

Business Insurance®

October 13, 2003

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\$4



Holding the line on costs

Automakers agree to limit shifting health care costs to workers but win UAW's commitment to help cut overall health expenses

NEWSPAPER

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Ruling lifts countersign requirement in Florida

Health care cost hikes to slow in 2004, survey finds

Stop-gap pension funding bill wins broad support in House
Measure would cut employers' plan contributions

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\$4



Health benefits stay intact as UAW OKs other cost cuts

By JOANNE WOJCIK

DETROIT—While the United Auto Workers may have won the battle with employers over health benefit cost-shifting in its latest contract talks, the automakers and union representatives are quietly working behind the scenes to find other ways to cut costs, some of which are outlined in the new four-year pact.

And there may be some cost-trimming opportunities, observers say, because the UAW's collective bargaining agreements have for years ensured that auto industry workers have maintained almost

first-dollar benefits for members and unrestricted access to providers, while workers in other industries have seen their benefits eroded.

Still, the UAW's victory at the bargaining table over increased cost-shifting at a time when most employers are passing off the rising costs of health care onto workers, was significant, observers say.

"They held the line, and they held the line in a situation where they were negotiating for Cadillac health care benefits," observed Richard Bank, director of the Center for Collective Bargaining at the AFL-CIO in Washington. "The

health benefits that are enjoyed by autoworkers represented by the UAW are among the best in the country. So they're extremely expensive, and to be able to hold the line on those is a very major achievement," he said.

Indeed, at the outset of negotiations with the Big 3 automakers—General Motors Corp., Ford Motor Co. and DaimlerChrysler Corp.—UAW President Ron Gettelfinger was adamant that health care would not be a negotiable item.

But the union did agree to help reduce health care costs, and

See **BENEFITS**/page 25

Countersignature law overturned in Florida

Ruling to reduce brokerage red tape

By MARK A. HOFMANN

TALLAHASSEE, Fla.—Risk managers and brokers are hailing a federal judge's rejection of Florida's countersignature law, saying the decision should promote efficiency in insurance transactions.

And the Council of Insurance Agents & Brokers, which sued to have the Florida law declared unconstitutional, said it plans to step up its efforts to promote producer licensing uniformity by examining how all states treat surplus lines licensing.

On Sept. 30, U.S. District Court Judge Robert L. Hinkle of the U.S. District Court for the Northern District of Florida in Tallahassee overturned Florida's countersignature law on constitutional grounds. The statute required licensed, nonresident agents and brokers to be "accompanied" by a resident agent to solicit, negotiate or implement an insurance contract. In practical terms, this meant resident agents had to sign any policies, and in return, the nonresident agents had to turn over as much as half of the commission on the business to the resident agent.

The CIAB argued that the 1949 countersignature law unconstitutionally discriminated between resi-

See **CIAB**/page 28

Late News

Insurers reject revised asbestos proposal

Insurers have rejected an asbestos reform plan that had been proposed by Senate majority leader Bill Frist, R-Tenn., as part of an effort to get the legislation moving again.

Insurance groups last week sent Sen. Frist a letter outlining their concerns about the creation of a



Sen. Frist

proposed fund designed to compensate victims of asbestos-related diseases (see story, p. 18). According to sources, Sen. Frist's counterproposal contained a call on insurers to pay more than \$45 billion into the fund. In return, they would be exempt from any additional contingent funding if the fund proved inadequate to meet claims, with such claims reverting to the tort system.

Court approves Magellan reorganization

Magellan Health Services Inc. has received court approval for its reorganization plan, which will enable it to exit Chapter 11 bankruptcy. The managed behavioral health care company filed for reorganization in March in an effort to reduce its \$1 billion in debt. Over the past several months, the company has reduced its debt and attracted additional investors, including Toronto-based conglomerate Onex Corp., which has pledged to invest \$103 million in the reorganized company.

Health care costs up 15% in 2003, survey finds

Employers paid an average of 15% more for health care coverage in 2003 than they paid in 2002, according to a survey by units of Wells Fargo. According to the survey, 59% of the employers reported at least 13% higher health care plan costs in 2003, with 23% of those reporting cost increases of more than 20% within the past year. The cost per employee for single coverage within a preferred provider

See **LATE NEWS**/page 27

Health cost inflation to ease in '04

Hewitt study projects a 12.6% average increase, down from recent years

By JERRY GEISEL

Health care cost increases finally may be moderating.

Next year, group health care costs are projected to rise by 12.6% on average, to \$7,009 per employee, according to an analysis by benefit consultant Hewitt Associates Inc.

This year, costs leaped an average of 14.7%, according to Lincolnshire, Ill.-based Hewitt. Health maintenance organization costs in-

creased the most, rising an average of 15.6%, to \$6,018 per employee; while costs in preferred provider organizations climbed 14.5%, averaging \$6,300 per employee; and point-of-service plan costs rose 14.1%, averaging \$6,391.

Hewitt's 2004 projection is based on a survey of budgets that employers have set and the health care premium increases they have received through the end of September. The actual increases could be somewhat

lower, if, for example, employers drop their most expensive health plans, or, in the case of self-funded employers, if greater cost-shifting to employees reduces utilization of services.

While next year's projected rise marks the fourth consecutive year of double-digit cost increases, the roughly two percentage point drop in cost hikes is the greatest since the mid-1990s, when managed care plans were slashing rates to build

market share.

Still, despite the moderation, another double-digit hike in health care costs probably will be of little comfort to most employers, especially when the costs of many other goods and services they are purchasing are rising by low single digits, if at all.

"We have moved from the outrageous to the merely intolerable," said Ken Sperling, a Hewitt consul-

See **HEWITT**/page 28

New interest rate index would cut plan contributions

House passes proposal to reform pension funding

By JERRY GEISEL

WASHINGTON—Congress is one big step closer to passing legislation that would allow employers to reduce contributions to their pension plans by billions of dollars in each of the next two years.

In a rare bipartisan action, the House of Representatives last week voted 397-2 to approve H.R. 3108, a bill that would change for 2004 and 2005 the methodology that employers must use in valuing pension liabilities.

Under the stop-gap legislation, employers would value pension liabilities using an interest rate based on the yields of long-term, highly rated corporate bonds. The Treasury Department would determine the interest rate based on a blend of corporate bond index rates.

Absent such a change in the law, employers next year would value liabilities under a formula of 105% of the four-year weighted average of the yield on the 30-year Treasury bond. This year, under a law set to expire at the end of 2003, employers use a formula of 120% of the four-year weighted average of the yield on the 30-year Treasury bond.

For purposes of pension liability valuation, the use of a corporate bond-based rate should result in an interest rate assumption that is about one percentage point higher compared with using a rate based on 105% of the yield on 30-year Treasury bonds, according to pension actuaries.

With plan liabilities decreasing by roughly 10% to 12% for every one-percentage-point increase in interest rate assumptions, the con-

tribution savings under the measure could be hefty for many employers, said Chris Bone, chief actuary for Aon Consulting in Somerset, N.J.

According to an analysis by the federal Pension Benefit Guaranty Corp., the use of corporate bond yields to value plan liabilities would reduce total pension plan contributions by more than \$25 billion over the two years compared with the methodology employers are using this year.

The impact of the change on any individual employer would vary and would depend on the funding level of its pension plan. In some cases, the savings could be minimal, but in other situations, the savings could be "massive," said Kevin Wagner, a consultant with

See **PENSION BILL**/page 25

Brokers charged with aiding alleged workers comp fraud

Laborers misreported as low-risk workers: Indictment

By DOUGLAS McLEOD

CHICAGO—An indictment of several Chicago businesspeople in an alleged \$100 million municipal contract fraud has swept up two insurance brokers, who are accused of separately helping the other defendants defraud workers compensation insurers of more than \$3 million.

The two-pronged federal indictment charges politically active businessman James M. Duff, Mr. Duff's mother and two associates with winning more than \$100 million in City of Chicago waste recycling and janitorial contracts by fraudulently having Duff-controlled companies certified as minority- and women-owned businesses.

The indictment separately charges two officials of Leahy & Associates Inc., a family-owned insurance broker and third-party administrator, with aiding a scheme to suppress the Duff companies' workers comp premiums by falsely reporting workers as low-risk "clerical" and "labor union" employees.

Between 1989 and 2001, the insurance scheme deprived the Illinois workers comp assigned risk pool and several insurers of more than \$3 million in unpaid premiums, prosecutors charge.

All of the defendants pleaded not guilty at an arraignment in U.S. District Court in Chicago last week.

"This is obviously an unjust accusation that we plan on vigorously

defending," said John J. Leahy, president and owner of Westchester, Ill.-based Leahy & Associates and one of those named in the indictment.

"We are in shock here," Mr. Leahy added. "We are a very reputable agency."

The 30-count racketeering, money laundering and fraud indictment, announced by U.S. Attorney Patrick J. Fitzgerald in Chicago on Sept. 25, names:

- Mr. Duff and his mother, Patricia Green Duff. According to prosecutors, Mr. Duff controlled a string of Chicago-based day labor, janitorial and trucking companies that did business with the city, including Windy City Labor Services Inc.,

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PHOTO: REUTERS

California Gov.-elect Arnold Schwarzenegger won the support of business by pledging workers comp and tort reforms.

California employers hopeful Schwarzenegger will reform comp system

By SALLY ROBERTS

SACRAMENTO, Calif.—Employers in California are optimistic that Gov.-elect Arnold Schwarzenegger will have more success in reforming the state's troubled workers compensation system than did Gray Davis, whom Mr. Schwarzenegger ousted in last week's widely publicized California gubernatorial recall election.

The Hollywood action-star-turned-politician made workers comp reform a part of his campaign to remove Gov. Davis from office just 11 months after voters in the state re-elected him to another four-year term.

Although Gov. Davis signed into law several workers comp reforms earlier this month, employers say they are not enough to stem rising workers comp costs. Costs increased more than 200% in California between 1995 and 2003, driving many employers out of the state (*BI*,

Oct. 6).

"Unlike the recent legislation, I will work to comprehensively address all significant drivers behind the workers compensation crisis, including medical fee schedules, vocational rehabilitation expenditures, potential cost increases arising from the recent legislation and more," Mr. Schwarzenegger said on his campaign Web site.

Whether Mr. Schwarzenegger will be successful in implementing any meaningful reform remains to be seen, California risk managers say. They are optimistic, though.

"We made a big step forward by getting Arnold in there," contends Nancy Axtell, director of safety and risk management for PRIDE Industries in Roseville, Calif. "What has been done to work comp in the last couple years has been devastating to the state."

Given that the Democratic

See **WORKERS COMP**/page 26

Inside Business Insurance

U.K. companies explore D&O alternatives

A large group of British companies is looking at alternative ways to fund directors and officers liability cover, in the face of big rate hikes. **Page 4**

Industry underreserved for A&E claims: Best

An A.M. Best Co. analysis finds reserve deficiencies for asbestos and pollution claims. **Page 4**

Florida employers hail workers comp reforms

Employers in Florida are hopeful that new comp reforms will reduce costs, improve benefits and promote efficiency. **Page 6**

Protectionist statute brought hassles, costs

A Florida judge was right to strike down the state's countersignature law as unconstitutional. **Page 8**



Australia backs down on docs' indemnity levy

Australia's government has put on hold a medical indemnity levy in an attempt to avert the widespread closure of hospitals. **Page 21**

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.

- Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.

- New **Opinion Poll** for readers: How important do you think the property/casualty insurance industry's unified opposition to the Senate asbestos reform bill will be in determining the fate of the measure?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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New U.S. docket holds little for risk managers

By MARK A. HOFMANN

WASHINGTON—Lackluster rather than blockbuster describes the Supreme Court's current docket in terms of risk management cases.

Unlike previous terms that have begun with a docket brimming with high-profile business cases, the high court term that began last week is remarkably thin where liability and health issues are involved. As former U.S. Attorney General Richard Thornburgh put it during a recent discussion of the upcoming term at the Washington Legal Foundation, the docket is "plain vanilla." Although the justices had accepted 37 cases for review before the current term began on Oct. 6, very few of those involve

risk management or health care questions. In fact, the justices thus far have accepted only two potentially significant employment liability cases and no cases involving the constitutionality of punitive damages or other civil justice questions.

The continuing impact of last year's docket was underscored last week when the justices remanded two punitive damages cases to lower courts in light of last year's decision in *State Farm Mutual Automobile Insurance Co. vs. Curtis Campbell et ux*. In that case, the high court suggested that, as a general rule, punitive damages must be less than double-digit multiples of underlying actual damages to pass constitutional muster. One of the re-

manded cases—*Philip Morris USA Inc. vs. Mayola Williams*—involved punitive damages nearly 100 times the underlying damages. The other—*Chrysler Corp. vs. Dorothy Clark*—involved punitive damages almost 13 times the underlying damages.

Absent civil justice cases, workplace liability questions dominate what risk management exists, and even those tend to fall short of "blockbuster" status, noted an employment law expert.

"While the Supreme Court's last term resulted in numerous decisions with significant implications for employers, the current docket for the 2002/03 term lacks multiple cases with potential blockbuster

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There are few high-profile cases of interest to risk managers in the current session of the U.S. Supreme Court.



PHOTO: COURTESY OF BAE SYSTEMS

BAE Systems P.L.C., a U.K. defense and aerospace company, has joined the fight against D&O rate increases.

U.K. companies say D&O rate increases don't reflect risks

By NEIL HODGE

LONDON—A large group of British companies is exploring alternatives to buying directors and officers liability coverage in response to what they see as unwarranted and exorbitant rate hikes.

The 70 companies, most of which are U.K.-based and members of the Financial Times Stock Exchange 350, are angry that, in the words of one risk manager, they are being "held to ransom" by their D&O insurers, given the small number of major D&O claims in the United Kingdom over the past 10 years.

Underwriters, for their part, maintain that D&O coverage in

the United Kingdom has been underpriced for years and that the hikes are needed to bring prices in line with exposures, particularly for those companies that are listed in the U.S. in addition to being listed in London.

Although shareholder class actions are rare in the United Kingdom, directors and officers still face exposure to charges such as fraud and mismanagement. In addition, companies that have a stock listing in the United States—as do nearly all of the 70 companies involved—are exposed to shareholder litigation in that country. Such companies are seeing the largest D&O premium hikes, which in many cases

See **D&O**/page 23

Ratings agency finds \$45 billion shortfall

Asbestos, environmental risks are underreserved: A.M. Best

By DOUGLAS McLEOD

Despite huge asbestos reserve increases by several insurers in the last two years, the property/casualty industry remains significantly underreserved for these claims and even more underfunded for environmental losses, A.M. Best Co. reports.

At year-end 2002, the industry was underreserved by \$45 billion, or about 37%, for ultimate, undiscounted asbestos and pollution liabilities expected to reach \$121 billion, the Oldwick, N.J.-based rating agency concludes in an analysis of 2002 insurer financial statement disclosures.

While insurers had recorded in-

curring-to-date asbestos losses of \$45 billion as of the end of last year, they still faced unfunded liabilities of \$20 billion, or about 31% of the projected industry loss of \$65 billion. Environmental incurred-to-date losses amounted to \$31 billion, leaving the industry underreserved by \$25 billion, or about 45%, for projected ultimate losses of \$56 billion, Best found.

Asbestos reserving levels have actually improved dramatically since 1993, when the industry was underreserved by more than 70% for the current projected industry loss, and even since 1998, when the industry was still underreserved by 58%.

The last two years have seen sev-

eral high-profile asbestos reserve increases, including multibillion dollar boosts by Travelers Property Casualty Corp. and ACE Ltd. last year and Hartford Financial Services Group Inc. earlier this year.

Industrywide asbestos loss reserves jumped 46% in 2002 after a 25% increase in 2001, according to Best.

Those increases have been largely responsible for a surge in annual incurred asbestos losses to \$8 billion last year from \$4 billion in 2001 and a three-year annual average of \$1.7 billion before 2001.

Nevertheless, only half of the 30 insurer groups with the largest A&E

See **ASBESTOS**/page 26

Midsize firms are next target for D&O lawsuits, panel warns

By GAVIN SOUTER

NEW YORK—Midsize companies are likely to face a wave of shareholder lawsuits, as suits against larger companies become more protracted, a panel of directors and officers liability experts predicts.

Plaintiff lawyers are less able to control shareholder actions as large shareholders increasingly take control of suits filed against the directors and officers of large companies, so attorneys are setting their sights on midsize and smaller listed companies for the potential to win damages, the panel of experts says.

Another factor, they add, is that all listed companies are facing more onerous corporate governance requirements that will likely lead to more shareholder

lawsuits.

The majority of shareholder lawsuits are instigated by plaintiff lawyers who specialize in the litigation rather than shareholders themselves, said Thomas J. Kavalier, a partner at Cahill Gordon & Reindell L.L.P. in New York.

He was speaking at a seminar on D&O issues for midsize companies in New York last week sponsored by American International Group Inc., NASDAQ, Financial Executives International, and the National Assn. of Corporate Directors.

And the lawyers that file the lawsuits "live off volume," he said.

But although the lawsuits continue to be generated by lawyers, increasingly large shareholders, such as pension funds, are taking control of the litigation after

See **MIDSIZE**/page 28



Florida reform law addresses workers comp woes

By JUDY GREENWALD

TALLAHASSEE, Fla.—Florida employers are applauding the state's new workers compensation reform law, saying the reforms will help reduce costs and fraud, improve injured worker benefits and create a more efficient system.

In fact, in response to the measure, workers comp rate increases averaging about 14% that were introduced in April were rolled back Oct. 1, when many of the law's provisions took effect.

The reform is expected to create annual savings of \$400 million to \$450 million, said Peter Burton, senior division executive-state relations for the Boca Raton, Fla.-based National Council on Compensation Insurance. "This is one of the largest reform efforts in the last decade" nationwide, Mr. Burton said.

But trial lawyers say that the Workers Compensation Reform Act—which was approved by the Florida Legislature in a special session in May and signed into law by Fla. Gov. Jeb Bush in July—unfairly reduces or eliminates some worker benefits and may deny workers adequate counsel by modifying the basis for paying attorneys fees.

The lawyers say the legislation is likely to be constitutionally challenged in the courts.

"There's going to be a lot of appellate activity," predicted plaintiff attorney Sean Culliton, of Tallahassee-based Anderson, Culliton & Sullivan.

Some observers say the law may also lead to more litigation against employers in cases where workers comp coverage is denied.

The legislation is designed to reduce litigation, provide greater compliance and enforcement authority for the state to combat fraud, revise certain indemnity benefits for injured workers, increase medical reimbursements for physicians and surgical procedures, and increase the availability and affordability of coverage. While most of the law's provisions took effect Oct. 1, some went into effect upon the bill's signing on July 15, and others take effect in January.

Florida's workers comp insurers collected a total of \$2.80 billion in net direct written premiums in 2002, according to the Tallahassee-based Florida Workers' Compensation Insurance Guaranty Assn. Individual company and group self-insured businesses accounted for the equivalent of another \$1.68 billion

in premiums.

The general consensus is that Florida's workers comp system is troubled. "Florida's been cited as having the second-highest premiums in the country and one of the lowest benefits, and, based upon anecdotal evidence...employers were faced with both availability and affordability problems," said Mr. Burton.

'This is one of the largest reform efforts in the last decade' nationwide.

*Peter Burton
National Council
on Compensation Insurance*

According to the Cambridge, Mass.-based Workers Compensation Research Institute, a study of 1999 claims conducted in mid-2000 found that the average workers compensation claim in Florida was \$3,081, or 18% higher than the median for the 12 states included in the survey. The findings from an updated version of the study, which will be released shortly, are consistent with the earlier study, said WCRI Senior Analyst Carol Telles.

Employers generally have welcomed the new law.

"I'm pleased with it, most pleased," said Stephen Sutter, president of Sarasota, Fla.-based Sutter Roofing Co. of Florida. "No. 1, it reduces our rates, it provides for better coverage for our workers, and it lets some of the attorneys' fees out of the system, which helps reduce the cost to everyone. I think, from a competitive standpoint, it's going to allow us to provide better pricing to our customers."

A spokesman for Chicago-based Boeing Corp., which has 2,600 employees in Florida, said, "We're very pleased with the legislation and find it a very positive improvement." Workers compensation "was the biggest cost driver for companies like us in Florida," the spokesman said. "It put us at a disadvantage. The changes that take place are going to make us much more competitive as company and easier for Boeing to do business in the state."

Frank Catapano, risk manager for Volusia County in De Land, Fla., said, "I think, from the employer's standpoint, it's positive."

"In the long run, we should save some dollars" as a result of the law, Mr. Catapano said. He cautioned, though, that "you have to wait to see how the judges and the courts interpret it."

Laura Wehrle, Tampa, Fla.-based senior vp and divisions manager for Liberty Mutual Insurance Co., which is the largest workers comp insurer in the state, said, "We think the Florida Legislature passed an excellent reform bill that addresses many areas of the workers comp system that were spiraling out of control."

However, while the system is more stable, the economics remain generally unchanged, "so if the anticipated cost savings fall short in any way, then the rate structure will

be inadequate. I think most carriers realize that this is an increased risk until the benefits of reform are realized, and I think people are factoring that into the business decisions they make within the state," said Ms. Wehrle. She said Liberty Mutual remains "very committed to our customers in the state."

Plaintiff attorneys say the law troubles them.

"The disadvantages that injured workers have now in proving their cases and receiving just compensation are just insurmountable," said Mark L. Zientz, a Miami-based plaintiff attorney.

Ramon Malca, an attorney with Malca & Jacobs in Miami, said, "The so-called reform failed to address the problems that were identified by those that were looking at the system, and what we ended up with is a product that benefits insurance companies to the detriment of injured workers and employers who pay premiums."

Of particular concern to plaintiff attorneys is a provision that limits attorney fees to 20% of the first \$5,000 of benefits secured, 15% of the next \$5,000 and 10% of the remaining amount of benefits. A judge, though, in medical-only cases may approve a one-time attorney fee of up to \$1,500 based on a maximum rate of \$150 per hour.

Plaintiff attorneys contend that adequately representing workers can entail many hours of work and that this provision will discourage attorneys from taking on workers comp cases. "It eliminated reasonable fees," which historically have been determined by the amount of time an attorney spends on a case, said Mr. Malca.

While plaintiff attorneys are limited in how much they can be awarded, there is no comparable limitation on insurer attorneys, who will be paid even if they lose, said Mr. Malca.

"I think it'll lead to workers having difficulty getting adequate representation. I think it'll encourage insurance companies to deny claims that should be accepted and to delay claims benefits that should be paid promptly because there's no real penalty for engaging in that type of conduct," he said.

However, Liberty Mutual's Ms. Wehrle said, "Prior to reform, we had a situation where attorneys' fees could be significantly higher than the benefits received." The workers comp reform attacks not the funds that ultimately end up in injured workers' pockets but the other frictional costs of administering the system, she said.

Another point of contention is the limitation on compensation for psychiatric problems under the law. To receive compensation for a psychiatric problem, a physical injury must be at least 50% responsible for the mental injury. Benefits are capped at six months from the time the physical injury has healed, after which, for those with a permanent impairment, workers can obtain a one-time payment that amounts to \$665 for a worker who makes \$500 a week.

Some observers say they are concerned about potential situations where, for instance, a woman who is raped in the workplace and suffers subsequent emotional trauma but sustains relatively little, if any, physical injury, may be denied coverage.

Defense attorney Steve Kronenberg of Kelley, Kronenberg, Gilmartin, Fichtel & Wander in Miami said, "I understand why the Legislature did this, because there are some psychiatric injuries that are marginal or nonexistent at best, and they are trying to address that, but my concern is for the person that genuinely has a catastrophic psychiatric injury."

This issue is being looked at by the Legislature.

Florida Senate President Jim King, R-Jacksonville, has asked the Senate Banking and Insurance Committee to consider concerns raised by legislators about the reform law as to "possible unintended consequences, and how certain provisions would actually be implemented." These include the standards for compensating mental and nervous injuries. The committee's report is due Dec. 1.

Meanwhile, defense attorney Paul Westcott of Hurley, Rogner, Miller, Cox, Waranch & Westcott in Fort Pierce, Fla., said he is concerned that the higher bar required under the law to obtain workers comp coverage, combined with the lower fees plaintiff attorneys will receive, will encourage them to file more litigation against employers in civil court when coverage is denied.

Mr. Westcott said he is advising employers as well as insurers to "make sure you look at what you're doing when you're denying coverage under a claim now."

However, Claude Revels, corporate safety manager for Jacksonville, Fla.-based JM Family Enterprises, said he believes that, under the legislation, plaintiff attorneys will have a "pretty high test to pass" to successfully pursue litigation in the courts.

FLORIDA'S WORKERS COMP REFORMS

Provisions of the Workers Compensation Reform Act include:

- Sets attorneys' fees by percentage of benefits won.
- Increases the Florida Department of Financial Services' authority to examine and fine insurers for unreasonable delay in claims handling or for harassment, coercion or intimidation of claimants.
- Limits the previously widely used exemptions from coverage in the construction industry.
- Limits an employer or employee to one independent medical exam per accident, rather than one per medical specialty.
- Increases benefits for a permanent, partial disability, but reduces the amount by 50% if the employee can earn the same or a greater wage after the injury.
- Increases funeral expense benefits to \$7,500 from \$5,000 and death benefits for dependents to \$150,000 from \$100,000.
- Limits benefit payments for mental or nervous injuries to no more than six months after recovery from the physical injury.
- Provides subcontractors with immunity from lawsuits by employees of another subcontractor or the contractor under certain conditions.
- Requires "clear and convincing" evidence that exposure to a specific substance caused an injury or disease.
- Increases doctors' fees to 110% of Medicare reimbursements, and surgeons' fees to 140%, but reduces outpatient reimbursement for non-emergency surgeries to 60% of charges from 75%.

Paul Winston



*Paul Winston's
commentary will return
in the Oct. 20 issue*

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Editorial

More to do on pensions

LEGISLATION APPROVED by the House of Representatives last week, which would give employers temporary and needed pension plan funding relief, is a victory for common sense.

As we report on page 3, the House overwhelmingly approved a stop-gap measure that would allow employers to use the yields on long-term corporate bonds, rather than the 30-year Treasury bond, to value plan liabilities for the next two years.

The issue of what debt instrument sponsors should use to value pension plan obligations may, at first glance, make one's eyes glaze over.

But, in fact, that issue is of vital importance to the nation's retirement income system. If, for example, interest rate assumptions employers must use are too low, then companies will contribute far more than is needed over the long term to

fund obligations, a result that certainly would encourage employers who need the cash for other corporate purposes to jettison their plans.

Conversely, if interest rate assumptions are set too high, plans can end up extremely underfunded, posing a risk to participants if the company later fails and the plan is terminated. And that is a risk to the Pension Benefit Guaranty Corp., which guarantees most of participants' promised benefits.

The PBGC is funded by premiums paid by employers with defined benefit plans, and if the agency absorbs bigger and bigger losses, it will have to charge employers ever-higher premiums, another deterrent for employers to stay in the defined benefit plan system.

By now, a near consensus has developed among pension policymakers that basing interest rate assump-

tions on the yields of corporate bonds is more appropriate than using the Treasury bond-linked approach. The yield on T-bonds has been artificially depressed by the government's decision to stop issuing the debt instrument, among other reasons.

So, unquestionably, the House is on target in approving this temporary measure. But pension funding considerations go well beyond the issue of interest rate assumptions.

For example, should employers with underfunded plans be allowed to boost benefits, and is the requirement that pension plan contributions be accelerated when plans slip below certain funding levels too rigid?

These are issues that need careful study, and the House action ensures that legislators will have the time needed to come up with answers.

No place for protectionism

PROTECTIONISM IS AN ECONOMIC philosophy that outlived its usefulness decades ago.

Nevertheless, a form of protectionism remained alive and well in Florida until just a few days ago in the form of the Sunshine State's countersignature law. Risk managers, who have long fought for greater efficiency in insurance transactions, have good reason to cheer rather than mourn its passing.

The Council of Insurance Agents & Brokers performed a real public service by suing to get the law declared unconstitutional, which is exactly what U.S. District Court Judge Robert Hinkle did. The law required licensed nonresident agents and brokers to find a resident agent to "accompany" them if they wanted to do business in Florida. The cost of companionship of this sort was a mere 50% of their commission.

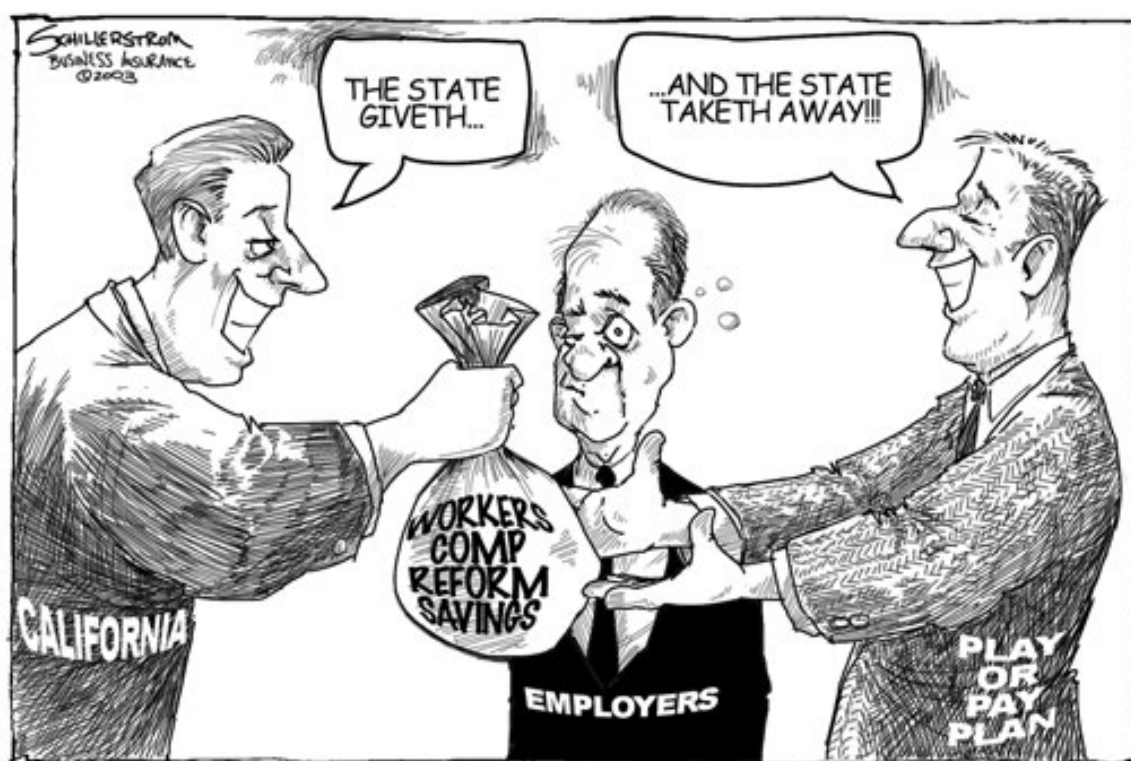
That's a pretty steep price for a signature. It's also the kind of price that, even if it didn't appear as a line item

on contracts between risk managers and their brokers, had to be paid from somewhere. Like most hidden costs, it ended up increasing overhead and hassles, except for the lucky countersignatories.

The fact that the Florida law remained on the books until the last day of September of this year is particularly galling given ongoing U.S. efforts to break down trade barriers throughout the world. Trade negotiators have been working overtime to breach protectionist walls while the state of Florida merrily shielded its agents from—horrors—domestic competitors.

The CIAB is taking action against the few remaining countersignature laws, and we certainly wish the organization well in its efforts. There's no good reason for such protectionist walls to remain. Leveling them just as Florida's was leveled will help promote smoother and more efficient transactions for producers and their risk manager clients alike.

Schillerstrom



Letters to the Editor

S&P seeks to clarify role of insurer ratings

To the editor: Your editorial, "Beware Reinsurer Insecurity" (BI, Sep. 22), provides valuable advice to risk managers but perpetuates some myths about financial strength ratings. You recite complaints of downgraded companies that "rating agency models are too inflexible" without stating that analytic models are simply tools that assist us in understanding particular risk characteristics of a reinsurer. Over the last two years, Standard & Poor's has lowered the ratings of 14 of the world's 20 largest reinsurers (eight of them more than once) because they have been consistently losing money. We don't need a more sophisticated model to tell us that unprofitable companies may need to be downgraded.

We agree with your entreaty that risk managers look beyond letter ratings to understand the underlying strengths and weaknesses of insurers and reinsurers to which they are exposed. This is why our analysts write in-depth reports that accompany rating actions, explaining the reasons for our opinions and indicating key factors that may affect future financial strength. Unfortunately, most risk managers and brokers prefer simplistic rules based on the letter ratings, which gives rise to the downgrade provision contract language you cite. We do not endorse the use of these so-called triggers as they may unnecessarily stress a reinsurer when it is most vulnerable.

Steve Dreyer
 Managing Director
 Standard & Poor's Corp.
 New York

Quality letter misstates desires of risk managers

To the editor: Regarding Jay T. Deragon's Aug. 11 letter critiquing the insurance industry's efforts to improve itself, I hear in his invective a barrelful of sour, if not rotten, grapes.

While the Quality Insurance Congress may have failed in its mission to influence and improve processes in the industry, the reasons go beyond those he's outlined in his letter. More importantly, that's old news and unimportant to the issues at hand today. These include his mischaracterization of what matters most to risk managers in the way insurers and brokers perform.

Performance measurement, best practices and his "host of other schemes" (which no doubt includes RIMS' Quality Improvement Process initiative), while likely not meeting his highly academic view of quality, are a few of the things that a highly qualified group (the RIMS Quality Committee and partners) representing insurers, brokers and customers, deemed most im-

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A modest proposal on health plan design

By William E. Hembree

What's next after managed care and consumer-driven health plans? A fundamental rethinking of plan design is needed for the future.

While cost-shifting is often credited with helping control employee health care costs, in reality, it has a poor track record of controlling costs. That's because the less than 20% of covered populations who create more than 80% of plan sponsors' medical costs are in the 100% plan payment, maximum out-of-



pocket zone of their plans for much of the plan year.

This small number of patients who create most of a plan sponsors' costs tend to be very seriously ill, and serious illness is the predominant cause of costs for all plan sponsors.

And at the point of service in these serious-illness situations, the emotional response of, "Doctor, I don't care what it costs; just help my loved one get well" typically trumps prudent buying.

Plan sponsors lament that employees irresponsibly engage in unhealthy behavior they could modify. But from the employees' perspective, why should they act responsibly? Today's plan design approach, with its focus on point-of-service cost-sharing, wrongly insulates participants from the consequences of their unhealthy behavior.

Health plan sponsors lament that employees engage in unhealthy behavior they could modify. Today's plan design approach, with its focus on point-of-service cost-sharing, wrongly insulates participants from the consequences of their unhealthy behavior.

Employees engaging in health-risking behavior are comfortable being insulated from the cost consequences of that behavior. They know they pay added premiums in virtually all other forms of insurance they purchase. Isn't whether an individual uses tobacco one of the first questions asked on a life insurance application? How many drunken-driving convictions does it take to eliminate access to auto insurance? Don't actuaries consider the number of smokers in a household when setting homeowners insurance rates?

Who believes using more of the same plan designs in the future will bring about anything but the same insufficient results we're experiencing today?

If cost-sharing is essential, the best vehicle to share costs among users and nonusers alike is not based on flat amounts. Flat contributions create higher costs as a percentage of income for lower-paid employees than for higher-paid employees.

The best vehicle to share costs among users is an uncomplicated, equitable, affordable employee premium contribution that is adjusted for family size. Some plan sponsors already share costs with employees on a percentage-of-pay basis, which is fairer, and

of course, percentage-of-pay contributions automatically increase employees' contributions as their pay increases over time.

An innovative plan design should be used that affects behavior when it counts, not just at the point of service. An effective approach would be a simple risk-adjusted percentage cost-sharing arrangement at the point of service with no maximum out-of-pocket limit.

Under this approach, individual participants who choose not to alter habits that create a higher likelihood of future cost would pay more at the point of service—preferably much more—than would participants who fit into the wide definition of normal risk. The participants who don't change their behavior should also pay a higher percentage of pay as their modifiable risk-adjusted premium contribution.

For example, if 10% were used as a base, most employees would fit in the normal risk category and simply pay 10% of the cost of medical services each time they receive care. No deductibles, no tiered or other copayments, no maximum out of pocket and no other hard-to-understand provisions and anxiety-provoking unknowns.

But it can be validly demonstrated that smokers create more medical costs than nonsmokers. Consequently, while nonsmokers would pay the 10% point-of-service fee, smokers would pay more—maybe 15%, 20%, 25% or more depending on the risk-adjusting method used.

This concept can be extended to all lifestyle risks employees could control if they choose to—such as tobacco and illegal drug use, obesity, lack of fitness, drunken driving, failure to use seat belts, attempted suicide, jumping from airplanes, etc.

Under this modifiable health-risk-adjusted plan design concept, plan sponsors' costs would become behavior-neutral, and thus, plan sponsors—and, equally importantly, fellow employees—would be protected from employees who bring higher-than-average risks to medical plans. All participants who have been insulated from the consequences of their health-risking behaviors in the past would gradually become responsible for a risk-proportionate share of future costs if they choose not to change their lifestyle-induced risks.

As an incentive to those with poor lifestyles currently, participants could choose to modify the behaviors causing their higher cost and eventually qualify for the normal-risk category. But, best of all, the 10% used in this example could be lower—even 0%—to reward individuals who bring much lower-than-average risks to the plan.

William E. Hembree is director of the Health Research Institute in Concord, Calif.

Profit compensation ruled a bonus for LTD cover

The 7th U.S. Circuit Court of Appeals ruled that profit compensation in an employment agreement constituted a bonus for purposes of calculating long-term disability benefits under an Employee Retirement Income Security Act plan.

Mary Perugini-Christen was covered by LTD insurance under a group policy provided by Reliance Standard Life Insurance Co. From 1985 to 1993, Ms. Perugini-Christen owned a mortgage company. In 1993, she sold the company to Homestead Mortgage Co. As part of the sale, she entered into a deal with Homestead to act as an independent branch manager for the Fort Wayne, Ind., office. She negotiated a compensation package under which she was to receive 50% of the branch profits in addition to her annual salary. In 1996, Ms. Perugini-Christen became disabled and filed a claim for LTD benefits. Under the insurer's benefits plan, her benefits were to be based on covered monthly earnings. Covered monthly earnings were defined as the employee's monthly salary and any bonuses averaged over 36 months. Reliance considered the branch profits she received to be a bonus and averaged them over a 36-month period to calculate her monthly benefits. Ms. Perugini-Christen sued but lost in the trial court.

On appeal, Ms. Perugini-Christen argued that, because she was contractually entitled to the branch profits, they couldn't be considered bonuses. She maintained that the profits were commission and, thus, were to be averaged over the preceding 12 months. The court said that the trial court correctly classified the profits as bonuses. "Certainly," the court said, "the branch profits cannot be

Legal briefs

considered salary because although they were earned on a monthly basis, they were in no way fixed compensation." Accordingly, the court said, the trial court was correct in finding that the profits were better described as bonuses than as commissions.

Perugini-Christen vs. Homestead Mortgage Co., 7th U.S. Circuit Court of Appeals, April 19, 2002 (BI/05/N.-\$10).

LTD plan description required repayments

The 6th U.S. Circuit Court of Appeals ruled that an Employee Retirement Income Security Act summary plan description could only reasonably be interpreted to provide that long-term disability benefits would be reduced by Social Security disability benefits received by a plan participant.

Several former employees of Wal-Mart Stores Inc. and Sam's Club who were participants in a welfare plan had purchased LTD insurance offered by Wal-Mart through Hartford Life & Accident Insurance Co. Subsequently, the employees became disabled and submitted claims for LTD insurance. Before each was paid the LTD benefits, each signed reimbursement agreements obligating the individual to repay the insurer for all other income benefits, including Social Security disability insurance benefits and retirement benefits. The insurer

withheld their LTD benefits when the employees failed to repay the plan for their SSDI benefits. The employees then sued their employer and the plan, claiming a violation of ERISA. The trial court ruled for the insurer.

The appellate court said that, reading the contractual language of the monthly benefit provision in the summary plan description in an ordinary and popular sense, the only reasonable interpretation of the language was that a participant's disability benefit is reduced by the amount of any Social Security benefit received by the participant. Furthermore, the court said that the language of the Social Security provision in the SPD allowed for only one reasonable interpretation requiring a participant to apply for SSDI benefits and reducing LTD benefits by any Social Security benefits that the participant received. Thus, the court affirmed the trial court decision.

Garst vs. Wal-Mart Stores Inc., 6th U.S. Circuit Court of Appeals, March 12, 2002 (BI/02/N.-\$10).

Plumber's negligence not covered by CGL

A plumbing contractor's negligence in installing copper pipe instead of polyvinyl chloride called for by construction drawings was not an "occurrence" within the meaning of a general liability insurance policy, according to the 3rd U.S. Circuit Court of Appeals.

ProDent Inc. contended that Zurich Insurance Co. and the Northern Insurance Co. of New York were liable to it by virtue of Zurich's having issued a liability insurance

policy to cover RACS Associates, which performed certain plumbing work in connection with the renovation of ProDent's dental offices. In ProDent's suit against RACS, a jury had determined that RACS was negligent in connection with the performance of the work. Specifically, RACS installed copper pipes instead of PVC called for by the drawings. ProDent argued that Zurich, as insurer under a general liability policy, was responsible to pay the \$123,191 judgment obtained against RACS. The trial court ruled against ProDent.

On appeal, the court noted that the policy between RACS and Zurich obligated the insurer to indemnify for "property damage" caused by an "occurrence." Here, the court said, the claim was not one arising out of injuries that resulted from an accident but, instead, was based upon negligent workmanship. While RACS was found liable for the negligent performance of its work, the court said, that does not mean that the resulting damages were covered. According to the court, the injury and damages were suffered by virtue of an error or mistake, not by virtue of an accident or occurrence. The trial court decision was affirmed.

ProDent Inc. vs. Zurich U.S., 3rd U.S. Circuit Court of Appeals, March 29, 2002 (BI/04/N.-\$10)

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

REBEX 2003

Exposure standards needed for mold liability cover

By **RODD ZOLKOS**

CHICAGO—The problem of liabilities related to mold exposure are complicated by a lack of exposure standards and regulations related to mold cleanup, according to one expert.

Speaking at REBEX 2003, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc. last month in Chicago, Julie Vasilevich, senior director at USI Environmental Risk Mitigation Group in Chicago, said, "There's also great debate in the medical community as to how much mold makes you sick."

'There's also great debate in the medical community as to how much mold makes you sick.'

*Julie Vasilevich
USI Environmental Risk
Mitigation Group*

There are no specific exposure standards yet for mold, Ms. Vasilevich said, and, "what we're finding is what makes one person sick doesn't necessarily make another person ill," she said.

But as mold standards and regulations are adopted, it will force risk managers to focus more on taking preventive steps, Ms. Vasilevich said.

The effects of mold exposure are reversible, with no lasting damage

to most people, Ms. Vasilevich said. But for the approximately 3% of the population with compromised immunological systems, the problems could be more serious, she said, and risk managers responsible for large apartment buildings or office complexes can expect that a certain percentage of the occupants will be susceptible to those more serious health issues.

Ms. Vasilevich noted that mold-related claims are coming from diverse groups. "As far as claim activity, no one is immune,"

she said. And, she said, the insurance industry has already paid out more than \$4 billion in mold-related claims in Texas alone. "So, when these big, bad insurance companies put these exclusions on, they're not so big and bad. They are having some severe problems," she said.

Describing her own recent experience with mold following flooding in her condominium, Peggy J. Rychtarik, director of corporate risk management at Grubb & Ellis Co. in Northbrook, Ill.,

said, "It just absolutely amazed me that mold could grow that quickly."

"I know there's a lot of hype going on about exclusions in your policies and insurers not wanting to offer (mold coverage)," Ms. Rychtarik said. "I think I now understand why."

Two key factors in the emergence of a growing number of mold claims are the move since the 1972 energy crisis toward "energy-tight" buildings that lack windows that open and the misinformation about

mold's effects spread over the Internet and in the press, Ms. Vasilevich said.

Insurers' response with mold exclusions, meanwhile, is driven largely by a lack of credible mold loss history, limited case law and no regulations specifying what constitutes adequate mold cleanup, she said.

Despite the exclusions in many policies, "the main environmental insurance carriers will offer some degree of mold coverage," Ms.

See **MOLD**/next page



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275 attend REBEX event in Chicago

CHICAGO—REBEX 2003, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc., drew about



275 attendees to Chicago Sept. 24 and 25. Conference sessions addressed such topics as loss analysis, issues in the directors and officers insurance market and hiring practices.

For information about next year's REBEX conference, visit the Chicago RIMS chapter's Web site, <http://chicago.rims.org>, or the Wisconsin chapter's site, <http://wisconsin.rims.org>.

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REBEX 2003

Good preloss planning vital to business' well-being

By **RODD ZOLKOS**

CHICAGO—Proper planning before a loss occurs not only can save a company money but, in severe cases, can help ensure the survival of the business.

Speaking at REBEX 2003, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc. last month in Chicago, Doug D. Backes, operations vp-claims manager at Factory Mutual Insurance Co. in Park Ridge, Ill., said, "I see

day in, day out the horrible consequences that can result from inadequate preloss planning."

Mr. Backes, whose company does business as FM Global, said the goal of preloss planning is to determine what the company can do beforehand to prevent or mitigate a loss.

Contingency planning is of critical importance, Mr. Backes said. "The insurance contract can financially reimburse you, but there are many things that aren't insured and can put at risk your long-term stability," he said. A contingency

plan, he said, can give a company "a real fighting chance" after a catastrophe.

It's essential to obtain management support of any contingency plan, and it's important to a remember that such a plan is a process that must continually evolve as the organization changes.

Details of how the insurance contract will respond in the event of a loss should be hammered out in preloss meetings, Mr. Backes said. "Understanding the terms and conditions of that policy is just critical," he said.

cal," he said.

It's also important to determine how multiple carriers will work together in shared or layered programs. "Make sure that that's addressed before a loss," Mr. Backes said.

In many cases now, underwriters' requirements are forcing companies to do preloss planning.

"I think the current hard market has given all of us risk management professionals a real opportunity to do things we just weren't interested in before," said Patricia Cauwen-

bergh, corporate risk manager for manufacturer A.O. Smith Corp. in Milwaukee. Faced with the need to reduce high premiums, many risk managers may find it easier to get management approval for loss prevention and risk improvement projects, she said.

But James P. O'Brien, assistant client services manager for FM Global in Park Ridge, cautioned against planning only to satisfy underwriters, saying that approach is only a short-term solution and **Continued on next page**

Mold: Standards needed

Continued from previous page

Vasilevich said, though those coverages are generally offered on a case-by-case basis. And, in many cases, "the mold buyback might not be worth what you pay for it," she said.

For property owners seeking the coverage, "basically, the insurance companies are going to want to see that you have some sort of written prevention and mitigation techniques," Ms. Vasilevich said.

Lenders are becoming increasingly aware of the mold issue as well, she said. "They don't want to foreclose on moldy properties," she said, and may require that borrowers disclose their mold prevention plans and may require they obtain insurance coverage for the exposure.

Ms. Vasilevich suggested that buyers of mold coverage look very closely at the policy language, because there can be problems over the definitions of such terms as "failure to maintain," "cleanup costs" and "construction defects," and even over "mold" itself. "You want to make sure that you literally read every word," she said.

"The more you can show you're not likely to have a problem, the more likely you will be able to get coverage," Ms. Vasilevich said. "What we recommend," she said, "is that risk managers follow what we call prevention diagnostics," which are aimed at preventing a mold problem from occurring in the first place.

Among other things, property owners can assess and correct construction and building operations problems, eliminate potential sources of contaminants and design and build new buildings that are appropriate for the type of occupants who use them and the types of activities that will take place in them.

"Until the insurance company kind of catches up," Ms. Vasilevich said, "there are some things you can do from a risk management standpoint to diagnose and maintain healthy buildings."



REBEX 2003

Screening weeds out potential bad hires

Testing can avert costly mistakes

By **RODD ZOLKOS**

CHICAGO—Bad hires can turn into enormously expensive mistakes for companies, so many employers are looking to tools such as behavioral screening to identify job applicants who pose significant risks.

"What you do on the front end can have a bigger impact than just

about anything you do: hiring the right people to start with," said David J. Schaerer, executive vp of pre-employment screening company American Tescor Inc. in Beaverton, Ore.

Speaking as part of a panel at REBEX 2003, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc. last month in Chicago, Mr. Schaerer suggested that many employees come into the workplace with an "entitlement mindset."

That mindset can manifest itself in workers compensation claims, excessive absenteeism and other workplace problems, Mr. Schaerer said. But behavioral screening can help an employer avoid hiring such individuals, as well as others who might be high risks for theft or workplace violence.

'Eighteen percent of all job applicants admit to theft behavior' and '13% of all job applicants admit to current drug use.'

David J. Schaerer
American Tescor Inc.

There are several common denominators in expensive workers compensation claims, Mr. Schaerer said. "Typically, we see a history of absenteeism," he said. Also, there is typically a history of disciplinary action, prior claims or drug abuse.

Mr. Schaerer added that retailers have used behavioral analysis for years to identify job applicants who are high risks for theft, lying, substance abuse and hostile behavior.

"Interestingly, those people who are hostile, by the way, tend to interview very well," Mr. Schaerer said.

Because they have found ways to rationalize their behavior, many who do pose theft or substance abuse risks answer honestly in behavioral screenings, Mr. Schaerer said, noting that "18% of all job applicants admit to theft behavior" and "13% of all job applicants admit to current drug use."

Of those tested, on average, "2% are hostile," Mr. Schaerer said. "That's the good news. The bad news is, do not hire this 2%."

"Any screening is better than no screening," Mr. Schaerer said. "The more, the better." But he acknowledged that many techniques have limitations.

The most common tools used by employers today in screening prospective employees are drug testing and criminal background checks.

"Criminal background checks are **See SCREENING/next page**

Continued from previous page doesn't lead to long-term understanding of issues.

"The key, we feel, is understanding," Mr. O'Brien said, adding that it's hard to sell loss prevention ideas to management if the risk manager doesn't fully understand them. He suggested that risk managers need to prepare themselves by understanding the hazard, understanding the solution and understanding the insurance implications.

"The key is, you need to really sell the story of what could happen if this hazard is not corrected," he said.

In terms of understanding the risk, a risk manager must consider the potential impact on the busi-

ness and whether the business can tolerate that risk, Mr. O'Brien said.

In assessing the possible impact of an exposure, it's important to consider not just property damage but risks such as loss of production, loss of contracts or market share, damage to reputation and the impact on shareholder value, Mr. O'Brien said. "There's a lot of impact that is not covered by your insurance policy, and a lot of it can be addressed by risk improvement," he said.

In developing possible solutions, it's important to consider various options, Mr. O'Brien said. "You need to question your loss prevention provider about what are the options," he said.

"You may not have to go in and

sprinkler an entire plant or follow every single recommendation of your field engineer," Ms. Cauwenbergh said. "There may be alternatives to that."

And, in weighing the insurance implications of any loss prevention steps, one must consider the consequences of doing nothing and the possible rewards of making improvements.

"There are usually rewards for substantial improvements to a facility," Mr. O'Brien said. If nothing else, "you're making your account more marketable for your next renewal," he said.

Conversely, according to Mr. Cauwenbergh, often, "the consequences of doing nothing are big losses and big premiums."



Gary Bridgeford, Director—Corporate Risk Management
Johnson Controls, Inc.

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Products & Services

Benchmarking tool gets new features

NEW YORK—Advisen Ltd. has released an updated version of its information system that provides analytical and benchmarking information for commercial insurance risks.

The new version of the system, which is aimed at insurers, brokers and risk managers, includes real-time data, additional analytical functions, additional financial data on public companies and a new user interface, according to New York-based Advisen.

Additional enhancements will be added to Version 2.0 before the end of 2004 at no extra charge, the company said.

For more information, visit www.advisen.com.

ESIS expands claims consulting

PHILADELPHIA—ESIS Inc., the risk management services arm of ACE USA, will now provide complex claims consulting services.

The services are aimed at companies that self-administer their claims and that face claims that

raise legal factual or administrative challenges, according to Philadelphia-based ESIS.

The service will cover claims arising under several policies, including workers compensation, employers liability, general liability, auto liability and products liability. ESIS offers advice on claims strategy, expert selection, litigation strategy, settlement negotiation tactics, reserve recommendations and recovery.

More information is available at www.esis.com.

Theft recovery system adds claims support

NEW YORK—The National Equipment Register, a register designed to aid in the recovery of

stolen heavy equipment, has introduced a claims support service.

The Heavy Equipment Claims Support service is a training program and information service intended to help loss adjusters deal with off-road equipment claims.

"Errors in the adjusting and reporting of farm and construction equipment claims are common but result from a small number of recurring factors such as poor ownership documentation, nonstandard numbering formats and confusion over where and how to record a loss," according to an NER statement.

The training program is intended to help nonspecialist adjusters deal with the problems and help them identify suspect claims.

For more information, visit www.nerusa.com.

St. Paul offers manufacturers cover

ST. PAUL, Minn.—The St. Paul Cos. Inc. has introduced a specialized insurance package for manufacturers.

St. Paul DesignPoint for Manufacturers is aimed at midsized manufacturers and includes coverage for product recall expenses, worldwide products liability and expanded coverage for property and general liability risks, according to the St. Paul, Minn.-based insurer.

The coverage is designed to

"anticipate and protect against the risks manufacturers face as they do business in a complex global marketplace," Dennis Crosby, president-commercial middle market at St. Paul, said in a statement.

For more information, visit www.stpaul.com.

Aetna launches cover for business travelers

HARTFORD, Conn.—Aetna Inc. has introduced a supplemental health insurance product for business travelers through its Aetna Global Benefits unit.

AGB WorldTraveler supplements employees' home country health insurance, providing medical coverage and emergency assistance services not covered by their existing plans.

The product is designed for employees who travel overseas on assignments for up to six months, according to Hartford, Conn.-based Aetna.

Optional coverages offered through the product include accidental death and dismemberment coverage for employees, coverage for spouses and dependents traveling with the insured employee, and coverage for leisure travel linked to a business trip.

For more information, visit www.aetna.com/agb/directory.htm or call 888-800-1748.

Screening : Averting mistakes

Continued from previous page

good up to a point," Mr. Schaerer said, but most states don't have statewide criminal information databases and the information available may be deficient or out of date. Also, only convictions are reported, and most employee theft is never reported.

Likewise, urinalysis is "not a bad tool, subject to a lot of limitations," he said, noting that "the cottage industry on beating drug tests is big business."

A variety of approaches are needed to address risks with existing employees and to reduce employee turnover, said Stephen M. Bennett, national leader of the workforce strategies practice at Marsh USA Inc. in Chicago. In general, those techniques center around the company culture and maintaining a good workplace environment, he said.

"Obviously, there are a ton of contributing factors that make a good work environment," Mr.

Bennett said. "Culture impacts employee behavior; how you're treated by your employer has a lot to do with how you're motivated every day and your work environment."

Mr. Bennett suggested employers should audit their management processes, benchmarking them against either internal or external peer groups. Such audits will highlight those management practices that reduce risks and employee turnover, he said.



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AGENT/BROKER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO AGENTS, BROKERS AND CONSULTANTS

Leaders in Productivity



Most productive agents and brokers

Intermediaries* ranked by 2002 brokerage revenues per employee

Rank	Company	Revenue/employee			Brokerage revenues			Employees		
		2002	2001	% change	2002	2001	% change	2002	2001	% change
1	AirSure Ltd.	\$414,291	\$336,248	23.2%	\$12,428,739	\$9,078,688	36.9%	30	27	11.1%
2	Mid American Group Inc. ¹	\$371,426	\$337,501	10.1%	\$4,828,543	\$3,712,512	30.1%	13	11	18.2%
3	Frank Crystal & Co. Inc.	\$309,240	\$274,858	12.5%	\$85,041,000	\$71,463,000	19.0%	275	260	5.8%
4	JMB Insurance Agency Inc.	\$302,655	\$278,930	8.5%	\$21,185,855	\$21,198,664	-0.1%	70	76	-7.9%
5	Capacity Group of Cos.	\$278,451	\$265,528	4.9%	\$27,009,710	\$22,835,380	18.3%	97	86	12.8%
6	The Sklover Group Inc.	\$275,786	\$280,000	-1.5%	\$1,930,500	\$1,960,000	-1.5%	7	7	NA
7	SullivanCurtisMonroe Insurance Brokers	\$272,622	\$246,045	10.8%	\$34,077,701	\$29,771,395	14.5%	125	121	3.3%
8	Aviation Insurance Services ¹	\$260,700	\$252,933	3.1%	\$13,035,000	\$11,382,000	14.5%	50	45	11.1%
9	Hirsch Wolf & Co. L.L.C.	\$250,497	\$210,005	19.3%	\$5,761,420	\$4,620,100	24.7%	23	22	4.5%
10	Thesco Benefits L.L.C.	\$244,099	\$222,017	9.9%	\$9,519,864	\$7,992,628	19.1%	39	36	8.3%
11	Bollinger Inc.	\$234,283	\$218,932	7.0%	\$61,616,314	\$53,638,365	14.9%	263	245	7.3%
12	Trion	\$230,376	\$198,890	15.8%	\$24,650,275	\$20,883,466	18.0%	107	105	1.9%
13	The Ruggieri Consulting Group L.L.C.	\$230,000	\$238,462	-3.5%	\$3,450,000	\$3,100,000	11.3%	15	13	15.4%
14	Tanenbaum-Harber Co. Inc.	\$227,700	\$144,737	57.3%	\$45,540,000	\$27,500,000	65.6%	200	190	5.3%
15	The Graham Co.	\$226,109	\$221,575	2.0%	\$35,499,088	\$33,014,700	7.5%	157	149	5.4%
16	William Gallagher Associates Insurance Brokers Inc.	\$219,214	\$205,920	6.5%	\$30,690,000	\$25,740,000	19.2%	140	125	12.0%
17	MLW Services Inc.	\$218,109	\$208,828	4.4%	\$13,959,000	\$13,365,000	4.4%	64	64	NA
18	McGraw Wentworth	\$217,561	\$238,824	-8.9%	\$5,874,152	\$5,254,128	11.8%	27	22	22.7%
19	Mesirow Insurance Services Inc. ²	\$214,586	\$196,957	9.0%	\$37,123,387	\$32,694,935	13.5%	173	166	4.2%
20	Alliant Resources Group Inc.	\$206,865	\$152,085	36.0%	\$101,156,953	\$46,081,878	119.5%	489	303	61.4%
	Averages	\$260,228	\$236,464	10.0%	\$28,718,875	\$22,264,342	29.0%	118	104	13.5%

* Reflects U.S. agents and brokers deriving a majority of revenues from commercial retail brokerage 1. Fiscal year ending 6/30 2. Fiscal year ending 3/31

**Culture change can help
agencies achieve goals 14D**

**IIABA inaugurates
first woman president 14G**

AGENT/BROKER TOPICS

Hard market assists productivity gains

By SALLY ROBERTS

Brokerage revenue gains far outpaced staffing increases in 2002, giving rise to double-digit productivity growth among the most productive agents and brokers.

Although hard market conditions contributed to many of the intermediaries' top lines, other factors came into play to push the average revenue per employee

figure up in 2002, according to several of the brokers ranking among *Business Insurance's* annual list of the 20 most productive firms. The average revenue per employee last year rose 10.0%, to \$260,228.

In addition to specializing in various niche and program businesses, top-performing brokers also point to large accounts, higher compensation, flat organizations and technology as catalysts in their higher productivity figures.

But as agency consultants and several brokers point out, the hard

commercial insurance marketplace played a key role in improved productivity in 2002.

"My clients' staffs are stressed out, so I think productivity gains are a matter of the higher revenues coming in faster than the agencies can manpower staff," said Chris Burand, president of Burand & Associates L.L.C., an agency consulting firm in Pueblo, Colo.

"So you've got a temporary situation where productivity should have increased significantly," he said.

Indeed, brokerage revenues among the Top 20 firms were 29.0% higher, on average, in 2002, while average staff increased 13.5%, to 118.

BI ranks the 20 most productive agents and brokers each year based on information submitted for the magazine's annual Agent/Broker Profiles issue in July. To be listed in that issue's directory, a company must generate at least \$500,000 in gross revenues from commercial retail brokerage. To qualify for the productivity ranking, at least 50%

of a firm's brokerage revenues must come from commercial retail business.

This year's list includes brokers of all sizes, ranging from The Sklover Group Inc., with \$1.9 million in 2002 brokerage revenues, to Alliant Resources Group Inc., with \$101.2 million in 2002 brokerage revenues.

Specialties pay off

In line with past years, specialization remains key to success among the most productive intermediaries.

Golden, Colo.-based AirSure Ltd., the most productive agency with \$414,291 in revenue per employee, is an aviation insurance specialist. Westmont, Ill.-based Mid American Group Inc., No. 2 on the list with \$371,426 in revenue per employee, writes only employee benefit business.

'My clients' staffs are stressed out, so I think productivity gains are a matter of the higher revenues coming in faster than the agencies can manpower staff.'

*Chris Burand
Burand & Associates L.L.C.*

"The biggest thing (in terms of productivity) is specialty business because it's just so much more leverageable," said Kevin Stipe, senior vp and principal of Reagan Consulting Inc., an Atlanta-based agency consulting firm. "In many instances, the business is more standardized," he said. And because specialty business is often mass marketed through magazine advertising, direct mail and through association-type marketing, "they don't have to have the sales force out there selling on an account-by-account basis that you find in the more-general business," he said. "It's very hard to get that kind of revenue per employee when you're doing face-to-face selling."

Several brokers among the Top 20 say that specialty and program business are the drivers behind their higher productivity.

"A good majority of our business is program business," said Lou Lefevre, executive vp of Bollinger Inc. in Short Hills, N.J., when asked about his firm's productivity. "It's standardized products, and although there is quite a bit of servicing involved with all of those, because it is standardized products there's standardized servicing as well," he said.

Bollinger moved up one spot in the rankings to No. 11, with \$234,283 in revenue per employee, a 7% rise.

"We offer a number of specialty programs, and specialty programs allows us to be more efficient in

See **PRODUCTIVITY**/page 14D



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AGENT/BROKER TOPICS

Productivity: Hard market assists in gains

Continued from page 14B

our marketing," said John Addeo, chief executive officer of Alliant Resources, which makes its debut on the most productive chart at No. 20, with \$206,865 in revenue per employee, up 36% over 2001.

In addition to Stamford, Conn.-based Alliant, six other brokers are new to the 2002 productivity chart. Some, like JMB Insurance Agency Inc. of Chicago, which ranks as the fourth most productive firm, with \$302,655 in revenue per employee, are new to *BI*. Others, like No. 14 New York-based Tanenbaum-Harber Co. Inc., did not make the rankings last year but did this year.

"Obviously, it had something to do with the marketplace, but I think it also had to do with our book of business, which has been migrating over the last few years into larger accounts," said Walter L. Harris, president and CEO of Tanenbaum-Harber, whose revenue per employee figure jumped 57.3% in 2002 to \$227,700.

"We're one of the brokers benefiting from the consolidation of the larger brokers," he said. "Because of that, we're being asked to work on larger, more-complex accounts, which is generating more revenue per account," he said.

Mr. Harris said that while it will be more challenging when the market softens to maintain high productivity figures, he thinks Tanenbaum-Harber's productivity is sustainable due to the larger, more-complex accounts the broker is servicing today.

Indeed, large-account business is

one of the key ingredients to higher productivity, agency consultants contend.

"Larger-than-average accounts for an agent's or broker's demographic size, the correlation between that and higher productivity is almost perfect," Mr. Burand said.

"One of the things that correlates to high productivity is large books of business with a limited number of producers," Mr. Stipes agreed.

Other brokers concur.

"What we've tried to do is to target and focus on the right customer," said John Monroe, managing partner of SullivanCurtisMonroe Insurance Brokers. The Irvine, Calif.-based broker maintains its No. 7 spot in the rankings with \$272,622 in revenue per employee, a 10.8% increase over 2001. The high end of the middle market, those large private companies and smaller public companies that outsource their claims, risk management and loss control functions, have always been the broker's focus, he said.

As a result, "the revenue our customers pay us, on average, is significantly larger than a lot of our peers who service a broader spectrum," he said.

Rewarding producers

In addition to large accounts, producer compensation also plays a part in higher productivity, consultants and brokers say.

"What we find is the highest revenue-per-employee firms are

generally the ones that pay people the most," Mr. Stipe said. "It's kind of counterintuitive. If you go after the best employees out there, it's going to cost you more, but you're going to get a higher level of productivity out of them and, ultimately, get better margins in your business if you can get those people to really work at peak capacity," he said.

'One of the things that correlates to high productivity is large blocks of business with a limited number of procedures.'

Kevin Stipe
Reagan Consulting Inc.

"Our producers are paid very well for new business and renewal business, and they've got a staff of people to support them on their day-to-day service needs," said Bill Behan, president of AirSure. "They know they can make as much money as hard as they want to work."

"We pay dearly for our employees," said Bollinger's Mr. Lefevre. "If you look around at what we're paying account executives, we're paying \$10,000 to \$15,000 a year more than our competition. With that, our average account executive in our commercial division has in excess of 15 years' experience" with the company, he said.

At the same time, part of the broker's compensation package is an employee stock ownership program, which has grown more than 100% over the past four years, Mr. Lefevre said. "People are owners of the company as well, so we get better productivity out of them," he said.

Mr. Lefevre noted that, in addition to a more-rich compensation package, Bollinger also remains productive by maintaining a very flat organization. The broker, for instance, centralizes all of its accounting, administration and human resource functions.

"We make sure that all of our people are productive," Mr. Lefevre said. "We don't have secretaries. We have an outside marketing unit that does all of our advertising and sales promotion work, so individual producers don't have to get involved with that. We make it very easy for the producers to sell, but, by the same token, we don't give them a whole lot of administrative help to do that."

Mr. Behan said it's more than just being a niche player and offering a better compensation package that propels AirSure to the top of the ranks. Automation also plays a key role.

"We've been on the cutting edge of the automation curve from day one and try to stay ahead of that curve," Mr. Behan said. "We spend a considerable amount of time, effort and money each year to make sure what we have is state of the art. We lease all of our

equipment, except for our servers, and this stuff is cycled out of here every 24 to 30 months. We don't want it around after that. It's too old."

"When you do things like this, you know you're getting cutting edge, you know you're getting the maximum speed, you know also from just feedback from your staff that this is neat, that they like it and it challenges them. I think, when you put all these things together, you get happier people and you get people who enjoy more of what they are doing. Does that create more productivity? Sure. What percentage? I don't know. But all those things help," he said.

"You either have that commitment that you're going to squeeze every ounce of productivity out of what you can control and hope that it works or you don't," Mr. Behan said. "I have a lot of friends in the business that just don't see it."

Mr. Stipe of Reagan Consulting is quick to point out that while the revenue-per-employee figure is a great way to measure one's business, the figure is not a panacea.

"I am constantly warning people today to be careful to be putting too much stock into that number," Mr. Stipe said. "One of the ways you can inflate that number is by keeping your employee count low. That's a great short-term strategy in terms of maximizing your profitability, but it's like burning your furniture as firewood. You can't do it for long and still prosper," he warned.

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Improvement sought by internal change

Fostering a more open culture

By Judith A. Gleason
and Gary L. Wolford

A/BT perspective

What differentiates an agency's best sales people from the average ones?

You probably already know that it isn't just technical skills and know-how. There are those intangible qualities possessed by high-performing individuals. The challenge is to bring the entire team to the level of the high performers, to create and nurture structures and incentives that enable the high performers to drive the results of those capable of performance improvement. In other words, to create a culture built on teams in which members inspire and challenge one another to reach and exceed strategic goals.

Culture change can be achieved more quickly than many imagine. Having seen recent studies showing the importance of emotional intelligence in agent performance and the role of job satisfaction when staff contribution is raised, we decided to pursue a strategy of cultural improvement to enhance

the agency's already-strong business results. We elicited the help of an outside adviser to work with our executives and staff.

While one of the purposes of a culture assessment and reorientation is to increase reliance on internal resources, we initially turned to an external facilitator for immediate success. A person or group from outside the company possesses the distance and, therefore, the authority to recommend changes that will apply to every member of the team. The facilitator is the "honest broker" who can be trusted to provide candid information and opinions. In addition, because the amount of data generated in just a few hours can be overwhelming, the facilitator has the ability to place all the data into manageable categories.

See PERSPECTIVE/page 14F


AGENT/BROKER TOPICS

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Perspective: Culture change

Continued from page 14D

Our agency wanted to do what all of us want to do: increase the bottom line. But we were also interested in finding ways to increase our staff's sense of ownership through the development of work processes built on autonomy and self-reliance. Working with our outside facilitator, we implemented a unique "team building diagnostic." The diagnostic process was premised on candid staff input to be discussed in an open atmosphere. We promised to be "thick-skinned" about whatever comments came our way—an important step in the process.

The staff members were then divided into teams: marketing, service, human resource initiatives, staff function and office ergonomics. Through a series of questions, teams divided operational areas into categories of "effective" and "ineffective." Sample questions that drove the discussion included:

- What can we do to enhance our competitive position in the marketplace?
- What can we do to improve the overall effectiveness and efficiency of internal operations and how can we operate as a team?
- You are now the owner. What changes do you want to make to enable the business to run more efficiently?
- Should sales be separate from service?
- What can we do to make our work environment and culture better?

Each team prepared responses for 8-10 such questions. Initially, the

responses, but no recommendations, were presented to us. After individual teams had made their presentations, an "all teams" meeting was held that identified the top priority planning initiatives. Employees were then assigned to teams to develop

The economic climate remains challenging. Under these conditions, productivity and performance gains are the cornerstones of success.

specific recommendations to change processes and to improve effectiveness.

It was recommended that we quickly implement the staff recommendations, which we did. The result was an immediate boost in morale, performance and, more importantly, sales.

The key challenge has been to integrate the new decision-making process into our day-to-day business routine. We knew if could achieve that, we would continue to make gains. If we did not, our productivity improvements would not only stop, but they could reverse themselves as staff would doubt our intentions.

Our consultants provided us with a clear road map to maintain and deepen the new decision-making structure through regular formal and informal staff meetings. It sounds straightforward, and it is. But under the crush of everyday activity, when decisions need to be

made quickly, an agency requires a plan and discipline to maintain a wider decision-making circle that encourages the exchange of improvement ideas among staff.

Nine months later, we have maintained our focus and discipline. Our entire team has seen the concrete results of a more open and participatory culture. Staff better understands our strategic goals, is more invested in their achievement and is more committed to performing at the highest levels.

Specific benefits include:

- Increased productivity and quality.
- Decreased responsibility on outside problem solving—using the "we" solution.

- Increased enthusiasm and "buy-in."

- Optimism that communication in the agency works.

- Increased appreciation for high performance and those who achieve it.

- Establishment of an ongoing process for continued agency-wide improvements.

The economic climate remains challenging. Under these conditions, productivity and performance gains are the cornerstones of success. A strategy of continuous improvement through internal change is a powerful way to achieve it. That begins and ends with culture.

Judith A. Gleason is president of the Judith A. Gleason/State Farm Agency in Chicago. Gary L. Wolford is a partner with Bridge Avenue Partners, an executive advisory firm based in Chicago.

IIABA Convention and InfoXchange

Insurance agencies should link compensation, performance

By **ROBERTO CENICEROS**

Insurance agencies need to link employees' pay to their specific productivity level, a consultant says.

"We have to change the method of paying our employees," E. Al Diamond, president of Cherry Hill, N.J.-based Agency Consulting Group Inc.

Agencies, he said, need to move away from the "merit" system, under which salary increases are based on subjective evaluations. That system doesn't motivate poorly performing employees, and it "demotivates" good employees, he said. Mr. Diamond made his remarks during a presentation at the Independent Insurance Agents & Brokers of America's Convention and InfoXchange, held last month in Las Vegas.

Mr. Diamond advocates regularly evaluating employee productivity based on objective measurements. In addition, he said that agencies should adjust salaries based on an

incentive compensation system, while segregating salary increases from the performance and productivity evaluations.



Employees need specific job descriptions that detail both their responsibilities and the measurements of success for that job, Mr. Diamond said. That information helps employees and allows agency managers to evaluate performance as objectively as possible.

"If I don't tell them what the standards for that job are, how the heck are they going to know if they

are doing well or poorly?" Mr. Diamond said.

Every position in an agency can be measured for productivity, said Mr. Diamond, who also is chief operating officer of Commonwealth Insurance Group, which owns agencies throughout eastern Virginia.

A receptionist, for example, can be rated according to the number of customer calls received. As the customer base grows and more calls come in, the receptionist's pay might increase by a corresponding amount.

A somewhat similar formula can be applied to customer service representatives. A CSR that earns \$30,000 annually for handling a book of business producing \$300,000 in commissions, for example, is actually paid 10% of the commission base. So if the commission for the book of business he or she services increases to \$400,000 over time, the CSR might receive a commensurate

Continued on next page

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AGENT/BROKER TOPICS

Continued from previous page salary increase.

Mr. Diamond teaches employees how to access agency data and run their own reports detailing the amount of business they handle. "Do you think that these people are a little more interested than your employees in cross-selling?" he asked. "You bet."

He noted that work evaluations and compensation should remain segregated, because when evaluations are conducted simultaneously with the handing out of annual pay raises, employees hear only the amount of the raise they will receive for the year, Mr. Diamond said. They block out any constructive criticism of their performance and focus only on the pay raise, he said.

Mr. Diamond said that bonuses can be a waste of money because they motivate employees for only about 30 days before managers give them out and for about 15 days after.

Employees may also come to see bonuses that are given annually as a regular part of their compensation and get angry if they don't receive them.

Under Mr. Diamond's system, employees who receive job evaluations in June would receive potential compensation raises in September or October. That delay gives them a few months to meet goals or learn skills discussed

during the evaluation.

"That should send shivers up people's spines and, yes, evaluations should be done at least twice a year," he said.

Some agency managers who apply Mr. Diamond's system conduct evaluations three or four times annually and on an ad hoc basis.

'If you have insurance experts who have a terrible customer attitude, they are not doing you any favors. They are not doing your customers any favors.'

*E. Al Diamond
Agency Consulting Group Inc.*

All evaluations should let employees know what they need to do to improve within their current position or how they can reach the next career level.

"It is not permissible for an employee to stay in one place" or stop learning, Mr. Diamond remarked.

Mr. Diamond said he has little need for employees who serve only as "insurance experts."

"I need people with a great customer-service attitude," he said. "Everything else can be learned. If

you have insurance experts who have a terrible customer attitude, they are not doing you any favors. They are not doing your customers any favors. They ought to be working for an insurance company as underwriters."

Implementing a productivity-linked compensation system is not appropriate for all insurance agencies, such as those that do not record a profit. But those agencies that do implement it may find that, under such a system, some employees could eventually see significant salary increases of, say, 10% to 15%, Mr. Diamond explained.

"Believe me, if they do, they are going to deserve those 10% to 15% raises," Mr. Diamond said.

"You will have other people that fall by the wayside. Folks that have been with you for years will be leaving your agency because your agency will be re-established as a high-performance agency," he suggested.

Mr. Diamond also advocates going slowly when changing compensation methods to his system.

"The incentive compensation is budget-driven," Mr. Diamond noted. "This is not guesswork, and if you are overpaying or underpaying your people now, you don't rapidly change it in any given segment. The changes come slowly."

IIABA Convention and InfoXchange

Association inaugurates first woman president

The Independent Insurance Agents & Brokers of America inaugurated Louise Canter as president during the association's Annual Convention and InfoXchange, held at Caesars Palace in Las Vegas.

Ms. Canter, the 99th president of the IIABA, is the first woman to hold the office.

"For me, it is a culmination of over 25 years of volunteer work within our association," Ms. Canter said at the convention. "The privilege of serving not only as your president but also as your first woman president is truly an incredible honor."

Ms. Canter is senior vp of Patterson/Smith Associates in Falls Church, Va.

"Two of the greatest challenges we face in my

agency—and I believe we all face as agents—are getting new blood into our industry to perpetuate it and harnessing technology to cut costs to make us all more profitable," she said.

One of the best ways for the Big I to recruit young agents is to build on its InVEST program, Ms. Canter said. The program, a partnership between the association and member companies, creates mock insurance agencies at high schools and community colleges.

Approximately 2,000 people registered for the InfoXchange, held Sept. 21-24. The IIABA's 2004 Convention and InfoXchange is scheduled for Oct. 9-13 at the Walt Disney World Swan & Dolphin Hotel in Orlando, Fla. For more information, contact the IIABA at 800-221-7917.



Ms. Canter

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BI News flash

AGENT/BROKER TOPICS

IIABA Convention and InfoXchange

Good communications key to managing fear of change

By ROBERTO CENICEROS

Successfully managing change requires good communication and an understanding of employee fears, a leadership coach told the Independent Insurance Agents & Brokers of America.

"It's human nature to resist change," said Marsha D. Egan, president of Reading, Pa.-based LeadershipLights Inc., but Ms. Egan noted that the rate of change in our world continues to accelerate.

Those factors affect insurance agents and brokers, Ms. Egan said after her presentation, which was part of a "Professional Development Series" of lectures at the IIA-BA's Convention and InfoXchange in Las Vegas. Agency mergers and acquisitions, new computer and claims handling systems and new business models all represent changes that can affect an insurance agency's clients, employees and others.

It's crucial to understand how

proposed changes will affect stakeholders and what fears will arise, she told the InfoXchange. Understand, from an employee's frame of reference, what change will mean for them, she advised.

"You can't change other people by what works for you," Ms. Egan said. "You need to change people by what works for them."

Before implementing changes, think ahead and gain insight into employees' frame of reference by asking them what they fear about the proposed changes. Mapping out the impact of any changes and highlighting the potential benefits derived from them will help assuage employees' fears, said Ms. Egan, who was president of the CPCU Society during 1999 and 2000.

"That is how you are going to implement change and get by it," she said. "Because even the best change in the world—the one where you brought in all the consultants and everyone loved it—(can) be derailed in two to three months by people

who don't want it to work."

Change management is "caring communication," Ms. Egan said. "It's asking people how they feel and taking care of their fears."

'The people at the top need to communicate (their) vision so that the people who are implementing the change understand it and are positive about it.'

Marsha D. Egan
LeadershipLights Inc.

There are no rules for communicating to employees about proposed changes, Ms. Egan said. Meetings with individuals or group roundtables is an aid, because just talking through issues can help employees cope. And the meetings might help managers glean new

ideas for approaching their planned changes, she said.

"These people who work in your operations are going to have some really good ideas. They may be able to help you. You want to value that," Ms. Egan said.

Provide employees and others with as much information as possible and get feedback from them, she said.

"When you get the feedback, you have to listen to it," Ms. Egan said. "Asking for feedback without doing something with it is an insult."

People want to follow leaders and they want assurances for their behavior, Ms. Egan explained. So enlisting "sponsors," such as top managers, can also help ensure that changes are implemented smoothly.

"The people at the top need to communicate (their) vision so that the people who are implementing the change understand it and are positive about it. To me, that is one of the most important parts of com-

munication," Ms. Egan said.

In addition to sponsors, managers should identify "advocates"—opinion leaders within an organization, although they may not have formal titles or leadership roles—and solicit their help, she said.

When possible, don't change everything at once. Do it slowly or in stages, Ms. Egan advised.

But one audience member asked Ms. Egan how to handle several changes at once, such as a merger and an office move occurring at his agency.

It is sometimes impossible to avoid many changes occurring simultaneously, Ms. Egan responded. If it can't be avoided, "it's real important to stay close to the people as it is happening," she said.

Her approach to managing change can be time-consuming, Ms. Egan acknowledged. But "if you don't take the time, how much time are you going to have to spend fixing it? So it's an investment in the future," she said.

IIABA Convention and InfoXchange

Being a 'trusted adviser' benefits clients, employees

Ask challenging questions, consultant advises

By ROBERTO CENICEROS

Insurance producers can excel in their client-focused business world by becoming "trusted advisers," a training consultant told the Independent Insurance Agents & Brokers of America.

Trusted adviser skills can also assist agency managers maintain optimal productivity levels by

helping them retain key employees, said Brian Horan, a senior training consultant for The Richardson Co. of Lakewood, Wash.

The Richardson Co. conducts training programs for financial institutions, including Chubb & Son Inc., American International Group Inc., Zurich Financial Services Group and Marsh & McLennan Cos. Inc., Mr. Horan

said. The Richardson Co. trains insurers in client relations so they can improve their interactions with the agents and brokers that place their products.

Trusted advisers are more than mere product providers or technical experts, Mr. Horan told the IIA-BA's Convention and InfoXchange in Las Vegas. They establish personal relationships, combining business and social contacts, with their target audience, and they do so even when a deal is not imminent.

Mr. Horan listed other qualities of trusted advisers:

- Often they are found engaged in that style of relationship with top decision-makers such as a corporation's chief executive officer. That way they make themselves invaluable and impossible to replace.

- They put their clients first and personally invest themselves in their relationships and excel at listening and asking questions.

- They "add value" to every interaction with their clients or intended audience.

'Trusted advisers are very good at pushing, at stretching and creating uneasiness....And, as a result, both they and the client walk away with more insight.'

Brian Horan
The Richardson Co.

"So when you think about the people you deal with, and you think about the relationships you have, ask yourself, 'Do I absolutely add value every time?'" Mr. Horan said. "It's not a sometime deal. It's an all-the-time deal."

The Richardson Co. has studied the best practices of trusted adviser types, he said.

"Being a trusted adviser takes a tremendous amount of time; it takes full-time effort," Mr. Horan said. Success is also more likely for those who understand the tangible behaviors of trusted advisers, he added.

Perhaps their most important practice is their "extraordinary preparation" for interacting with their target audience. They have a disciplined and strategic approach that includes planning out their relationships.

Most people prepare for such contacts by looking at the important issues from their own perspective, Mr. Horan said.

Trusted advisers, in contrast, have the confidence to look at things from their client's perspective, which is not an easy task, he said.

They also are very persistent.

"The people who are very effective, they literally create niches," Mr. Horan said. "They identify who are the clients or the process that they are going to go after. They are going to be aggressive. They are going to be focused. They are going to be relentless, and they are going to do everything it takes."

They engage their intended audience in strategic dialogue without allowing product or technical issues to dominate their conversations, he said.

Most people prefer asking safe questions that they may already know the answers to. They do so out of fear of the unknown or because they want to be liked, Mr. Horan said. But trusted advisers ask questions that challenge others to think about difficult issues.

"Trusted advisers are very good at pushing, at stretching and creating uneasiness," Mr. Horan said. "And, as a result, both they and the client walk away with more insight."

While trusted adviser practices can help insurance producers develop and retain valued customers, they also are valuable within the agency, Mr. Horan said after his presentation to the IIA-BA. The same principles can be used to maintain close relations among an agency's officers and key employees.

The enhanced relationships can help an agency's owner understand and address its key employees' concerns. That way he or she can address those issues and maintain a productive working environment for those employees.

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Industry executives stress need for tort reform

By MICHAEL BRADFORD

NAPLES, Fla.—Despite some states' attempts at reform, the tort system in the United States remains in need of an overhaul, a panel of insurance industry sources contends.

"There are many problems in the tort system," said Robert Hartwig, senior vp and chief economist with the Insurance Information Institute in New York. "We've established a system in this country where we can have, essentially, liability without fault; we can have liability with little or no causation, and we can have damages without harm."

Damages can be awarded with "little or no constraint," Mr. Hartwig pointed out, and "any system with those problems is going to be defined as broken."

'We've established a system in this country where we can have, essentially, liability without fault.'

*Robert Hartwig
Insurance Information Institute*

Mr. Hartwig made his remarks during a panel discussion at the second annual State of the Art Forum sponsored by GE Employers Reinsurance Corp., held in Naples, Fla., earlier this month.

He said one indication that the tort system is broken is "the pure numbers involved," citing figures compiled by Tillinghast-Towers Perrin that show the U.S. tort system costs about 2% of the U.S. gross domestic product, or \$200 billion a year. And, Mr. Hartwig noted, "you can see an escalation of that over the next several years."

Many other countries, such as France, Canada and the United Kingdom, all have tort systems that cost less than 1% of their GDP, Mr. Hartwig noted.

"We also have, in addition to a very expensive system, a very inefficient system," Mr. Hartwig told his audience. Studies have shown that only 20% of total awards go to plaintiffs for their economic loss, while the rest is paid out in "frictional costs, absorbed through various administrative fees, or attorneys fees, and about 22% goes toward noneconomic loss" such as punitive damage awards. "It doesn't deliver a lot of benefits to those who have been economically aggrieved."

Mr. Hartwig noted that rising jury awards are the major driver of the high costs of the U.S. tort system.

He said insurers should pay attention to average jury awards and not just median awards. "Average awards will give you a better feel for what's happening on the extremes. If you have three awards, the median is going to be the same," he explained, but if one of the awards is "way out on the wild side, the average is going to be greatly affected by that. So insurers have to take that into account."

Jury awards have doubled and tripled in many liability cases, and even quintupled in product liability cases over recent years, Mr. Hartwig said, adding that "we do see a continuation of this trend."

Two states that passed tort reform measures this year are waiting to see whether the changes will improve insurance coverage availability and pricing. Many expect reforms in Texas to have more impact than those enacted in Florida.

"Texas went the extra step to say that it is not enough to pass tort reform, we have to change the constitution so that the plaintiffs' lawyers

can't get around it," said panelist Timothy Kenesey, chief executive officer of GE Medical Protective Co., a malpractice insurer unit of GE Employers Re's GE Commercial Insurance. He was referring to that state's recent enactment of Proposition 12, which added reform amendments to the Texas constitution.

Proponents of reforms passed this year in Florida are not as hopeful that the changes will have a big impact.

The problem in Florida has been availability and affordability of medical malpractice insurance,

much as is the case in other states, according to William Bell, Tallahassee-based general counsel with the Florida Hospital Assn.

In 1999, there were 66 medical malpractice insurers in Florida, he said. "Last year, we had four."

Speaking at the panel discussion, Mr. Bell said reformers fought trial lawyers and other opponents in a public battle to establish caps on damage awards and make other changes to the state's tort system. In the end, "we did move the mountain," he said, "but we didn't move it very far."

Politics quashed the potential for

more meaningful reform than was passed, Mr. Bell remarked. "The Senate did not want to be seen as caving in to the governor and the House," he explained, and a compromise eventually resulted in caps that many feel are too high.

Those caps include a \$1 million limit on noneconomic damages against physicians in medical malpractice cases and a \$1.5 million cap on those damages for all non-physician defendants.

Texas fared somewhat better, even though its fight was just as fierce, according to the state's insurance commissioner, Jose Montemayor, who participated in the panel discussion.

Continued on next page

Conditions converge to create current hard insurance market

By MICHAEL BRADFORD

NAPLES, Fla.—Various forces have converged in the current market to wallop buyers and disorient insurers, an industry analyst says.

"We are in a unique period," said Alain Karaoglan, managing director with Deutsche Bank Securities Inc. in New York. But, like all other cycles, "eventually, this period will finish," he predicted.

Mr. Karaoglan spoke at the second annual State of the Art Forum,

were rising dramatically.

"In the end, we won it by the narrowest of margins," Mr. Montemayor said, with a campaign that cost more than \$20 million. Proponents spent much of that just to counter attacks by those hoping to derail the reforms.

"There is no question that there is irrefutable evidence that tort reform can work," said Mr. Kenesey of GE Commercial Insurance. He pointed to Indiana and California as examples of states that are seeing positive results from their efforts to reform their tort systems.

The session was moderated by Glenn Pomeroy, vp and associate general counsel for government affairs at GE Employers Re in Kansas City, Mo.

sponsored by GE Employers Reinsurance Corp. and held in Naples, Fla., earlier this month.

He told attendees that the conditions of the three previous hard market cycles had all reappeared nearly simultaneously to produce the hard market that insurers and policyholders find themselves in today.

There was a stock market decline in the 1970s, a liability crisis in the 1980s and a "mini-cycle" in the early 1990s that was prompted by Hurricane Andrew, Mr. Karaoglan noted.

In today's market, losses from the terrorist attacks on the World Trade Center; a stock market slump; and liability issues related to asbestos, high jury awards and directors and officers exposures have fueled the current hard market, he said.

Those catalysts come on top of a lot of other contributing factors, Mr. Karaoglan pointed out, such as medical inflation, a bolder plaintiffs bar, low interest rates and insurer reserve deficiencies.

He predicts the market will continue to harden, with commercial insurance prices rising through this year and into 2004. Increases will slow next year, though, as insurer profitability improves, Mr. Karaoglan said.

Property/casualty rates will likely be 15% to 25% higher for the entire year 2003 and 10% to 15% higher in 2004, with the biggest increases seen in casualty, according to Mr. Karaoglan.

Insurers, he said, will see some additional revenue gains if tort reform becomes more widespread throughout the United States. Because insurers are pricing as if reforms will not be passed, "if they get it, it's going to be gravy," Mr. Karaoglan suggested.

He pointed out that management changes among commercial lines insurers have been frequent during the current hard market and the companies now are more focused on generating a return on capital and "profitability over market share."

"It's a new cycle," Mr. Karaoglan said, in which "management is much more disciplined."

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400 attend annual GE ERC State of the Art Forum

NAPLES, Fla.—After days of heavy rain, sunshine broke through for the second annual State of the Art Forum sponsored by GE Employers Reinsurance Corp.

The event was held Oct. 1-3 at the Ritz-Carlton Hotel's golf resort in Naples, Fla. Although the region saw record rainfall before the forum, players were able to tee off for a round of golf after a morning of educational sessions. A half-day of sessions was held the following day, as were presentations by insurance industry analysts.

The seminar drew around 400 attendees.

Details for next year's seminar have not been finalized.

Letters to the Editor

Continued from page 8

portant to improved outcomes among and between these parties. As in all things of importance, the key to success is effective leadership, adoption and execution of the QIP and related initiatives, focusing on the things that improve understanding, expectations and, of course, results.

Finally, it is crystal clear to me that the majority of Mr. Deragon's myopia is his own misunderstanding of the customers—risk managers—and their place within their companies. Risk managers have, in fact, substantially improved their level of recognition and influence and are

effecting change in their companies. They may not have fully arrived yet, but, particularly in the world post-Enron and 9/11, they are more effective than ever.

Chris Mandel
Chief Risk Officer
and Former President
Risk & Insurance
Management Society Inc.
New York

Embrace latest technology to benefit the 'client'

To the editor: Michael Bradford's Sept. 8 article, "Imaging Technology Embraced," clearly highlights our industry's need to go paperless. There has been an industrywide de-

pendency on paper-based processes that has made our industry exceptionally inefficient in managing its client, partner and supplier interactions.

While imaging and indexing technology provides a partial solution to the pre-existing mountains of paper, there is an even greater need for enhancing our cross-enterprise information exchange and processes to eliminate this paper chase. The scope of discussion should extend to the way industry participants manage the "client"—the way the insurer services the wholesaler; the way the wholesaler services the retail broker; the way the broker services the end insured.

At every step in this complex in-

surance value chain there are many internal and external activities associated with the paper exchange. Documents and files are "living" elements that represent parts of processes transcending organizational units.

The market shouldn't be simply replacing paper with electrons. It should embrace the latest technologies to further enable its work processes. Only then will the industry begin to address its inefficiencies, its errors and omissions problems and its poor service record. Only then will benefits be passed on to the "clients."

Karim Hussein
Chief Technology Officer
Riskclick Inc.
New York

Industry continues opposition to asbestos proposal

WASHINGTON—The property/casualty insurance industry continues to strongly oppose asbestos liability reform legislation that could be taken up in the Senate in the next few weeks.

In an Oct. 7 letter to Senate Majority Leader Bill Frist, R-Tenn., five insurer trade groups said that the Fairness in Asbestos Injury Resolution Act approved by the Senate Judiciary Committee in July is "inequitable, unaffordable and unworkable from the standpoint of insurers."

The bill would replace the current litigation-based system for compensating victims of asbestos-related diseases with a no-fault trust fund paid for primarily by defendant companies and their insurers. The measure initially called for a maximum insurer payout of \$45 billion over the life of the \$108 billion fund, but last-minute amendments raised that payout to at least \$52 billion, plus a potential contingency assessment of \$22.5 billion if the fund were to run short of money needed to pay claims. Additional levies could also be imposed.

"With respect to financing, we must reiterate our strong opposition to any industry allocation in excess of \$45 billion, which represents a substantial increase over current held reserves. This would place great financial stress on these companies and would greatly diminish the insurance industry's ability to respond to all of the other claim obligations it faces, as well as support current and future commercial policyholder needs," said the insurer groups.

The groups adopted a uniform position on asbestos reform that now contains eight principles. In addition to limiting the industry's collective contribution, the principles hold, among other things, that non-U.S. entities be held accountable for contributions on the same basis as domestic insurers and reinsurers; that there be no contingency funding of the program, with a reversion to a "modified tort system" if the fund proves inadequate to pay claims; and that the program provide for collateral source offsets of awards from the fund.

The Alliance of American Insurers, the American Insurance Assn., the National Assn. of Independent Insurers, the National Assn. of Mutual Insurance Cos. and the Reinsurance Assn. of America signed the letter.

—By Mark A. Hofmann

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Between the Lines

Compiled by Joanne Wojcik



Self-inflicted death benefits

The mother of a man who killed three of his factory co-workers before shooting himself in a workplace rampage last July is seeking workers compensation death benefits from her son's former employer.

Racine, Wis.-based Modine Manufacturing Co., however, has rejected the claim filed by Nina Tichelkamp-Russell, whose 25-year-old son, Jonathon, killed himself after shooting several of his co-workers on the night shift at a radiator manufacturing plant in Jefferson City, Mo. Three people died, and five others were taken to hospitals with injuries.

The company approved the claims filed by the families of Mr. Russell's victims but has no intention of compensating the gunman's family, said company spokesman Mick Lucareli.

Dog discrimination

Mold and terrorism aren't the only exclusions creeping into insurance policies these days. Now insurers are telling homeowners they won't provide them with liability coverage if they own any dogs underwriters deem to be dangerous.

While most people are familiar with the unpredictable behavior of Pit Bulls and Rottweilers, in addition to these canines, the "Amended Dog Breed Exclusion" on the newest version of the homeowners/condominium insurance policy issued by the Automobile Assn. of Southern California now includes the following pure or mixed breeds: Akita, Bernese, Presa Canario, Chow Chow, Doberman, American Husky, Karelian Bear Dog, Rhodesian Ridgeback and Russo-European Laika.



Uninsured by choice?

While the ranks of the uninsured may have swelled by an estimated 2.4 million in 2002 to a total of 43.6 million, many of those lacking health care coverage may be doing so by choice, a new report has found.

The U.S. Census Bureau reported last week that approximately 15.2% of the U.S. population lacked health insurance last year, compared with 14.6% in 2001. Texas led the nation, with 24.7% of its population lacking coverage.

While it has been assumed that the lack of coverage is attributable to its unaffordability, in examining the Census Bureau's findings, the National Center for Policy Analysis has found that most of those going without coverage could probably afford it.

In fact, almost one-third of the uninsured now live in households with annual incomes above \$50,000, and one-fifth live in households earning more than \$75,000 annually, the think tank found. By contrast, the number of uninsured with annual incomes below \$25,000 fell by 17%.

The report can be viewed online at <http://ncpa.org/pub/ba/ba460>.

But will it find itself?

Two new products under development at Tucson, Ariz.-based Environmental Technologies Inc. will help locate lost electronic gadgets, children and even elderly family members suffering from dementia who have wandered off aimlessly—just about anywhere in the world.



"Gadget Finder," which incorporates leading-edge Global Positioning System and wireless technology, allows the owner of portable electronics such as cell phones, personal digital assistants, laptops, compact disc players, etc., to instantly locate a missing device within 30 feet using a small wireless unit. Similarly, "Kinder Finder" allows a parent to pinpoint the location of a child within 1,000 square feet anywhere in the world at any time. It can

also be used to find wandering elderly family members, the company says.

Having completed the prototypes, the company plans to begin independent testing of the devices this fall.

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

Bill would expand health cover tax credit

By JERRY GEISEL

WASHINGTON—Employees who have lost their jobs and are receiving unemployment compensation benefits would be eligible for a federal subsidy of their health insurance premiums under legislation introduced in the Senate last week.

The bill, introduced by Senate Finance Committee Chairman Charles Grassley, R-Iowa, and committee ranking member Sen. Max Baucus, D-Mont., would expand a small federal program that now provides a federal tax credit to offset partially the cost of health insur-

ance for some workers and retirees.

Under that program, known as the Health Coverage Tax Credit, employees who have lost their jobs due to foreign competition and retirees age 55 through 64 whose pension plans have been taken over by the Pension Benefit Guaranty Corp. are eligible for a 65% tax credit toward the premiums they pay for qualified health care coverage. Qualified coverage includes that provided through COBRA and state high-risk pools.

Unlike other types of tax credits, the HCTC is advance-refundable, which allows the beneficiary to use

the credit even if he or she does not owe taxes. In addition, since Aug. 1, the HCTC can be applied immediately, reducing the beneficiary's cash outlay to 35% of the premium.

While the HCTC expansion legislation, S. 1693, is not an overhaul of the nation's health care system, "it is a practical, principled incremental solution," Sen. Baucus said.

Expanding the HCTC "to the unemployed would provide health insurance coverage for 1.4 million Americans a month who are currently unemployed and uninsured. It's not a panacea, but it's a start," Sen. Baucus said.

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Australia drops indemnity levy on doctors

By ELIZABETH FRY

CANBERRA, Australia—The Australian government has put on hold its controversial medical indemnity

levy on hospitals and doctors in an attempt to avert the threatened widespread closure of hospitals across the nation.

Late last week, federal Health

Minister Tony Abbott announced the government would withdraw its controversial "incurred but not reported" levy, which had prompted an outcry among doctors, who said the levy was too onerous.

Earlier this month, 2,000 health care providers in New South Wales had threatened to quit by the end of October unless the government dropped the levy. Providers in Queensland planned similar action.

The IBNR levy, which was due to become effective Nov. 1, was designed to allow the government to recoup the \$460 million Australian (\$311.9 million) it is paying to cover future medical liability claims following the collapse of Australia's largest provider of medical insurance.

Sydney-based United Medical Protection Ltd., which covered about 60% of the nation's doctors, entered liquidation in April 2002 as a result of record medical negligence payouts and a crisis in the in-

surance industry after the collapse of HIH Insurance Ltd.

The levy, which was intended to cover cases in which liability exists but lawsuits have not yet been filed, was to be applied over a 10-year period to doctors formerly insured by UMP.

For high-risk specialists, such as obstetricians, the 10 years of charges could have amounted to up to \$250,000 Australian (\$169,550) or more. And it would have come on top of already-hefty medical indemnity premiums, which can be around \$100,000 Australian (\$67,820) per year.

In response to the levy, Australian doctors said they could no longer afford to operate in public hospitals, where their profit margins are too thin.

Dr. Mukesh Haikerwal, vp of the Australian Medical Assn., said, "The levy was the last straw; specialists

See **DOCTORS**/next page



PHOTO: NEWSPIX

Australian physicians protested the "incurred but not reported" levy at a medical rally in Sydney, New South Wales, on Sept. 28.

World Updates

First U.K. smoking suit opens in Scotland

Britain's first smoking trial, brought against Imperial Tobacco Group P.L.C. of Bristol, England, on behalf of a man who died from lung cancer 10 years ago, opened in Edinburgh, Scotland, Tuesday. The outcome could determine whether other litigation by people who claim to have suffered smoking-related diseases finds its way into English and Scottish courts, which have not seen the wave of litigation that has hit tobacco companies in the United States. A spokesman for Imperial Tobacco called the case "speculative."

Lloyd's names exec to head up reforms

Lloyd's of London has named Iain Saville as the market's first head of business process reform. Mr. Saville, who reports to Lloyd's Chief Executive Nick Prettejohn, is responsible for efforts to modernize and improve business processes in the Lloyd's market. Mr. Saville will also become chair of Kinnect, the Lloyd's-backed electronic insurance information platform formerly known as Blue Mountain. Mr. Saville was formerly CEO of CREST, a London-based share settlement system in London. Prior to that, he was an economic forecaster and policy adviser at the Bank of England.

Fortis sues U.K. agency over rail crash losses

Fortis Insurance Ltd. is suing a U.K. government agency in a bid to recover some of the £22 million (\$36.5 million) it has already paid out to compensate victims of a 2001 rail crash. Eastleigh, Hampshire-based Fortis Insurance insured the driver who caused the Feb. 28, 2001, accident when his vehicle slid off a highway in bad weather and came to rest on a railroad track. The vehicle was subsequently struck by a passenger train, which derailed and collided with an oncoming freight train. Ten people were killed, and a further 76 were injured. In its suit, which was filed in the High Court in London, Fortis argues that the Highways Agency, the government body in charge of road maintenance and safety, was partly responsible for the accident and should share the costs.

Liberty Mutual expands European operations

Liberty Mutual Insurance U.K. Ltd., a London unit of Boston-based Liberty Mutual Insurance Co., has expanded its European operations. Now called Liberty Mutual Insurance Europe Ltd., the insurer has enlarged its existing office in Paris and has opened a new office in Cologne, Germany, to focus on directors and officers liability business.

Swiss government lowers minimum interest rate guarantees to help pension plans catch up

By BENJAMIN SEEDER

ZURICH, Switzerland—Swiss pension plans were upbeat in September after the government reduced minimum interest rate guarantees to group life and pension accounts to 2.25%.



Switzerland has recently seen record low rates on government bonds.

The new rate is below the present yield on Swiss government bonds, the important benchmark for plans that have been heavily burned by their first forays into equities in the late 1990s.

The government bond's yield is important because Swiss pension plans rely on the bonds to provide returns that meet the minimum interest rate liability. But when the government yield

drops below the minimum interest rate, as it has done, pension schemes must find higher-yielding asset classes to meet their liabilities.

The Swiss Cabinet decided Sept. 10 to reduce the interest rate guarantee by a full percentage point, from 3.25%. The new rate will go into effect Jan. 1, according to Bern-based BSV, the Federal Office for Social Security.

It is the second time this year that the government has lowered the guarantee rate, as falling markets and record low interest rates on government bonds have pushed pension plan investment returns below the return needed to match their liabilities.

Although defined benefit plans are not affected, most of the remaining second-pillar schemes are subject to the new minimum, said John Anthony, a consultant with Watson Wyatt Worldwide in Zurich.

In a bitterly fought campaign against trade unions last year, the Swiss pension and insurance industries argued that the 4% guarantee rate then was forcing plans to invest in high-risk asset classes, such as equities, at the expense of safer securities, such as government bonds, which were not yielding the required interest rate at the time.

"If the schemes didn't make up that minimum rate, they'd

See **SWISS**/next page



PHOTO: REUTERS

Oil seed rape is one of the genetically modified crops for which underwriters are hesitant to provide liability insurance.

Farmers group finds U.K. liability cover scarce for GM crops

Farmers in the United Kingdom seeking to plant genetically modified crops face difficulty obtaining liability coverage, according to a trade group.

According to research carried out by Farm, a group representing U.K. farmers, insurers are taking steps to limit their exposure to liabilities stemming from the cultivation of genetically modified crops, fearing a public health crisis and huge claims.

Farm said in a statement that some leading underwriters for farm insurance in the United Kingdom have imposed exclusions for liabilities arising from the crops. In addition, some underwriters surveyed by Farm say they won't provide coverage for farmers cultivating genetically modified crops or that they are reviewing their position in light of reinsurance industry and European Union developments, the London-based group said.

Farm said that all the companies surveyed felt that too little was

known about the long-term effects of genetically modified crops on human health and the environment.

One major U.K. farm insurer—NFU Mutual & Insurance Society Ltd. of Stratford-upon-Avon—confirmed that it does not provide coverage for liability arising from growing genetically modified crops.

Dave Lamb, agriculture manager for the Perth, Scotland, office of Aviva P.L.C., said, "those farms that are using GM seeds are carrying out government-sponsored trials, so liability rests with the U.K. government and the GM seed manufacturers." Aviva writes insurance coverage for Agricultural Insurance Underwriters Agency.

Margaret Beckett, the U.K. secretary of state for environment, food and rural affairs, will decide within the next few weeks whether the first genetically modified seed can be planted in Britain following three years of trials.

—By Neil Hodge

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re: Petition of Nigel Hall and Anthony Bamber, as Foreign Representatives of **MARLON INSURANCE COMPANY LIMITED** (formerly Skandia Marine Insurance Company (UK) Limited and Vesta (UK) Insurance Company Limited), Subject of a Foreign Proceeding. In re: Petition of Nigel Hall and Anthony Bamber, as Foreign Representatives of **THE NATIONAL INSURANCE & GUARANTEE CORPORATION LIMITED** (formerly The National Insurance & Guarantee Corporation Plc), Subject of a Foreign Proceeding. In re: Petition of Nigel Hall and Anthony Bamber, as Foreign Representatives of **RIVERSTONE (STOCKHOLM) INSURANCE CORPORATION (PUBL)** (formerly Odyssey Re (Stockholm) Insurance Corporation (publ), Skandia International Insurance Corporation (publ), Skandia Reinsurance Corporation, Amphion Aquitas Reinsurance Corporation, Amphion Insurance Corporation and Amphion Reinsurance Corporation), Subject of a Foreign Proceeding.

In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 03-42343(CB)

In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 03-42344(CB)

In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 03-42345(CB)

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SUMMONS AND NOTICE OF HEARING IN AN ANCILLARY PROCEEDING

SUMMONS: TO ALL UNIDENTIFIED INSURANCE, REINSURANCE AND RETROCESSION CREDITORS OF THE COMPANIES, INCLUDING THOSE WITH NO KNOWN ADDRESSES:

Identical petitions ancillary to a foreign proceeding, pursuant to 11 U.S.C. section 304, were filed on October 3, 2003 in the United States Bankruptcy Court for the Southern District of New York (the "304 Petitions"), for an order giving full force and effect in the United States to the schemes of arrangement (the "Schemes") dated May 27, 2003, between Marlon Insurance Company Limited ("MIC"), The National Insurance & Guarantee Corporation Limited ("NIG") and Riverstone (Stockholm) Insurance Corporation (publ) ("Riverstone") and each of their U.S. creditors in respect of certain of their respective insurance, reinsurance and retrocession liabilities covered by the Schemes (the "U.S. Scheme Creditors"). The 304 Petitions were filed together with a motion for an order giving full force and effect to the Schemes, making the Schemes binding on and enforceable against all U.S. Scheme Creditors and granting related injunctive relief (the "Motion").

YOU ARE HEREBY SUMMONED and required to submit an answer or motion to the Clerk of the Bankruptcy Court if you contest the relief sought in the 304 Petitions and Motion, within 20 days after publication of this summons, to the Office of the Clerk, Room 534, One Bowling Green, New York, New York 10004-1408. At the same time, you must also serve a copy of your answer on the undersigned attorneys for the petitioners at the address below. If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 1011(c). If you fail to respond to this summons, the relief requested in the 304 Petitions and Motion may be granted.

This summons is served on you by publication pursuant to an order of the Honorable Cornelius Blackshear, United States Bankruptcy Judge, dated October 3, 2003, and filed with the 304 Petitions and other papers in the office of the Clerk of the Bankruptcy Court.

PLEASE TAKE NOTICE that copies of the 304 Petitions, Motion, declaration of Nigel Hall in support of the 304 Petitions, Motion and First Day Motions ("Hall Declaration") and proposed order giving full force and effect to the Schemes are available upon written request to the petitioners' counsel at the address below. The Hall Declaration contains exhibits, which include, among other things, copies of the Schemes.

PLEASE TAKE NOTICE that if objections or answers are filed to the relief requested in the 304 Petitions and Motion, a hearing will be held on November 5, 2003 at 2:00 p.m. before the Honorable Cornelius Blackshear, at the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408 in Room 601.

LOVELLS
 Attorneys for Petitioners
 900 Third Avenue
 New York, New York 10022
 Tel: (212) 909-0600
 Fax: (212) 909-0666
 Attention: Karen Ostad, Esq.
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Swiss: Pension plans allowed to catch up

Continued from previous page
 have to fork out the difference from their own wallets," Mr. Anthony said.

Swiss insurers and others sponsoring group pension plans invested heavily in equities for the first time in the late 1990s, only to see values crumble in the next 30 months.

Those losses coincided with the lower interest rates on government bonds.

Yields on Swiss government bonds were around 2.96% at the start of the month but were much lower earlier in the year, according to Swiss National Bank in Zurich.

That meant the plan sponsors were forced to contribute money, Mr. Anthony said.

Member accounts in these plans grow in line with contributions and investment returns, but capital is in turn guaranteed at the set rate by government statutes.

"There is a fear among unions that pensioners and workers will be the ones who will lose out as a result of this (rate drop). Our view is it must go down because earnings are down over the past three years," said Jerge Rice, a spokesman for Schweizerisches Arbeitgeberverband of Bern, a Swiss employers' association that also lobbied for the initial reduction last year and pressed for the further reduction this year.

Benjamin Seeder is a reporter for Pensions & Investments, a sister publication of Business Insurance.

Doctors: Australia puts levy on hold

Continued from previous page
 are leaving hospitals."

In an attempt to avoid a walk out, Mr. Abbott offered an 18-month moratorium on the IBNR levy on amounts above \$1,000 Australian (\$678) annually. But this move was rejected outright by the Australian Medical Assn., which said it was not enough.

Then, late on Oct. 10, after holding talks with the AMA, Mr. Abbott announced that he would withdraw the levy pending a review of the medical indemnity problem.

"The current IBNR levy notices will be withdrawn and existing payments refunded. New levy notices will be issued after the policy review process is completed," he said in a statement.

In addition, Mr. Abbott said that the government is lowering the threshold of its coverage backstop for catastrophic claims. Under the

change, the government will cover 50% of claims between \$500,000 and \$20 million. Previously, the program had covered only claims above \$2 million.

The policy review committee will be chaired by Mr. Abbott and will make its recommendations to Prime Minister John Howard by Dec. 10.

AMA President Bill Glasson welcomed the move.

The ministerial involvement in the committee should enable it to provide a solution that will be acceptable to doctors, he said.

"Those outcomes are around providing affordable services in medicine in this country and also, importantly, providing security and sustainability for the medical profession," Dr. Glasson said.

Gavin Souter contributed to this report.

Directory deadline approaches

Business Insurance will publish its online Directory of Reinsurance Intermediaries in conjunction with the Nov. 10 issue, which will also feature a Spotlight report on trends and issues in the reinsurance industry and a ranking of the largest reinsurance brokers.

The online directory will be available to subscribers on www.businessinsurance.com and will be included in *BI's* 2003/2004 Market Sourcebook, a special printed compilation of all of *BI's* directories and rankings that will be published in December.

Companies must report gross revenues to be listed in the directory and must derive at least

\$500,000 of their revenues from reinsurance brokerage to be included.

The directory includes both U.S. and non-U.S.-based reinsurance brokers.

Business Insurance publishes the directory as an editorial service; there is no charge to be listed. If your company meets the criteria for inclusion but has not yet received a questionnaire, please request one from Directory Editor Kevin Edison at 312-649-5279. Questionnaires may also be printed from the *BI* Web site at www.businessinsurance.com.

Questionnaires must be received by the extended deadline of Oct. 31.

D&O: Companies say rate hikes don't reflect risks

Continued from page 4

es have been in triple digits.

Paul Hopkin, director of risk management at London-based leisure and entertainment company Rank Group P.L.C., is leading the discussions in his capacity as chairman of the recently formed D&O taskforce of the London-based Assn. of Risk & Insurance Managers.

Other companies that have confirmed their involvement in the group are defense and aerospace company BAE Systems P.L.C., technology company Invensys and venture capitalist 3i, all of London.

AIRMIC formed the taskforce at the beginning of the month in response to members' concerns about the state of the D&O market and the availability of suitable, affordable coverage.

Led by a team of 10 risk managers, the taskforce represents the interests of 70 companies—all members of AIRMIC—that have indicated a strong interest in examining the feasibility of alternative funding solutions for D&O coverage. The taskforce held its first meeting on Oct. 3 and plans to meet again later this month after it has had a chance to review companies' claims history.

The AIRMIC taskforce also wants to hold discussions with insurers and brokers about a best practice

guide for D&O risks. Such guidelines, they say, would allow underwriters to differentiate between firms that manage their D&O risk effectively and those that do not, and to price coverage accordingly.

In addition, the group is exploring self-insurance alternatives to traditional D&O coverage, such as using captives, letters of credit from banks and pooling their risks.

However, some risk managers admit privately that they are skeptical about the viability of a pooling arrangement and about whether company boards could be persuaded to explore such an option.

One risk manager closely involved in the discussions—and who asked not to be named—said that “the rate hikes that we have seen in D&O cover over the past couple of years seem to be totally unjustified given the lack of any major claims history within the group of 70 companies.”

The risk manager said his company has seen a six-fold increase in premium rates for D&O coverage in two years, even though the company has not made a claim on its D&O insurance since 1995.

“It occurred to me the other day that the organization's D&O cover is costing the same as what we pay for employers liability cover,” he said. “This is plainly ridiculous. Our

claims history would tell any broker or underwriter that we are definitely going to be claiming on our employers liability cover and that the risks on that policy extend possibly 50 years into the future if an employee should, for example, contract a disease like asbestos.

“I really can't understand how

'Given the litigious culture in the U.S... those companies that have a U.S. listing can see a rise of 500% to 600%' for D&O premiums in extreme cases.

Julian Martin
Jardine Lloyd Thompson
Group P.L.C.

underwriters think,” he said.

Underwriters and brokers, however, say the rate hikes are appropriate.

“Those companies that are paying four or five times their normal premium are largely doing so because they are either buying blanket coverage rather than specific aspects of D&O, or have seen a dramatic fall in their share price or greater investor pressure,” said John

Taylor, D&O product manager for U.K. and Ireland at Chubb Insurance Co. of Europe S.A. in Birmingham, England.

Julian Martin, partner in the London office of broker Jardine Lloyd Thompson Group P.L.C.'s financial and professional practice, said that D&O premiums have been “corrected” rather than “hiked.”

“Rates were on a downward trend from 1995 to around 2001, and coverage was getting wider and wider. Underwriters have simply corrected that process, so the increase in rates is not as disproportionate as companies might think,” he said.

Mr. Martin added that premium hikes are also dependent on whether shares in the company or a subsidiary are publicly traded in the United States. Such companies, he explained, face a greater exposure because of the risk of U.S. shareholder lawsuits.

“Those companies that do not have a U.S. listing have typically seen a premium increase of around 40% to 50% in the past year. However, given the litigious culture in the U.S. and the bad publicity over corporate governance scandals, those companies that have a U.S. listing can see a rise of 500% to 600%” in extreme circumstances, he added.

However, Mr. Martin added that “the amount companies are paying in D&O cover is a drop in the bucket compared to the possible liabilities they could face in a U.S. court.”

Nick Foord-Kelcey, European practice leader for D&O at Marsh U.K. Ltd., part of Marsh & McLennan Cos. Inc., in London, said that there are several legal barriers that companies must overcome if they want to pursue alternative funding mechanisms for the D&O risks.

Mr. Foord-Kelcey noted Section 310 of U.K. company law prevents companies from themselves indemnifying directors, although they can purchase D&O insurance. Furthermore, section 330 prohibits companies providing loans or guarantees to directors, which may mean that providing a letter of credit to a director could be illegal.

In addition, he noted that alternative risk funding mechanisms might be considered a “benefit in kind” and could therefore be treated as a tax liability on the company's balance sheet. D&O coverage is exempt from such treatment.

“At the end of the day, directors need to be reassured that they are suitably indemnified, and I can't see any alternatives that give the kind of reassurance that is contained in D&O coverage,” said Mr. Foord-Kelcey.

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Track 2: Employee Benefits in Captives: The Opportunities and the Imperatives

6:00 PM - 7:30 PM
Welcome Reception with Exhibitors
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TUESDAY, NOVEMBER 18, 2003

7:30 AM - 9:00 AM
Breakfast in the Exhibit Hall
Sponsored by Dempsey Myers & Co.

7:45 AM - 9:00 AM
Domicile Info Breakfast
Network with domicile representatives at informational breakout sessions scheduled during breakfast

9:00 AM - 10:30 AM
Keynote Address:
What's Driving the Insurance Markets?
Featuring Dr. Sean F. Mooney, Sr. Vice President and Chief Economist for Guy Carpenter & Co.

10:30 AM - 11:00 AM
Cookies & Milk Break

11:00 AM - 12:15 PM
Breakout Sessions
Track 1: Cell Captives: Uses and Developments
Track 2: The Health Care Crisis

12:15 PM - 1:45 PM
Buffet Luncheon with Exhibitors

1:45 PM - 3:00 PM
Breakout Sessions:
Track 1: New Cell Captive Strategies
Track 2: The How and Where of Reinsurance Markets

3:00 PM - 5:00 PM
Networking Poolside Break
Sponsored by Watson Wyatt Insurance & Financial Services, Inc.

7:00 PM - 10:00 PM
Captive Cabaret featuring the internationally known *Jimmy Keys*

WEDNESDAY, NOVEMBER 19, 2003

7:30 AM - 9:00 AM
Breakfast in the Exhibit Hall
Sponsored by Barbados Investment & Development Corporation

7:30 AM - 8:45 AM
Contingent Capital - The Basic Alternatives

9:00 AM - 10:30 AM
Captive Case Studies

10:30 AM - 11:00 AM
Beverage Break in Exhibit Hall

11 AM - 12:30 PM
Tax and Legal Developments

12:30 PM - 1:30 PM
Box Lunch and Prize Drawing

1:30 PM - 2:30 PM
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Duff: Brokers charged with aiding work comp fraud

Continued from page 3

Remedial Environmental Manpower Inc., Windy City Maintenance Inc. and Curtis Storage & Trucking Co.

The Duff family—which also controls the Chicago-based Liquor & Allied Workers Union Local 3—has been politically active, raising thousands of dollars for Chicago Mayor Richard M. Daley's campaigns, according to federal prosecutors and news reports.

• William E. Stratton, who was purportedly the sole owner, officer and director of REM and who is a longtime Duff family friend and

member of the Liquor & Allied Workers Union, according to the indictment.

• Mr. Leahy and Edward Wisniewski, a Leahy & Associates vp for commercial insurance.

According to the indictment, Messrs. Duff and Stratton and Ms. Duff carried out a scheme to manipulate a city program that set aside a portion of municipal contracts for minority- and women-owned businesses.

In 1994, prosecutors allege, REM won city certification as a minority-owned enterprise on the basis of false statements by Mr. Stratton,

who is black, that he owned the company and controlled its daily operations. In fact, Mr. Duff was in charge, the indictment alleges.

REM was later awarded city waste recycling work as a subcontractor of Waste Management of Illinois Inc. and collected \$74 million between 1995 and 2002, prosecutors say.

Similarly, Windy City Maintenance was certified as a women-owned business in 1991 based on false statements by Ms. Duff that she owned and controlled the company when, in fact, Mr. Duff controlled it, the indictment charges.

Windy City Maintenance collect-

ed \$28 million between 1991 and 1999 under subcontracts to provide janitorial services at Chicago's Harold Washington Library and at the international terminal of O'Hare International Airport, the court filing says.

Prosecutors charge that Mr. Duff used another company he controlled, American Management & Consulting Services Inc., to siphon away a large part of the money collected by REM and Windy City Maintenance. Between 1996 and 2001, American Management received \$5.7 million from the two companies, the indictment says.

Meanwhile, the indictment charges that Mr. Duff carried out the separate workers comp fraud scheme with help from Messrs. Leahy and Wisniewski, the two Leahy & Associates officers, over a 12-year period beginning in 1989.

Leahy & Associates was formed 51 years ago by Mr. Leahy's grandfather and draws about half of its revenues from brokerage—including a small amount of workers comp business—and half from TPA services, Mr. Leahy said. TPA clients include health and welfare funds for about 15 unions and a self-insured health plan covering city employees of the Chicago suburb of Cicero, Mr. Leahy said. Leahy & Associates won the Cicero business, he said, after the town fired its previous TPA, whose operators were later convicted with former town President Betty Loren-Maltese of diverting health plan funds to their own use.

According to the indictment, Messrs. Duff, Leahy and Wisniewski repeatedly submitted false information about Windy City Labor's workforce to the National Council on Compensation Insurance and servicing insurance companies participating in the state's workers comp assigned risk pool.

While most of Windy City Labor's 650 to 2,100 workers over the period were unskilled manual laborers, the defendants reported most of them as "clerical" or "labor union" employees whose job risk classifications carried premium rates about one-twentieth of the amount that otherwise would have been charged, prosecutors allege.

Mr. Duff also directed employees to provide bogus employee and client company information to auditors from the servicing workers comp insurers, the indictment charges.

In 2000, after a voluntary market policy obtained by Windy City Labor was nonrenewed, the company merged with REM. Messrs. Duff, Leahy, Wisniewski and Stratton then provided false information to NCCI to obtain assigned risk coverage for REM's "new" workers, failing to disclose that REM had simply taken over Windy City Labor's employees and continuing to falsely describe those workers as "clerical," the indictment charges.

Messrs. Duff and Stratton face a variety of charges in both the alleged contract and insurance fraud schemes, while Ms. Duff is charged only in the alleged contract scheme and Messrs. Leahy and Wisniewski only in the alleged insurance scheme.

Mr. Wisniewski referred questions to his lawyer, who could not be reached.

Michael Sher, a Chicago-based lawyer for Mr. Stratton, said that "the evidence at trial will demonstrate that both he and REM properly discharged all of their legal obligations, that there was no scheme to defraud the city and that no one was defrauded."

Attorneys for the Duffs could not be reached but dismissed the allegations in comments following last Tuesday's arraignment.



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Benefits: Carmakers, UAW look to cut costs

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sources say the primary reason for the union's cooperation is the recognition that U.S. automakers face increased competition from foreign automakers that do not have high benefit costs.

In particular, U.S. automakers are providing benefits for a huge number of retirees, and because their operations are newer, the foreign automakers do not have these costs, noted Bryan Zoran, research associate at the International Foundation of Employee Benefit Plans in Brookfield, Wis.

"The Japanese transplants are eating up the market right now," agreed Richard Bank, director of the Center for Collective Bargaining at the AFL/CIO in Washington.

"So what the United Auto Workers did was to cut a very smart deal where they preserved the essence of the agreement that they had, and they are giving the companies a chance to become more efficient so they can compete with this non-union competition they have," he said.

"Everybody is being victimized by this situation," Mr. Banks continued. "So much of a company's profits are being eaten up" by health care costs. As a result, "it doesn't leave a lot for wages, it doesn't leave a lot for improving other benefits, it doesn't leave a lot for improving pensions, and if this cycle continues indefinitely, we're going to have a major crisis on our hands."

Under the terms of the agreement, UAW members will keep their virtually free health benefits except in the area of prescription drugs, where the copayment for brand-name prescription drugs will

'Cost-sharing has not been as prevalent (in union environments) as in non-union environments.'

Bryan Zoran
 International Foundation of Employee Benefit Plans

increase from \$5 to \$10 beginning in January 2004. However, there will be no copayment hike for retirees that use brand-name drugs. But both active and retired workers will be required to make a \$5 copayment to use the mail-order drug program beginning in January 2005.

In addition to maintaining their rich health benefits, pension payments for future retirees will increase 8.9% over four years, and current retirees will receive an additional \$800 annually plus two \$1,000 coupons toward the purchase of a new vehicle.

As a tradeoff, the union agreed to smaller wage increases than in the previous four-year contract and to some plant closings. Under the 1999 contract, automak-

ers were not permitted to close any plants.

The UAW's success is partly because unions, in general, are better able to preserve health benefits than employees who not represented by collective bargaining agreements, experts say.

"Cost-sharing has not been as prevalent (in union environments) as in non-union environments," acknowledged Mr. Zoran.

But while the UAW may have won on the highly visible areas of premium and copayment cost-shifting, it did concede in other areas that could, some industry experts say, help the automakers reduce their health care costs somewhat.

In particular, the current preferred provider networks will be restructured effective January 2005 to consist of hospitals and physicians that have demonstrated quality outcomes, best practices and cost-effectiveness.

"So instead of having access to every physician that's in the phone book, going along the lines of reducing the number of physicians that employees can go to and the number of hospitals that are in the plan," said a source close to the negotiations who did not want to be identified.

It is also hoped that the automakers will be able to use the strength of the UAW to their advantage in negotiating deals with hospitals and doctors, he said.

"If you can't fight on a unit cost

basis with hospitals, what you have to fight with is where people go with their feet in terms of taking their business," the source explained.

The new contract also will emphasize wellness by expanding and making permanent existing health and fitness programs to include such things as classes on weight management, stress and nutrition, providing health risk appraisals and health club discounts.

In addition, the health plan management will be studied to determine if it would save the automakers money by consolidating administration, sources say.

While these tactics certainly aren't new to non-union employers, many of whom have used them for years, they are new to the automakers.

It is for that reason, and the fact that such cost-containment efforts have been effective for many other employers, that they may very well work for the automakers, industry experts say.

"You oftentimes benefit as a follower and not as a leader," said Henry Loubet, senior vp at Keenan & Associates, a benefit consultant in Oakland, Calif.

"Others have done some of those things and have built certain programs that have proven to be effective, and then those programs become almost institutionalized, and you get a residual benefit or value from the fact that others have implemented those," he said.

Pension bill: Would reduce contributions

Continued from page 3

Watson Wyatt Worldwide in Southfield, Mich.

Employers that stand to gain significantly from the change are those whose plans otherwise would slip below a funding level, which, under federal law, triggers accelerated contributions.

Sponsors are exempt from making those extra contributions—known as deficit reduction contributions—if their pension plans are at least 90% funded or if their plans

are at least 80% funded and were at least 90% funded during each of the prior two years.

With the higher interest rate assumption allowed in the House bill, "it would be much less likely that the DRC will be triggered," Mr. Wagner said.

Employer groups for more than two years have pressed for a change in the methodology used to value plan liabilities. That drive began as interest rates on the 30-year Treasury bond began to slide as the fed-

eral government reduced its borrowing and later when the Treasury Department stopped issuing the long-term bond, reducing supply.

The resulting low interest rate artificially inflated pension obligations, pension experts say, boosting the need for employers to contribute corporate funds that they could better use elsewhere.

Congress at the beginning of last year responded to those cries for relief by nudging up the interest rate assumption used to value plan liabilities, while keeping the 30-year Treasury bond yield as an interest index.

But with the 2003 change expiring at the end of this year, legislators again are wrestling with the issue, with some favoring another stop-gap measure and others supporting both a short-term and a long-term approach.

For example, legislation approved by the Senate Finance Committee would, like the House bill, allow employers to use corporate bond yields to value pension liabilities, though for three years rather than two. But over the long term, that measure would require employers to value plan liabilities on a so-called "yield curve." Under that approach, which business groups and pension experts have criticized, interest rate assumptions would vary based on when plan liabilities are due.

With the time for action drawing closer, Washington observers say the most likely outcome is that Congress will pass a bill that is closer to the House-passed—and Bush administration-backed—measure.

Portions of the Senate bill are strongly opposed by the administration because they would, in some situations, exempt employers for the next several years from making extra contributions to their plans, regardless of how low the funding levels of their plans had sunk.

Benefit experts say that the House's approach is the more logical one.

"This is a good middle ground. You provide employers with some certainty for the next couple of years" while giving legislators time to come up with a long-term solution, said Mr. Bone of Aon Consulting.

Indeed, some legislators say they would soon like to begin work on permanently replacing the 30-year Treasury bond and addressing other pension-funding issues.

"Once this temporary solution is put in place, we expect to proceed immediately with efforts to provide a permanent replacement for the 30-year Treasury rate benchmark," said House Education and the Workforce Committee Chairman John Boehner, R-Ohio, the chief sponsor of the House-passed bill.

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Asbestos study: Companies underreserved

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exposures have conducted "ground-up" loss reserve evaluations in the last two years, nearly all resulting in reports of sizable deficiencies, Best notes.

"These losses will continue to

grow, albeit at a slightly reduced level, during the next two years as more groups start to recognize and act on the magnitude of their loss reserve deficiencies," Best predicts.

The flood of asbestos reserve additions in the last two years has re-

versed an earlier trend in which environmental exposures were funded at a higher level than asbestos claims, the study observes.

Much of the industry remains "in 'sleep' mode" regarding pollution exposures, with insurers reporting

little incurred environmental loss activity for 2001 and 2002 and several companies drawing down previously posted reserves they viewed as redundant.

Industrywide environmental reserves fell 14% in 2002, outpacing the roughly 10% declines recorded in each of the preceding three years, the study notes.

Best expressed worries, though, that insurers face environmental liabilities that they are not disclosing in their financial statements. While insurers, for example, have clung to the absolute pollution exclusion introduced in 1986 as a defense against post-1986 claims, courts in several states have refused to apply the exclusion in many cases, the analysis notes.

"As a result, it is likely that a significant portion of environmental losses are not disclosed," Best said, adding that it is now asking insurers for supplemental data regarding these potential exposures.

Dwindling federal Superfund revenues available for waste site cleanups, meanwhile, make it more

likely that federal and state governments will put pressure on corporate polluters and their insurers to cover cleanup costs, the study adds.

For these and other reasons, "Best remains concerned that insurers' ultimate environmental exposures might be higher than currently perceived."

Insurance groups with large unfunded—and uncertain—A&E liabilities in relation to surplus and earnings face a greater risk of having their financial strength ratings downgraded, Best warned.

"Given the ongoing relative weakness in the industry's core (non-A&E) reserves, still-diminished investment opportunities and uncertainty over economic conditions, the ability of some groups to come to terms with their A&E exposures remains questionable," the report concludes.

A copy of the full report can be downloaded for \$50, while a combination of the report plus a spreadsheet file of the report data can be downloaded for \$125 from www.bestweek.com. Best-Week subscribers are eligible for discounts. For information, call 908-439-2200, ext. 5742.

LARGEST NET ASBESTOS & ENVIRONMENTAL RESERVES

Year-end 2002, in millions of dollars.

Group	Net reserves	Net reserve growth	Asbestos component	Environmental component
Travelers PC Group	\$3,790	211.5%	89.8%	10.2%
ACE INA Group	2,207	60.9	65.6	34.4
Berkshire Hathaway	1,657	6.6	57.8	42.2
CNA	1,615	-6.1	76.2	23.8
Nationwide	1,352	-4.6	70.0	30.0
Hartford *	1,341	27.3	64.2	35.8
Liberty Mutual	1,292	-0.2	75.0	25.0
One Beacon/Potomac **	1,259	-4.9	55.9	44.1
Chubb	1,083	163.2	77.0	23.0
St. Paul	1,038	19.9	72.5	27.5

*Includes \$1.3 billion in reserves held by Bermuda-based subsidiary Heritage Reinsurance Co. Ltd.; does not include Hartford's first quarter 2003 net reserve increase of \$2.57 billion **Does not reflect retroactive reinsurance transfer of \$1.2 billion in A&E reserves to a Berkshire Hathaway unit in 2001 and an earlier, smaller retroactive transfer to Gerling Global
Source: A.M. Best Co.

Broker develops pooling program for California schools

By SALLY ROBERTS

TORRANCE, Calif.—While it's too early to determine whether Gov.-elect Arnold Schwarzenegger will come through on his pledge to reform California's workers compensation system, one insurance broker is helping a number of schools rein in their skyrocketing workers comp premiums.

Torrance, Calif.-based Keenan & Associates recently developed what it describes as a "hybrid self-insurance and reinsurance" workers comp pooling program for nearly 400 schools and community colleges throughout California.

The joint powers authority, called the Protected Insurance Program for Schools and Community Colleges, or PIPS, became operational July 1.

Under the program, 12 reinsurers provide first-dollar coverage up to \$250,000 in a quota-share arrange-

ment and provide various levels of excess coverage above the \$250,000 retention, explained Tara Schilling, a senior vp with Keenan.

While the program mirrors an insured program, "it looks and smells like self-insurance," because the JPA maintains control over claims and loss prevention, Ms. Schilling explained.

"There's no insurance company coming in saying, 'This is what you have to do.' They manage the program, and we administer it for them," she said.

Because of Keenan's expertise in workers compensation and school coverages, Ms. Schilling said the broker was able to come up with an appropriate funding level "to give our customers a 99% confidence level for their work comp expenses, so they can be prepared budgetarily."

Workers comp premiums have increased 70% over the last four

years in California, Ms. Schilling said. Although Keenan's school clients avoided the crisis over the last three years due to a three-year guaranteed cost program that the broker put together for them, that program expired in July, prompting the creation of PIPS. "We knew we couldn't go out to market because the rates were astronomical," she said.

Under the PIPS program, members are receiving rate increases that are half what the standard workers comp market is imposing, Ms. Schilling said.

Ms. Schilling said she is optimistic that the PIPS program will remain a more affordable alternative. "We keep the rates down because Keenan controls the rates," she said.

"We have a loss control department, we have a medical management department and we monitor the claims and are being very proactive and aggressive in bringing

claims to resolution."

School risk managers say they like the structure of the PIPS program.

"This is a different approach, where we have some manageability in a self-insurance aspect and some fully insured aspects as well. We like that versatility," said Rocky Bonura, risk manager of the El Camino College District in Torrance, Calif.

"I like the fact that there are a lot of schools joined together working toward improving their work comp processes, putting into place loss control efforts that are specifically aligned for each individual district," said Judy Neal, risk services manager for Coast Community College District in Costa Mesa, Calif.

At the same time, the PIPS program is designed to save schools money on their workers comp programs. That, risk managers say, is a big selling point.

"It saved us money," Ms. Neal

said, when asked what she liked about the program.

"We had another broker quote a traditional insurance program this year, and they couldn't touch the rates Keenan was offering through the JPA. So instead of doubling our premium this year, which is what we would have done if we tried to stay in an insured program, we had a 35% increase in our cost for our program," she said.

Ken Hochnadel, secretary and treasurer for the Tulare County Schools Insurance Group, a JPA with 50 school districts, said he is "tickled to death" to be part of PIPS.

"The first thing is, we have insurance," he said. "Second of all, the price was very competitive compared to what else was out there, which was not much."

Mr. Hochnadel estimates Keenan's program is saving his JPA around \$5 million a year compared with a traditional insured program.

Workers comp: Employers are optimistic

Continued from page 3

legislature is "unfriendly to employers," however, it is going "to be a tough go for him," Ms. Axtell said. "The best part, though, is that we've got somebody right now who is on the employers' side. We had nobody there in the last five years," she said.

"He's made a lot of comments about our workers comp system," said Jeffrey W. Pettegrew, vp-risk management and insurance for Westaff Inc. in Walnut Creek, Calif. "The quick midnight-hour reform under the Davis administration was simply a Band-Aid to our issue of concern. We're hoping now that (Mr. Schwarzenegger) will put some meat into it and pressure the legisla-

ture into refocusing its attention on the workers comp problem."

Peggy Nakamura, executive director of risk management and associate counsel for Adventist Health System/West in Roseville, Calif., also is hopeful about the prospects for reform.

"We're struggling with our workers comp experience, as everyone else is, and it's not going in the right direction," Ms. Nakamura said, "but I'm a little more optimistic that perhaps (Mr. Schwarzenegger) will offer some legitimate solutions. But that remains to be seen."

"It's got to be difficult when you have a Democratic legislature and a Republican governor, and how this

will play out in the next few months and couple of years is anyone's guess," Ms. Nakamura said.

Judy Neal, risk services manager for Coast Community College District in Costa Mesa, Calif., added: "Workers comp reform in California is definitely needed. The fact that businesses are leaving the state because they can't afford coverage for their employees is a good indicator that we have some problems here."

As to whether Ms. Neal feels confident that Mr. Schwarzenegger will be able to make the appropriate reforms as governor, she said simply, "I feel better than I did with Gray Davis."

According to Mr. Schwarzeneg-

ger's Web site, he proposes a five-point plan "to rein in the runaway workers compensation system."

That plan includes imposing evidence-based standards to help reduce widely diverging medical care recommendations for similar diagnoses and giving injured workers access to a dispute resolution process so that temporary disability claims are resolved fast and fairly.

Mr. Schwarzenegger also proposes adopting an independent medical review process to help rein in costly litigation; auditing the State Compensation Insurance Fund to identify waste, fraud and other fiscal problems; and appointing a new management team to the Division of Workers Compensation.

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Late News

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organization averages \$3,750 per year, while full family coverage costs average \$9,900 per year.

AIG to take stake in Chinese insurer PICC

American International Group Inc. plans to buy a minority stake in PICC Property & Casualty Co. Ltd. and to develop accident and supplemental health insurance products with the Chinese insurer. Under the



Mr. Greenberg

agreement, AIG subsidiaries will make an investment representing 9.9% of PICC Property & Casualty's capital. PICC Property and Casualty plans an initial public offering later this year. The agreement with the Chinese insurer is "a significant milestone for AIG in China" because it is "a large market with tremendous potential," AIG Chairman Maurice R. Greenberg said in a statement.

Court refuses Aon's appeal of jet crash award

The Illinois Supreme Court refused to hear Aon Corp.'s appeal of a \$23.5 million jury award to the family of a co-pilot killed in a 1996 corporate jet crash. The jet, on loan to Aon from



personal care products company Alberto-Culver Co., crashed shortly after a troubled takeoff. A trial court in 2001 found Aon's pilot 90% at fault for the crash and awarded \$19 million to the family

of Alberto-Culver pilot Robert Whitener, who was found 10% liable. An appellate court in March affirmed the award, which earns 9% interest annually. Aon was insured by U.S. Aircraft Insurance Group.

Supreme Court turns down pension appeal

The U.S. Supreme Court has refused to stay a federal appeals court ruling ordering Xerox Corp. to pay nearly \$300 million to former workers and retirees in compensation for underpayment of benefits. A lower court had found that Xerox used an incorrect methodology to calculate payments to members of its cash balance pension plan.

Katie School to study comp claims processing

The Katie School of Insurance & Financial Services at Illinois State University is conducting a national study on the effects of automation on workers compensation claims processing. The Normal, Ill.-based Katie School conducted a pilot study on the subject Oct. 1-3 at Corporate Systems Inc.'s users conference in Las Vegas. Pilot study participants placed high importance on improving such areas as reserve practices, data accuracy, adjuster communications, return-to-work programs and the ability to analyze and forecast trends.

OSHA forms alliance with traffic safety group

The Occupational Safety and Health Administration and the Network of Employers for Traffic Safety have formed an alliance to reduce work-related traffic injuries and fatalities. The alliance will provide employers of all sizes with access to information and safety resources that can be used to create effective workplace traffic safety programs. The groups also plan to work on



electronic assistance tools for workplace traffic safety programs, including fleet safety.

Property/casualty rate increases slow

Average property/casualty rates increased 12% in September, the lowest rate increase in three years, according to MarketScout, an online distribution channel. The reduction in rates for risks placed through MarketScout "is a clear signal the insurance market is nearing the end of a four year hard market cycle," said Richard Kerr, chairman and CEO of MarketScout.



HRH expects slower growth in revenues

Hilb Rogal & Hobbs Co. expects its revenue growth to be slower than it had previously forecast during the rest of 2003. HRH said that it



expects organic revenue growth to be in the 5% to 7% range for 2003 as whole, as opposed to the 11% to 13% it had previously projected. According to an HRH statement, the lower-than-expected growth "resulted from both industry trends and company issues," such as softening of property insurance rates and a "shortfall in executive benefit revenues."

Brown & Brown posts nine-month gains

Brown & Brown Inc. reported gross revenues of \$416.1 million for the first nine months of 2003, a 23.6% increase over the same period in 2002. Nine-month profits at the Daytona Beach, Fla.-based brokerage increased 36.9%, to \$84.5 million. Much of the growth resulted from acquisitions, including three in the third quarter of 2003, Brown & Brown said.



Briefly noted

UnitedHealth Group Inc. of Minneapolis has purchased HealthAllies Inc., a Glendale, Calif.-based provider of discounted physician networks. Terms of the deal were not disclosed. HealthAllies will retain its name and continue to operate under its current management.

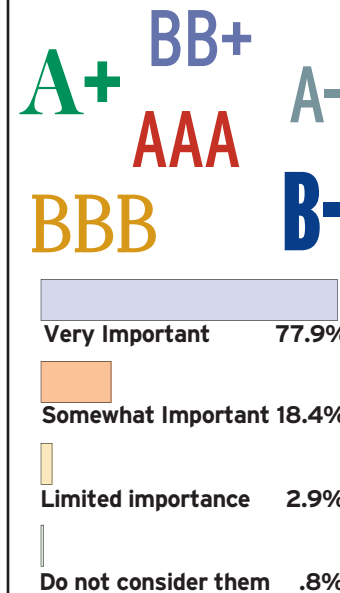
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Online Poll

[10/6-10/10]

How important are rating agency ratings in your choice of insurers?



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[10/6 - 10/10]

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Percentage change of BI Stock Index vs. key indicators

BI Stock Index	2025.15	0.17
Dow Jones	9674.68	1.07
S&P 500	1038.06	0.80

Largest gains

Gainsco Inc.	10.00%
PacificCare Health Systems	7.66%
SCPIE Holdings Inc.	4.73%
Unico American Corp.	4.03%
PXRE Corp.	3.45%

Largest losses

Acceptance Insurance Cos.	-50.00%
Trenwick Group Ltd.	-15.38%
Hilb, Rogal & Hobbs	-6.92%
Safeco Corp.	-6.83%
Penn-America Group Inc.	-6.04%

Weekly change by market segment

Brokers	-3.32%
Insurers/Reinsurers	-1.19%
Managed Care Organizations	1.25%

Source: CNET Investor (investor.cnet.com)

Docket: Not a 'blockbuster' term

Continued from page 4
implications for workplace litigation," said Gerald L. Maatman Jr., a partner in the Chicago law firm of Seyfarth Shaw.

Perhaps the most important risk management case accepted by the justices so far is *General Dynamics Land Systems Inc. vs. Dennis Cline et al.* (BI, April 28). The case involves allegations of reverse discrimination in retiree health benefits. Under a 1997 collective bargaining agreement, Sterling Heights, Mich.-based General Dynamics Land Systems changed its retiree health benefit policy to one that provided full benefits only to those employees who were at least 50 years old as of July 1, 1997. The old policy had guaranteed benefits to retired workers who had accumulated 30 years of service.

A group of workers between the ages of 40 and 49 sued, claiming that the new policy violated the Age Discrimination in Employment Act, which protects all workers 40 years old or older from age

discrimination. Although a U.S. district court in Toledo dismissed the case, a divided three-judge panel of the 6th U.S. Circuit Court of Appeals reinstated it, paving the way for high court review.

"The 'big' case on the docket is *General Dynamics vs. Cline*—not so much due to the question of how the court will interpret the ADEA but due to the graying of the American workforce and the ramifications a plaintiff-friendly ruling might have if it subjects employers to lawsuits for a myriad of personnel issues whenever 40-somethings perceive their colleagues over 50 are treated more favorably. Recognition of 'reverse age discrimination' claims will impact the workplace for the remainder of the baby boom generation's worklife," said Mr. Maatman.

If the high court rules against General Dynamics, "there would be a real problem," said Donald B. Verrilli Jr. during the WLF's Supreme Court preview. Employers' reaction could be to deny re-

tree health benefits to everyone, said Mr. Verrilli, who is partner in the Washington office of the Chicago-based law firm of Jenner & Block.

Oral arguments are scheduled for Nov. 12.

The other employment case, *Raytheon Corp. vs. Joel Hernandez*, asks whether the Americans with Disabilities Act gives employees lawfully terminated for misconduct—in this case, illegal drug use—preferential rehiring rights. Mr. Hernandez had tested positive for cocaine during a drug test in 1991 and was allowed to resign rather than be fired from his job at Hughes Missile Systems, which is now part of Raytheon Corp. In 1994, he reapplied for a job, but his old personnel file contained a note describing his termination and the company rejected him. He sued, noting that he had been drug-free and sober for two years, claiming that he was the victim of illegal discrimination under the ADA. A U.S. district court dismissed his case, but

a three-judge panel of the 9th U.S. Court of Appeals reinstated it, and the Supreme Court heard oral arguments in the case last Wednesday.

The high court will also revisit the question of state immunity from damages stemming from ADA violations when it hears *Tennessee vs. George Lane and Beverly Jones*. The case involves physical access to the state courthouses.

The Supreme Court has also accepted a case asking what constitutes an "accident" under Article 17 of the Warsaw Convention, which governs airline liability. The case—*Olympic Airlines vs. Husain*—involves the death of an asthmatic passenger whose pre-existing condition worsened after he was exposed to cigarette smoke during a transatlantic flight. The man died aboard the plane after flight personnel refused to allow him to sit farther from the smoking section, and lower courts ruled that the airline was liable for damages despite the pre-existing nature of his illness.

CIAB: Florida countersignature law is overturned

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dent and nonresident agents. The CIAB also successfully petitioned the judge to reject a Florida regulation that allows only resident agents to receive surplus lines licenses.

In issuing a summary judgment in favor of the CIAB, Judge Hinkle "understood how ridiculous these laws were and what the real purpose of them was, which is protectionism," said Ken Crerar, president of the Washington-based CIAB.

"Obviously, costs in the system are costs in the system, and this was a cost in the system. From a risk manager's perspective, this is good. It's all part of our long-term strategy to streamline licensing. The more efficiencies that are in the system, the more bang for the buck," he said.

"It was one of those laws that people tried to get around. It inhibited the ability of any broker to service a client," said Mr. Crerar.

The Risk & Insurance Management Society Inc., which has long supported uniformity in producer licensing, welcomed the ruling.

"RIMS supports the judge's deci-

'It improves the efficiency of the insurance transaction, and that is good for risk managers. Ultimately, the consumer should enjoy lower premiums...'

Janice Ochenkowski
Jones Lang LaSalle

sion to overturn Florida's countersignature law," said Janice Ochenkowski, RIMS' vp-external affairs. "It improves the efficiency of the insurance transaction, and that is good for risk managers. Ultimately, the consumer should enjoy lower premiums as unnecessary trans-

actional costs are trimmed. This ruling is also an indication that further work needs to be done to create the uniformity and efficiency that RIMS promotes in our representation of commercial insurance consumers," said Ms. Ochenkowski, who is also senior vp/national director-risk management for Chicago-based Jones Lang LaSalle.

Meanwhile, the Florida Department of Financial Services has "no plan to appeal the judge's ruling as it relates to Florida's countersignature law, and we're now reviewing the practical implications of the judge's ruling as it relates to surplus lines agents," said a spokeswoman for the department, which regulates insurance.

Mr. Crerar noted that the CIAB already has a suit pending in federal district court challenging Nevada's countersignature law and is "considering filing new suits in both South Dakota and West Virginia," the only other states with such

statutes.

He said that the victory in Florida has encouraged the CIAB to examine surplus lines licensing in all states. "We'll take a hard look where it makes sense to go after discriminatory practices," he said.

"Some states continue to have prohibitions or special burdens for nonresidents," said Joel Wood, the CIAB's senior vp-government affairs. "We believe that such statutes may be challengeable under the logic of the Hinkle decision."

In a sometimes biting decision in favor of the CIAB's position, Judge Hinkle said "no purpose is served" by denying licensed nonresident agents the same rights as resident agents.

"This is one nation with one economy," he wrote.

"Each individual state retains its own sovereignty and its own ability to govern within its borders. A state thus may require that persons seeking to engage in any particular form

of economic activity—acting as an insurance agent for example—demonstrate their competence and meet appropriate prerequisites to licensure. But no state may build a fence at the border to keep out residents of other states or to keep them from competing for business within the state. Thus, nonresidents who meet the same standards that a state imposes on its own residents ordinarily may not be barred from plying their trade within the state."

Judge Hinkle also rejected the argument that such discrimination benefits insurance buyers because they have a "local" agent upon which to call for assistance.

Council of Insurance Agents & Brokers vs. Tom Gallagher, in his official capacity as Commissioner of Insurance for the State of Florida. U.S. District Court for the Northern District of Florida, Tallahassee Division. Case No. 4:02cv208-RJ. Sept. 30, 2003.

Hewitt: Health cost hikes high, but easing

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tant in Norwalk, Conn.

And, Mr. Sperling warns, there are no signs that health care cost increases will ease to much more tolerable levels.

"We have seen a moderation in the trend curve, but I don't see anything yet that would bring increases down to below 8%," he said.

And as costs continue to escalate, employers are passing those increases onto employees through premium hikes and design changes such as higher copayments.

For example, Hewitt projects that in 2004, the average employee premium contribution will be \$1,565, representing 22% of the total premium. This year, employees paid an average of \$1,276 for coverage, or just over 20% of the total premium.

The Hewitt survey is based on information it collected from about 300 employers, whose workforces average about 5,000 employees. Health costs include employer and employee premium contributions—but not copayments or coinsurance—for medical, hospital and prescription drug coverage.

Some of the moderation in cost increases may stem from timing. In recent months, several popular and expensive prescription drugs—such as Claritin, an allergy medication, and Prilosec, a heartburn medication—have either moved to over-the-counter status or have become available as generics.

Still, the major drivers of health care cost increases have not changed, Mr. Sperling noted. Those drivers include provider consolidation, which gives doctors and hospitals more leverage in their negotiations with health plans; an aging population; provider cost-shifting to insured patients to offset the cost of treating the uninsured; and continued adoption of more expensive medical technology.

And for health plan participants, "there is an ever-increasing demand

for medical services," Mr. Sperling said.

Nonetheless, he said, it is not all gloom and doom on the health care cost-control front. Indeed, he believes that employers, through design changes and other actions, can cut down cost increases from 12% or so to about half that.

"It is a matter of better design, not cuts on the backs of employees. Employers can make a difference,"

he said.

For example, just providing employees with more information, such as a range of expected costs of certain medical procedures, and requiring them to pay a reasonable share of those costs could influence employee behavior, he said.

"If an employee knows a certain surgery is going to cost \$5,000 and he will have to pay a share," the employee then might be more like-

ly to talk to his doctor about other options, Mr. Sperling said.

Some design changes, especially those involving prescription drug cost-sharing arrangements, already are helping hold down cost increases.

One approach involves moving from copayments to coinsurance requirements, in which employees pay a percentage of drug costs rather than a flat dollar amount.

That approach makes employees much more aware of cost differences among the various brand name drugs frequently prescribed for the same medical condition, such as high levels of cholesterol. That sensitivity is lacking when the identical copayment is imposed for all brand names on a formulary.

Indeed, employers that have moved to coinsurance from a copayment system for prescription drugs have seen cost increases in the high single digits, compared with the typical 15% to 20% increases.

"The results are startling," Mr. Sperling said. A coinsurance system "engages consumers in the costs of drugs; it promotes generic utilization as well as brand-name price-shopping," he said.

Another promising approach is the use of so-called consumer-driven plans, he said. Such plans often feature a very high deductible and an employer-funded account, which covers a portion of expenses that fall within the deductible. Funds remaining in the accounts can be rolled over and used for succeeding years or even to pay for retiree medical premiums.

"Employees see the accounts as their money," and, as a result, they tend to use medical services more carefully so as to preserve the accounts, Mr. Sperling said.

A summary of Hewitt's survey is available at www.hewitt.com.

Midsized: Firms are next targets

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the suits are filed, according to John Keogh, president and chief executive officer of National Union Fire Insurance Co. of Pittsburgh, Pa., a New York-based unit of AIG.

"The big funds are not going to settle for 10 cents on the dollar, so these cases take a long time," he said.

Consequently, suits against midsize companies, which are less likely to be taken over by large institutional shareholders, will become increasingly attractive targets to the plaintiff lawyers bringing these actions, Mr. Keogh said.

In addition, midsize companies, like all listed companies, are facing a plethora of new corporate governance requirements that will likely lead to more shareholder suits, said Mr. Kavalier of Cahill Gordon & Reindell.

The new requirements are more detailed and specific than previous rules. Companies will face challenges trying to comply with every aspect of the rules, so they will be more susceptible to shareholder litigation, he said.

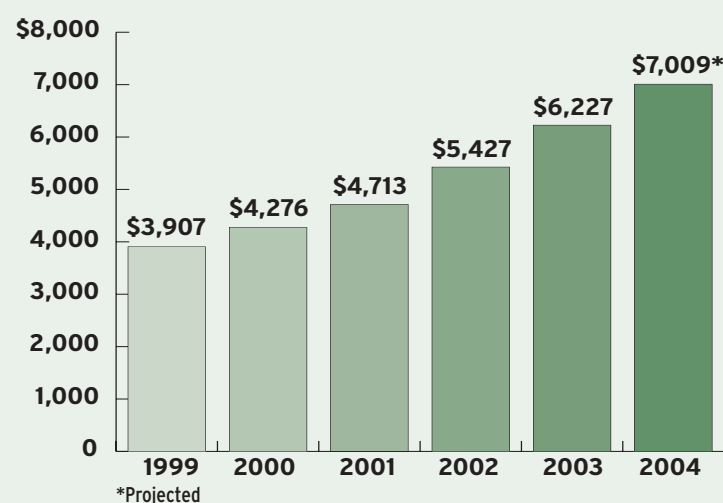
"There used to be broad general concepts but now there are specific rules and (when you comply with the rules) if you get it almost perfect you get it wrong," Mr. Kavalier said.

However, there are some positive developments, Mr. Keogh noted.

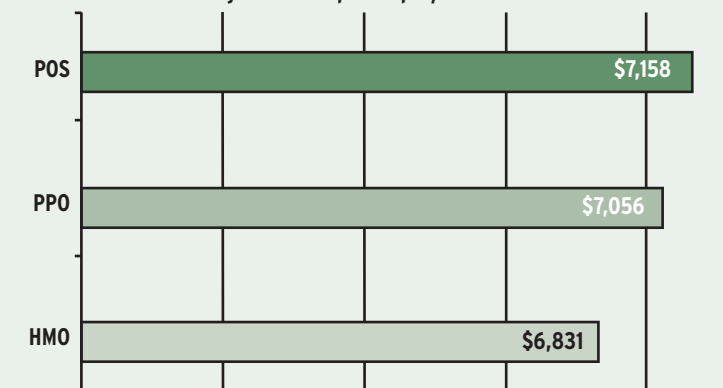
Stock prices appear to be recovering and because many of the suits are triggered by drops in share prices, the number of shareholder lawsuits should fall as share prices rise, Mr. Keogh said.

HEALTH CARE COSTS STILL RISING

Survey shows rising health care costs per employee



Projected cost per employee for 2004



Source: Hewitt Associates Inc.