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seen as key in '04 election / 4**

Business Insurance

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\$4

New administrative burdens seen

Bill would expand FMLA law to cover families of soldiers

By JERRY GEISEL

WASHINGTON—Immediate family members of individuals called up for military service would be eligible for Family and Medical Leave Act benefits under legislation now before a congressional conference committee.

Under the proposal, employees whose spouses, children or parents are called to active duty or are notified that they will be activated in support of a "contingency" operation, such as the deployment of troops to Iraq, would have to be offered FMLA benefits by their employers.

Although benefit experts don't expect

widespread use of the leave, the proposed expansion still would create administrative work for employers, which would have to change plan descriptions and other benefits materials, as well as upgrade their recordkeeping capabilities.

If the change becomes law, FMLA benefits—which include up to 12 weeks per year of job-protected unpaid leave and the continuation of health care benefits on the same basis as prior to the leave—would have to be extended to the family members for virtually any reason, as long as it relates to the service member's absence.

See FMLA/page 30



PHOTO: AFP/JEFF KOWALSKY

The proposed expansion of the Family and Medical Leave Act could reduce the strain put on military families.

Class-action reform stalled by Senate vote

Supporters hope to see a new measure

By MARK A. HOFMANN

WASHINGTON—Supporters of federal class-action reform legislation remain optimistic they will get a bill passed this year, despite a major defeat in the Senate last week.

On Oct. 22, a Senate vote to end debate on a class-action reform bill fell one vote short, therefore sinking the Class Action Fairness Act—S. 1751—for the time being.

The bill, a version of which has already won House approval, would permit the removal of certain interstate class actions to federal court from state court, among other changes. The measure's supporters, which include the Risk & Insurance Management Society Inc. as

well as various business and insurer groups, claim that hearing such cases in federal court would eliminate so-called "forum shopping" by plaintiffs' attorneys. That practice involves attorneys seeking to file national class actions in state courts known to be plaintiff-friendly venues. The measure also would have required judges to subject noncash awards, such as coupons, to greater scrutiny.

The failure to end debate on the measure represented a "missed opportunity to address a vitally important issue," said Senate Majority Leader Bill Frist, R-Tenn., moments after the vote. "We are very committed" to addressing the issue, he added.

See CLASS ACTIONS/page 30

SGP's Griffith forming integrated brokerage

Firm offers ART, reinsurance

By SALLY ROBERTS

DALLAS—One month after stepping down from the helm of Summit Global Partners Inc., Gary R. Griffith has formed a new firm, APEX Global Partners, that will target large risk management accounts and their brokers for a wide range of products and services.

In addition to wholesale and reinsurance brokerage services, APEX aims to also deliver an array of alternative risk financing products and services to its customers.

In its first move, Dallas-based APEX signed a definitive agreement to acquire Hamilton, Bermuda-based broker The Park Group from IAS Park Group, the Bermuda holding company for the brokerage and captive management operations formerly owned by Mutual Risk Management Ltd.

The Park Group, which has revenues of more than \$20

See BROKER/page 29

Late News

Terror risks too complex for cat bonds: GAO

Insurers have yet to issue any catastrophe bonds covering terrorism risks, chiefly due to the complexity of the exposures, according to a report by the General Accounting Office. "One challenge involves developing statistical models to predict with some certainty the frequency and severity of terrorist attacks," the GAO noted in its report. In addition, "investor concerns about the risks associated with catastrophe bonds covering terrorism in the United States might also make the costs of issuing securities related to terrorism prohibitive."

Garamendi calls for health/comp combo

California Insurance Commissioner John Garamendi is calling for the creation of what he calls "24-hour health care" as part of efforts to improve the state's workers compensation system. Mr.



Mr. Garamendi

Garamendi did not provide details on how he would implement the coverage but said that it would entail combining the various health

coverages currently provided under employer-sponsored benefit plans, workers compensation insurance, automobile insurance and third-party liability policies. Providing health care coverage through various lines of insurance is "a nonsensical approach," he said, resulting in unnecessary litigation costs as attorneys "get involved to bicker over who pays for what injury and when."

See LATE NEWS/page 31

Spotlight

WORK & LIFE BENEFITS

Begins on page 10



RANKINGS OF LARGEST EAPS, DEPENDENT CARE RESOURCE PROVIDERS

Rankings on page 12,14

Judge in bad-faith case was bribed, USF&G says

By DOUGLAS McLEOD

JACKSON, Miss.—United States Fidelity & Guaranty Co. is suing to rescind a \$1.5 million bad-faith settlement with a former policyholder, charging that the policyholder's attorney—a prominent Mississippi trial lawyer—bribed a judge to influence the case.

The insurer's racketeering complaint, filed in U.S. District Court in Jackson, alleges that the Peoples Bank of Biloxi, Miss., conspired with Biloxi lawyer Paul S. Minor and a state judge to force the 2002 settlement of the bank's bad-faith action against USF&G for refusing to defend it in a pair of customer lawsuits.

Along with Mr. Minor, a past president of the Mississippi Trial Lawyers Assn., and his law firm, Minor & Associates, the insurer's racketeering suit names Walter W. Teel, a former state Chancery Court

judge who presided over the bad-faith case.

Judge Teel's actions in the case "were corrupt and were the products of financial considerations extended to Judge Teel by Minor, the law firm and Peoples Bank," according to USF&G, which seeks \$12.5 million in compensatory and punitive damages.

The charges mirror allegations in a July federal grand jury indictment of Mr. Minor, Judge Teel and two other state judges—one of them a Mississippi Supreme Court judge—on bribery and other charges. The indictment, returned in federal court in Jackson, alleges that Mr. Minor helped to arrange and then pay off several loans to the judges starting in 1998 in return for favorable treatment of his clients, including Peoples Bank.

Mr. Minor, Judge Teel and the other defendants have pleaded not guilty to the criminal charges. A tri-

al is scheduled for March 2004.

Representatives of Mr. Minor, Judge Teel and Peoples Bank also deny USF&G's allegations.

"The case USF&G wants to revisit was an open-and-shut matter that was settled entirely on its merits," said Abbe D. Lowell, a Washington-based lawyer for Mr. Minor, in a statement. The insurer "wants to take advantage of the unsupported allegations in federal charges—in which all involved are presumed absolutely innocent—so that they can once again try to duck their legal responsibilities."

Albert L. Necaise, a Gulfport, Miss., lawyer representing Judge Teel in the criminal case, said USF&G "will have a hard time proving" that the judge unduly influenced the settlement. Mr. Necaise pointed out that the insurer could have gone to trial and, if necessary, to appellate courts rather than pay a

See **USF&G**/page 31



PHOTO: TIM BOYLE/GETTY IMAGES

A ruling in a lawsuit brought by a woman who alleged she was injured in a Toys 'R Us store could increase the liability of self-insured companies in Massachusetts.

Massachusetts raises standards for claims handling by self-insurers

By SALLY ROBERTS

BOSTON—Self-insured businesses in Massachusetts will be held to the same claims settlement standards as insurers and could be subject to treble damages if an appellate court ruling stands.

Earlier this month, the Massachusetts Appellate Court in Boston ruled that a self-insured employer that fails to settle or delays to settle a claim when liability is reasonably clear could be in violation of the state's general consumer protection statute.

Prior to this month's ruling, which overturned a lower court decision, only insurers had been held in violation of the general consumer protection statute for violation of unfair claims settlement practices, which is governed under a second, insurance company-specific statute.

The three-judge appellate panel, though, ruled Oct. 16 that

noninsurance entities also may be held liable for unfair claims settlement practices under the general consumer protection statute.

The case, *Morrison vs. Toys 'R Us Inc., Massachusetts*, involves Susan Morrison, who suffered "significant injuries" after being struck on the head and face by a falling sign while shopping in a Toys 'R Us store in Kingston, Mass., in 1996. Self-insured Toys 'R Us, which never denied liability, attempted to settle the case with Ms. Morrison, who demanded \$250,000. The toy retailer's settlement offers ranged from \$15,000 to \$45,000 the morning of the trial, according to court papers. A jury awarded Ms. Morrison \$1.2 million in damages, which a judge later reduced to \$250,000 plus interest.

Ms. Morrison subsequently filed suit against Toys 'R Us alleging unfair claim settlement

See **CLAIMS**/page 30

Delay of cash balance rules prolongs uncertainties

By JERRY GEISEL

WASHINGTON—Employers that have been waiting since the late 1980s for the federal government to issue cash balance pension plan rules are going to have to wait longer, perhaps a lot longer.

The Treasury Department had been expected to issue rules soon on the methodology employers must follow in calculating lump-sums payments due cash balance plan participants when they terminate employment or retire.

Treasury officials also had fueled expectations that the department would finalize or revamp and reissue regulations it proposed last December detailing the basic features cash balance plans must have in or-

der for the plans not to be considered age-discriminatory.

Following a federal court decision that found a cash balance plan sponsored by one of the nation's largest employers, IBM Corp., discriminates against older employees, and legislation the House passed that bars the Treasury from taking any action over the next year that would overturn the IBM ruling, Treasury is holding back regulations.

"The recent House vote on the Treasury bill signals that many in the House do not want us to act on the proposed regulations. We are taking these concerns into account as we consider the best course of action," a Treasury Department spokeswoman said.

That action could be, at least on issues that arise when employers convert traditional pension plans to cash balance plans, to leave it to Congress to write rules through legislation, Treasury suggested.

"If we believe that we cannot address legitimate issues through the regulatory process, we will consider other avenues," the spokeswoman said.

Treasury's decision to hold off in releasing cash balance plan regulations is a blow to employers that had been hoping official guidance would eliminate the near-regulatory vacuum in which the plans have operated.

"In general, it is bad news," said Scott Macey, senior vp with Aon

See **CASH BALANCE**/page 28

Inside Business Insurance

Senate hears arguments for federal regulation

A Senate Commerce Committee hearing last week indicated that support is growing for some form of federal insurance regulation. **Page 6.**

And now for some really scary movie plots

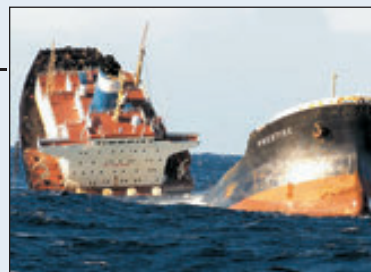
Editor Paul Winston offers a list of film ideas that are enough to scare risk managers out of their wits. **Page 6.**

Hopes not yet dashed for class-action reform

Despite the Senate's failure to cut off debate, class-action reform proponents have come too far to give up now, one of this week's editorials says. **Page 8**

Pension guaranty fund draws opposition

A proposed European pension guaranty fund would be too costly for plan sponsors, employers argue. **Page 25**



E.U. bans single-hull tankers from ports

The European Commission, starting this month, has banned single-hulled tankers from European ports in an effort to reduce the risk of oil spills. **Page 25**

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: Do you support expanding the Family and Medical Leave Act to allow employees to take leave related to the absence of a family member serving in the military?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Captive forum offers range of educational sessions

By MICHAEL BRADFORD

NAPLES, Fla.—The 13th Annual World Captive Forum will take attendees from the basic concepts of forming and operating captives to the latest developments that can affect the future of the insurance vehicles.

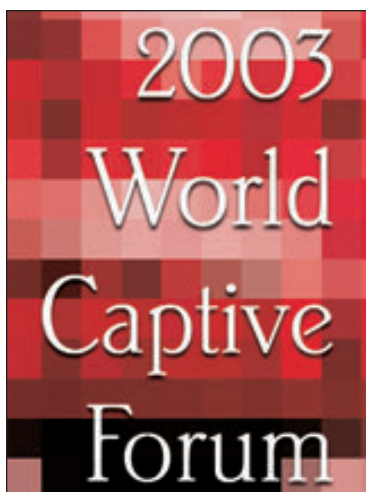
The forum, scheduled for Nov. 17-19 at the Registry Resort in Naples, Fla., will feature several educational workshops and presentations by insurance industry experts. The conference exhibit hall will be set up to showcase the offerings of industry partners and provide networking opportunities for event

attendees.

The forum is produced by *Business Insurance*, the Quest Group of Cos. and Tillinghast-Towers Perrin.

Two workshops open the forum on Monday, Nov. 17, from 3 p.m. to 6 p.m. One covers the basics of captive formations and the latest developments affecting the insurers. The panel discussion features Nicholas Dove, president of Quest Insurance Solutions Ltd.; Claude Parenteau, marketing director of SEB Asset Management America Inc.; and D. Hugh Rosenbaum, a principal with Tillinghast.

In a concurrent session, a panel will address opportunities for insur-



ing employee benefits in captives. Speakers are: David Crosts, vp-risk management, Americas for Cadbury Schweppes P.L.C.; Ted Scallet, principal with Groom Law Group; and Sophia Tesfazion, a consultant with Tillinghast.

On Tuesday at 9 a.m., Sean F. Mooney, senior vp and chief economist at Guy Carpenter & Co. Inc. will deliver the keynote address. Mr. Mooney will discuss insurance market drivers and give buyers an idea of what to expect in 2004 and beyond.

Two concurrent sessions will be held from 11 a.m. to 12:15 p.m. One, which will focus on the use of

cell captives, will be led by a panel that features Cammy Lantis, vp-Lantis Enterprises; Catherine Sheridan-Moore, partner-tax at KPMG L.L.P.; and Rick Stasi, vp of Frank Gates Alternative Risk.

The other session will cover health care practitioners and captive owners who are dealing with the tight market for reinsurance and fronting for health care captives. On the panel are Don Harvey, president and chief operating officer of EmCare Inc.; John Mucha, system vp with Risk Finance & Insurance Services; and Ed Wrobel, principal with Tillinghast.

See **FORUM**/page 28



PHOTO: AP/WIDE WORLD

The Democratic presidential candidates, including, from left, Sen. John Edwards, D-N.C., Sen. Joseph Lieberman, D-Conn., and former Vermont Gov. Howard Dean, have offered different health care-related proposals.

Health coverage issues seen as key in election

Candidates target problem of uninsured

By MARK A. HOFMANN

WASHINGTON—Health care coverage is likely to be a key issue in next year's presidential campaign, a Democratic and a Republican pollster agreed.

As might be expected, though, Democratic pollster Celinda Lake and her Republican counterpart, Bill McInturff, did not agree on which side would benefit more from the issue. The two pollsters offered their opinions during a discussion held last week at the National Press Club in Washington and sponsored by the nonpartisan Alliance for Health Reform and the Robert Wood Johnson Foundation.

Health care should be a particularly potent issue for the eventual Democratic presidential nominee, said Ms. Lake, who is president of Washington-based Lake Snell Perry & Associates. Democrats have as "big an advantage on

health care as Republicans do on terrorism," she said.

In addition, Ms. Lake noted that the issue of health care coverage "taps into some other big currents." These include what she called "anti-corporate populism," in which voters fault big business for its treatment of workers, and general sympathy for small businesses that cannot afford to provide coverage for their employees. Ms. Lake said that the issue appears to resonate particularly with two key groups of swing voters—senior citizens and suburban women.

Speaking from the Republican perspective, Mr. McInturff, a partner and cofounder of Public Opinion Strategies in Alexandria, Va., said that next year's election will hinge mainly on two issues—the conflict in Iraq and national security and health care. In addition, he noted that the issue of health care could

See **HEALTH CARE**/page 28

Errors & omissions

• A story in the Oct. 20 issue, "Aetna to Offer FSA Debit System," misstated the number of participants in flexible spending accounts ad-

ministered by Aetna Inc. About 350,000 employees participate in Aetna-administered FSAs.



Coverage continues
on page 21
and in the
Nov. 3 issue

FERMA Risk Management Forum 2003

American legal system challenges Europeans

By PAUL WINSTON

ROME—European companies that do business in the United States must be prepared for a legal system that is dramatically different from their own and one that can create significant risks if it is not understood.

"From a European's perspective, the American legal system is in serious need of reform," said Harry A. Daugird, managing director of Komposit Risk Consultants & Insurance Brokers Ltd. in Heidelberg, Germany—a unit of ABB Group—and the moderator of a panel discussion on litigation risks at the Federation of European Risk Management Assns.' meeting in Rome earlier this month.

The U.S. economy "is burdened by its legal system" and the costs it creates, Mr. Daugird said.

The most urgently needed reforms, he contends, are limits on punitive damages, better guidance to juries on damage awards and curbs on excessive attorney fees.

Phillip J. Sheehee, a partner with Sheehee & Vendittelli P.C. in Miami, agreed that there have been outrageous jury awards in United States but said that this risk can be minimized if the defendant understands the system and the proper steps to take in the early stages of its defense.

Swift response to a lawsuit is one such step, Mr. Sheehee said. Many defendants

See **LITIGATION**/page 22

FERMA Risk Management Forum 2003

Underwriters seeking more info from buyers

By SARAH VEYSEY

ROME—The quality of risk information risk managers provide to insurers will become increasingly important in underwriting and pricing decisions, according to a panel of industry experts.

The upper-level executives of insurance companies now expect risk managers to provide better information and data on risks being underwritten, said Steve Schleisman, chief executive officer of Allianz Global Risks, who took part in a panel discussion at the recent meeting of the Federation of European Risk Management Assns. in Rome.

In addition, insurers have been re-evaluating their underwriting in light of recent natural catastrophe events, said John

Amore, president and CEO of Zurich North America. Events such as floods in Eastern Europe in recent years have highlighted the need for insurers to keep a close eye on their capacity allocation, Mr. Amore noted.

"The best thing we can do is to respond individually and try to give enough cover and capacity to those clients we have good relationships with," he said.

"We need to monitor our accumulation; we need more information from clients to be able to transfer our information to reinsurers," said Jean-Paul Rignault, CEO of AXA Corporate Solutions in Paris.

In addition, improvements in the quality of information risk managers provide

See **MARKET**/page 20

Senate panel hears debate on federal regulatory role

By MARK A. HOFMANN

WASHINGTON—Support may be growing for some sort of federal role in insurance regulation, if the testimony of witnesses at a Senate Commerce Committee hearing last week is any indication.

Exactly what that role should be, though, remains an issue of some debate, with proposals ranging from using federal legislation to prod reluctant state governments to enact reforms to allowing multi-state insurers to choose federal rather than state charters.

Not surprisingly, a witness representing the National Assn. of Insurance Commissioners held that a federal insurance regulatory role is not only unnecessary but also could prove counterproductive.

The hearing was called at the behest of the committee's ranking minority member, Sen. Ernest Hollings, D-S.C. Sen. Hollings has

introduced The Insurance Consumer Protection Act, S. 1373, that would subject multistate insurers to regulation from a powerful new federal Insurance Commission. Under the Insurance Consumer Protection Act of 2003

'Nationwide reform (of insurance regulation) at the federal level is critical.'

Craig Berrington
American Insurance Assn.

the commission, among other things, would have the power to set rates, issue licenses and investigate market conduct.

This is not the sort of federal regulation, though, that even insurers that favor a federal role would

like to see.

"Nationwide reform at the federal level is critical," said Craig Berrington, senior vp and general counsel of the American Insurance Assn., as the committee considered what role, if any, the federal government should play in insurance regulation. Mr. Berrington said that the AIA would be willing to give up the limited antitrust exemption granted insurers by the McCarran-Ferguson Act in return for insurers being allowed to freely price their products like other businesses.

The McCarran-Ferguson Act gives states primacy in insurance regulation. Mr. Berrington noted that the AIA supports optional federal chartering for insurers that operate in more than one state. He stressed that the AIA believes that there should be no rate regulation, either by the states or within a federal

See **REGULATIONS**/page 28

Paul Winston Movie plots certain to make you shiver

Halloween is coming.

If dressing up in costume and trick or treating on Oct. 31 for all the candy you can carry is not your style, maybe instead you'll run to the video store and rent a spooky movie to watch.

It's a good bet, because horror movies are one of Hollywood's most popular and enduring genres. How else to explain that there have been 10 more movies starring woody sociopath Jason Voorhees since the original "Friday the 13th" was made in 1980?

With hundreds of scary movies, it can be hard to choose. So, as a public service, I have created a list of horror films certain to scare the wits out of risk management and insurance professionals this Halloween.

28 Days Later. A new twist on the classic post-apocalyptic zombie genre, in which the CEO of a large workers compensation insurer wakes up one morning to discover that TRIA has been allowed to expire and now he is all alone in facing the enormous risk of terrorism losses. Sure enough, before too long the film uses the metaphor of undead zombies for terrorists and the CEO is overrun.

Evil Dead II. In this continuation of the Evil Dead franchise, a multiline insurer realizes that its reinsurance unit's results have become dangerous and threaten to kill them both unless it is carved out. In the terrifying climax of the film, the insurer cuts the malevolent reinsurer from the corporate body (with a chainsaw, of course). But will it be enough? Is it too late? I will not ruin the surprise.

The Exorcist. This is the story of a directors and officers liability insurer that takes drastic steps to try to drive directors who face criminal charges from being covered by its policy. The effort results in a pitched battle between the forces of good (the insurer's attorneys) and evil (the directors) that threatens to destroy the directors' company in the bargain. Watch for the special effect in which the insured company does a complete 360-degree turn on its position on severability.

Frankenstein. A mad capitalist is not satisfied with investing in existing reinsurance companies and is determined to create his own entity. He raids an industry graveyard for former executives to build a new company in Bermuda. After a cash infusion giving life to the new entity, it soon becomes apparent that no amount of money can overcome the lack of a rating and the company begins to make ruinous underwriting mistakes.

Soon, other insurers in the village plot to destroy the new entity.

Invasion of the Body Snatchers. Evil black mold spores begin to spread through a Texas housing community, defying efforts to eradicate them with conventional methods. In the process, hapless homeowners are transformed into wheezing pod people and family pets meet tragic ends. A claims adjuster begins to wonder if he's the last person not infected by the plague and must flee for his life as the pod people join forces in a class action alleging bad-faith claims handling.

The Others. An insurance company executive continues to call on clients, attend meetings and try to conduct business yet can't shake the feeling that others are behaving oddly toward her and her colleagues. She has no idea what the reason is for this confusing behavior, but during a séance the audience comes to discover that her company was downgraded to a B+, is already dead and she just doesn't realize it yet.

Re-Animator. Movie about a team of doctors who, after their medical malpractice insurer collapses and dies, engage in unorthodox attempts to bring it back to life. Their prayers seem to be answered when their experiment results in the creation of a risk retention group, but soon they come to realize that the insurer wasn't the problem—it was their loss experience.

The Ring. The horrific premise of this movie—which is a Hollywood treatment of a Japanese cult film—is that if you watch enough action videos you will wake up one morning to discover that the star of these films has been elected governor of your state. Do not watch this with the kids.

Rosemary's Baby. An insurance trade association helps draft legislation that would reform asbestos liability and create a system of compensating truly injured claimants. A bill is introduced in Congress, and the trade group believes its "baby" is in good hands. Soon, however, it realizes that Congress is really in the control of a coven of devil-worshipping former trial attorneys bent on transforming the bill into something evil that could cost the trade group's members more than they bargained for.

If, after watching one of these, you are afraid to turn out the lights, just remember: It's only a movie. Or is it?

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Paul Winston



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What's this all about?

The Center for RMI Research at Georgia State University is launching a research program on the dynamics of commercial insurance and reinsurance markets and the key factors driving movements in demand and supply, prices and terms of coverage. A quarterly survey, partially sponsored by Employers Reinsurance Corporation, will provide critical input to the study and help Georgia State develop forecasting models.

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Editorial

Redouble effort in tort reform battle

EVEN AS DEFEATS GO, last week's Senate scuttling of a reasonable class-action reform bill was a real heartbreaker.

Senate supporters of the Class Action Fairness Act came up only a single vote shy of cutting off debate on proceeding with the bill. But close doesn't count in the Senate—one vote shy or 50 votes shy of the 60 needed to invoke cloture doesn't make any difference. The issue has been put aside—at least for now.

Class-action reform was the second major tort reform effort to win approval in the House and then fall victim to the Senate's arcane procedural rules. The other was medical malpractice liability reform, and, truthfully, that effort never picked up the bipartisan support class-ac-

tion reform did. A third liability reform effort—replacing the current litigation-based system of compensating victims of asbestos-related disease with a national no-fault trust fund—is on the ropes. Meanwhile, the clock ticks toward next year's elections, with every passing hour making legislative action less likely.

Civil justice reform supporters might be forgiven for wanting to give up now. After all, if they can't get meaningful reform enacted with pro-reform majorities in both the House and Senate as well as a pro-reform president at the other end of Pennsylvania Avenue, when can they get it enacted?

Actually, that's all the more reason to redouble efforts on class-action reform. Unlike the medical

malpractice legislation, the Senate bill enjoyed genuine bipartisan support, even drawing the support of a candidate for the Democratic presidential nomination—Sen. Joseph Lieberman, D-Conn. That took real political courage. It enjoyed the support of seven other Democrats, as well as that of Sen. Jim Jeffords, the Democratic-leaning independent from Vermont.

Unfortunately, it did not enjoy the support of one Republican—Sen. Richard Shelby of Alabama. He voted against cloture, just as he votes against any initiative that has the slightest whiff of tort reform—hence the one-vote shortfall. We think it's past time for Senate Majority Leader Bill Frist to have a chat with the wayward Alabama senator.

Despite last week's defeat, this remains probably the best of times to re-engage the battle for class-action reform. No one knows the composition of the next Congress, just as no one is certain who will be living in the White House on Jan. 20, 2005. This could well be a case of now or never—or, at least, now or not in the foreseeable future.

The one-vote loss was indeed a heartbreaker. But the very closeness of the vote must offer some hope. Discouraging as last week's defeat was, it would be even more discouraging to accept that loss without making one more effort to get class-action reform enacted. This could be the last chance—and it's up to reform advocates to take advantage of it.

Reconsider collateralization rules

ON SECOND THOUGHT, maybe the strict application of collateralization requirements for foreign reinsurers isn't such a good idea.

Earlier this year, a group of European reinsurers proposed relaxing U.S. rules that require all nonauthorized reinsurers to post collateral equal to 100% of their expected gross liabilities assumed from U.S. cedents. The National Assn. of Insurance Commissioners' Reinsurance Task Force continues to review those proposals, which call for a much lower collateral funding requirement for non-U.S. reinsurers and their U.S.-based affiliates that meet certain financial thresholds.

In May, we suggested that rushing to relax those collateral requirements was not in policyholders' best interest (BI, May 5).

What has changed? There is a growing sense that antiquated state regulations are an impediment to the efficiency of global business. In the long run, protectionist regulations, such as the Florida countersignature law overturned earlier this month, serve to hinder business rather than help it.

The Florida court decision that upended that state's countersignature law was hailed as a victory for common sense, as well as for insurance brokers and their clients. The 54-year-old countersignature law re-

quired nonresident agents and brokers to obtain the signature of a licensed Florida intermediary—and to split commissions—to solicit, negotiate or implement an insurance contract in the state (BI, Oct. 13). This added needless costs to insurance transactions.

In light of this ruling, perhaps the protectionist nature of an inflexible collateralization requirement needs reviewing, too. Currently, all nonauthorized reinsurers—regardless of their financial condition—must fully fund their expected gross liabilities in the United States. The European companies seeking a reduction in these rules have a valid criticism: the cur-

rent rules paint all foreign companies with the same brush.

Anyone sophisticated enough to purchase reinsurance knows there is a significant difference between a Munich Re and, say, Fly By Night Re based somewhere in the Leeward Islands.

Reinsurance today is a truly global business. Raising hurdles for well-capitalized foreign companies would appear to limit U.S. businesses' choices and hamper free trade. We believe U.S. regulators should take a reasonable amount of time to review yesterday's requirements and consider making them less rigid to ensure that they reflect today's market realities.

Schillerstrom



Letters to the Editor

Punitive damages awards shouldn't go to plaintiffs

To the editor: With respect to the article on punitive damage reform in the Sept. 29 issue of *Business Insurance* by Mark A. Hofmann, "Scholar Targets Punitive Abuse," I cannot understand why any punitive award should go to the plaintiff.

Plaintiffs have already been awarded any damages they experienced. The plaintiff's lawyer should be paid by the hour for any time spent on the punitive portion of the case, and any award should go to the state. Any other outcome is not rational nor explainable.

Kenneth J. Kortz
Edina, Minn.

Weekly Online Polls

Each week, *Business Insurance* posts a poll question about industry events on www.businessinsurance.com. Visit the BI Web site and cast your vote in the weekly online polls.

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Spotlight

Work & Life Benefits

Spotlight Editor: Sally Roberts

Employers look to cut costs with family medical centers at worksites

By ROBERTO CENICEROS

A growing number of employers are looking to address rising medical costs and improve employee health care by opening family medical centers and pharmacies near their worksites.

"With escalating costs, you have to be willing to take a different shot at the problem and see if there are alternative solutions," said Sherrie String, vp of human resources for Smithfield, Va.-based Smithfield Foods Inc.

'With escalating costs, you have to be willing to take a different shot at the problem and see if there are alternative solutions.'

Sherrie String
Smithfield Foods Inc.

in Tar Heel, N.C. About 5,000 people work at the plant, and they have about 10,000 dependents.

The center is open six days a week to provide health care for the workers and their dependents. Employees decide whether to use the company's health center or receive treatment elsewhere.

At the center, an employee can see a primary care physician, obtain X-rays and lab work, get a prescription filled and obtain other services.

Employees can do all that in one visit and for one \$10 co-payment. Obtaining similar services elsewhere likely would require visiting several providers' offices and it likely would cost employees a copayment for each of those services, Ms. String said.

Smithfield hopes the one-stop shopping will draw employees to

See **ONSITE**/page 18

After evaluating alternatives in the fight to hold down rising medical costs, Smithfield in late August opened a family medical center and pharmacy adjacent to a meat processing facility it owns



Few companies preparing for impending labor shortage

Work/life programs can ease pain of crisis

By JUDY GREENWALD

Work/life programs can help ameliorate the impact of an impending labor crisis, but too few employers are preparing for the prospect, say observers.

With the economy only now beginning to show some signs of recovery, many employers have been too wrapped up in managing their short-term financial situations to worry about the potential for staffing crunches down the road,

observers say.

The problem, though, may hit employers sooner than they expect. With many baby boomers approaching retirement age, the U.S. Labor Department estimates that by 2010, American businesses will face a labor shortage of more than 10 million workers. In fact, shortages have already hit businesses in certain geographical areas and for certain professions, such as nursing, say observers.

The group of workers who are 25

to 44 years old is now diminishing in number, and these workers "traditionally have been a lot of the backbone of an organization. So it's going to be quite competitive for employers" seeking to recruit from this group, said Jane Paradiso, national practice leader-workforce planning for Watson Wyatt Worldwide in Washington.

The return to a strong economy may also create a staff retention problem.

See **LABOR**/page 16

Paternity leave offered more frequently, but fathers slow to use it

By MICHAEL PRINCE

Interest in offering paternity benefits is growing among employers, though the culture within many organizations has so far hindered the widespread use of such benefits by employees, experts say.

The movement toward greater employer adoption of the programs, which include paid leave and lactation-related benefits, comes as research shows that men are taking on a bigger share of the child care responsibilities at home.

'Leading-edge companies are beginning to recognize that fathers are entitled to the same type of flexibility as mothers.'

Susan Seitel
Work & Family
Connection Inc.

edge companies are beginning to recognize that fathers are entitled to the same type of flexibility as mothers," said Susan Seitel, president of Work & Family Connection Inc. in Minnetonka,

Minn.

The movement, though, has been gradual, experts say.

"More companies are looking at the importance of paternity leave very slowly," said Kathy Lynch, director of corporate partnerships at the Boston College Center for Work & Family in Chestnut Hill, Mass. The change in attitude "is slow and subtle," she added.

KPMG L.L.P. is one employer that has embraced paternity benefits.

Last year, the New York-based tax and accounting firm began providing new fathers with two weeks of paid time off after a child's birth. The move reflects KPMG's desire to provide equitable benefits to its male and female employees, explained Kathie Lingle, national

See **DADS**/page 15

Largest employee assistance program providers
page 12

Largest dependent care resource providers
page 14

LARGEST EAP PROVIDERS BY EMPLOYER CLIENTS	
Ceridian	25,285
Magellan Behavioral Health	1,900
Claremont Partners Inc.	1,100
ComPsych Corp.	1,000
CIGNA Behavioral Health	925
Source: BI survey	

LARGEST EAP PROVIDERS BY TOTAL REVENUE	
Ranked by a BI estimate of revenue derived from EAP services	
Magellan Behavioral Health	\$227,500,000
Managed Health Network Inc. dba MHN	\$131,284,151
ComPsych Corp.	\$55,000,000
CIGNA Behavioral Health	\$33,000,000
ValueOptions	\$33,000,000
Source: BI survey	

Largest EAP providers

Ranked by number of lives covered at year-end 2002

Rank	Company/Address	Phone/Fax/Web site	Total lives covered	Total clients	Total salaried employees	Total contracted employees	Principal officer
1	Magellan Behavioral Health 6950 Columbia Gateway Drive Columbia, Md. 21046	800-458-2740 Fax: 410-953-5200 www.magellanhealth.com	14,000,000	1,900	5,171	46,000	Steven Shulman, CEO
2	Optum 6300 Olson Memorial Highway Golden Valley, Minn. 55427	800-884-8458 Fax: 763-797-2532 www.uhc.com	11,812,900	400	861	3,000	R. Edward Bergmark, CEO
3	ComPsych Corp. NBC Tower, 455 Cityfront Plaza Drive, 13th Floor Chicago, Ill. 60611	800-851-1714 Fax: 312-595-3125 www.compsych.com	10,000,000	1,000	300	20,125	Richard A. Chaifetz, chairman/CEO
4	Ceridian 3311 E. Old Shakopee Road Minneapolis, Minn. 55425-1640	800-729-7655 Fax: 314-872-8805 www.ceridian.com/myceridian	6,355,000 ¹	25,285	450	4,100	Todd Reimringer, COO
5	CIGNA Behavioral Health 11095 Viking Drive Eden Prairie, Minn. 55344	800-637-1257 Fax: 952-996-2659 www.cignabehavioral.com	5,433,000	925	972	13,700	Keith Dixon, president/CEO
6	ValueOptions 240 Corporate Blvd. Norfolk, Va. 23502	757-459-5200 Fax: 757-459-5219 www.valueoptions.com	3,774,527 ²	627 ²	4,000	61,496	Ronald I. Dozoretz, chairman/president/CEO
7	VMC Behavioral Healthcare Services 100 S. Greenleaf Gurnee, Ill. 60031	847-625-3500 Fax: 847-249-2772 www.vmcgap.com	3,600,000	247	210	17,520	Mary Vasquez, president/CEO
8	Managed Health Network Inc. dba MHN 503 Canal Blvd. Point Richmond, Calif. 94804	800-488-8449 Fax: 510-620-6331 www.mhn.com	2,369,269	456	416	35,463	Jerry V. Coil, president/CEO
9	Horizon Behavioral Services 1500 Waters Ridge Drive Lewisville, Texas 75057	866-428-8501 Fax: 972-420-8247 www.horizoncare.net	2,041,015	804	287	16,514	Jackie James, president
10	Claremont Partners Inc. 1050 Marina Village Parkway, Suite 203 Alameda, Calif. 94501	800-834-3773 Fax: 510-337-8833 www.claremontpartners.net ; www.claremonteap.com	1,500,000	1,100	150 ²	15,000	Tom Bjornson, CEO

1 Employee lives only 2 Estimated
Source: BI survey

The full Directory of Employee Assistance Program Providers is available online in the directories area of www.businessinsurance.com. The searchable directory allows users to locate employee assistance program service providers by company name, revenue and number of clients, among other information. PDF copies of the directory can be purchased by calling the Crain Information Center at 312-649-5476.

LARGEST PROVIDERS BY EMPLOYEES

Ranked by number of employees dedicated to dependent care services

Ceridian	250
Accor Services North America Inc. dba Work Life Benefits	94
e-DependentCare Work/Life Services	65
ComPsych Corp.	64
Child & Elder Care Insights Inc.	27

Source: BI survey

LARGEST PROVIDERS BY EMPLOYER CLIENTS

Ranked by number of employer clients that receive dependent care services

Child & Elder Care Insights Inc.	902
Accor Services North America Inc. dba Work Life Benefits	890
Ceridian	716*
ComPsych Corp.	459
e-DependentCare Work/Life Services	300

* Estimated
Source: BI survey

Largest dependent care resource
and referral service providers
Ranked by number of lives covered at year-end 2002

Rank	Company/Address	Phone/Fax/Web site	Lives covered	Employer clients	Staff	Principal officer
1	Child & Elder Care Insights Inc. 19111 Detroit Road, Suite 104 Rocky River, Ohio 44116	800-234-6322 Fax: 440-356-2919 www.carereports.com	6,400,000	902	27	Elisabeth A. Bryenton, president/CEO
2	Ceridian 3311 E. Old Shakopee Road Minneapolis, Minn. 55425-1640	800-729-7655 Fax: 314-872-8805 www.ceridian.com	3,463,000	716*	250	Todd Reimringer, COO
3	Accor Services North America Inc. dba Work Life Benefits 25115 Ave. Stanford, Suite 200 Valencia, Calif. 91355-4582	661-775-2200 Fax: 661-775-2223 www.wlb.com	3,000,000	890	94	Laurent Delmas, CEO
4	ComPsych Corp. NBC Tower, 455 Cityfront Plaza Drive, 13th floor Chicago, Ill. 60611	800-851-1714 Fax: 312-595-3125 www.compsych.com	2,976,000	459	64	Richard A. Chaifetz, chairman/CEO
5	e-DependentCare Work/Life Services 10 E. 39th St., Suite 906 New York, N.Y. 10016	888-554-5565 Fax: 212-656-1249 www.e-dependentcare.net	1,500,000	300	65	Maurice Wingate, corporate director
6	BrownRichards & Associates 1710 DeFoor Ave. Atlanta, Ga. 30308	800-537-2153 Fax: 404-352-8137 www.brownrichards.com	500,000	25	10	Betsy Richards, president
7	Corporate Counseling Associates Inc. 475 Park Ave. S. New York, N.Y. 10016	212-686-6827 Fax: 212-686-6511 www.corporatecounseling.com	375,000	130	15	Robert Levy, president
8	Work & Family Benefits Inc. 100 E. Hanover Ave. Cedar Knolls, N.J. 07927	800-644-2363 Fax: 973-267-0404 www.wfbenefits.com	312,000	284	15	William H. Mulcahy, president
9	The CPA Group Inc. 221 N. LaSalle St., Suite 2301 Chicago, Ill. 60601	312-263-0551 Fax: 312-263-2332 www.cpagroup.org	200,000	110	4.5	Mary Ellen Gornick, president
9	FamilyCare Inc. 7041 Koll Center Parkway, Suite 235 Pleasanton, Calif. 94566	925-249-6610 Fax: 925-249-6611 www.famcare.com , www.famcareconcierge.com	200,000	50	10	Catherine Leibow, president

* Estimated
Source: BI survey

The full Directory of Dependent Care Resource and Referral Service Providers is available online in the directories area of www.businessinsurance.com. The searchable directory allows users to locate dependent care resource and referral service providers by company name, revenue and number of clients, among other information. PDF copies of the directory can be purchased by calling the Crain Information Center at 312-649-5476.

Dads: Attitudes are changing

Continued from page 10

work/life director at KPMG in Montvale, N.J. "If you do something for mothers, you also do it for fathers," Ms. Lingle said.

Recent research shows that more men are taking on a greater role in child care.

The National Study of the Changing Workforce, released this year by the Families & Work Institute in New York, surveyed 3,504 employed adults between October 2002 and June 2003. Thirty percent of women with spouses and children surveyed reported that their spouses are taking an equal or greater role for child care than they are. In 1992, that figure was only 24%, according to the survey.

However, many men in the workforce are still reluctant to take time away from work to deal with a new arrival in the family. And employers must overcome these cultural forces if they want employees to make use of paternity benefits.

New fathers are reluctant to take paternity leave because "they are afraid they will lose their jobs," Ms. Lynch said. In addition, they are concerned they will be perceived as less committed to their job, damaging their careers, she said.

"For the most part, men are still not taking advantage of these benefits," noted D'Ann Whitehead, senior consultant at Watson Wyatt Worldwide in San Francisco.

It takes a significant cultural shift in an organization to change this attitude, said KPMG's Ms. Lingle. At KPMG, this shift has been under way as the company has stressed the importance of balancing work and personal life. As a result, about half of its eligible male employees take advantage of the firm's paid paternity leave, she said.

The shift in attitude must start at the top, said Peter Burki, chief executive officer at LifeCare Inc. in Westport, Conn. Last year, Mr. Burki took two weeks' leave for the birth of his first child. As a result, other fathers at the work/life services company, which offers paid paternity leave and a lactation program, felt they could take time off to be with their newborn children, he said.

"My comfort with taking advantage of our paternity benefits has encouraged our employees to follow suit," he said.

For the needed cultural change to become widespread, though, requires more than just corporate chiefs taking time off, Mr. Burki said. "Unless it's practiced and supported by midlevel management, you won't have success. It has to be practiced throughout the organization," he said.

In addition to being granted paternity leave, male employees increasingly are being offered lactation-related benefits for their wives.

In the past, lactation programs—which typically offer discounts on breast pumps and supplies, free lactation consultations and educational materials—were provided only to female employees. Now, though, "it's very rare for a company to only offer it to females," said Carol Ann Friedman, director of the Mothers

At Work program at LifeCare in Pasadena, Calif.

Of the 23 companies that offer LifeCare's lactation program, all but one provide it to both male and female employees, which marks a big shift from just a few years ago, Ms. Friedman said.

PricewaterhouseCoopers L.L.P. does not currently offer its lactation program to male employees. However, male employees are asking for it, and the firm is reevaluating its stance, said Toni Riccardi, chief diversity officer at the tax and accounting firm in New York.

Attitudes about paternity benefits

are changing, in part, because of the influence of younger workers. Ms. Riccardi said that employees under age 30 are more likely to take leave than are their older peers, noting that young men are "more involved in thinking about the total pregnancy."

In general, these younger workers place greater emphasis on their personal needs than on their perceived employment obligations, said Ms. Friedman of LifeCare.

"They seem to be much more aware of what they want and are not willing to let work dictate how they will be parents," she said.



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Labor: Retention an issue

Continued from page 10

At least one survey indicates that many current employees are not particularly happy with their work and may only be waiting for the economy to improve to make a change. A total of 52% of the respondents to the national 2003 Spherion Emerging Workforce Study indicated a desire to change jobs, with 75% of those respondents seeking a change within the next 12 months. Rochester, N.Y.-based Harris Interactive conducted the survey of 3,278 employees in July on behalf of Fort Lauderdale, Fla.-based Spherion Corp., a recruitment and staffing firm.

"Most employees are corporate cocooning," said Joyce L. Gioia, president of the Herman Group, a consulting firm in Greensboro, N.C. "They don't like their jobs, they don't like their co-workers, they don't like their bosses, but they're scared. When the economy heats up—and we know that it will—and more jobs are created around the country, these same employees are going to spread their wings and fly away. Right now, we have an epidemic of what we call 'warm-chair attrition,'" she said. "Physically, they're still warming the chairs, but mentally and emotionally, they're history."

'Most employees are corporate cocooning. ... They don't like their jobs; they don't like their co-workers, they don't like their bosses, but they're scared. When the economy heats up ... these same employees are going to spread their wings and fly away.'

Joyce L. Gioia
Herman Group

But despite the potential impact on their workforces, relatively few employers have paid attention to this issue, say observers.

"A handful of the smartest employers are looking at what they have to do now, but only a handful," said Ms. Gioia.

James Klein, president of the Washington-based American Benefits Council, said that with "the realities of the economy that we've had for the past few years, I think, companies are always juggling both their short-term needs with their long-term expectations, and, for most companies, this is still largely in the long-term category."

Robert Morgan, president of Spherion Corporate Solutions, a Spherion Corp. unit, said some employers "who have been paying attention to (retention issues) for quite a while" have started to achieve some real success addressing such concerns. But others will be caught short, and still others are "entrenched into their old ways of doing things and aren't going to change until they have to change."

The perception among small and medium-sized employers in particu-

lar is that while they would like to introduce programs such as flex time, flexible retirement programs and adoption benefits, such programs are too costly, said Jay Kirschbaum, St. Louis-based national director of Willis' Group Holdings benefits legal and research group.

The situation is starting to change, though, said Peter G. Burki, chief executive officer of LifeCare Inc., a consulting firm in Westport, Conn. More companies "have been reaching out to us and saying, 'Do you have programs and services that can help us deal with these is-

sues?'" he said.

Some employers say the answer to that question is work/life programs.

"It's a recruiting tool, it's a retention tool. Most importantly, it keeps the really diverse population of people—men and women—in the firm that can do the work that we need them to do on behalf of our clients," said Maryella Gockel, flexibility strategy leader for Ernst & Young L.L.P. in New York, which offers a wide range of work/life benefits such as resource and referral programs, parental leave and flexi-

Continued on next page



Continued from previous page
sible work arrangements.

Judy Reed, vp of human resources for Maynard, Mass.-based Stratus Technologies Inc., whose work/life program includes flexible hours, said she expects that program to help the company retain employees when a labor shortage emerges. "We've made a tremendous investment in just about everyone and...it's very difficult to replace them" when they leave, said Ms. Reed. "Every small thing that you can do for employees to retain them helps."

Columbus, Ohio-based Nationwide Mutual Insurance Co. introduced its work/life program in the 1990s, when there was intense competition for employees,

said Bob Puccio, vp-associate services. "We expect these programs will serve us well as we move through the next 10 to 15 years," said Mr. Puccio. Its work/life programs include flexible work arrangements, tuition reimbursement, fitness centers and advice and counseling for personal and

'Every small thing that you can do for employees to retain them helps.'

Judy Reed
Stratus Technologies Inc.

work-related issues.

"We don't anticipate that there's going to be a large labor shortage,"

said Mr. Puccio. However, Nationwide does expect to return to the same environment of the late 1990s and early 2000, in which "folks were more willing to look at more opportunities. There's probably some pent-up demand as a result of the economy over the past two to three years," he said. Nationwide's work/life balance program "is a key driver of our employee performance, loyalty and retention," so the company will continue to focus on these types of programs, both to attract new employees and retain existing ones, said Mr. Puccio.

Tom Mullgaard, senior human resources manager at Irvine, Calif.-based Option One Mortgage Corp., a mortgage lender, said that an annual employee job satisfaction sur-

vey conducted by the firm indicates its work/life program helps it to retain and attract employees, said Mr. Mullgaard. He noted that his company is already encountering a tight labor market.

"We're very fortunate, because we have a very positive perception as an employer in our industry. We hear that often from applicants as a reason why they are attracted to Option One as a company," he said. Option One's wide range of family/work benefits includes flexible schedules, telecommuting and adoption assistance. It also plans to launch a program that gives employees one or two days of paid time off annually for charitable work.

Beth Israel Deaconess Hospital in

Boston was able to reduce its nurse turnover rate from about 20% to 6.8% over a 15-month period in part because of a flex time program, which enables nurses to choose whether to work eight- or 12-hour shifts, said Pat Folcarelli, the hospital's director of professional practice development.

While some younger staff members prefer the eight-hour day, many nurses prefer working three 12-hour shifts a week, said Ms. Folcarelli. Working fewer shifts "gives you more time" with your family, she said.

Richard Federico, vp-work/life and communications for The Segal Co. in New York, said that, in the future, employers may be faced with two groups within their workforce: older employees, who may be interested in cutting back their hours; and younger workers, who, because of the labor shortage, may be faced with more responsibilities at an earlier time in their careers. "The creative and wise employer is going to ask, 'What are we going to do to support both of them?'" said Mr. Federico. A mentoring program that includes job sharing could be the answer, he suggested.

Employers should not wait, though, until a labor shortage hits to introduce a work/life program, said Ernst & Young's Ms. Gockel. "I believe what people look for is consistency in a workplace," she said. Employees recognize when they are being treated differently merely because of a tight labor market. "People have a long memory," she said.

'Not only will you not satisfy everybody with any one particular benefit but you don't have to. ... Several smaller initiatives, each of which affects a smaller portion of your population, may, in total, speak to employees more directly and more personally.'

Barry Schilmeister
Mercer Human Resource Consulting

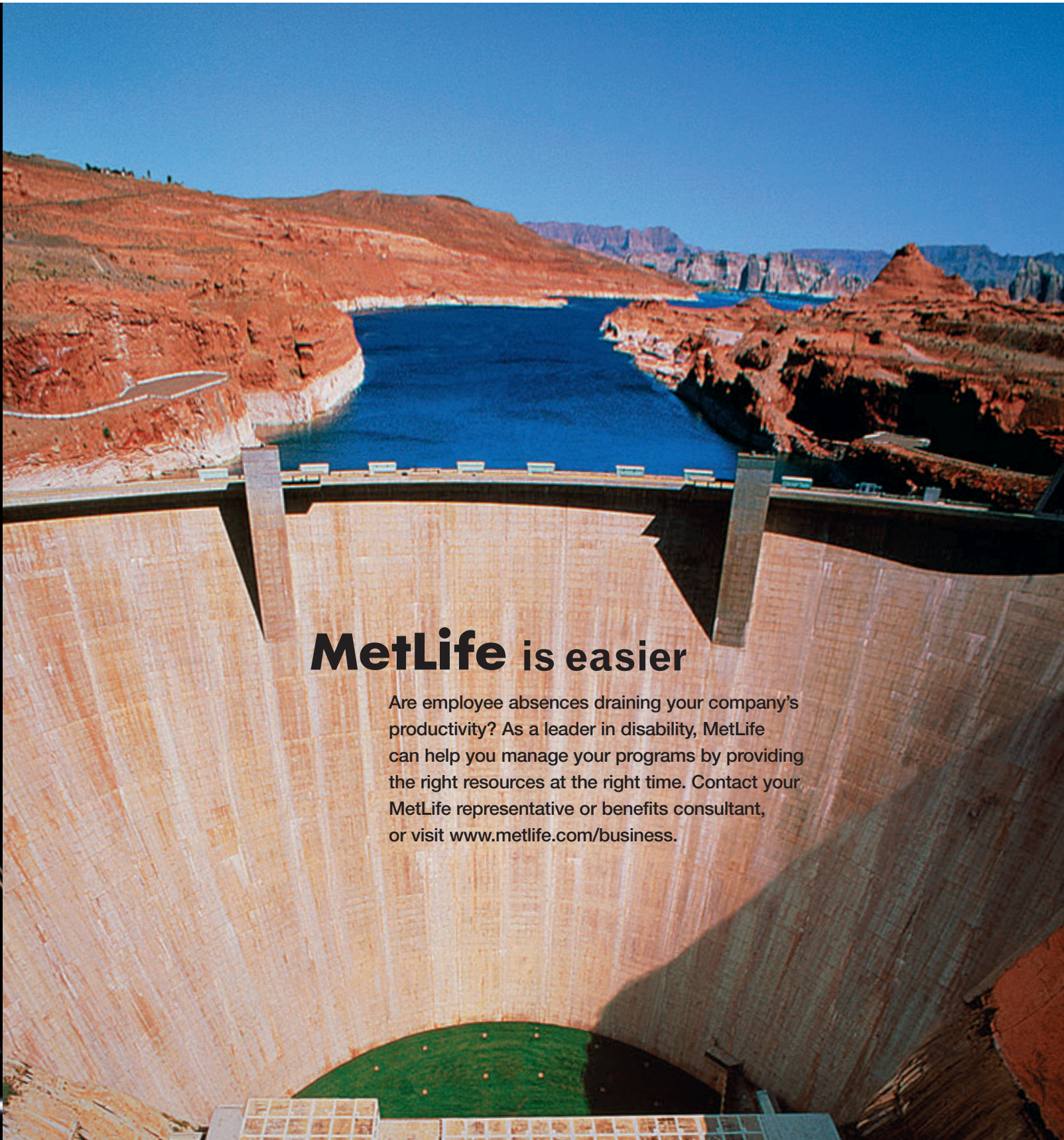
Flexibility is critical to introducing a work/life program that successfully retains and attracts employees, say observers. There is no one-size-fits-all solution, and the benefits an employer offers should be based on the demographics of its particular workforce, they say.

"Not only will you not satisfy everybody with any one particular benefit but you don't have to," said Barry Schilmeister, a principal with Mercer Human Resource Consulting in New York. "Several smaller initiatives, each of which affects a smaller portion of your population, may, in total, speak to employees more directly and more personally."

"Every organization really has to know their own workforce," said Jennifer Schramm, manager-workplace trends and forecasting for the Alexandria, Va.-based Society for Human Resource Management. "You can't make assumptions based on stereotypes," she said. "You really have to get to know the workforce that you have, and then base your strategies on that."



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Onsite: Companies open medical clinics

Continued from page 10
use the clinic.

The self-insured company's savings from the facility depend on the number of employees that use it, Ms. String said. Smithfield built its center with help from Nashville-based CHD Meridian Healthcare.

CHD Meridian is a leader in managing employer-sponsored medical centers, several observers say. The company now manages about 30 such medical centers and stand-alone pharmacies nationwide, said Stuart Clark, vp of sales and marketing for CHD Meridian.

CHD Meridian built 12 of the 30

existing medical centers and pharmacies during the past two years. The remainder were built between 1984 and 2000.

The company currently has contracts to build four more employer-sponsored centers by April 2004.

The overall number of companies with such facilities is still small, but Paul R. Berger, a medical doctor and principal for Mercer Human Resource Consulting in Atlanta, said he believes the numbers will grow.

Several large corporations are updating workplace clinics that formerly treated only occupational in-

juries, Dr. Berger said. To reduce medical costs and get more benefits from the existing occupational-injury treatment facilities, companies are now aligning those facilities with their health and benefit plans and their disability management strategies.

They are using the clinics to provide health care assessments, disease management programs and other absence management services, as well as primary care physician services, Dr. Berger said.

Likewise, there is also a growth in employers creating occupational health centers at their work sites.

Two years ago, Vienna, Va.-based Comprehensive Health Services Inc. staffed and managed 32 employer-sponsored occupational health facilities nationwide. Today it operates about 60 of the facilities, said Jim Mitchell, executive vp. Unlike CHP Meridian, though, Comprehensive does not provide primary doctor services, something leading-edge employers are seeking.

Doctors contract with Storage Technology Corp. to provide primary care services to employees at a family medical center on StorageTek's Louisville, Colo., campus.

Many of the center's other staff members are StorageTek employees, said P.J. Hollister, manager of wellness services.

Ms. Hollister describes the clinic as similar to a family medical practice office that patients typically visit for routine primary and acute care. Workers use their employer-sponsored insurance card at the facility just as they would at another doctor's office.

But their copayment at the clinic is \$5 less than if they choose to go elsewhere. StorageTek also offers employees optometrist care, dental hygiene and physical therapy, as well as other health services.

Providing such services saves money for the mostly self-insured company. StorageTek, for example, can contract for radiologist and X-ray services for about one-third less than the company would pay if its employees were to go elsewhere, Ms. Hollister said.

Additionally, StorageTek has lower overhead for billing and other administrative costs that a regular doctor's office has, Ms. Hollister said.

"The structure of the clinic is such that the cost for us to provide a routine office visit or annual physical is less than we would pay out in the normal marketplace," she said.

StorageTek, in partnership with CHD Meridian, also recently opened a pharmacy that helps the company reduce costs.

Pharmaceutical manufacturers sell their products to "closed-door pharmacies" at much steeper discounts than they sell them to retail pharmacies or even to mail-order pharmaceutical benefit managers, Mr. Clark said. Closed-door pharmacies do not sell to the general public.

Employers such as StorageTek then benefit from the discount, Mr. Clark said.

"You realize the savings in a whole lot of different ways," Ms. Hollister said.

For now, StorageTek is still recouping investment costs, so the savings have not yet been significant. But indications are that the costs "are moving in the right direction," Ms. Hollister said.

Employers also are hoping they can save on productivity costs lost when employees leave work to seek medical services.

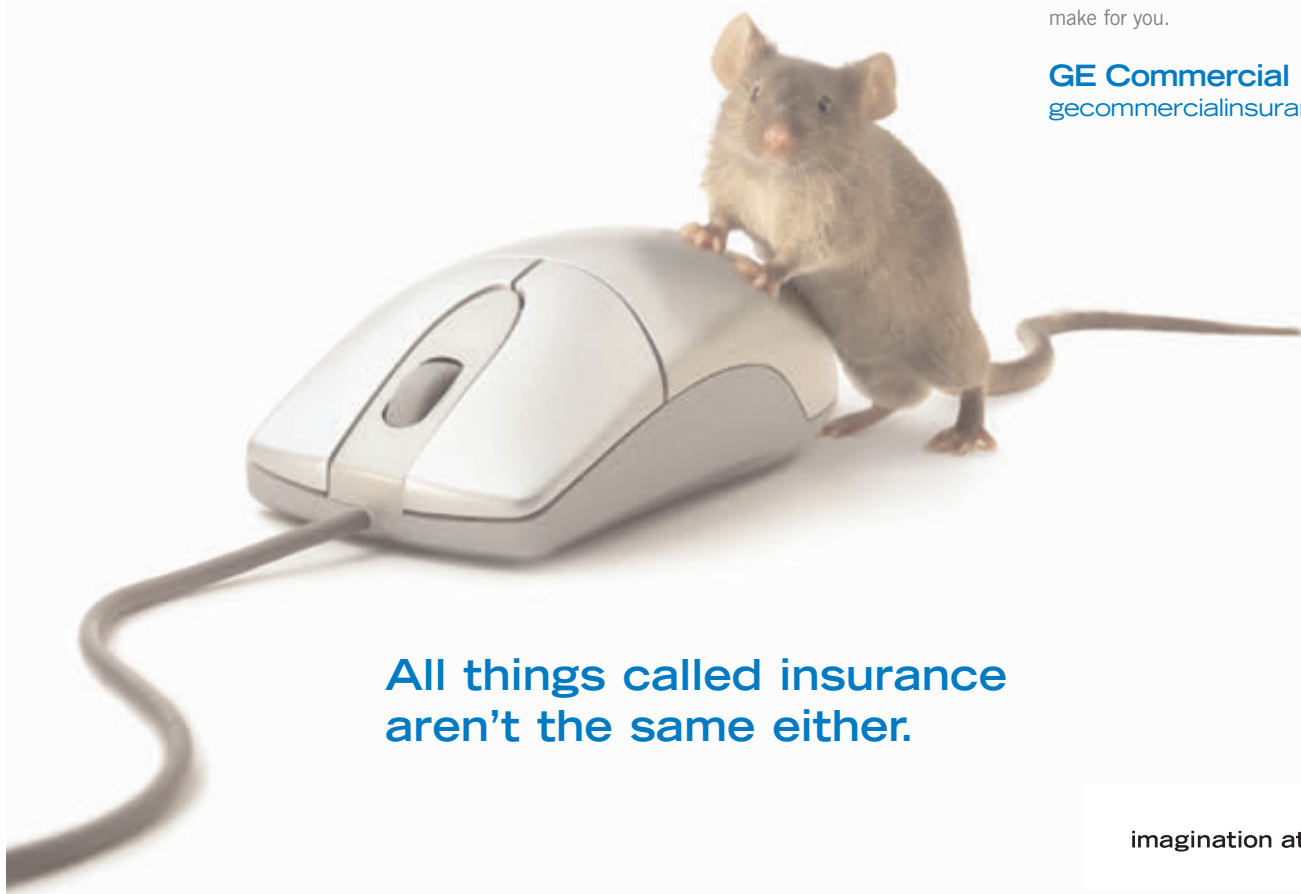
"Those are not easy savings to quantify, but it's very obvious to those companies that have these clinics that that is a desirable outcome," Dr. Berger said.

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Market: Insurance companies want more information

Continued from page 4

to underwriters may help to make the insurance cycle less volatile in the future, Mr. Amore said.

At Factory Mutual Insurance Co., underwriters are trying to reduce the price of insurance products not by looking at pricing history but instead trying to "change the future by preventing losses" through loss control and risk consulting, according to Ruud Bosman, executive vp the Johnston, R.I.-based insurer, which does business worldwide as FM Global.

Currently, rates are rising in some geographical markets but leveling

off in others, according to Mr. Amore.

'While we do not have the same scope for class actions in Europe (as in the United States), this is beginning to change.'

Jean-Paul Rignault
AXA Corporate Solutions

For casualty lines, prices are continuing to rise in the United States,

United Kingdom and continental Europe, he said. But for property coverages, although rates are still going up in continental Europe, they have flattened in the United Kingdom and the United States, he noted.

In casualty business, many multi-year policies written in the 1990s are still working their way through the system, said Clive Tobin, president and CEO of XL Insurance Global Risk. As a result, those lines could see even more increases as such policies, which were written during a soft market, come up for renewal.

Managers of insurance companies must be more disciplined, Mr. Tobin said. "Everybody lost a lot of blood in Europe in the 1990s," he added.

Another concern for European insurers is the importation of trends in liability insurance from the United States.

"This is a key issue for Europe," said Mr. Rignault.

In the United Kingdom, he said, the introduction of contingency fees for lawyers could signal a trend toward increased litigation. In addition, "while we do not have the same scope for class actions in Eu-

rope (as in the United States), this is beginning to change," he warned.

Indeed, there are signs that liability trends from the United States are being replicated in Europe, said Mr. Tobin. He pointed to the example of U.K. broker Bradstock Group P.L.C., which recently went out of business because it couldn't afford to renew its professional liability insurance (*BI*, Oct. 6). Premiums for that line have risen drastically in the United States due to growth in the number and size of claims in recent years.

Another topic, terrorism insurance, found some panelists arguing that the current patchwork of state-specific terrorism coverage programs may not be the best way to deal with such risks.

"This is one area where there could be more European cooperation," said AXA's Mr. Rignault. "Each state found its own solution, but, obviously, for large companies operating in many countries, it was difficult to follow all those pools," he said.

"Certainly, the European insurance industry would support, if not a pool, a European way in which terrorism (could be) addressed," he said.

The panel was moderated by Maurizio Castelli, group risk manager at Pirelli S.p.A.

ferma

1,000
attend
meeting

ROME—About 1,000 delegates attended the Federation of European Risk Management Assns.' biennial conference, held Oct. 5-8 in Rome.



Mr. van Santen

During the event, Thierry van Santen, group risk manager of Paris-based Groupe Danone, was re-elected president of FERMA for two years. Paul Taylor, the former vp of the association, was unable to take up the role of president.

In addition, Ralf Oelssner, chairman of the German risk management association Deutscher Versicherungs-Schutzverband e.V. and director of corporate insurance for German airline Lufthansa, was elected vp of FERMA.

FERMA's next conference will be held in Lisbon, Portugal, in October 2005.

FERMA Risk Management Forum 2003

Many companies still ignoring supply-chain risks

By RODD ZOLKOS

ROME—Many businesses are putting themselves in peril by failing to assess their supply-chain risks and to develop plans for dealing with such exposures, a panel of experts warns.

"It's quite incredible that, in this day and age, there are many, many companies that have no business interruption plans at all," said David Peter Ney, risk consulting director at Willis Risk Solutions in London. Mr. Ney took part in a panel discussion at the 2003 Forum of the Federation of European Risk Management Assns., which was held earlier this month in Rome.

"In the past, underwriters were pretty ambivalent as to whether you had a business continuity plan," Mr. Ney said. Now, though, that situation has changed, with the insurance industry increasingly discriminating between good and bad risks, he said.

'It's quite incredible that, in this day and age, there are many, many companies that have no business interruption plans at all.'

David Peter Ney
Willis Risk Solutions

Mr. Ney encouraged risk managers to ensure that their companies spend the necessary money on sensible recovery plans that will allow the organization to resume or continue necessary functions, though not necessarily on plans that will completely restore damaged or destroyed facilities.

Antonio Borghesi, chairman of the Department of Finance, Industrial and Technological Studies at the University of Verona in Verona, Italy, said supply-chain management is directly linked with such areas as product-development management and customer-relationship management.

"Supply-chain management is a process which has subprocesses," such as procurement, warehousing, customer-ordering cycles, transportation and manufacturing, the professor said.

To manage supply-chain risks, it's necessary that a company identify risk indicators in its processes that enable the firm to measure risk in its supply chains. Doing so involves considering both business and physical risks, said Mr. Borghesi, whose department includes his university's risk management course of study.

Alex Hindson, risk services manager at AstraZeneca P.L.C. in London, noted that often different aspects of a business can appear to be at cross purposes as the company moves to address supply-chain risks. "Marketing is quite risk-seeking and product development is risk-averse, and trying to bring

them together at the table is quite difficult," he said.

In addressing the pharmaceutical firm's supply-chain exposures, "we've come to the conclusion there isn't one answer," Mr. Hindson said.

AstraZeneca has an "extremely complex supply chain," Mr. Hindson said, with regionalization and consolidation in the chemical and plastics industries increasing the company's vulnerability to single incidents.

In addressing supply-chain expo-

sure, a company first must identify all of the risks related to the various links in that chain, Mr. Hindson said. Among other things, AstraZeneca identified 500 to 600 key suppliers, a number it is trying to reduce, he said.

In addition, the risk manager said that while outsourcing can offer opportunities, it also brings risks that must be examined on a case-by-case basis.

"We're not trying to avoid all risks," Mr. Hindson said. "We're trying to take measured risks."

Willis' Mr. Ney said that in developing a business continuity plan, the first step is to review the company's business objectives. "It's amazing how many people start their business interruption and supply-chain analysis far too late in the process," he said.

A company should then map its critical dependencies to set objectives for its continuity plan, as well as determining scenarios in which supply chains could fail. It then should quantify and prioritize its risks, he said. Finally, the company

should repeat the entire risk assessment process regularly.

By advancing the company's understanding of its supply-chain exposures, it's possible to improve the company's ability to meet its business objectives, Mr. Ney said.

"And—this mustn't be forgotten—you're actually preserving jobs, and you may be preserving your own," he said.

Allesandro De Felice, risk manager-Europe, Middle East and Africa for Pirelli S.p.A. in Milan, Italy, moderated the panel.

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BUSINESS NEEDS CHAMPIONS

Litigation: Legal systems differ in U.S., Europe

Continued from page 4

would prefer to be sued in federal rather than state courts, he noted, but a request to remove a case to federal court must be filed within 30 days of the case's inception.

A defendant also has to quickly evaluate a lawsuit to determine whether the allegations against it are an isolated event, or whether it has much broader impact, such as alleged problems with a company-wide pattern of conduct or an entire product line, Mr. Sheehe said.

The danger of the latter scenario, he said, is that the complaint could be the start of a class-action lawsuit,

the stakes of which require a different defense.

"There are plaintiffs attorneys in the United States that do nothing but look for potential class actions," he said, noting that such lawsuits hold the promise of huge attorney fees. These attorneys are willing to finance such actions, plowing the revenue from bringing tobacco lawsuits, for example, into new and lucrative class actions, he said.

Mr. Sheehe said another risk of the U.S. legal system that may be unfamiliar to Europeans is the broad powers of discovery granted to plaintiffs.

"Under our legal system, the plaintiff is able to liberally request all documents from a defendant that could be relevant to the dispute," he noted. In a product liability case, for example, the plaintiff could ask for all documents on the design and premarket testing of a product, he said.

Once a document is given to the first plaintiff to sue, all subsequent plaintiffs will have it, too, he cautioned.

Again, a defendant must act swiftly to obtain a judge's confidentiality order for certain documents, he said.

"Europeans tend to underestimate the amount of work and danger involved in document production," said Mr. Daugird. There is a tendency to underestimate the dangers of "fishing expeditions" by a plaintiff seeking damaging documents, he added. Mr. Daugird related a case in which ABB was sued and had to create an information system just to manage the document production process.

In contrast to the open discovery in the United States, under the Italian legal system there is no obligation to provide documents, noted Francesco Mina, head of litigation

and arbitration for Lovells in Rome. A plaintiff must request specific documents and, in cases where intellectual property might be at stake, the defendant can make a case for refusal, he noted.

As soon as the defendant company has determined that a complaint against it could be "a crucial case," it must act to not only identify all the relevant documents but also all current and former employees with access to this information, Mr. Sheehe said. This can identify who might have pertinent documents and who might provide damaging testimony against the company, he said.

Mr. Sheehe related a case involving a design defect, in which an engineer had retained a body of documents because he felt they belonged to him and not the company. When they later turned up in the case, the plaintiff was able to obtain sanctions from the court against the defendants for withholding documents.

Former employees bearing grudges against the company can also be a risk, Mr. Sheehe said, citing a dispute over an agricultural product. The company had conducted a field test in which all of the crops died. It discontinued the tests, believing that it was flawed, perhaps by defective test crops.

However, in a later trial, a disgruntled former employee revealed that the tests had taken place, and the company was found guilty of fraud for not disclosing them.

"If you have a former employee with an ax to grind, the lawyers need to know about it," Mr. Sheehe advised.

He also warned against the destruction of any documents, because courts regard this as "spoliation of evidence." Similar to those for withholding documents or information, the penalties for destroying documents can be severe, he noted.

Mr. Sheehe also warned that some courts might regard e-mails as evidence that should not be destroyed, even if a company routinely deletes e-mails.

When preparing a defense, some companies might find it worthwhile to employ so-called shadow juries, or pretrial juries, to gauge how a jury might regard a case or assess damages, he said. These shadow juries' deliberations are monitored by lawyers, who are often shocked by what they hear, he noted.

Such exercises also can be useful in cases in which a client refuses to believe that it has a problem lawsuit on its hands, Mr. Sheehe said.

Mr. Mina discussed how the Italian legal system dramatically differs from the U.S. system that Mr. Sheehe described.

First, there are no contingency fees to give attorneys an incentive to seek potential class-action targets, he noted. Attorneys instead are compensated by fees, which makes it easier to control the cost of litigation.

Another key difference is that there are no juries to hear civil dis-

See LITIGATION/page 24



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Between the Lines

Compiled by Joanne Wojcik



I'm gonna tell

While tattling may have been unpopular in childhood, the fall of Enron has made corporate squealing all the rage. But this time around, whistleblowers can remain anonymous, and sometimes even get rewarded.

The hotline business has really taken off since the Sarbanes-Oxley Act took effect, according to Adelle Erdman, director of marketing for The Network, a Norcross, Ga.-based provider of ethics hotlines.

"We launched more hotlines in the first quarter of this year than in all of 2002," she said.

The Network's newest client is Berkshire Hathaway, but other household names using its hotline service include Coca-Cola, Blockbuster, Waste Management and SBC Communications.

The No. 1 tip? Theft and fraud, reported by 36%. Other callers turn their co-workers in for discrimination, 16%; wage and overtime discrepancies, 13%; and sexual harassment, 6%.

The frequency and volume of calls vary, depending on how the hotline is promoted and whether rewards are offered, Ms. Erdman said. But, on average, 1% to 3% of a company's employees will call during a given year. "At a company with 300,000 employees, that's a lot of calls," she said.

Worse than anthrax?

Alleging that the cure may have been worse than the disease, a group of U.S. Postal Service workers has filed a lawsuit against the manufacturer of an antibiotic they took during the anthrax scare two years ago.

Filed in Superior Court in Camden, N.J., earlier this month, the suit charges that German pharmaceutical giant Bayer A.G. failed to disclose data that the drug Cipro could cause nerve and tendon damage.

The suit also names three New Jersey hospitals, accusing them of failing to provide warnings, perform exams or offer alternative medications.

The four postal employees who filed the suit, which seeks class-action status on behalf of all postal service workers who took Cipro, work at the New Jersey mail processing facility that drew national headlines in 2001 after at least four anthrax-laced letters were handled there.

A preliminary review by the federal Centers for Disease Control and Prevention last year found that while 57% of the postal workers who were administered Cipro had reported side-effects, only 3% were told to stop treatment, according to the suit.



PHOTO:KRT

But the lawyer is employed

The next time you think Americans are a litigious bunch, consider this: A British accountant who moved to Canada in 1998 is suing the federal government there, alleging he was misled by immigration officials who assured him he'd have no trouble finding work in his field.

Selladurai Premakumaran hopes to recover \$225,000 in damages—including \$60,000 in relocation costs and \$100,000 in credit card debt he has accumulated since the move.

According to the suit, which legal experts say may be the first of its kind in Canada, neither Mr. Premakumaran nor his wife, a bookkeeper, have been able to use their professional training and instead have been forced to clean toilets, shovel snow and perform other tasks to support their family of six.

Please extinguish all smoking materials

Perhaps following the lead of the state of California, the European Commission recently announced that it was considering using worker safety legislation as a vehicle to ban smoking in cafes, bars and restaurants throughout the 15-member European Union. So far, the E.C. has banned tobacco advertising and instituted graphic images of diseased lungs and other organs on cigarette packets to warn of the dangers of smoking.

In 1998, California became the first U.S. state to ban smoking in most enclosed public places to ensure employees a workplace free of second-hand smoke.

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

Litigation: Legal systems differ

Continued from page 22

putes and assess damages. Instead, judges who are basically career civil servants hear cases, Mr. Mina said.

Without a jury, litigation does not rely on oral arguments, and there is no cross-examination of witnesses. Instead, he noted, it relies on written arguments, which creates lengthy proceedings and lengthy deliberations.

"There's a discontinuity of the legal proceedings, while Anglo-Saxon legal proceedings are more concentrated," Mr. Mina said.

As a result, he said, there is always a risk that evidence presented early in the case might be forgotten

and overlooked by the judge when the case is ready for judgment, which can be years after it began.

Another major difference, Mr. Mina said, is that in the U.S. legal system, precedents are binding, and a court cannot diverge from a precedent established in a similar case. In Italy, though, "precedents are only persuasive," he said. An Italian judge can decide there is a good reason to decide a case differently from an earlier one with similar facts, he said.

So while juries can create uncertain outcomes in the United States, there is also uncertainty over how judges will rule in Italian courts, he

noted.

Finally, there are no class actions in Italian courts, Mr. Mina said. The closest Italy comes to such a mechanism is that product safety cases can be brought on behalf of all consumers, but in these kinds of disputes, only corrective relief, not punitive damages, is granted, he said.

Looking to the future, Mr. Mina noted that Europe is trying to produce legislation on civil procedures to create greater consistency in the legal systems of European countries. "If Europe develops such a common procedure, hopefully it will be different than the U.S. one," he said.

FERMA Risk Management Forum 2003

European companies have gap between risk, coverage: Marsh

By SARAH VEYSEY

ROME—European companies could be leaving themselves open to large liability payouts because of a widening gap between their potential exposures and their insurance protection, according to a study by Marsh Inc. presented at the Federation of European Risk Management Assns. conference.

The survey, "Limits of Liability 2003," found that during the 12-month period to Jan. 31, 2003, European firms purchased 11% less in liability limits—49 million euros (\$57.2 million), on average, compared with 55 million euros (\$64.2 million) the previous year.

Average costs of coverage rose 82% in the same period, to 15,196 euros (\$17,441) per 1 million euros (\$1.2 million) of coverage, com-

pared with 8,339 euros (\$9,736) per 1 million euros of coverage, the survey found.

Marsh surveyed 1,000 companies in 16 European countries.

But while most European companies are buying smaller liability limits, litigation in the continent is on the increase, noted Guy Malyon, managing director of placement services at Marsh and an author of the report.

"Something I am not proud to say, as an American, is that litigation is the U.S.'s No. 1 export, said Tim Brady, managing director of Marsh's national casualty practice in New York.

The size of legal awards is on the increase and there have been several large losses, such as the 2001 Toulouse factory explosion (BI, Oct. 1, 2001) in Europe in recent years, according to Mr. Malyon.

In 2003 in Scandinavia, for example, 5.9% of companies surveyed experienced a liability loss of more than \$5 million, compared with 7.9% of U.S. firms surveyed in a global report on liability trends.

In Central and Western Europe, 4.6% of companies had a loss of more than \$5 million in 2003, while in the United Kingdom, the percentage was 3.6%, according to the survey.

Of nine industry groupings studied in the report, chemicals and pharmaceuticals bought the largest liability limits of European companies in 2003—on average, 121 million euros (\$141.2 million), according to the report.

To obtain copies of the report, contact: Peggy Sherertz at 212-345-3393; or at peggy.j.sherertz@marsh.com

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International

25

U.K. mulls pensions guaranty fund

Critics hit high costs, poor protection and subsidization of poorly run funds

By SARAH VEYSEY

LONDON—The U.K. government should rethink its plans to introduce a U.S.-style pension guaranty fund, a group of employers and pension experts said.

The proposed Pension Protection Fund, which is similar to the United States' Pensions Benefit Guaranty Corp., would cost employers too much and penalize well-run pension funds by making them pay for the mistakes of poorly run funds, they said.

The proposals could even discourage employers from continuing to offer defined benefit pension

plans, they said at a Confederation of British Industry pensions conference held in London last week.

Andrew Smith, the secretary of state for Work and Pensions, told the conference that the idea behind the proposed Pension Protection Fund was to reassure members of



Mr. Smith

defined benefit pension plans that they would receive pensions even if their employers were to become insolvent.

The Pension Protection Fund, slated for introduction in 2005, would be funded by levies on employers operating defined benefit plans as well as a flat-rate

charge, according to the proposals. Employers would also be subject to a supplementary levy linked to any underfunding in the fund.

The fund would aim to secure 100% of pensions already in payment at the time of any insolvency, and 90% of pensions for those not retired, though this would likely be subject to a salary cap. The government would not act as insurer of last resort of the fund, according to the proposals.

The Department of Work and Pensions is still open to suggestions about how the plan should work, said Mr. Smith. And he said the

See FUND/next page

World Updates

Allianz, Munich Re end ceding agreement

Allianz A.G. Holding and Munich Reinsurance Co. have canceled a "principles of cooperation" agreement, under which they historically ceded a certain amount of business to one another. The two said in a statement that, as they now have a less than 15% cross-shareholding, "many of the issues governed by the agreement have become obsolete." The companies said they do not expect the cancellation to affect their business relationships.

Best gives A- rating to African Re

A.M. Best Co. has assigned an initial financial strength rating of A- to Nigeria's African Reinsurance Corp. The outlook is stable. Oldwick, N.J.-based Best cited African Re's excellent capitalization, consistent and sustainable underwriting performance and an excellent market position. Accounting on a three-year funded basis, African Re has been profitable over the past five years, a trend that is likely to be continue through 2004, Best said.

Hong Kong market grew steadily in 2002

All major lines of insurance in Hong Kong had steady growth in 2002, according to the Office of the Commissioner of Insurance. Gross premiums written for nonlife and life business in Hong Kong reached \$89.0 billion Hong Kong (\$11.41 billion) in 2002, up 16.6% over the previous year. Total gross premiums amounted to about 7.1% of Hong Kong's gross domestic product.

E.U. requires employers to study EMF risks

Employers across the European Union will be required to assess the risks to their staffs from radio, television and mobile telephone towers, following preliminary approval of a directive on electromagnetic exposure. The directive, approved by the E.U. Council of Ministers, requires employers to examine the risks posed to employees from electromagnetic fields and waves, including, for example, those from electricity generation, radio and TV broadcasting antennas and large furnaces.

Briefly noted

Gerling-Konzern Allgemeine Versicherungs A.G. has raised 150 million euros (\$175.1 million) through a share issue. Gerling Group said that a stronger equity base was needed for the company to try to raise its BBB- rating from Standard & Poor's Corp.



PHOTO: AFP

The 26-year-old single-hulled oil tanker Prestige split in two and sank off the northwestern Spanish coast on Nov. 19, 2002.

E.C. moves up ban date for single-hull tankers

By NEIL HODGE

BRUSSELS, Belgium—The European Commission has banned single-hull oil tankers from European ports.

As of Oct. 21, single-hull tankers may not be used to carry heavy grades of oil to or from European Union ports. In addition, the timetable for the phasing-out of such tankers has been accelerated, with Category 1 oil tankers—the most vulnerable type—to be withdrawn by 2005 rather than 2007. Category 2 and 3 tankers, which provide greater protection against grounding and collision, are to be withdrawn by 2010.

In addition, all oil tankers more than 23 years old are banned from E.U. ports immediately. Until now, tankers up to the age of 28 years could dock in ports in the European Union. Inspection checks will now be carried out on tankers more than 15 years old.

Furthermore, under the new regulation, double-hull vessels that do not meet E.U. test requirements may be refused entry to ports or permission to fly the

flag of an E.U. member state.

The commission in December 2002 proposed amending the existing regulation regarding single-hull tankers in the wake of the Prestige disaster. The single-hull vessel broke up and sank off Spain last November, spilling about 20 million gallons of fuel oil into the sea off the country's Galician coastline (BI, Nov. 25, 2002).

The commission has also submitted a formal proposal to the International Maritime Organization to have these stricter safety standards applied worldwide. The IMO is expected to decide on whether it will adopt the new regulations at a special session of the Marine Environment Protection Committee in London in December.

However, under IMO rules, the new standards would not come into force until 16 months after they have been adopted. The commission says that because of this time lag, it will continue to conclude bilateral agreements with the countries closest to the European Union, in particular Russia and Mediterranean states.

Equitable allowed to sue directors over bonus strategy

By SARAH VEYSEY

LONDON—The High Court in London has ruled that defunct life insurer Equitable Life Assurance Society can pursue a negligence and breach-of-duty claim against nine of its former nonexecutive directors. In a trial slated for April 2005, Equitable will also bring a case against six former executive directors of the company.

Equitable Life alleges that the nine nonexecutive directors failed to seek legal advice about a strategy adopted in the mid-1990s whereby they paid a so-called "differential terminal bonus" to policyholders with guaranteed annuity rate policies. This differential terminal bonus was applied to annual bonuses awarded to policyholders each year from 1993 to 2000. The differential terminal bonus was lower than the amount policyholders would have expected to receive from their guaranteed annuity rate policy.

Equitable's directors argued that they were entitled, according to the company's "Articles of Association," to adjust the annual bonuses in such a way.

But a test case brought before the House of Lords in July 2000 (BI, July 24, 2000) found that the differential terminal bonus breached the company's constitution. As a result, the Lords ruled that Equitable must meet its guaranteed annuity rate obligations and the company was forced to pay out £1.50 billion (\$2.45 billion) to policyholders.

Equitable stopped writing new business in December 2000.

The nine nonexecutive directors—including Peter Sedgwick, a former chairman of the investment group Schroders; and Jennie Page, the former head of London's Millennium Dome project—had sought summary judgment

in the case.

But the judge in the case, Mr. Justice Langley, ruled earlier this month that the lawsuit should be allowed to proceed.

Earlier this year, (BI, Feb. 17), Mr. Justice Langley dismissed a £2.6 billion (\$4.23 billion) damages claim brought by Equitable against its former auditor Ernst & Young L.L.P. But the Court of Appeal overturned that decision and ruled that the case should be allowed to proceed.

The judge referred to this decision when allowing the case against the nonexecutive directors to go ahead. "The overriding concern is the interests of justice...the simpler the case, the easier it is for a court to be able to take a view that the basis of a claim is fanciful or contradicted by all the documentary material on which it is founded," he said. "There is a danger of injustice in seeking to try such cases summarily on the documents and thus without oral evidence tested by cross-examination. It should not be done unless the court can be confident that all the relevant facts had already been satisfactorily investigated."

Equitable's chairman, Vanni Treves, said after the ruling, "In the interests of policyholders, we have a duty to proceed."

According to the London-based law firm of CMS Cameron McKenna, Equitable's directors and officers liability insurance is likely capped at £5 million (\$8.4 million). The cost of a full trial will probably be more than £30 million (\$50.3 million), the law firm said in a statement.

The eventual ruling could have an impact on D&O premiums, it added.

The London-based mutual is not affiliated with the New York-based Equitable Life Assurance Society of the U.S., an AXA S.A. unit.

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LEGAL NOTICE

No 6314 of 2003
 IN THE HIGH COURT OF JUSTICE (IN ENGLAND)
 CHANCERY DIVISION
 COMPANIES COURT
 IN THE MATTER OF
TRINITY INSURANCE COMPANY LIMITED
(formerly known as Trident Insurance Company Limited
and Trident General Insurance Company Limited)
 AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 13 October 2003 made in the above matter, the Court has directed that meetings ("the New Court Meetings") be convened of the Scheme Creditors (as defined in the Original Scheme of Arrangement hereinafter mentioned) of Trinity Insurance Company Limited ("the Company") for the purpose of considering and, if thought fit, approving with or without modification an Amending Scheme of Arrangement proposed to be made pursuant to Section 425 of the Companies Act 1985 ("the Amending Scheme"), amending certain terms and provisions of a Scheme of Arrangement dated 31 December 1992 which became effective on 18 March 1993 ("the Original Scheme") between the Company and its Scheme Creditors.

The New Court Meetings will be held consecutively at The Painters' Hall, 9 Little Trinity Lane, London EC4V 2AD on Thursday 4 December 2003 at the times mentioned below, namely:-

- (a) the meeting of Scheme Creditors with Potentially Protected Liabilities as defined in the Amending Scheme at 11am; and
- (b) the meeting of Scheme Creditors with Liabilities other than Potentially Protected Liabilities at 11.05am (or as soon thereafter as the preceding meeting shall have concluded or been adjourned).

The Chairman of the New Court Meetings will address Scheme Creditors concurrently on the common parts of the Amending Scheme and on issues relevant to voting at the commencement of the first meeting.

A downloadable file of the proposed Amending Scheme of Arrangement, Explanatory Statement and Appendices is now available on the Company's Website at www.trinityinsurance.co.uk and should a printed copy be required, please send your request to the Scheme Administrator c/o Omni Whittington Insurance Services Limited, Omni Whittington Court, Whitfield Street, Gloucester, GL1 1NA, England as soon as possible and in any event before 1 December 2003 and the said documents will be sent to you together with a blank Voting and Proxy Form(s).

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

It is requested that forms appointing proxies should be lodged with the Scheme Administrator c/o Omni Whittington Insurance Services Limited at the above address, not less than 48 hours before the time appointed for the New Court Meetings but if these forms are not lodged they may be handed to the Chairman at the New Court Meetings. Please note that faxed and emailed Voting and Proxy Forms will not be counted unless the signed originals (and any accompanying documents) are received by the Scheme Administrator c/o Omni Whittington Insurance Services Limited by close of business on Thursday 11 December 2003.

Each Scheme Creditor or his proxy will be required to register his attendance prior to the commencement of the meetings. Registration will commence at 10.30am.

By the same Order, the Court has appointed Paul Anthony Brereton Evans or, failing him, Douglas Nigel Rackham to act as Chairman of the New Court Meetings and has directed the Chairman to report the results of the New Court Meetings to the Court.

The Amending Scheme of Arrangement will be subject to the subsequent approval of the High Court of Justice.

Dated 23 October 2003

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Fax: 020 7606 3305

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Solicitors to the Scheme Administrator

LEGAL NOTICE

LEGAL NOTICE

No 6313 of 2003
 IN THE HIGH COURT OF JUSTICE (IN ENGLAND)
 CHANCERY DIVISION
 COMPANIES COURT
 IN THE MATTER OF
MARLON INSURANCE COMPANY LIMITED
(at all material times known as
Vesta (UK) Insurance Company Limited)
 AND
AIOI INSURANCE COMPANY OF EUROPE LIMITED
(formerly known as The Chiyoda Fire and
Marine Insurance Company (UK) Limited)
 AND
 IN THE MATTER OF THE COMPANIES ACT 1985
TRIDENT POOL BUSINESS

NOTICE IS HEREBY GIVEN that, by an Order dated 13 October 2003 made in the above matter, the Court has directed that meetings be convened of the Scheme Creditors (as defined in the Scheme of Arrangement hereinafter mentioned) of Marlon Insurance Company Limited and of Aioi Insurance Company of Europe Limited ("the Scheme Companies") in respect of their Trident Pool business only for the purpose of considering and, if thought fit, approving with or without modification schemes of arrangement proposed to be made between the Scheme Companies and their respective Scheme Creditors pursuant to Section 425 of the Companies Act 1985 ("the Scheme").

The meetings will be held consecutively at The Painters' Hall, 9 Little Trinity Lane, London EC4V 2AD on Thursday 4 December 2003 at the times mentioned below, namely:-

- (a) the meeting of Scheme Creditors of Marlon Insurance Company Limited at 11.10am, or as soon thereafter as the meetings of the Scheme Creditors of Trinity Insurance Company Limited shall have concluded or been adjourned;
- (b) the meeting of Scheme Creditors of Aioi Insurance Company of Europe Limited at 11.15am or as soon thereafter as the preceding meeting should have concluded or been adjourned.

The Chairman of the meetings will address Scheme Creditors of both Scheme Companies generally on the common elements of the Scheme and on issues relevant to voting prior to the commencement of the first meeting.

All Scheme Creditors are requested to attend at such place and time either in person or by proxy.

A copy of the text of the Scheme and of the statement required to be provided by section 426(3) of the Companies Act 1985 may be obtained from either of the Scheme Companies, c/o Omni Whittington Insurance Services Limited, Omni Whittington Court, Whitfield Street, Gloucester, GL1 1NA, England before 1 December 2003 together with blank Voting and Proxy Forms.

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

It is requested that forms appointing proxies should be lodged with the Scheme Company concerned, c/o Omni Whittington Insurance Services Limited at the above address, by 4pm on Monday 1 December 2003 but if these forms are not lodged they may be handed to the Chairman at the meetings. Please note that faxed Voting and Proxy Forms will not be counted unless the signed originals (and any accompanying documents) are received by the relevant Scheme Company c/o Omni Whittington Insurance Services Limited by close of business on Thursday 11 December 2003.

Each Scheme Creditor or his proxy will be required to register his attendance prior to the commencement of the meetings. Registration will commence at 10.30am.

By the same Order, the Court has appointed Paul Anthony Brereton Evans or, failing him, Douglas Nigel Rackham to act as Chairman of the meetings and has directed the Chairman to report the results of the meetings to the Court.

The Scheme will be subject to the subsequent approval of the High Court of Justice.

Dated 21 October 2003

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Business Insurance

Fund: PPF proposal raises concerns

Continued from page 25

fund would not merely mimic the PBGC.

"We're not aiming simply to copy the U.S. institution. We want to learn from its experience," he said.

But employer representatives speaking at the conference raised concerns about the way the fund would operate and its potential impact on employers.

The proposed fund would increase costs for employers operating defined benefit pension plans by an estimated £350 million (\$587.1 million) a year, according to Richard Greenhalgh, chairman of Unilever U.K. in London and chairman of the CBI's pensions strategy group.

"We agree that pensioners need to be protected if schemes go insolvent," said Mr. Greenhalgh. "But we are concerned that the PPF doesn't give enough protection at an acceptable cost."

The government should be the final guarantor of the fund, said Mr. Greenhalgh, "so that the whole burden is not on employers."

Peter Fergusson, managing director of Norsk Hydro (U.K.) Ltd. in London, urged the government to drop plans for the fund.

"There is everything wrong with this Pension Protection Fund," Mr. Fergusson told delegates.

If there were to be a major corporate collapse in the United Kingdom, the fund would likely not be able to cover the cost of pension payouts, he said. This would necessitate a supplementary levy on employers, he said. "It'll require companies to increase payments at the time they can (likely) least afford it," he said.

Another concern voiced by the CBI's pension strategy group is that the PPF could lead to cross-subsidies—well-run defined benefit plans compensating for badly run plans—according to Mr. Greenhalgh.

This concern was echoed by Peter Thompson, worldwide partner at Mercer Human Resource Consulting in London, who suggested that some strong employers might even consider winding up their defined benefit plans to avoid having to subsidize weaker companies.

Mr. Smith said that the government was aware of such concerns and that one option being looked at was that more-solvent employers would pay smaller levies to the plan than would weaker companies.

Another issue of concern, said Mr. Thompson, was the risk that the existence of a pensions backstop plan might actually encourage some pension fund sponsors to adopt riskier investment strategies than they might otherwise, "and if it all goes wrong, the Pension Protection Fund will just pick it up."

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MedRisk offers precert service

KING OF PRUSSIA, Pa.—MedRisk Inc. has introduced CERTExpert, a

physical therapy precertification service aimed at self-insured employers, third-party administrators, insurers and managed care organizations.

"Traditional PT precertification services merely authorize a number of approved visits," Shelley Boyce, chief executive officer of King of Prussia, Pa.-based MedRisk, said in a statement.

"CERTExpert goes beyond visit approval to give the treating clinician a detailed roadmap for achieving the best outcome for each patient," she said.

The service aims to identify the most appropriate and effective care, control overutilization, encourage progressive treatment and achieve consistent and defensible results.

More information is available from MedRisk at 800-225-9675.

Intracorp offers bill management

PHILADELPHIA—Intracorp is offering its AccuMed Health Care Cost Management program to group health customers.

The product, which is designed to help employers and payers realize savings on the processing and payment of medical bills,

previously was available only to Intracorp's disability cost management clients.

AccuMed, which also seeks to improve the timeliness and accuracy of bill payment to providers, includes rate negotiation for clinical and outpatient services, bill audits and other features.

More information is available at Philadelphia-based Intracorp's Web site, www.intracorp.com.

Protective barrier guards against bombs

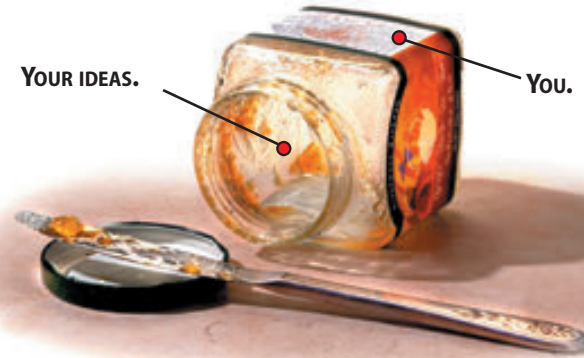
UPLAND, Calif.—A new device to mitigate the risk of terrorist bombings is available from RSA Protective Technologies.

The Adler Blast Wall provides a protective barrier that its developers say is strong enough to withstand an explosion more powerful than the one that destroyed the Alfred P. Murrah Federal Building in Oklahoma City.

The wall has a modular design that can be quickly installed and removed in response to terrorist alerts or threats.

The equipment is designed to protect the exterior of facilities such as multitenant properties, military installations and other buildings. It also can be installed in interiors such as loading docks, mailrooms, vaults and safe rooms.

More information is available from RSA at 909-946-0964 and at www.rsaprotect.com.



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World Captive Forum Golf Tournament
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3:00 PM - 6:00 PM
Opening Workshops
Track 1: Captive Basics: The Expanding Horizons
Track 2: Employee Benefits in Captives: The Opportunities and the Imperatives

6:00 PM - 7:30 PM
Welcome Reception with Exhibitors
Sponsored by A.M. Best Company

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
Conference Round-Up

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Cash balance: Rules postponed

Continued from page 3

Consulting in Somerset, N.J.

"The result is continued uncertainty, which can only negatively affect the security of the nation's retirement income system," said Larry Sher, a principal with Mellon Human Resources & Investor Solutions in New York.

Others, while disappointed, understand why Treasury decided to defer.

"When you write regulations, you have to pay attention to what is out there. You have to react to the universe out there," said Eric Lofgren, director of global benefits for Watson Wyatt Worldwide in Philadelphia, referring to the IBM court decision, which is being appealed, and the House of Representatives action. The Senate last week also took action in approving a proposal by Sen. Tom Harkin, D-Iowa, to prevent the Treasury Department—for the next year—from implementing the regulations it proposed last year.

Some believe political considerations drove the delay, with the ad-

ministration fearful that the regulations would be cited by cash balance foes as evidence that the administration does not care about older workers. Plan critics say conversions have, in some instances, prevented

'Cash balance and other hybrid plans have been the only place employers have been willing to go. If you close off that avenue, the implications for employers and employees would be terrible.'

Larry Sher
Mellon Human Resources
& Investors Solutions

older employees from earning benefits they had expected, while supporters say such situations are rare.

The administration "perceived that the political climate was dan-

gerous" for the release of regulations, Mr. Sher said.

He said Treasury is ducking its responsibilities. "They need to find the courage to do their job, which is to interpret law," he said.

The uncertainty, if it continues, could be deadly to the future of defined benefit plans, benefit experts say. Cash balance plans have been the only type of defined benefit plan to have shown growth in recent years, and if employers perceive that a resolution of the legal standing of the plans will be indefinitely delayed, they may abandon the defined benefit plan system.

"Cash balance and other hybrid plans have been the only place employers have been willing to go. If you close off that avenue, the implications for employers and employees would be terrible," Mr. Sher said.

"You would see more defined contribution plans which offer fewer protections for employees," said Kevin Wagner, a Watson Wyatt consultant in Southfield, Mich.

Regulation: Federal proposal

Continued from page 6

framework.

Mr. Berrington said that even insurers that do not support an optional charter recognize that there are serious problems with the current state-based regulatory system. Other witnesses bolstered that contention.

For example, while stressing his group's belief that state regulation should be improved rather than superseded, Thomas Ahart, past president of the Independent Insurance Agents & Brokers of America Inc., said that Congress should use its powers to get states to adopt a more-uniform system of producer licensing and enact other reforms, such as overriding state regulations that govern file and use laws. Rates

should be based on market competition, said Mr. Ahart, who is president of Ahart, Frinzi & Smith in Phillipsburg, N.J.

"I have, in my entire life, supported state regulation," said J. Robert Hunter, director of insurance of the Consumer Federation of America. But the longtime industry critic and former Texas insurance regulator said that he now thinks "state regulation is failing" to protect consumers adequately.

"I'm at the Rubicon," he said, adding that he would not support a dual system of state and federal regulation. "We cannot abide a race to the bottom," which he said would occur if insurers were permitted to choose between state and federal regulation.

Mr. Hunter's contention was not shared by Ernst Csiszar, director of the South Carolina Department of Insurance and vice chairman of the NAIC's executive committee. "By and large, the state system has worked," Mr. Csiszar said, acknowledging that there had been "some hiccups" along the way. Creating a dual system of regulation "isn't the ideal world for consumers," he said.

Stephen Rahn, vp and associate general counsel of Lincoln National Life Insurance Co. of Fort Wayne, Ind., also testified before the committee on behalf of the American Council of Life Insurers. Douglas Heller, senior consumer advocate at the Santa Monica, Calif.-based Foundation for Taxpayer & Consumer Rights, also spoke.

Health care: Likely to be issue

Continued from page 4

work to President Bush's advantage in his campaign.

Mr. McInturff, who stressed that he is not connected with the president's re-election campaign, said that while Americans are truly concerned about the number of individuals without insurance, they are unwilling to trade a reduced quality of their own health care for broader coverage of the population as a whole.

In addition, Americans are "very taxophobic," he said. The president could turn this to his advantage by arguing against some Democrats who are calling for the rollback of some or all of the president's tax cuts to fund broader coverage, said Mr. McInturff.

For example, both former Vermont Gov. Howard Dean and

Rep. Richard Gephardt, D-Mo.—two Democratic candidates—have called for the repeal of all the recently enacted tax cuts to fund broader health care coverage, he said.

A third speaker, Jack Meyer, president of the Economic and Social Research Institute, a nonpartisan Washington think tank, said there's "no magic bullet" for expanding coverage. Using tax credits and regulatory relief, as President Bush has advocated, causes "less worry this will crowd out employer-sponsored coverage" but will help only a fraction of the uninsured. "This gives you a first down but probably doesn't get you into the end zone," Mr. Meyer said.

Expanding existing programs such as Medicaid, as has been suggested by Sens. John Kerry, D-Mass.,

John Edwards, D-N.C., and Joseph Lieberman, D-Conn., as well as by Mr. Dean, could provide a partial solution but runs the risk of crowding out employer-sponsored coverage, he said. Rep. Gephardt's plan to use both employer and employee tax credits and increased federal funding could get "close to universal coverage" but would carry a huge federal price tag, he said.

Finally, some form of Canadian-style single-payer system, as advocated by Rep. Dennis Kucinich, D-Ohio, and former Illinois Democratic Sen. Carol Moseley-Braun, would require "a big tax increase, even though, in the end, the price might be much less," said Mr. Meyer.

Ed Howard, executive vp of the Alliance for Health Reform, moderated the discussion.

PBGC to terminate pension of Weirton Steel Corp.

WASHINGTON—The Pension Benefit Guaranty Corp. will take over and terminate a massively underfunded pension plan sponsored by bankrupt Weirton Steel Corp., which will saddle the agency with one of its largest losses.

The Weirton plan, with about 9,200 participants, has \$530 million in assets to cover about \$1.35 billion in benefit obligations. Of the \$825 million in underfunding, the PBGC estimates it will be liable for nearly \$700 million.

The PBGC took action after Weirton, which is based in Weirton, W.Va., reported in its reorganization plan that it no longer can afford its pension plan. Weirton, according to the PBGC, already has failed to make at least \$69 million in federally required contributions to the plan.

"Despite our very best efforts, the magnitude of required contributions to the plan far exceeded our ability to fund them," Weirton Chief Executive Officer D.

Leonard Wise said in a statement.

Had the PBGC delayed terminating the plan, it could have incurred an additional \$147 million in liabilities for shutdown benefits. The PBGC guarantees shutdown benefits, but only if a plant shutdown has occurred at the time of termination.

The PBGC takeover of Weirton's plan is the latest in a series of steel-industry pension failures. In March 2002, the PBGC took over pension plans sponsored by LTV Corp., which were \$1.9 billion in the hole; and last December the PBGC terminated Bethlehem Steel Corp.'s pension plan, which was \$3.9 billion in the red.

The losses from steel industry plans have contributed significantly to the PBGC's record \$8.8 billion deficit. The loss from the Weirton plan does not add to the agency's deficit, though, as it had already been booked as a probable loss, a PBGC spokesman said.

By Jerry Geisel

Forum: Captive sessions inform

Continued from page 4

Two more concurrent sessions will be held from 1:45 p.m. to 3 p.m.

One will cover additional strategies for cell captives, including the structures of onshore and offshore facilities. The panel will be made up of Michael Burns, partner with Appleby, Spurling & Kempe; John O'Brien, president of Charleston Captive Management Co.; and Joseph Dazide, vp of alternative products with AIG Risk Management Inc.

Networking opportunities follow until 5 p.m. with a poolside refreshment break, and entertainer Jimmy Keys performs at a cocktail reception and dinner later in the evening.

Wednesday's first workshop will cover contingent capital and other advanced risk-financing techniques from 7:30 a.m. until 8:45 a.m. Attendees will hear from Brent Clark, managing director at Strategic Risk Solutions and Bert Stahlmann, director-alternative risk financing with Marsh Inc.

This year's captive case studies, which run from 9 a.m. until 10:30 a.m., will cover one of the first group risk financing programs, Oil Insurance Ltd.

The creator of a new group captive for health care risks also will be on hand, as will a representative of a multinational company who will discuss fronting and reinsurance risks. The panelists are Mr. Crosts; Dale Fenwick, vp with LTC Insurance Ltd. and chief operating officer of Nursing Homes Risk Management Assn.; and Bob Stauffer, direc-

tor of risk management and real estate at Kerr McGee Corp.

Regulatory and tax issues will be the focus of the final session, which runs from 11 a.m. until 12:15 p.m. James R. Cameron, a partner with Baker & McKenzie, will be joined by panelists Timothy Carter, director of risk management and real estate sales at Goodrich Corp.; Rick Irvine, a partner with PricewaterhouseCoopers L.L.P. and C. Jeffery Triplette, vp-risk management services with Duke Energy.

A box lunch is available until 1:15 p.m. and will be followed by a conference roundup session that lasts until 2:30 p.m. The roundup is an informal gathering during which attendees can further discuss topics covered during the forum or talk about issues that were not addressed.

Full registration for risk managers is \$975 and \$1,250 for others. For second and subsequent registrants from the same company, the fee is \$975. Captive regulators pay \$495 to attend, and social passes for spouses or non-industry guests are \$150.

In addition, there is a \$200 fee for those who choose to participate in Monday's golf tournament.

Reservations can be made at the Registry Resort, 800-247-9810 or 239-597-3232.

For more information on the forum, contact Lisa Ferrier at 952-928-4659 or lferrier@harringtoncomp.com.

In addition, registration forms for the event can be downloaded at www.captive.com/CaptiveForum/index.html.

Broker: APEX aims to deliver broad range of services

Continued from page 1

million, specializes in alternative risk management, reinsurance and specialty wholesale services, mainly in professional liability. It has operations in Bermuda, London, Chicago, New York, Philadelphia and San Francisco.

As part of the deal, which is expected to close within a few weeks, APEX will retain Park's 105-member staff, while captive management operations will remain part of IAS Park Group. Terms were not disclosed.

The Park deal is one of a number of acquisitions APEX plans to make as a means to grow in the future.

"I think the unique thing we're able to bring to the table, which we believe has not been presented to brokers yet, is that whole integration of the alternative markets in Bermuda, the reinsurance capabilities we have in London and the targeted specialty wholesale deliverables that we have in our wholesale operations in North America," said Mr. Griffith, who is chairman and chief executive officer of APEX.

'Gary obviously has demonstrated his ability to again attract capital, but my question is what problem is this new enterprise solving? What is the market need for another alternative risk/Bermuda/reinsurance facility?'

John Wicher
John Wicher & Associates

APEX plans to provide brokers and their clients access to the full range of risk solutions available in Bermuda, ranging from captives to risk securitization to the many insurance and reinsurance companies established there in recent years.

"It's a unique strategy really trying to work with global clients and their brokers and focusing on integrating those—up until this point—disparate parts of the business," he said.

Mr. Griffith noted that APEX also intends to develop a technology platform that supports its strategy to integrate access to reinsurance, wholesale and Bermuda business.

APEX is targeting Fortune 1000 to Fortune 2000 accounts or those companies with at least \$1 billion in annual sales.

"It's very much a large global account initiative," Mr. Griffith said.

APEX is "well-capitalized" through a number of private equity partners and a bank partner and is setting its sights on an initial public offering in two years, Mr. Griffith said.

In addition to Mr. Griffith, Paul Scope, chairman and CEO of The Park Group, has been named a director and member of the APEX board. Mike Foulger, deputy chairman and chief operating officer of Park, has been named corporate senior vp of APEX.

Mr. Griffith is known for build-

ing brokerages, but it is questionable whether a brokerage like the one he envisions is really needed in today's market, said John Wicher, principal of John Wicher & Associates, an insurance investment bank based in San Francisco.

"Gary obviously has demonstrated his ability to again attract capital, but my question is what problem is this new enterprise solving? What is the market need for another alternative risk-Bermuda-reinsurance facility?" Mr. Wicher asked.

At the same time, with the current market cycle, those insurance buyers who made the decision to

look at the alternative risk transfer market "are well on their way to addressing those alternative risk solutions" and they began that effort two to three years ago, Mr. Wicher said. Those that have not made the decision to move into the alternative risk market "are looking at the reinsurance market, which is beginning to soften even on some of the more difficult lines," he said. "I'm not so sure from a timing perspective whether this is late."

John M. Wepler, a senior vp with Marsh, Berry & Co. Inc. in Concord, Ohio, however, said he thinks APEX "definitely" fills a need in the

market.

The consolidation that has occurred over the past several years has reduced the number of capable large global brokers that have the skills to address large complex accounts, he said.

"There's no doubt that large complex commercial accounts with risk managers are looking for more options," he said.

Other observers note Mr. Griffith's track record of building brokerages.

Mr. Griffith created SGP in 1995 after the previous company he led, Bain Hogg Robinson Inc., was ac-

quired by Acordia Inc. Based on 2002 brokerage revenues of \$76.9 million, SGP was the 26th largest broker of U.S. business, according to *Business Insurance's* annual brokerage rankings (*BI*, July 21).

Mr. Griffith resigned as SGP's chairman and CEO in September.

"I know Gary very well. He's a solid guy and is viewed by many as a builder," said Ken Crerar, president of the Council of Insurance Agents & Brokers in Washington. "He built Summit Global Partners and has had very little trouble securing investors when he starts out to do these things, so it's not a surprise."

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Class actions: Reform bill stalled by Senate vote

Continued from page 1

Senate Minority Leader Tom Daschle, D-S.D., who joined most of his fellow Democrats and one Republican in voting against cloture, said the vote meant that the time had arrived for Democrats and Republicans to negotiate the shape of a new class action reform bill.

Supporters vowed to continue working to enact class action reform legislation, with some holding out the hope that the Senate will revisit the issue this year.

"RIMS is extremely disappointed in the failure of the cloture motion on the class action reform bill," said Lance J. Ewing, president of the New York-based society. "This legislation is long overdue and critical to all Americans—both the business community and consumers. The in-

ability of some U.S. senators to understand the importance of this issue is very frustrating.

"RIMS would like to thank those senators who supported this action. We will continue to advocate tort reform, particularly in the area of interstate class action lawsuits. We will not give up on this issue and will keep working to see strong, effective legislation approved," said Mr. Ewing, who is executive director-risk management for Las Vegas-based Park Place Entertainment Inc.

Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington, called the vote "tremendously disappointing."

"We remain optimistic in the sense that negotiations can take place and we can reach an accom-

modation that would be acceptable to both sides. We remain committed to trying to make sure that happens this year," Ms. Shelk said.

A spokeswoman for the National Assn. of Independent Insurers in Washington also expressed disappointment but added that "we hope the leadership will meet as soon as possible to further discuss and negotiate in order to obtain the votes needed to pass a bill this year."

"We remain optimistic that we'll be able to get a good balanced, sensible bill in this Congress," said Marliiss A. Browder, federal affairs representative for the National Assn. of Mutual Insurance Cos. in Washington.

"The vote was so close, and there were enough votes there to indicate

that with a few minor changes, this could go forward," said Lawrence Fineran, vp-regulatory and competition policy for the National Assn. of Manufacturers in Washington. "We've got to see what those changes would be. I'm optimistic we can still get something," he said.

The head of the U.S. Chamber of Commerce blasted the Senate vote.

"Today's vote shows lawmakers can use procedural rules to subvert the will of a clear majority of senators," Thomas Donohue, the chamber's president and chief executive officer in Washington, said in a statement issued shortly after the vote. "Those senators who voted for party politics over bipartisan, common-sense reforms have cast a vote against American consumers and class members," he said.

"Based on the remarks made by a number of senators after today's vote, however, we do remain encouraged about the prospects for the Senate passing class action reform this year. We intend to work quickly to try and address the concerns raised by a number of senators on the floor after today's vote," said Mr. Donohue.

The Consumer Federation of America, however, praised the 39 senators who voted against cloture on the measure.

"This vote was not only a vote against a broad and dangerous change to our civil justice system, it was also a vote in favor of consumers' rights," Rachel Weintraub, assistant general counsel of the Washington-based CFA, said in a statement released after the vote.

FMLA: House bill expands leave

Continued from page 1

"There appear to be no limitations. It certainly could mean situations such as picking up kids from day care centers or taking them to doctors' appointments," said Fran Bruno, a consultant with Mercer Human Resource Consulting in New York.

"It would be a significant expansion" of the FMLA, added Amy Kohn, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Under the 1993 law, all but very small employers must offer FMLA benefits to employees to care for newly born or adopted children or for an employee's own serious illness or that of a spouse, parent or child. Individuals must meet certain length-of-service rules to be eligible, and the law applies only to employers with at least 50 employees.

The military service expansion was proposed by Sen. Russ Feingold, D-Wis., and attached without debate to a supplemental spending bill appropriating \$87 billion for the reconstruction of Iraq and Afghanistan. The Senate passed that appropriations bill, S. 1689, on Oct. 17.

A congressional conference committee is working to iron out differences between the Senate measure and a somewhat different spending bill passed by the House, which does not include an FMLA provision.

The conferees could decide the fate of the FMLA provision as soon as this week.

If the Feingold FMLA amendment is accepted by conferees, it would go into effect as soon as President Bush signs the bill. The administration, however, has threatened to veto the bill for reasons unrelated to the FMLA provision.

The amendment has drawn the support of military and family rights organizations, who say callups of employees for active military service, which often involve very little notice, have put strains on families.

"There are legitimate family leave

needs created" when employees enter military service, said Devon McGraw, policy counsel for the National Partnership for Women & Families in Washington.

When one parent is deployed, the other must scramble to take care of additional family responsibilities, such as attending parent/teacher conferences, she said. "At a minimum, their jobs should be protected if they have to meet those needs. This goes with the spirit of supporting our troops and shows that we value families," Ms. McGraw said.

"We owe it to our military personnel and their families to do all we can to support them in this difficult time. I hope this amendment will bring a small measure of relief to our military families," Sen. Feingold said on the Senate floor.

Employer groups, while sympathetic to the intent of the legislation, say they are concerned it could create confusion among employers and employees.

"There could be lots of confusion of who is eligible," said Michael Aitken, director of governmental affairs at the Society for Human Resource Management in Alexandria, Va.

Mr. Aitken noted, for example, that it isn't clear how broadly the notion of "in support of a contingency operation" would apply. Such ambiguities typically are discussed when a measure is considered through the normal legislative process of committee hearings and votes, he said.

"But, of course, this did not happen," given the way the proposal was approved, he added.

But Ms. McGraw of the NPWF said that expedited action is justified because of the immediate family needs that have been created by the deployment of tens of thousands of reservists.

"We don't have time to hammer out all the issues," she said, adding that subsequent guidance from regulatory agencies can resolve issues that emerge.

Indeed, the legislation leaves it to

the Department of Labor to provide guidance on certification requirements employers could impose on employees who want to take leave under the proposal.

While the proposal, if enacted, would add to employers' administrative load, the overall impact would be minor.

That is because the pool of potentially eligible individuals would be small as a percentage of most employers' workforces. In addition, many individuals eligible for leave might decline it because of the loss of income resulting from not working.

"A lot of families already are losing incomes when a family member goes into the military," and, as a result, there won't be significant use of the unpaid leave, said Barry Barnett, a principal with PricewaterhouseCoopers HR Services in New York.

Still, the FMLA, with its current strict limitation of eligible events that trigger eligibility for coverage, has enabled millions of employees to take job-protected leave.

"The FMLA has helped more than 35 million American workers to balance responsibilities to their families and their careers," Sen. Feingold said.

Regardless of the number of military families an expanded FMLA would help, employers will have to change plan documents and notify employees of the expanded availability of FMLA benefits, as well as develop notification, certification and recordkeeping procedures.

For example, recordkeeping could become more complicated as employees likely would take shorter but more-frequent leave—compared with regular FMLA—since they would be allowed to take time off for any reason relating to the family member's military service. Under the FMLA, leave need not be taken in full days and could involve periods such as one hour once a week.

If the proposal is enacted, there will be challenges ahead for employers, Hewitt's Ms. Kohn said.

Claims: Ruling sets new standards

Continued from page 3

practices.

Toys 'R Us argued that because it was not engaged in the business of insurance, it was not subject to the unfair insurance claim settlement prohibitions in the state and, accordingly, the consumer protection violations did not apply. A lower court agreed with Toys 'R Us, granting summary judgment in November 2000.

The appellate court, though, ruled that a right of action for unfair claims settlement practices is not limited to entities engaged in the business of insurance.

"The risk management claims facilitation department as the sole agent of the self-insuring corporate entity, Toys 'R Us, conducted negotiations, which involved assessing the merits of Morrison's claim, determining potential litigation exposure on the claim, engaging in claims facilitation and advancing settlement offers to Morrison. Accordingly, such claims settlement practices fall within the domain of the general consumer protections...and, if conducted in an unfair and deceptive manner may give rise to potential liability" irrespective of the applicability of the unfair insurance-specific claims settlement statute, the court said in its opinion.

It remanded the case to the Superior Court for further review.

If found in violation of the general consumer protection statute, Toys 'R Us could be liable for up to three times damages—or more than \$750,000, plus Ms. Morrison's attorneys fees.

Toys 'R Us is in the process of "filing a petition for additional review" from the Massachusetts Supreme Court, according to the retailer's attorney, John R. Bologna of Boston-based Bologna & Harris P.C. Mr. Bologna would not comment on the case.

Steve Schreckinger, a partner in the Boston law firm of Palmer &

Dodge L.L.P. who is familiar with the case, said the ruling is "very anti-business."

"It's a real trap for the unwary risk managers out there who don't understand the ramifications of not making a settlement offer," he said. "If you should have paid the claim and you didn't, you could be subject to treble damages and attorneys fees" in Massachusetts.

Prior to this case, "that standard had only been applied to insurance companies, so self-insureds never viewed themselves as subject to those standards," Mr. Schreckinger said.

Morrison vs. Toys 'R Us Inc., Massachusetts, Massachusetts Appeals Court; No. 01-P-778.

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Late News

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Health Net settles Superior National suit

Managed care provider Health Net Inc. has agreed to pay \$137 million to Superior National Insurance Group Inc. to settle litigation over the bankrupt insurer's ill-

fated acquisition of a Health Net predecessor's workers compensation insurance subsidiaries. Superior National had alleged that Health Net knew of that the subsidiary, Business Insurance Group, was insolvent before it was sold.

Some property rate relief seen in quarter: CIAB

Many buyers saw relief from commercial property insurance price increases in the third quarter of this year, according to a survey by the Council of Insurance Agents & Brokers. The CIAB members found that nearly one-third of small and large property accounts and 27% of midsize accounts had either no change in premiums or up to a 10% decrease on renewal and new business in the quarter.

Scottish Re buying ERC Life Reinsurance

Scottish Re Group Ltd. is buying 95% of ERC Life Reinsurance Corp. for \$151 million in cash. Business written by ERC Life, a subsidiary of GE Employers Reinsurance Corp., is mostly traditional life reinsurance. The in-force business represents about \$170 million in premiums. No employees of GE ERC will transfer to Scottish Re, which is based in Hamilton, Bermuda.



Firemen try to control a blaze at the Cook County Building in downtown Chicago. Officials have not determined the extent of the loss.

Chicago high-rise fire may spur sprinkler rule

Chicago officials will consider a measure requiring owners of older high-rise buildings in the city to retrofit them with sprinklers following an Oct. 17 fire in a downtown Chicago Cook County administration building that killed six people. Chicago Fire Department officials have indicated they suspect faulty electrical wiring caused the blaze, and county officials are still determining the extent of the loss. The building, which lacked sprinklers, was not required to have the devices in place because of its age. Cook County has \$105 million in property coverage on the building on a replacement-cost basis as well as \$50 million in boiler and machinery coverage. The county also has \$2 million in general liability coverage and a \$9 million umbrella liability policy. CNA Financial Corp. writes all of the coverages except boiler and machinery, which is written by Chubb Corp.

Treasury conducting Terror insurance surveys

The Treasury Department plans to begin collecting data on terrorism risk insurance markets from risk managers, insurers and reinsurers in the next few days. The Terrorism Risk Insurance Act holds that the Treasury Department must provide Congress by June 30, 2005, with a report on the effectiveness of TRIA, the availability of terrorism risk insurance for various classes of policyholders and the insurance industry's probable terrorism capacity after the federally backed terrorism insurance program ends on Dec. 31, 2005.

Goodyear, insurers to fund \$236 million settlement

Goodyear Tire & Rubber Co. expects its product liability insurers to pay about half of a \$236 million class-action settlement reached with homeowners using a type of radiant heating hose. The hose is used in systems that melt ice and snow on sidewalks and driveways. But a vendor, which has since declared



bankruptcy, improperly installed about 5,000 heating systems in several states, leading to leaking from the hoses, a Goodyear spokesman said. A U.S. District Court has approved the \$236 million settlement agreement.

Ranks of working uninsured growing, study finds

The number of uninsured individuals who work for large employers has increased in recent years, according to a report by the Commonwealth Fund. In 2001, the most recent year cited, about 11% of workers at companies with more than 500 employees lacked health coverage, up from 7% in 1987, the

report states.

AIG posts gains in profit, premiums

American International Group Inc. posted net income of \$6.57 billion for the nine months ended Sept. 30, up 16.8% over the prior-year period. The insurer's net premiums written for the period increased 29% to \$26.05 billion. AIG reported a 92.8% combined ratio for the nine months, down from 94.8% in the comparable period a year ago.

Briefly noted

Mellon Financial Corp. has combined Buck Consultants Inc. and its three other human resources lines of business into one unit that will operate under the name **Mellon Human Resources and Investor Solutions**....The Pension Benefit Guaranty Corp. will soon announce that employers will be allowed to electronically pay their **pension insurance termination premiums**, probably beginning in the first quarter of 2004. The electronic premium filing and payment system will be accessible through the PBGC's Web site, www.pbgc.gov....The **World Insurance Forum** has been rescheduled for June 6-9, 2004, at the Fairmont Southampton Princess in Bermuda. Information on the conference, which was postponed because of damage to the hotel from Hurricane Fabian, is available from the organizers at 441-292-6386 or at by e-mail at worldinsuranceforum@bis.bm

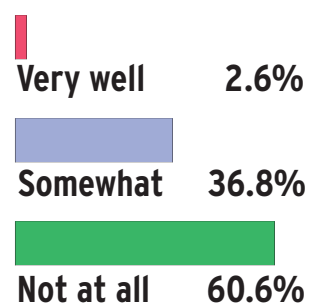
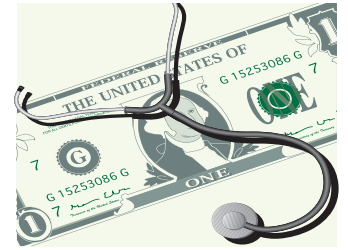
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Online Poll

[10/13-10/24]

How well do employees understand their employers' cost of providing health care benefits?



BI Stock Index

[10/20 - 10/24]

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

Percentage change of BI Stock Index vs. key indicators

BI Stock Index  **-1.34**
2025.41

Dow Jones  **-1.43**
9582.46

S&P 500  **-1.00**
1028.91

Largest gains

Gainsco Inc.	10.00%
SCPIE Holdings Inc.	8.64%
Everest Reinsurance	6.64%
Wellchoice Inc.	6.64%
Meadowbrook Insurance	6.19%

Largest losses

Seibels Bruce Group Inc.	-21.95%
Marsh & McLennan	-7.40%
XL Capital Ltd.	-5.68%
Markel Corp.	-5.41%
Unico American Corp.	-5.17%

Weekly change by market segment

Brokers	-0.82%
Insurers/Reinsurers	-1.22%
Managed Care Organizations	1.91%

Source: CNET Investor (investor.cnet.com)

USF&G: Insurer alleges judge was bribed

Continued from page 3

settlement it thought was unfair.

"They have every right to say, 'Wait, we don't think it's worth \$1.5 million,'" he said of the settlement talks. "The judge can't make them pay any more."

The dispute has its roots in two lawsuits filed against Peoples Bank in the mid-1990s over the bank's practice of "force-placing" property insurance for borrowers who allowed their own insurance to lapse. The bank tendered the first case to USF&G, a St. Paul Cos. Inc. unit that provided the bank's general liability and umbrella coverage.

USF&G concluded that the policies did not cover the claim, though, and refused to defend the case. Peoples Bank then handled both suits itself, settling both for less than \$20,000 and incurring total costs of less than \$500,000, according to the insurer's court filing.

The bank then filed its bad-faith action against USF&G in Chancery Court in Gulfport, where nearly all

cases are tried before judges rather than juries and where Judge Teel ultimately presided over USF&G's \$1.5 million settlement of the case.

At the time the suit was filed, Judge Teel was not yet on the

The judge 'misused his authority as a judge...to extort a substantial settlement from USF&G,' threatening that the insurer had 'a real risk of punitive damages.'

United States Fidelity & Guaranty Co.

bench: He was elected in November 1998 after a runoff campaign for which he borrowed \$24,571 from Peoples Bank. Mr. Minor helped arrange the loan and personally guaranteed repayment, according to USF&G's suit.

In February 2000, Mr. Minor arranged for another lawyer to advance Judge Teel \$27,500 to pay off the loan, the suit alleges. The judge knew he was not expected to repay the advance, though; instead, Mr. Minor repaid the lawyer the following month, according to USF&G. The transactions both concealed Mr. Minor's relationship with the judge and ended the judge's involvement with Peoples Bank, allowing him to take over the bad-faith case—which had been assigned to another judge—without raising conflict of interest issues, USF&G charges.

The judge who initially presided over the Peoples Bank case assigned Judge Teel to hear a preliminary discovery issue in May 2000 and later that year—following a request by Mr. Minor—transferred responsibility for the entire case to Judge Teel, USF&G says.

Judge Teel later ruled in the bank's favor on the issue of USF&G's duty to defend and in-

demnify, and in December 2001 presided over a settlement conference. At the conference, Judge Teel "misused his authority as a judge...to extort a substantial settlement from USF&G," threatening the insurer that "if this case goes to trial, you have a real risk of punitive damages because I am offended by what USF&G did here," the insurer's complaint charges.

Judge Teel said at the conference that "his" settlement figure was \$1.5 million, and the parties agreed to this, though the bank had originally sought \$5 million and USF&G offered to pay the bank's actual damages of \$500,000, according to court filings and a lawyer familiar with the case.

The judge, Mr. Minor and Peoples Bank "fraudulently concealed" their financial dealings, which were meant to influence Judge Teel's actions in the insurance dispute, the USF&G complaint alleges, leveling racketeering, fraud, conspiracy and negligence charges.