California employers lose harassment defense / 3 | *U.K. risk managers list their top worries / 4*

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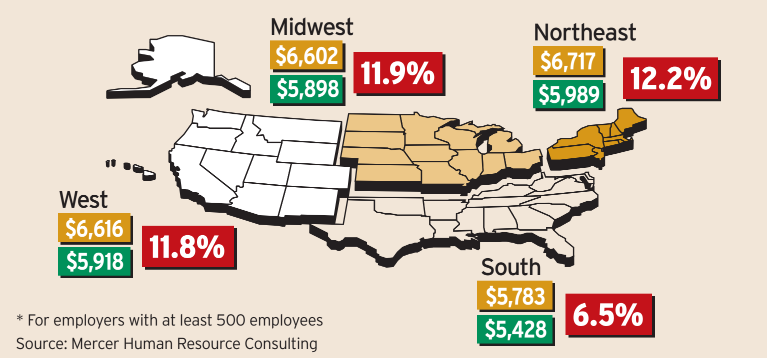
REGIONAL VARIATIONS

Increases in per-employee health care costs by region*



* For employers with at least 500 employees
Source: Mercer Human Resource Consulting

Cost-shifting helping lower health inflation

By JERRY GEISEL

Group health care plan cost increases are starting to ease, as employers, especially smaller firms, aggressively shift more costs to employees.

This year, group health care costs rose by an average of 10.1% to $6,215 per employee, according to a survey of nearly 3,000 employers released today by Mercer Human Resource Consulting in New York.

Total health plan costs for large employers—defined as those with at least 500 employees—climbed 10.2% to $6,348 per employee. Costs for small employers—those with between 10 and 499 employees—rose 9.7% to $6,027 per employee, which is a huge change from 2002, when small employers' health plan costs increased by an average of 18.1%.

While this year's 10.1% overall average increase marks the third consecutive year that costs have jumped by double-digit amounts, it is the first time since 1997 that the cost increase in the current year was lower than the prior year. In 2002, health care plan costs jumped an average of 14.7%, which was the biggest one-year increase since 1990.

In the Mercer survey, total health plan costs include employer and employee premium contributions for medical, dental, prescription drug, mental health and vision care.

While the slowing of health plan cost increases clearly is good news for employers, "it is much too soon to declare victory," said Blaine Bos, a Mercer consultant in Minneapolis, who is one of the authors of the survey.

"A 10% increase is not a number that is going to make many chief financial officers very happy," Mr. Bos added.

Indeed, while plan cost increases may be cooling, that largely was the result of employers shifting costs to employees—through higher deductibles and copayments—rather than any significant letup in the forces,

See HEALTH CARE/page 23

Legislation awaited

Class action reform compromise reached

By MARK A. HOFMANN

WASHINGTON—Although details of the proposal are scant, a class action reform compromise reached on the eve of the Senate's Thanksgiving recess appears to be no turkey, say reform proponents.

In fact, the compromise, which has not been put into legislative language, could be the breakthrough that advocates of class action reform have been seeking since the Class Action Fairness Act came up before the Senate in late October. That measure—a version of which was passed by the House earlier this year—would, among other changes, permit the removal of certain interstate class actions to federal court from state court. Reform proponents say that change is necessary to prevent so-called "forum-shopping," in which trial attorneys seek out the most plaintiff-friendly venues in which to bring class actions.

During the Senate's deliberations, supporters of the bill fell one vote short of the 60 needed to halt debate on the measure and bring it to a vote. During the next few weeks, supporters of the bill, including

See COMPROMISE/page 27

Hartford to buy CNA group benefits book

By SALLY ROBERTS

CHICAGO—As part of its plan to shore up its capital, CNA Financial Corp. will sell its group benefits business—CNA Group Life Assurance Co.—to The Hartford Financial Services Group Inc. for about $500 million in cash.

The deal includes GLA's group life and accident business, short-term and long-term disability and certain other products, which generated $987 million in revenues for the first nine months of 2003. Group long-term care business is excluded from the sale.

Upon completion of the deal, which is expected to close on or before the end of the year, about 1,200 CNA employees will transfer to The Hartford. Of the 29 CNA group life and disability offices, 28 are in locations with a Hartford Life office, a Hartford Life spokeswoman said. A 10% cut in workforce is expected, she said.

Richard Mucci, senior vp and director of Hartford Life & Accident Insurance Co.'s group benefits operations, has been tapped to lead the combined operations.

"The sale of group benefits enables us to sharpen our operational focus and move forward on our recently announced capital plan," said Stephen W. Lilenthal, chairman and chief executive officer of CNA, in a statement.

In 2002, property/casualty business accounted for $9.98 billion, or about 73%, of CNA's $13.69 billion in direct premiums written. By comparison, P/C business accounted for $8.11 billion, or about 79%, of The Hartford's 2002 total premiums earned.

As part of the Chicago-based insurer's plan to strengthen its capital base, it said it would sell some assets and parent Loews Corp. would provide up to $1.4 billion in capital support.

See CNA/page 6

Late News

OneBeacon buying Atlantic Mutual books

OneBeacon Insurance Co. has agreed to buy Atlantic Mutual Insurance Co. subsidiary Atlantic Specialty Insurance Co. and the renewal rights to Atlantic Mutual's commercial insurance business. Terms of the deal were not disclosed. Gross written premiums for New York-based Atlantic Mutual's commercial lines business amount to around $450 million. OneBeacon is a Boston-based subsidiary of Bermuda-based White Mountains Insurance Group Ltd.

AIG's Kanak named co-COO

Donald P. Kanak, president and chief executive officer of AIG in Japan and Korea, has been elected vice chairman and co-chief operating officer of parent American International Group Inc. Mr. Kanak succeeds Edmund S.W. Tse, senior vice chairman and head of AIG's worldwide life insurance operations, who had been named co-chief operating officer along with Martin J. Sullivan, former executive vp for foreign general insurance, in 2002. Mr. Tse will now concentrate on AIG's life insurance growth opportunities in Asia and around the world, the company said.

Mr. Kanak

Higher copays lead some to stop medication

Many employees stop taking maintenance medication when their employers switch to a three-tiered prescription drug plan that charges significantly more for brand-name drugs, a study has

See LATE NEWS/page 27

NEWSPAPER

Spotlight

EMPLOYEE BENEFITS COMMUNICATION AWARDS

Begins on page 10

RANKING OF THE LARGEST BENEFITS COMMUNICATION SYSTEMS

Ranking on page 16

California ruling erodes harassment suit defense

By ROBERTO CENICEROS

SAN FRANCISCO—A California Supreme Court ruling eliminates a defense California employers have sought to use against sexual harassment liability and will put their anti-harassment policies and procedures under a legal microscope at trial, attorneys predict.

However, the ruling may reduce in some cases the amount of damages employers must pay to sexual harassment claimants.

In its ruling in *State Department of Health Services vs. The Superior Court of Sacramento County*, the court provided a limited defense against harassment-related damages, finding that employers may not be liable for damages that occur while employees delay reporting harassing conduct.

But the unanimous decision also preserves plaintiffs' ability to hold employers strictly liable for "hostile environment sexual harassment by a supervisor," regardless of when the conduct is reported, court records indicate. That aspect of the Nov. 24 ruling is of particular concern to employers, as they say it departs from two U.S. Supreme Court decisions that employers often apply in state and federal courts to defend themselves against harassment suits.

In *Burlington Industries Inc. vs. Ellerth* and *Faragher vs. City of Boca Raton*, the U.S. Supreme Court allowed employers to establish a defense against liability in harassment claims (*BI*, June 28, 1999). Under those decisions, employers can avoid liability in federal court by proving that they exercised care to prevent harassment and promptly addressed any harassment. In addition, employers must establish that a plaintiff failed to take advantage of preventative measures and corrective opportunities.

In contrast, the California Supreme Court's recent decision makes it harder for employers to defend themselves against liability, explained Greg J. Richardson, an associate for Heller Ehrman White & McAuliffe in San Francisco. The law firm filed an amicus brief on behalf of The California Bankers Assn. and the California Law Council, which represents large corporations in employment-related litigation.

The ruling weakens employers' defense, as outlined in the U.S. Supreme Court rulings, by saying that employees need not avail themselves of preventative measures and corrective opportunities if they have a legitimate reason for not doing so, such as embarrassment or fear of reprisal, Mr. Richardson explained.

In the decision, California Supreme Court Justice Joyce L. Kennard stressed a number of reasons why California law does not expect that "employees victimized by a supervisor's sexual harassment must

See **CALIFORNIA**/page 25

But pricing momentum may slow in 2004

Most insurers see big profits

By JUDY GREENWALD

Most of the major U.S. property/casualty insurers reported gains in nine-month profits from disciplined underwriting and another year of double-digit rate hikes, though observers expect the increases to moderate next year.

In addition, nagging questions about reserve adequacy continue to haunt the industry, and reserve boosts hit the nine-month earnings of some insurers this year.

The 14 insurers that reported net income in *Business Insurance*'s survey posted a 6.7% increase, to $8.97 billion, for the first nine months of 2003. But net income rose 47.2% when the results of two of the insurers that reported major reserve charges this year are excluded: CNA reported a $1.61 billion nine-month loss as a result of more than $2 billion in reserve strengthening and other charges in the third quarter. And Hartford Financial Services Group Inc.'s $545 million loss reflects a first-quarter pretax charge of $3.91 billion for asbestos reserves.

Other nine-month results from the *BI* survey of 15 major property/casualty insurers include:

- All 15 insurers reported an aggregate weighted combined ratio of 100.8%, compared with 102.4% for the year-earlier period.
- Net premiums written increased 13.6% to $89.35 billion.
- Policyholder surplus for the 14 insurers that reported this data increased 15.8% to $55.39 billion.

Property/Casualty Insurers
Nine-Month RESULTS

Not included in the latest survey are results for Royal & SunAlliance USA. RSA is selling the renewal rights to a large part of its U.S. commercial insurance business to a unit of Hartford, Conn.-based Travelers Property Casualty Corp. (*BI*, Sept. 8).

"It was a strong quarter for the industry," said John Ward, chairman of the Cincinnati-based Ward Group. Market discipline and improved pricing and underwriting "seemed to outweigh the unfavor-

See **RESULTS**/page 26

PHOTO: AP/WIDE WORLD

Host Marriott Corp.'s hotel at the World Trade Center complex was destroyed in the Sept. 11, 2001, terrorist attack.

Marriott settles claim for 9/11 property loss

BETHESDA, Md.—Host Marriott Corp. has agreed to a $370 million settlement of property damage and business interruption claims stemming from the Sept. 11, 2001, destruction of its World Trade Center hotel and damage to its nearby New York Marriott Financial Center hotel.

The settlement will produce a one-time gain of $210 million in Marriott's 2003 financial results, consisting of $55 million for the World Trade Center hotel property and $155 million for projected post-2003 business interruption losses, the company announced. Marriott will separately report as income an additional $17 million covering 2003 business interruption losses.

The World Trade Center hotel was destroyed in the terrorist attack on the adjoining Twin Towers, while the Financial Center hotel was damaged but underwent repairs and reopened in January 2002.

Bethesda-based Marriott, which had been negotiating the Sept. 11 claims with its property insurer for months, had already received $35 million in business interruption payments for the two hotels by the end of 2002, according to its annual report filed with the Securities and Exchange Commission.

Marriott also collected $6 million in insurance proceeds to repair damage to the Financial Center hotel, the company reported.

Marriott wrote off the $129 million net book value of the World Trade Center hotel in the fourth quarter of 2001.

The company did not identify the property insurer involved in the settlement.

Marriott meanwhile announced that, as part of the settlement, it has terminated its ground lease on the World Trade Center hotel site with the Port Authority of New York and New Jersey, ending the hotel company's obligation to rebuild at the site.

—*By Douglas McLeod*

Inside Business Insurance

New York seeks to limit liability for ferry crash

New York City is seeking to limit its liability for the fatal crash of a Staten Island ferry to the $14.4 million value of the ferry's hull. **Page 4**

Asbestos reform battle to continue in Congress

The battle isn't over for asbestos litigation reform in Congress, legislative experts say. **Page 4**

North Pole Inc. sees its fortunes turn south

Like other businesses, one venerable manufacturing/delivery company has had a tough year, Editor Paul Winston writes. **Page 6**

Class-action compromise could bring happy ending

Despite sketchy details, a reform proposal looks promising, one of this week's editorials says. **Page 8**

U.K. tour operator faces distress claims over crash

Vacationers can claim psychological damages against a tour company without proving airline negligence in a crash landing, a judge says. **Page 21**

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New Opinion Poll for readers: Do you think class-action reform legislation will be passed in the next congressional session?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Increased hurricane activity cycle may last decades

By DAVE LENCKUS

Hurricane forecasters at Colorado State University predict that the increased Atlantic basin hurricane activity since 1995 will continue not only next year but also probably for the next two decades.

In a report issued Friday, the renowned team of storm researchers at CSU in Fort Collins, Colo., estimates that the probability that a major Atlantic hurricane will make landfall on U.S. shores next year is about 30% higher than the average.

The researchers estimate that in 2004 seven Atlantic hurricanes will develop, compared with an annual average of 5.9 hurricanes. The researchers predict there will be three intense hurricanes rated as Category 3 storms or greater, compared with 2.3 intense hurricanes on average; six intense hurricane days, compared with an average of five days; and 30 hurricane days, compared with an average of 24.5.

In their study, Professor William

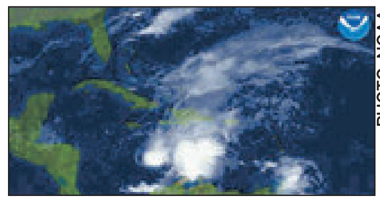

PHOTO: NOAA

M. Gray and Research Associate Philip J. Klotzbach developed probabilities that a Category 3 or stronger hurricane would make landfall on several coastal areas, and all of their estimates exceeded averages for the past century. For the entire U.S. coastline, the researchers estimated a 68% likelihood, compared with an average of 52% for the past century.

Beyond 2004, a shift in the Atlantic Ocean's thermohaline circulation—which measures differences in sea water densities controlled by temperature and salinity—suggest that a period of at least a couple decades of increased hurricane activity commenced in 1995, the study's authors said. This period followed 25 years of "diminished activity," they said. Historical and geographical evidence suggests that a pattern of 25- to 50-year periods of high and low hurricane activity has existed for thousands of years, they said.

Meanwhile, a seasonally late tropical storm, Odette, was headed toward the Dominican Republic or Haiti Friday with winds clocked at more than 63 mph.

The full study is available online at http://tropical.atmos.colostate.edu/Forecasts/2003/dec2003/.

PHOTO: KRT

The Oct. 15 crash of the M/V Andrew J. Barberi ferry at a Staten Island pier killed 10 and injured dozens more.

New York seeks to limit liability for ferry crash

NEW YORK—New York City is seeking to limit its liability for the fatal October crash of a Staten Island ferry to the $14.4 million value of the ferry's hull.

The city, which owns and operates the ferry service, filed suit Monday in U.S. District Court in New York's Brooklyn borough, seeking a ruling that it is not liable for the 10 deaths and dozens of injuries that resulted from the crash. Alternatively, the city argues that its liability should be limited under a federal law, the 1851 Limitation of Liability Act, to the value of the 310-foot ferry's hull.

The city is self-insured for any losses arising from the accident.

The ferry, the M/V Andrew J. Barberi, crashed into a pier in St. George, Staten Island, on Oct. 15 after a midafternoon crossing from lower Manhattan. The vessel's captain, Michael J. Gansas, refused to speak to federal investigators after the crash and was fired by the city. Assistant Captain Richard J. Smith, who is believed to have piloted the ferry and who attempted suicide after the crash, was recently questioned by investigators following his release from a hospital. The cause of the accident has not been determined.

To date, the city has been named in two lawsuits and notified of 81 claims seeking total damages of $2.15 billion, according to its court filing.

Under federal law, however, damages for the deaths and injuries should be limited to $14.4 million because the city did not have "privity or knowledge" of the circumstances leading to the wreck, the city's filing argues.

At the same time, the city will "make every effort to fairly and expeditiously resolve" death and injury claims out of court, according to a statement released by the New York City corporation counsel and city comptroller.

Plaintiffs' lawyers, meanwhile, will argue that the limitation should not apply because managers of the ferry operation knew that crews were not following proper procedures, said Anthony Bisignano, a partner with Bosco, Bisignano & Mascolo in Staten Island, who is representing several crash victims.

While Mr. Bisignano expressed disappointment with the city's action, a maritime lawyer not involved in the case noted that the liability limitation is normally invoked after marine disasters.

"There's nothing unusual about it at all. It would have been very surprising if the city had not done so," said John D. Kimball, a partner with Healy & Baillie in New York.

—By Douglas McLeod

Business interruption tops list in 2003

U.K. executives rank key risks

By SARAH VEYSEY

Business interruption and the failure to adapt to change are the biggest risks for businesses in the United Kingdom, according to a survey of risk managers and company executives.

For its eighth "Biennial Risk Management and Risk Financing Survey," London-based Aon Ltd., a division of Chicago-based Aon Corp., canvassed the opinions of 90 risk managers, insurance managers and finance directors at U.K. companies.

Business interruption was ranked the third biggest risk in 2001 and was ranked the top exposure in 1999, according to Aon.

Deborah Durkin, managing director of client service at Aon and one of the authors of the report, said that the continued presence of business interruption in risk managers' ranking reflected a recognition that it is not just an event but the ongoing effects of the event—and how those are managed—that are of utmost concern for companies.

The other exposures making up the top 10 were:

- Employee accidents.
- Employee recruitment and retention.
- Loss of reputation, which was ranked No. 1 in the 2001 survey.
- Failure of a key strategic alliance. This year marks the first time that exposure was among the top 10.
- Professional indemnity.
- General liability.
- Product liability and tampering risks.
- Physical damage.
- Political risk.

Employee accidents and employee recruitment/retention were the risks that have risen most quickly up the list of risk managers' concerns over the past two years, said Ms. Durkin. In 2001, employee ac-

See SURVEY/page 22

15th Annual Executive Conference

Insurance executives skeptical of chances for asbestos reform

By JOANNE WOJCIK

NEW YORK—The battle isn't over for asbestos litigation reform despite the failure of the recent proposal in the last session of Congress, legislative experts say.

Asbestos has become the most pervasive issue facing not only the insurance industry in particular, but the economy in general, according to Makan Delrahim, former chief counsel and staff director of the U.S. Senate Judiciary Committee in Washington.

With more than 600,000 claims against 400 companies or more, "it's truly become a public policy issue," he said during a panel discussion held at the 15th Annual Executive Conference for the Property/Casualty Industry, held last month in New York.

Because of its urgency, "asbestos reform is the next litigation reform legislation likely to pass," said Mr. Delrahim, adding that he hasn't seen such momentum since financial reporting reforms were passed following the collapse of Enron Corp. and WorldCom Inc.

"I've been impressed by the amount of talent and effort that's gone into this," said Jeffrey B. Kindler, senior vp and general counsel at Pfizer Inc., who has been working on asbestos litigation reform. "It's been an intense effort since late January."

After hammering out a solution that was acceptable to all of the parties involved, "we are pretty much down to money," he said, adding that he thinks legislation could pass early in the next session of Congress.

Senate Majority Leader Bill Frist, R-Tenn., called asbestos litigation reform a priority and said he would commence action on the Fairness in Asbestos Injury Resolution Act, S. 1125, by March 2004.

But insurance industry leaders weren't as optimistic, especially after hearing American International Group Inc. Chairman and Chief Executive Officer Maurice R. Greenberg lambaste the latest proposal as "ill-conceived" and "designed to fail."

In fact, in an informal survey taken during the conference, only 8% of industry executives attending the conference were confident asbestos litigation reform was likely.

Also in the survey, 92% said that asbestos claims continue to mount and that allocation is a huge problem.

Besides having an extraordinarily long tail, asbestos liabilities are now growing tendrils as the first tier of defendants goes bankrupt, forcing plaintiffs to look elsewhere for compensation.

This is putting more and more insurers on guard, insurers that before now didn't think they had any as-

See ASBESTOS/page 24

More coverage of the Executive Conference appears on page 24

Errors & Omissions

- A Dec. 1 story on risk management information systems incorrectly referred to catastrophe modeling company AIR Worldwide Corp. by its former name. Boston-based Applied Insurance Research changed its name to AIR Worldwide in May 2002.

CNA: Benefits sold

Continued from page 1

The news of the capital plan came as CNA reported a $1.61 billion net loss for the first nine months of 2003. The loss includes more than $2.0 billion in reserve strengthening and other charges.

In accordance with the plan, Loews late last month purchased $750 million of CNA's new series nonvoting convertible preferred stock.

That sale and the sale of its group benefits operation is expected to provide additional capital and surplus to Continental Casualty Co., CNA's principal insurance subsidiary.

CNA said the sale of its group benefits operation will result in about a $200 million loss in the fourth quarter of 2003; on a statutory accounting basis, though, the sale will generate an aftertax gain of about $100 million.

For Hartford, the deal allows it to expand its group benefits business.

"This will enable Hartford Life to increase the scale of its group life and disability operations and expand its distribution capability," Ramani Ayer, Hartford chairman and CEO, said in a statement. "With expected 2004 earned premiums of approximately $1 billion coming from this transaction, we will create value through improved expense leverage and improved earnings as the businesses are combined with our existing operations," he said.

Observers say the deal is a good fit for both companies.

"The transaction makes sense to us for both sides," said John Iten, an insurance company ratings analyst with Standard & Poor's Corp. in New York. "Group benefits business is an area Hartford is already strong in, so it's an opportunity to leverage and achieve more economies of scale by buying this book," he said. For CNA, "this was expected and in line with what we understand of their capital plan," Mr. Iten said.

Observers note the deal is part of an industry movement to shed noncore assets.

"I think we're going to see more of these as more and more companies are under reserve pressure and also are starting to focus on profitable business lines as opposed to just pulling in premium," said Matthew Josefowicz, manager of Celent Communications L.L.C.'s insurance group in New York. At the same time "you're going to see more of these kinds of realignments and shedding of noncore assets…on the other side of that will be opportunity buying," he said.

Paul Winston

Santa may not be coming to town

It's been a rough year for North Pole Inc.

Like many other multinationals, this year it has had to contend with rising liabilities, expensive or scarce insurance, restrictive government regulations, health care inflation and labor squabbles. As a consequence, it faces challenges that may interfere with its seasonal performance goals and its unique just-in-time delivery process, causing widespread dissatisfaction among customers and attracting the attention of trial lawyers.

A review of the many challenges the company faced this year will explain its precarious position.

First, there was the walkout over cost-shifting efforts. After years of double-digit increases in health care costs, North Pole on Jan. 1 sought to shift some of its soaring expenses. Health care inflation for the company is compounded because of limited competition among area providers, due to the geographic isolation of its main manufacturing and distribution plant.

Paul Winston

Yet, efforts to force its elfin workforce to share some of the burden through the introduction of copayments and limited premium contributions were met with stubborn resistance. In fact, the labor union staged a walkout. Because its production facilities are ergonomically customized for its height-challenged workforce, bringing in scab labor was out of the question. North Pole was forced to back off its demands.

One cost-cutting step it adopted was to purchase lower-priced prescription drugs for its employees through Canadian pharmacies, though drug makers have threatened to stop supplying pharmacies that ship to North Pole.

During the summer, North Pole was affected by the power outages that also struck North America. Despite having daylight for nearly 24 hours at this time of year, it was forced to halt production until power was restored, causing a significant backlog on Hokey Pokey Elmo dolls.

North Pole this year also incurred sizable costs in revamping and upgrading its information security procedures to comply with new privacy regulations. The company was required to demonstrate that its personalized customer information is safe from hackers and direct-mail companies. However, the company successfully avoided anti-spam regulations that would have required it to change its practice of annually delivering its goods until it receives an explicit opt-out request from customers.

Meanwhile, some state attorneys general and securities lawyers have challenged North Pole's governance structure, claiming that its board is composed entirely of insiders and that there is no clear-cut succession plan for the chairman and CEO, Mr. Claus. That fight is ongoing, though Mr. Claus shows no sign of capitulating any time soon and naming a successor.

Like other businesses, North Pole continues to cope with soaring property/casualty insurance premiums. On the property front, things are easing somewhat, owing to the recent investment in upgrading its unique facilities to meet highly protected risk status. But on the casualty front, the company continues to pay exorbitant prices for product liability, workers comp, employment practices liability and general liability coverage. This situation has been exacerbated by the recent withdrawal from the Arctic market of several insurers and consolidation among remaining players.

North Pole, as a consequence, is considering the formation of a captive insurer, but it as yet has been unable to decide whether to locate this facility in Bermuda, the Caymans or Hawaii.

Especially troublesome for North Pole was the aviation insurance market, as underwriters balked at what they regard as a dangerous concentration of risk. This is due partly to the fact that North Pole relies on a single aircraft to deliver its goods, which is powered by mystical beasts of burden. Underwriters also insisted on reindeer bite liability exclusions in North Pole's policy. Given war and terrorism concerns in the world, and resulting airspace restrictions over a good portion of North Pole Inc.'s delivery route, underwriters also threatened to withdraw coverage for aviation war risks.

In all, it has been a trying time for the management of North Pole Inc. Efforts to ameliorate the situation by appealing for a more agreeable business environment have largely fallen on deaf ears. As a result, Mr. Claus is checking his customer lists twice, and expects to make a new determination of who is naughty and who is nice.

For those companies dealing with North Pole that do not wish to find a lump of coal in their stockings this year, time is running out to get on Mr. Claus' good side.

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Editorial

Move class action reform into light

SOMETIMES, YOU HAVE to beware the light at the end of the tunnel—it might be the light of an oncoming freight train.

With that admonition in mind, we certainly hope that a sketchy compromise on class action reform is the real thing, truly light at the end of the tunnel. While we can't endorse a proposal that has yet to make it into legislative language, we do think the basic components of the bipartisan agreement announced late last month hold the promise of legislation that reform advocates can and will support.

The price for winning over three Democratic senators who voted to block consideration of a previous version of the bill back in October looks pretty reasonable in its current form. While we're still troubled by the idea that certain members of a class should receive greater compensation than others simply by virtue of having initiated the action, we can live with that kind of change if it opens the way for passage of a broader class-action reform bill.

And that's certainly a goal worth pursuing. One of the biggest problems of the current class action system is the ability of plaintiffs attorneys to "forum shop" to find the most plaintiff-friendly state court in which to file what are essentially national class actions. This practice has led the American Tort Reform Assn. to label a handful of particularly notorious jurisdictions "judicial hellholes" in which corporate defendants rarely if ever get a fair shake.

The Class Action Fairness Act in both its House and Senate incarnations addresses this flaw by permitting the removal of interstate class actions to federal from state court under certain circumstances. That's a modest, common-sense reform.

The proposal has drawn support from both sides of the aisle in both houses, so much so that the House passed its version of class-action reform months ago.

Unfortunately, in the Senate, support fell one vote shy of cutting off any potential filibuster. Four Democratic senators began negotiating with reform supporters, and in the end, three of the four announced that they'd reached agreement on a measure that they could support.

The challenge now is to keep all of the pro-reform votes firmly in line before the measure comes up for consideration. A vote is unlikely until early next year, possibly as late as March. With elections getting closer every day, and pressure from special interest groups—including the trial bar—increasing accordingly, that could be a pretty big challenge, too.

But it's an obstacle that can be overcome.

Congress is now closer to enacting meaningful class action reform than it has been in memory. There is light there, and there's no reason not to make the final push to reach it.

California ruling a setback

EMPLOYERS AND the courts have made substantial progress over the past several years in curbing sexual harassment in the workplace.

Unfortunately for employers in California, though, the high court in that state has decided to ignore the efforts of employers in a decision that could discourage employers from taking a proactive approach to preventing the problem.

After years of taking a laissez-faire attitude toward the issue, many employers now have firm policies in place to deter sexual harassment and quickly halt it when it occurs. Some have reached this point voluntarily, others have been coaxed there by peers and employees, and others have gotten there only due to the threat or the result of legal action.

In several cases, the legal action has not only punished and halted sexual harassment at specific employers but also set out clear guidelines for other employers to follow regarding how to deal with sexual harassment and avoid or limit liability.

But, as we report on page 3, last week the California Supreme Court decided that no matter what policy an employer has in place, or how effectively it puts that policy into practice, the employer can still be held liable in a case where an employee fails to report an incidence of harassment for nearly two years.

For laws protecting workers rights to have the greatest effect, they should provide both a threat of punishment and a clear inducement for employers to implement policies to establish and uphold those rights.

By effectively giving the plaintiffs bar in California a hazily defined option to circumvent well-planned and effectively implemented anti-harassment procedures, the justices in California have rolled back some of the long-overdue progress that employers in the state have already made.

Schillerstrom

Letters to the Editor

FDA must take greater regulatory role

To the editor: After 50 years of looking the other way and having no safety or quality issues, the Food and Drug Administration has recently taken heroic efforts to stop the flood of lower-cost medications coming from Canada. Citing unsubstantiated safety concerns, the FDA successfully closed RX Depot, a national chain of walk-in centers that assist consumers in getting lower-cost Canadian medications.

Yet, how can Americans trust the FDA? Since 1992, the FDA has taken hundreds of millions of dollars from drug companies. In the last 11 years, the FDA has become a well-paid drug industry puppet and a bureaucratic prostitute with a proven track record and willingness to trade large sums of money for its integrity. The FDA has partnered with the drug companies to ensure their high prices and profits.

The FDA's loss of a moral compass has become so skewed that the agency is willing to kill, lie, cheat, mislead and steal from America's poorest, elderly and most vulnerable population. The FDA is stealing from the poor and giving to the rich, and the uncensored national media coverage has become an unwitting accomplice to this crime against humanity. America's seniors deserve better.

Gary W. Lawson
Diamond Bar, Calif.

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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Benefits Communication & EBC Awards

Spotlight Editor: Regis Coccia

Kraft booklet strives for year-round relevance

User guide shows how to get maximum benefits

By JUDY GREENWALD

Kraft Foods Inc. did not want its 2003 benefits booklet to be shoved into a drawer by employees and quickly forgotten.

So the company designed its booklet with a variety of features that make it useful all year long, said Joanne Armenio, benefits director for the Northfield, Ill.-based company.

These include record-keeping forms for medical tests and children's immunizations, claims-tracking worksheets and a list of suggested questions to take to a doctor, among other features.

The booklet was published in conjunction with a new consumer-directed health plan introduced by Kraft in January, "and one of the things we were really trying to accomplish with this project was to have a piece that people could use throughout the course of the year, to have a user guide," said Ms. Armenio.

It is not uncommon for people to go through their annual enrollment plan materials and feel left at a loss as to how to use their plan, she noted.

"We felt this user guide was a bit friendlier and generally tried to get at the key things that people need to remember as they use the program," she said.

The booklet tells Kraft Foods' 35,000 employees how to follow its rules to receive maximum benefits while communicating their right to question their physicians.

"We wanted them to be even better health care consumers, and they

See KRAFT/page 12

Business Insurance

EBC 31st Annual Awards

2003 Employee Benefits Communication Awards

Print:
Best of Show - Kraft Foods Inc.
Award of Excellence - E.I. DuPont de Nemours & Co.

Personalized correspondence:
Best of Show - Continental Tire North America
Award of Excellence - INTEGRIS Health

Special project:
Best of Show - ChevronTexaco Corp.

Multimedia:
Best of Show - Spherion Corp.

Enrollment/re-enrollment:
Best of Show - Johnson & Johnson
Award of Excellence - IBM Corp.

Self-service, consumerism stressed in benefits info

By AMANDA L. MILLIGAN

The message is clear—employers expect their employees to take a greater interest in their benefits than ever before.

To accomplish that goal, benefit communication campaigns are pushing employees toward self-service tools and empowering them to think of benefits as another consumer decision.

Although many employers absorbed rising health care costs for several years, more and more employers today are asking employees to consider the impact of health care choices. Now, benefit consultants say, consumerist messages are popping up in employee communications.

"A year ago, we didn't see much of this at all," said Amy Heiserman, principal at Mercer Human Resource Consulting in Denver. But now, nearly every large employer that Mercer is working with "is starting consumerism campaigns along with their open enrollment."

After spending years making its employees aware of health care cost increases, Southwest Airlines plans to begin educating employees in 2004 about how to be better health care consumers, said Ralph Kimmich, director of compensation and strategic initiatives for the Dallas-based company. "This year, we came to a point where we really have to do this," he said.

In the early 1990s, Mr. Kimmich said, the airline launched an informational campaign in which comparisons were made between the amount the company would spend daily or annually on health care and, for example, how many airplanes could be bought with that sum. Soon, a campaign with the same types of comparisons will be launched, but employees will also be hearing about how the airline self-insures its five health plans and how costs directly affect the bottom line.

"Employers are realizing that they can harness benefits communication to get behavioral changes from their employees," said Wendy Rhodes, human resource outsourcing communications leader for Hewitt Associates Inc. in Lincolnshire, Ill. "It's the same message that employees need to take benefits seriously and to be prepared to take action."

The call to consumerism comes at a time when an employee's attention is sought by more than just his or her benefit manager. Because attention spans are short, benefit managers must balance brevity with clarity to achieve a winning response from their communications campaigns.

"In this MTV world, you won't get people's attention for a long time, so you better make the most of it," said Ms. Rhodes.

This is especially true online, where people are more likely to skim, rather than read in detail, said John Finney, senior communication consultant at Watson Wyatt Worldwide in Southfield, Mich. To be effective, communications must be focused, he said. Repeating and reinforcing key messages is critical.

Gary Nesbit, senior director of risk management and benefits at

See CAMPAIGNS/page 20

Largest employee benefits communication systems / page 16

Spherion's Web-based SPD proves engaging

By SALLY ROBERTS

When Spherion Corp. decided to update its summary plan descriptions, it wanted to provide employees easier access to the information and give them more than just benefits legalese.

The Internet provided the perfect medium for the Fort Lauderdale, Fla.-based staffing and recruiting firm, whose 12,500 employees are scattered among 800 different locations.

"We wanted to use this for more than just a legal requirement; we re-

ally wanted to provide information employees could use" when making benefits decisions, said Jill Goldstein, vp-human resource support, referring to Spherion's Web-based SPD. "So what we did was we sat the benefit Web site on top of our (existing Web-based) benefit enrollment system, so access to the SPD was filtered based on employee eligibility," she said. When employees access the SPD link on the site, "they only see the benefits that they are eligible for, and they can access that (at any time) from home or from work," she said.

This is particularly useful, Ms. Goldstein said, because of Spherion's business. The staffing company offers several benefit packages, and eligibility is based on employee classification, the contract and whether the employee is a full- or part-time worker.

Using the Web also allowed Spherion to expand the content it provides, adding such information as links to insurer Web sites and answers to "how to" queries, noted Chuck Sarkisian, the Tampa, Fla.-based Towers Perrin managing principal who worked on the project.

Spherion's Web-based SPD,

See SPHERION/page 20

DuPont booklet strikes balance of detail, readability

By JUDY GREENWALD

A fine balancing act was needed to develop a booklet describing preventive health benefits available to employees of Wilmington, Del.-based E.I. DuPont de Nemours & Co.

"It took thought, and it took a lot of judicious editing," said Tom Hauser, Norwalk, Conn.-based communications consultant for Hewitt Associates Inc., who worked on the project. The booklet had to have an appropriate level of detail, yet if it had been much more comprehensive, "I think it would have overwhelmed people," Mr. Hauser said.

Award of Excellence

The booklet, "Your First Step to Good Health, Preventive Health Benefits," is the Award of Excellence winner in the print category in the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

Mr. Hauser said that DuPont embarked on the project after an analysis revealed that its preventive benefits were being underutilized, "which means there were lots of health issues that could have been caught that weren't being caught (or) that could have been caught at an earlier stage."

The 15-page booklet tells employees in its introduction that DuPont provides a wide range of covered services at little or no cost to the employee. "All that's left is for you to take advantage of the opportunity," it says in boldface.

Inside, the booklet has sections on preventive examinations, tests and immunizations, and on infant and child care. For each test or exam listed, there are categories labeled "what is it," "how often," "what to expect" and "consider this."

For example, for the blood glucose test, which is used for the early detection of diabetes or low blood sugar, under the heading of "consider this," the booklet informs employees that about 5 million of the estimated 16 million Americans with diabetes do not know they have the disease.

Other pages in the booklet list frequently asked questions and answers as well as available resources.

A pocket in the back holds a family record keeper that lists each preventive health benefit, what it does and how often the test, exam or immunization should be carried out, along with space to fill in the date it was completed.

Employees can take this to their doctors and say, "Here's a precise summary of all the preventive care that DuPont covers for me and the guidelines. What is recommended?" said Mr. Hauser.

Kraft: Year-round relevance key

Continued from page 10

had to be involved in the process," said Ms. Armenio.

The result is a booklet that was named Best of Show in the print category in the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

The 60-page booklet, "Living Well Through Elements, Your 2003 Benefits Handbook," includes sections on Kraft's health care program, financial planning, optional protection programs and resources, including relevant telephone numbers and Web sites. The 7.5-by-10 inch booklet is tabulated for easy maneuverability.

It is also packed with other tools, including benefits identification cards and I.D. card holders that list tips on how to make the best use of the benefit plan.

The materials also include a letter to be sent to employees' physicians that explains Kraft's plan changes and some of its key features. Stickers that remind physicians about correct billing procedures, which are intended to be attached to patients' medical records, are included as well.

Ms. Armenio said careful consideration went into every aspect of the brightly colored booklet, which was prepared with the help of the Chicago-based ROC Group.

The booklet's size, for instance, was "really critical," said Ms. Armenio. Kraft did not want a letter-sized product with a lot of pages, which can be intimidating and hard for employees to store, she explained.

The company also decided to spiral bind rather than saddle stitch the booklet.

"We wanted something that people could open up, lay flat and maybe write their notes on," said Ms. Armenio.

Continental Tire site makes it personal

By ROSEANNE WHITE GEISEL

When Continental Tire North America wanted to drive home the value of its benefits plans, the company knew that the rubber would meet the road if employees' personalized information were accessible online.

The Charlotte, N.C.-based manufacturer had given its employees a printed annual total compensation statement for two years before rolling out the online version. Shayne Ingersoll, supervisor-benefit plans, said that in addition to providing more timely and accessible information, going online enabled the company to reach employees' families as well.

The company chose *www.my-conti.com* as the Web site address.

"We definitely wanted the Continental name in there somewhere, but we wanted it to be personal," Ms. Ingersoll said. "This is a place for them to go to get information that is important to them and specific to them."

The Web site has two major sections: an overview of the individual's compensation and benefits, listing the cost to the employee and the company; and "benefits in depth," which includes details about the individual's coverage, among other information and resources. Prior to logging out, employees can complete a survey about their reaction to the Web site.

Continental Tire was awarded Best of Show in the personalized correspondence category in the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

Among the highlights is a colorful pie chart under the headline "The Big Picture," showing how the company's compensation and benefits dollars are spent. "It helps to engender appreciation," said Lindsay Wyatt, a communications consultant with Mellon's Human Resources & Investor Solutions in Atlanta.

Under the benefits in-depth section, the employee will find a grid containing a square for each health care and savings plan offered. The employee can click on the individual squares to get detailed information.

The retirement income calculator has earned the most kudos from employees, Ms. Ingersoll said. This feature guides employees through the process of making the assumptions on which a projected retirement income can be calculated.

With all of this personal information on the Web, "security was a major concern," Ms. Ingersoll said. Mellon's security arm, LiveWire Media, handled those concerns. Among the security features are high-level encryption; prohibited use of the back button; identity validation at log-on; and a three-strikes-and-you're-out password system, which means that if the password is input incorrectly three times, it no longer will work, even if those three strikes occur at different sessions.

The survey responses indicate great satisfaction with the site. As of Jan. 27, 2003, 351 employees had responded to the survey, with 96.6% saying they found the site valuable, and 70.4% saying they learned something new about their compensation and benefits.

INTEGRIS highlights total rewards

By ROSEANNE WHITE GEISEL

INTEGRIS Health's need to recruit and retain high-quality nurses and other employees in a competitive market prompted the company to look at whether it was painting a complete picture of its employee benefits.

When the Oklahoma City, Okla.-based company, which operates hospitals, rehabilitation centers and

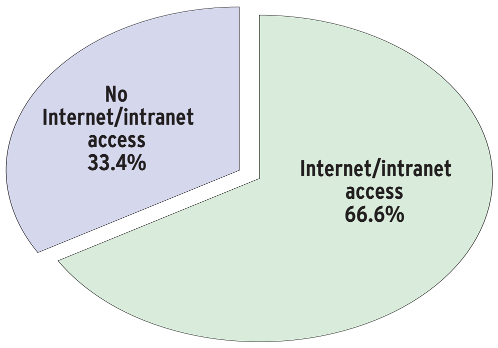
Award of Excellence

other facilities throughout the state, "stepped back and took a look, we had more out there than we were thinking about," said Chris Havens, human resources director. INTEGRIS offers employees things that "add up to so much more" than medical benefits, retirement savings

See INTEGRIS/page 18

INTERNET ACCESS

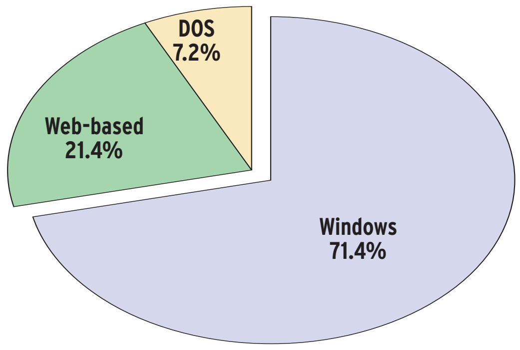
Percentage of systems offering online access



Source: *BI* survey

OPERATING SYSTEMS USED

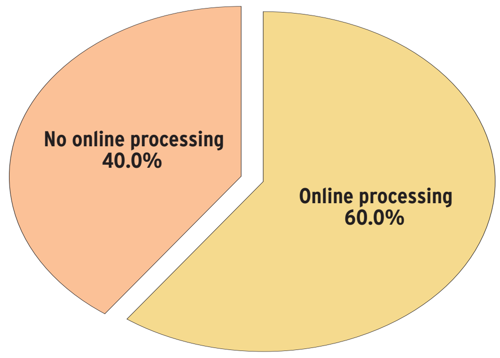
Breakdown by computer operating system



Source: *BI* survey

ONLINE PROCESSING

Percent of systems that offer online processing



Source: *BI* survey

Largest employee benefits communication systems

Ranked by number of installations in corporate employee benefits departments

Rank	Software name	Company/Address	Phone/Fax/Web site	Number of installations	First installation	Principal officer
1	DOS Taxdemo 5.7	Human Resource Consulting Group Inc. 1202 E. Dover Drive Provo, Utah 84604	801-765-4417 Fax: 801-765-4418 *www.hrconsultinggroup.com*	5,565	1983	Rob J. Thurston, president
2	Fringe Facts Communicator	Benefit Software Inc. 212 Cottage Grove Ave., Suite A Santa Barbara, Calif. 93101	805-568-0240 Fax: 805-568-0239 *www.bsiweb.com*	3,000 [1]	1978	Larry S. DuBois, president/CEO
3	Benergy	OnlineBenefits 333 Earle Ovington Blvd., Suite 210 Uniondale, N.Y. 11553	516-414-7000 Fax: 516-414-5100 *www.onlinebenefits.com*	2,700 [1]	2001	John Gedney, president
4	Employee Resource Center	Enwisen Inc. 7110 Redwood Blvd., Suite C Novato, Calif. 94945	415-897-0728 Fax: 415-897-3863 *www.enwisen.com*	200 [1]	1996	Wally Smith, president/CEO
5	HR Portal	Aon Consulting Inc. 200 E. Randolph St., Suite 1000 Chicago, Ill. 60601	800-438-6487 Fax: 312-381-0240 *www.aon.com*	128	1998	Donald C. Ingram, chairman/CEO-Aon Consulting Worldwide
6	Connection Server	Beacon Global Solutions Inc. 2 World's Fair Drive Somerset, N.J. 08873	732-560-9960 Fax: 732-560-9961 *www.beaconglobalsolutions.com*	100 [1]	1990	Andy Kelly, director-sales
7	ProAct Benefits Communicator	ProAct Technologies Corp. 120 Bloomingdale Road White Plains, N.Y. 10605	914-872-8000 Fax: 914-872-8100 *www.proactcorp.com*	90	1997	Tom Finstein, president/CEO
8	Fringe Facts Online	Benefit Software Inc. 212 Cottage Grove Ave., Suite A Santa Barbara, Calif. 93101	805-568-0240 Fax: 805-568-0239 *www.bsiweb.com*	34	1998	Larry S. DuBois, president/CEO
9	Campus	UnumProvident-Enterprise Enrollment Services 1 Fountain Square Chattanooga, Tenn. 37402	800-421-0344 Fax: 423-642-5538 *www.benefitamerica.com*	30	2000	Thomas R. Watjen, president/CEO
10	Online Total Rewards	Hay Group Inc. 100 Penn Square E. Philadelphia, Pa. 19107-3388	215-861-2569 Fax: 215-861-2106 *www.haygroup.com*	8	2000	Bernd Schneider, CEO/managing director

NA Not available 1 Estimated
Source: *BI* survey

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

Johnson & Johnson puts focus on employees' goals

By ROSEANNE WHITE GEISEL

Johnson & Johnson's online interactive benefits-orientation program could easily be titled "Benefits 101: What every employee should know to make optimal plan choices."

"The New Hire Planner," the latest addition to the company's health and benefits Web site, is a step-by-step guide to making benefit decisions based on individual goals and needs.

The first screen in the planner lays out the four steps in enrollment preparation: assessing your benefits knowledge, identifying your goals, developing your action plan and considering other information and resources that may help you get the most out of the benefits offered.

"It is really an education tool," said Eileen Palumbo, director, shared services benefits for the New Brunswick, N.J.-based health care products company. The aim is to have employees consider what they and their dependents might need now and in the future, and to understand they can change their selections as their life situation warrants, she said.

David Meuse, the Norwalk, Conn.-based Hewitt Associates Inc. consultant on this project, said that while companies tend to communicate benefit offerings by providing plan details upfront, this planner starts by focusing on the participant's goals.

This approach won J&J the Best of Show in the enrollment/re-enrollment category in the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

J&J had found that employees' choices sometimes did not appear to match their needs. The planner's "gauge your benefits knowledge" section consists of a true/false quiz to see whether employees understand the purpose of the different plans and coverages offered.

"Johnson & Johnson offers a competitive benefit program," she said. "Our primary objective is to make sure employees take advantage of it based on their individual situation."

The quiz "gives employees a sense of whether there are critical gaps in knowledge that may prevent them from making the enrollment decisions that are right for them," Mr. Meuse said.

The second part of the planner helps participants consider each plan offered and decide what their goals are with respect to that plan.

Next, the person is provided an "action plan" built on his or her goals. This centerpiece of the planner is described as "the payoff for your efforts." It lists steps the employee should take and tools and resources that should be checked before enrollment.

Nancy DeFalco, benefit services manager, said the planner gives employees more independence in preparing for enrollment. Calls to the benefits service center have decreased, partly due to fewer calls from new hires asking pre-enrollment questions. Johnson & Johnson has 108,300 employees at more than 200 locations worldwide.

This program is promoted to newly hired domestic salaried employees. New hires are given a temporary identification so they can use the planner before starting employment.

ChevronTexaco site helps track benefits

By MEG FLETCHER

ChevronTexaco Corp. launched its disability management Web site to let all 23,000 U.S.-based employees and managers have prompt, online access to the information they need to report and keep track of various types of absences.

A key aim of the project was to "provide a single, comprehensive Web site about the disability man-

agement program for employees and other stakeholders that is aligned with the company's overall goal to move its internal business to the Web," said Mark L. Huggins, senior coordinator of the company's disability management program.

San Ramon, Calif.-based ChevronTexaco is the second-largest U.S.-based integrated energy company, with sales and other operating revenues in 2002 of $98.69 billion. Overall, the company employs 53,000 people in more than 180 countries.

Launched July 1, 2002, the attractive and useful Web site won the Best of Show award in the special project category of the *Business Insurance* 2003 Employee Benefits Communication Award competition. The Web site is located at *http://hr2.chevrontexaco.com/disabilitymanagement.*

The Web site for the company's U.S. employees allows Portland, Maine-based UnumProvident Corp. to manage ChevronTexaco's non-occupational short- and long-term leaves, as well as occupationally related long-term leaves. In addition, Unum also manages employees' absences under the Family and Medical Leave Act.

The company's disability management Web site outlines the responsibilities of both workers and managers while educating them about company benefits and how they work together to create "a safety net of income protection," Mr. Huggins said. In addition, Chevron made the site "user friendly by organizing it topically by key subject areas and including a drop-down menu to enhance the user's ability to quickly find information," Mr. Huggins said.

The company requires an employee who will be absent from work to immediately contact his or her supervisor. If the employee expects to miss five or more workdays in a row, he or she must also call UnumProvident. The Web site then provides support by giving employees the information they need to protect their benefits when absences last for five or more workdays in a row or for leaves of any duration protected by FMLA. That information allows the vendor to manage claims and also permits supervisors to tailor absence reports, as needed.

The Web site—one component of the company's total communications package—also offers users the option of printing out the entire program, which is especially helpful to employees and supervisors in remote locations.

Web site usage data, which is analyzed by Arlington, Va.-based Nucleus Solutions Inc., shows that employees are visiting the site often; there were 48,763 visitors in the 12-month period ending Nov. 13, said James T. Potts, the project's communications manager.

In addition, company representatives continuously seek user feedback to improve the site, he said.

IBM benefits enrollment effort urges workers to 'Think Health'

By ROSEANNE WHITE GEISEL

IBM Corp. is helping its employees compute the importance of their benefit decisions to themselves and to their employer.

The Armonk, N.Y.-based company conducted a survey in 2002 to learn how knowledgeable its employees are about health care issues and what benefits the company offers them. It found that 32% of respondents didn't know what IBM pays for health care and that 45% wanted more information on which to base their benefit decisions.

IBM decided it was time for a change. "IBM has not reduced its spending. We need to control the rate of (health care cost) increase and have employees engaged in helping us do that," said Cathleen Donnelly, the company's senior communications specialist.

The resulting campaign, aimed at 140,000 benefits-eligible domestic employees, received an Award of Excellence in the enrollment/re-enrollment category of the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

The launch of the "Think Health: Choose Well" intranet enrollment center in October 2002 was preceded by a series of news articles on health care costs as a business issue and how IBM programs addressed that issue. The series began running in June on the company's intranet.

Debbie Slappey, the senior consultant with Mercer Human Resource Consulting in Atlanta, said a primary challenge last year was getting people to the site to see what would be new for 2003. That led to a design in which information was delivered in three categories: "what's new at a glance;" "decision assistance," including a medical-cost estimator, plan comparisons and a plan selector tool; and the online enrollment.

"What we were really trying to do is shake people out of their complacency" by educating them about plan differences, Ms. Donnelly said.

Last year, about 163,000 people used the IBM enrollment center intranet site. The campaign resulted in 91% of eligible employees actively making benefit selections for 2003, up from 67% in the year-earlier enrollment. And, at least 5% of participants switched to the new IBM preferred provider organization plan, which has a higher deductible but a lower monthly cost.

INTEGRIS: Highlights rewards

Continued from page 13

plans and take-home pay, Mr. Havens said.

To help employees realize that, a personalized "total rewards statement" was compiled, with information delivered under the headline "A year in the life of" followed by the employee's name.

INTEGRIS Health won an Award of Excellence in the personalized correspondence category of the *Business Insurance* 2003 Employee Benefits Communication Awards competition.

"From a communications perspective, the challenge was positioning total rewards as something very individual and about more than dollars and cents spent on benefits," said George Grimm-Howell, associate principal-communication, for Mellon's Human Resources & Investor Solutions in St. Louis.

A drawing in the upper left corner of the statement that depicts a man watering a leafy tree continues a "Let yourself grow" theme used in previous human resources correspondence. The personal growth theme "is a mindset that we support as an organization," Mr. Havens said.

That theme works with the "year in the life" headline and language to get employees to think of a long-term commitment to INTEGRIS, said Mr. Grimm-Howell.

The statement offers a total rewards annual summary that lists base pay, special pay and incentive pay; traditional benefits; an estimated per-employee average dollar value of learning and development benefits; and an estimated per-employee average dollar value of work environment benefits, such as fitness-center discounts, on-site child care programs and counseling services.

The pay and performance section details the employee's direct pay and includes a small graph showing how pay has increased over the employee's tenure. Separate sections discuss learning and development benefits and the value of the work environment.

The statement took about six months to put together, said Mr. Grimm-Howell. The cost was approximately $145,000.

Mr. Havens said the statement has received much positive feedback from managers, who have told him it is a helpful retention tool.

Between the Lines

Compiled by Joanne Wojcik

Plaintiffs turn up the heat on Chi-Chi's

You'd think the victims of the recent hepatitis A outbreak at a Chi-Chi's restaurant in Pittsburgh could find a lawyer closer to home.

Instead, they went after Seattle-based Marler Clark, whose reputation as one of the nation's foremost law firms representing victims of food-borne illness has been growing since the landmark 1993 E. coli litigation against fast-food chain Jack in the Box.

Partners William D. Marler and Bruce T. Clark served on opposing sides in that high-profile case. As a plaintiffs' attorney, Mr. Marler won \$15.6 million, creating a state record for an individual personal injury action. Mr. Clark was the lead attorney representing Foodmaker Inc., the parent company of Jack in the Box, in litigation that spanned four years and involved more than 100 lawsuits in four states.

But there's no conflict of interest, says partner Andrew Weisbecker, who is spearheading the Chi-Chi's case. The two lawyers didn't get together until 1998, at least a year after the Jack in the Box case was settled.

You in the Santa outfit, with the toy bag, freeze!

As the holidays near, risk managers whose salaries have suffered as a result of the huge bite insurance premiums are taking out of their budgets could find some moonlighting opportunities in the retail industry.

Some observers believe that because the shopping season started late and will be short this year, retailers may hire staff to squeeze out more sales.

But job search engine Monster.com recommends that those seeking seasonal work, instead of seeking to be cashiers or salespeople, apply to the security or loss control departments. Retailers increase their security personnel during peak buying times to thwart would-be shoplifters, according to Monster.com.

"Picture yourself incognito," a featured report says, "skulking through the aisles of electronics as shoppers scurry through the store. Suddenly, you spot a shoplifter and radio for backup. Sound intriguing? Undercover security or loss prevention might be the ticket."

Sure beats the pants off being a department store Santa.

Candid cameras help spot claims fraud

The holidays are also an opportune time for sleuthing out fraudulent workers compensation claimants who are breaking their activity restrictions, according to Brandon Olson, an investigative specialist at Omega Insurance Services Inc. based in St. Petersburg, Fla.

"You may be able to spot them out at the malls shopping for gifts, in their yards stringing up outdoor lights or even carrying trees and large frozen turkeys to and from their cars," he says. "For us, it's a really good time to get video and do surveillance."

To find out how your claimants are spending their winter holidays, visit *www.omegais.com/powerfacts.aspx* for an online order form, or call Mr. Olson at 727-898-0080, ext. 1097.

Governor cracks down on drug companies

Gov. Blagojevich

Illinois Gov. Rod R. Blagojevich is using the state's clout as a large prescription drug purchasers to fight drug companies' limiting supplies to Canada. He says Illinois will review its preferred drug list and remove brand-name drugs made by companies involved in the rationing effort.

"About a month ago, we released a report showing that if we import prescription drugs from Canada, the state of Illinois and consumers would save nearly \$91 million," he said in a statement. "Since then, the FDA and the big drug companies have done everything in their power to undermine our efforts. They have used scare tactics. They have dispatched hundreds of lobbyists to Capitol Hill. They have gone as far as to limit supply to Canada. Why? To protect their profit margins, at the people's expense."

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

Campaigns: New trends

Continued from page 10

Buffets Inc., said the Eagan, Minn.-based restaurant operation is moving more of its benefit communications toward e-mail and a benefits Web site. Although the company must work on increasing computer accessibility, the self-service advantages are strong.

"We see this as a long-term strategy to remain cost-effective," said Mr. Nesbit. And, by posting answers to frequently asked questions, all employees receive the same information communicated in the same voice. "(We're) starting to build consistent responses to common questions vs. hoping that the employee calls when the right person (to answer the question) is in."

Another big advantage to using online applications for benefit communications is the robust modeling tools, said Donald Sanford, a principal in the national communications practice of Mellon's Human Resources & Investor Solutions in St. Louis. Retirement and 401(k) plan information can be greatly enhanced with such devices, he said.

Because online communications don't lend themselves well to in-depth explanations and complex topics, benefit managers and consultants alike say there will always be a place for traditional benefit tools such as print and in-person communications.

The biggest challenge facing Marie Ellis, vp of human resources at Advocate Good Samaritan Hospital in Downers Grove, Ill., is how to help the hospital's 25,000 associates understand their benefits. Although the hospital uses online and print communications, the human resources staff also takes to the road to reach busy employees.

"We go to them and do (benefits) education. It has to be multifaceted," said Ms. Ellis of Advocate Good Samaritan's communications plan.

Because Modine Manufacturing Co.'s employees are spread across the country and not all have access to computers, print materials work the best, said Laura Clampett, director of compensation and benefits. The Racine, Wis.-based heat transfer technology maker uses its intranet to get information out quickly but still relies on its quarterly benefits newsletters and open enrollment materials to communicate the bulk of its messages.

Individualized communications that consider employee demographics are gaining popularity, as benefit managers work harder than ever to get their messages across. Hewitt's Ms. Rhodes predicts that "there will be more sensitivity to cultural issues," such as companies holding "town hall" benefit meetings in churches or community centers, where it may be easier to reach Latino workers and their families.

Kathy Crain, first vp of benefits at Countrywide Financial Corp. in Calabasas, Calif., said the company is placing greater emphasis on using demographic information to narrow down the volume of materials that it uses to communicate benefit plan choices. Because an employee in Southern California may have different plans from those available to a New York-based employee, tailoring the messages could prevent frustration and cut down on the "sifting through."

Having a surplus of benefit communications materials or splurging on flashy campaigns may not be merely wasteful. It can also send a conflicting message to employees who are hearing about downsizing, greater benefits cost-sharing and the negative impact the economy is having on business, consultants say. Tying together all communications to the employee is difficult but worthwhile.

"It's important to remember that benefits are one component of the employee relations process," said Mellon's Mr. Sanford. "We literally have a stream of communications that occur throughout the year. It's not a one-time event."

Spherion: SPD proves engaging

Continued from page 10

which cost between \$100,000 and \$200,000 and took seven months to implement, won Best of Show in the *Business Insurance* 2003 Employee Benefits Communication Awards competition in the multimedia category.

One of the challenges Spherion faced in rewriting more than 1,000 pages of benefits information was making it compelling for employees.

"Sometimes, the content you put in an SPD isn't the most exciting, so making the dry content about copays and deductibles more engaging was a challenge," Ms. Goldstein said. At the same time, "the interactive nature of the site requires you to think in more bite-sized pieces," so that required some discipline when writing the Web content, she said.

Spherion also did a lot of field testing to make sure that the site's graphics did not cause large delays for employees using a modem, she said.

The online SPD is now being used for more than just an employee assistance tool.

"We've developed generic user IDs and passwords, and we now use this tool as part of our recruiting process, so candidates have access to the detailed information...as a part of their decision-making process of coming on to Spherion," Ms. Goldstein said.

In addition, "we've really used the site as part of our sales process," she said.

Based on the success of the online SPD, Spherion recently added an electronic version of its employee handbook as an additional link on the site.

Rehab called key to cutting injury costs

By SARAH VEYSEY

LONDON—Giving injured employees better access to rehabilitation is necessary to curb the rising cost of employers liability insurance premiums in the United Kingdom and to get injured employees back to work, according to a panel of experts.

Speaking at the Forum of Insurance Lawyers' annual conference in London late last month, Lord Phillips, master of the rolls—the third-highest-ranking judge in England—said that prompt rehabilitation can reduce both the immediate and long-term effects of an injury.

The U.K. government has also acknowledged the importance of proper rehabilitation. In a report on the employers liability market published last week, the Department for Work and Pensions pledged to "help establish a new approach to rehabilitation within the U.K."

U.K. insurance lawyers have until now been slow to push for greater use of worker rehabilitation, and this has hampered adoption of the approach, Lord Phillips said.

Contributing to the slow adoption of rehabilitation are ignorance about its benefits and apathy among attorneys, he said. Many claimants' lawyers, he noted, are suspicious when an offer of rehabilitation is made. And while some lawyers look favorably on insurers' rehabilitation offers, too few actively request it for clients, he said.

Furthermore, U.K. rehabilitation services are expensive, and many facilities lack the resources to cope with increased demand, he said.

But there is a growing recognition among lawyers, insurers and the government that rehabilitation has a crucial role to play in compensating injured workers, Lord Phillips said. He noted, for example, that the first stage of the DWP's report on employers liability, which was published in June, said that rehabilitation should play a bigger role in worker injury cases (*BI*, June 9). And a report by the Office of Fair Trading, also published in June, noted that the increased use of rehabilitation techniques could reduce the cost of employers liability.

Speaking at the FOIL conference, Gareth Williams, head of the employers liability insurance review team at the DWP warned that there is "no quick fix" to the problem of rising rates for the coverage, which is mandatory in the United Kingdom. "The increase in premiums is reflective of the increased costs of accident and ill health," he noted.

Insurance buyers need to gain a better understanding of what health and safety measures they can implement to make themselves a "better risk" and merit a lower employers liability premium, said Mr. Williams.

Employers liability insurance should be a lever to improve health and safety management, he said.

The current system of employers liability in the United Kingdom, which pits injured employees and their lawyers against employers in a fight to win compensation, is not necessarily the best one from the injured employees' point of view, according to David Hooker, director of claims at Norwich Union, a unit of London-based insurance group Aviva P.L.C., and chairman of the Assn. of British Insurers' strategic claims committee.

"An adversarial system doesn't put the injured person at the center," Mr. Hooker said.

And financial compensation alone is not the answer to employee injuries, he said.

Mr. Hooker noted that there are steps that a company could take when an employee is injured that would engender a better relationship between the injured party and the employer. He said, for example, that "saying 'sorry' is an expression of regret, not an admission of liability."

Rehabilitation is also key in efforts to get injured employees back to work, he added.

It is absolutely critical that employers seek to begin rehabilitation as early as possible, rather than waiting until the legal case has been settled, said Lord Phillips.

Indeed, rehabilitation must happen early if it is to be effective, said Paul Howard, head of insurance and risk management at London-based J. Sainsbury P.L.C. and chairman of the London-based Institute of Risk Management.

In its latest report, the DWP said it would seek to develop a framework for effective intervention. This, it said, "will set out basic prin-

See REHAB/next page

Court allows suits against tour firm

By CAROLYN ALDRED

PHOTO: AFP

A ruling will allow tourists aboard a Britannia Airways 757 that crash landed in 1999 to seek compensation from the tour operator.

CARDIFF, Wales—Dozens of vacationers, traumatized after their aircraft crash landed, can seek compensation from the tour operator that organized their travel, without having to first prove liability against the airline, a U.K. court ruled last month.

The Nov. 25 ruling by the Cardiff County Court was the latest phase of the case, in which the passengers are seeking compensation for psychological injuries, even though international aviation treaties bar strict liability for such injuries unless gross negligence is proved.

In an earlier phase of the case, the court ruled last April that the tour operator could not avoid strict liability, as it had not sufficiently disclosed to its customers the liability restrictions in the treaties.

Tour operators in Europe are expected to clarify their liability terms and conditions following the ruling.

Judge Graham Jones of Cardiff County Court ruled that a group of 73 vacationers seeking compensation from tour operator Thomson Holidays Ltd. need not first prove that Britannia Airways was negligent in the September 1999 crash landing of their flight in northern Spain.

The Britannia Airways Boeing 757 crash landed in bad weather en route from Cardiff, Wales, to Gerona. There were 235 passengers and crew on the aircraft, which broke into three pieces in a field adjacent to Gerona airport.

Of the original 144 passengers who began legal action in 2001, 71 have accepted settlement offers from Thompson.

As a result of the Nov. 25 ruling, the remaining 73 claimants will now be able to seek damages for psychological trauma of up to £85,000 ($146,200) each, according to Peter Evans, a partner with Hugh James, the Cardiff, Wales-based law firm that led the group litigation. That figure is the compensation limit that airline travelers can claim for bodily injury without proving negligence under the Warsaw Convention, the international agreement governing compensation levels for air travel.

Judge Jones earlier ruled that Thomson Holidays could not avoid liability by citing the Warsaw Convention, which excludes psychological injuries sustained in air incidents, because the tour operator did not make it sufficiently clear to its customers that such injuries were excluded. However, the judge ruled that the passengers should still be able to benefit from the no-fault provisions of the Warsaw Convention.

As a result of the case, London-based Thomson Holidays Ltd. has changed the wording of its terms and conditions and other tour operators in the United Kingdom and continental Europe likely will be reviewing their own wordings, lawyers say.

"The travel industry can take advantage of the Warsaw Convention as long as they make it clear and unambiguous," said Peter Evans, a partner of Hugh James, noting that the charter's small print explained that the liability was the same as its carrier, Britannia Airways. Britannia Airways terms and conditions referred to the Warsaw Convention.

"The judge ruled that it wasn't reasonable for a package tourist to be expected to refer to the airline's terms and conditions and to look up the Warsaw Convention," said Mr. Evans.

A spokeswoman from Thomson confirmed that the company has now changed the wording of its terms and condition. She also confirmed that the company is insured for any compensation it provides the claimants.

Equitas may boost asbestos reserves again

LONDON—Equitas Ltd. has warned that it may again need to increase its reserves for asbestos-related claims at the end of the year.

London-based Equitas, the runoff reinsurer for Lloyd's of London's pre-1993 long-tail liabilities, said Thursday that a decision would be made after it completes a review of its reserve position.

Equitas said in a statement that it "is disappointed, though not surprised" that progress in Congress toward asbestos reform "has been slow and that prospects for enactment of such legislation remain uncertain."

In June, Equitas added £399 million ($686.9 million) to its asbestos reserves, bringing its gross, undiscounted asbestos reserves to £5.3 billion ($9.12 billion).

Equitas Chairman Hugh Stevenson noted in the statement that Equitas has continued to commute its asbestos liabilities.

"Even in this difficult environment, we have vigorously pursued opportunities to reduce our outstanding liabilities by closing out asbestos claims on acceptable terms," he said. Those efforts have produced several settlement deals, including two that resolved all asbestos claims with major policyholders, he said.

Equitas said it paid claims of £357 million ($614.6 million) for the six months ended Sept. 30, 2003, compared with £451 million ($776.4 million) a year earlier.

—By Sarah Veysey

World Updates

JLT acquires HLF aviation team

Heath Lambert Group P.L.C. has sold part of its aviation portfolio to London-based Jardine Lloyd Thompson Group P.L.C. in a restructuring. The business represents about £12.5 million ($21.5 million) in revenues. JLT will pay £9.4 million ($16.2 million) to acquire the portfolio and will take on about 60 HLF aviation brokers. HLF will continue to place some direct and reinsurance aviation risks, said an HLF spokeswoman.

SCOR gets approval to raise more capital

Paris-based SCOR S.A. said shareholders approved plans to raise 750 million euros ($896.7 million) in a share issue, up from 600 million euros ($717.4 million). SCOR said it will take a 35 million euro ($41.8 million) fourth-quarter charge for costs related to a hedging deal with investment bank Goldman Sachs for SCOR's credit derivatives exposure. SCOR said the portfolio has a maximum loss potential of about $2.5 billion. Standard & Poor's Corp. has raised SCOR's financial strength rating to BBB+ from BBB-.

Global premiums grow 5.5%, Swiss Re finds

Global insurance premium volume grew 5.5% to $2.627 trillion in 2002, a Swiss Reinsurance Co. study says. Global nonlife premiums grew 9.2% in 2002 to $1.091 trillion, led by the U.S. and U.K. markets, where rates were increased, the study states. U.S. nonlife premiums grew 11.1% to $519.9 billion in 2002, while U.K. nonlife premiums rose 10.8% to $77.0 billion. Global life premiums grew 3.0% to $1.536 trillion.

Briefly noted

Royal & SunAlliance Insurance Group P.L.C. has agreed to sell its 51% stake in Chilean life insurer Compania de Seguros de Vida La Construccion S.A. to La Camara Chilena de la Construccion, which holds 49%. London-based RSA said proceeds from the sale, about £44 million ($75.7 million), will support ongoing nonlife business, RSA said....Bengt Braun, chairman of Stockholm, Sweden-based **Skandia Group**, resigned last week after a report concluded some other senior managers had conducted "unsuitable" and "unethical" acts. He was replaced by Bjoern Bjoernsson, chairman of unit Skandia Liv. In May, Skandia commissioned an investigation of operations including benefits and incentives paid to senior executives. Mr. Braun said he wished not to be considered for re-election. A general board meeting is slated for Jan. 28, 2004.

Rehab: Cost key

Continued previous page

ciples and approaches which can be applied in the management of a range of individual conditions and business circumstances."

Employer and insurer groups welcomed the DWP's pledge to encourage greater use of rehabilitation.

"The government is right to tackle insurance cost volatility by rethinking rehabilitation," John Cridland, deputy director-general of the London-based Confederation of British Industry, said in a statement, though he added that questions remain about how a rehabilitation framework would work.

And the London-based Assn. of British Insurers said it was "delighted" that the government had decided to institute a plan to improve rehabilitation, as the ABI has lobbied the DWP for such a change.

Copies of the DWP report, "Review of Employers' Liability Compulsory Insurance Second Stage Report," are available at www.dwp.gov.uk/publications/dwp/2003/elci/dwp_employers_review04-12-2003.pdf.

Survey: Concerns

Continued from page 4

cidents were ranked as the 10th greatest risk, while employee recruitment/retention was ranked eighth. Ms. Durkin said that the increased importance of employee accidents could have been prompted by rising employers liability premiums in the United Kingdom over the past few years.

Ms. Durkin said terrorism ranked as the 14th most important risk. Terrorism was not ranked in the last survey. She noted that only 27% of respondents said they had a specific plan in place to address a terrorist attack or kidnap. Such risks may, however, be addressed in a broader major disaster plan, she noted.

Seventy-one percent of the companies surveyed said they had a contingency plan in place for health and safety/work-related absence, while 61% said they had a plan for major disasters/incidents and 50% for physical damage.

In addition, more than 40% of respondents to the survey said that the insurance market was not meeting their business needs, and 40% said that the insurance market was not providing sufficient capacity.

More than a third of respondents—36%—said they had experienced property rate increases of 20% or more this year, while almost half of those surveyed said their liability premiums had increased 20% or more in 2003.

Copies of the survey are available at www.aon.co.uk or by contacting Nicky Rogers at 44-207-882-0400 or nicky.rogers@aon.co.uk.

Health care: Inflation slowed

Continued from page 1
such as medical providers hiking rates and increased utilization, that have driven up costs, Mr. Bos said.

A continuation of cost-shifting—amid predictions by respondents that plan costs next year could rise by 13% on average—seems certain.

"Considering that a fourth of employers experienced cost increases of 20% or more in 2003, more cost-shifting in 2004 is a safe bet," Mr. Bos said.

Employee cost-shifting occurred both as changes in plan design and as hikes in employees' premium contributions.

For example, in 2003, 35% of small employers with preferred provider organizations said they imposed an in-network deductible of at least $1,000 for individual coverage, up sharply from the 21% of small firms with deductibles of that size last year. Larger employers, though, were more reluctant to ask employees to take on that much cost: just 4% of large employers this year imposed $1,000 or higher deductibles in their PPOs for in-network coverage, essentially unchanged from last year.

In addition, 70% of employers this year imposed an in-network deductible for individual coverage, up from 64% last year.

Employees also faced increases in the share of the premium they must pay for coverage. For example, employers charged employees an average of $381 a month for family PPO coverage, compared with a monthly average of $278 last year. Large employers in 2003 charged employees an average of $224 a month for family PPO coverage compared with a monthly average of $202 in 2002, while smaller employers charged a monthly average of $389 a month, up from $283 last year.

Employee cost-shifting, Mr. Bos said, only produces temporary cost savings, but many employers are taking actions—such as adding wellness and disease management programs—that can better manage costs over the long-term. For example, 43% of large employers this year offered asthma management programs, up from 34% last year.

And more employers are adding so-called consumer-driven plans, high-deductible plans linked to employer-funded accounts, which employees can use to pay for a portion of expenses that fall under the deductible. Proponents say such plans make employees more aware of the true cost of medical care and give them an incentive—the ability to roll over from year to year unused funds in their accounts—to use health care services wisely. This year, 9% of the biggest employers—those with at least 20,000 employees—offered a consumer-driven health plan, up from 7% last year.

"Employers know that simple cost-shifting is a temporary solution at best, with some serious downsides—namely unhappy employees. That's why they're starting to invest in disease and health management, and in plan designs that encourage consumerism," Mr. Bos said.

With health care cost increases and their impact on corporate profitability and jobs well publicized, these longer-term approaches now are more likely to win the cooperation of employees than perhaps a few years ago, Mr. Bos said.

"Employees have heard enough to recognize that there is a problem. There is a growing recognition among employees that they have to take more responsibility for their health care," he said.

As employers slowly move toward more consumer-driven type plans, they are moving away from HMOs, once seen as the plan model most able to control costs. This year, just a third of employers offered an HMO, down from 37% last, while 27% of employees were enrolled in HMOs, down from 29% in 2002 and 33% in 2001.

Employers are moving away from HMOs for several reasons, Mr. Bos said. First, those plans, which typically have low cost-sharing features, largely insulate employees from the cost of care, making it more difficult to change behavior, he said.

Smaller employers also may feel that if they are going to offer only one plan, a plan that doesn't limit employees' choice of providers may be preferable, Mr. Bos said.

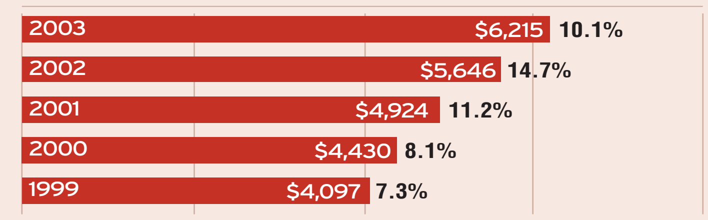
Other survey findings, all involving employers with at least 500 employees, include:

- Regionally, PPO plan costs were highest in the West, averaging $6,065 per employee, up 8.5% from 2002. PPO costs were lowest in the South, averaging $5,331, up 7.5%.
- HMO costs were highest in the Northeast, averaging $5,626, up 15.2%, and were lowest in the South, averaging $5,287, up 10.7%.
- Point of service plan costs were highest in the West, averaging $6,832 per employee, up 14.6%, and were lowest in the South, averaging $5,345, up 8.9%.

Copies of the "National Survey of Employer-Sponsored Health Plans" will be available in mid-March from Tara Lewis, Mercer Human Resource Consulting, 1166 Ave. of the Americas, 28th Floor, New York, N.Y. 10036; 212-345-2451. The cost is $500.

COSTS AT A GLANCE

Annual changes in total health care costs per employee*



Medical costs per employee by plan type+

	2003	2002	% change
Point of service	$5,982	$5,361	11.6%
Traditional indemnity	5,802	5,410	7.2
Preferred Provider Organization	5,730	5,220	9.8
Health Maintenance Organization	5,436	4,856	11.9

* For active employees
+ For employers with at least 500 employees
Source: Mercer Human Resource Consulting

GRAPHIC BY ADAM DOI

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15th Annual Executive Conference

Overall market unlikely to soften soon

By JOANNE WOJCIK

NEW YORK—While rate increases for property/casualty insurance appear to be moderating for some lines, insurance buyers should not expect the overall market to soften any time soon, industry leaders say.

In response to the prolonged soft market and declines in investment income, insurers are boosting reserves and underwriting more rigorously. Furthermore, rising workers compensation medical costs, unrecoverable reinsurance and continued low interest rates may keep the market hard even longer, warn executives of several large insurance industry companies.

"This is the beginning of the fourth year of a firming market that is the longest firm market I have ever seen," said John T. Sinnott, senior adviser to Marsh & McLennan Cos. Inc., the parent company of New York-based broker Marsh Inc. Mr. Sinnott recently retired as chief executive officer of Marsh.

By comparison, the hard market of the mid-1980s lasted only two and one-half years, he said.

But the longer duration of the current hard market may be needed, as it follows the longest soft market anyone in the industry today has ever seen, he said.

"The market will get softer, but there won't be a soft market for a while," said William R. Berkley, chairman and CEO of W.R. Berkley Corp. in Greenwich, Conn.

Pricing cannot flatten out yet because premiums must keep up with rising loss costs, he said.

Messrs. Sinnott and Berkley were among the industry executives who addressed market conditions during several panel discussions at the 15th Annual Executive Conference for the Property/Casualty Industry, held Nov. 20-21 in New York. The conference was co-sponsored by PricewaterhouseCoopers L.L.P., Standard & Poor's Corp., Black Diamond Group and J.P. Morgan & Co. Inc.

In addition to the World Trade Center disaster, which affected virtually every property/casualty line, higher-than-expected loss costs for two key coverages—workers compensation and directors and officers liability—are behind many of the recent premium hikes and ongoing reserve adjustments, the industry executives said.

Today, workers comp medical costs make up more than 50% of total premiums, compared with 10 years ago, when they absorbed only 30 cents to 35 cents of every premium dollar, according to Edmund F. Kelly, president, chairman and CEO of Liberty Mutual Insurance Co. of Boston. "That line cannot be written economically in three or four states," he said, pointing to California as an example.

Insurers are dramatically increasing premiums for directors and officers liability insurance not because of past losses, but because "we all just found out it's a dangerous risk," Mr. Kelly said.

The industry is also realizing there is a "cat effect" in D&O, said Brian Duperreault, chairman and CEO of Bermuda-based ACE Ltd.

Contributing to the avalanche of lawsuits accusing corporate directors and officers of wrongdoing is the "perception that something is endemically wrong with corporate America, especially in Congress," said Robert W. Rober, president and CEO of the National Assn. of Corporate Directors in Washington.

Insurers' continuing difficulty with obtaining payment from reinsurers is also strapping insurers, forcing them to hold the line, industry executives said.

"There are always different views as to what claims are covered," observed Mr. Sinnott. "But now it appears as if reinsurers are looking for technical issues to avoid paying and litigate. Whatever happened to following the fortunes?" he asked, referring to the legal doctrine under which reinsurers are obligated to follow a policyholder's fortunes as a party to primary insurance.

"We do not see stiffing the reinsurers or their stiffing us as good business," said Mr. Kelly.

Yet because of its inability to obtain payment from reinsurers for asbestos liabilities, Liberty Mutual discounted 45% of its reinsurance recoverables, he said.

In some cases, insurers are getting hit from both sides, litigating with both reinsurers and policyholders over coverage, Mr. Duperreault said.

"We have a good relationship with our clients. We were founded by clients. But now, whenever there's a claim, the client is no longer the risk manager—it's the general counsel," he said.

Another factor prolonging the hard market is low interest rates, Mr. Duperreault added.

During the soft market, people said market cycles were over, based on the assumption that investment income would continue to grow, said Brian M. O'Hara, president and CEO of XL Capital Ltd. in Bermuda.

"Ten great years of earnings—1986 to 1995—impacted everyone's mentality," he said.

But underwriting is the nature of the business, pointed out Mr. Sinnott of Marsh.

While part of today's rate hikes are being used "to fill potholes from the past…It's the nature of the business. Pricing has to look at today, the future and the past," he said.

However, "we've got a lot of leaders in the business who don't know how to play the game" because "they come from other disciplines" that operate differently from how insurance does, he said.

Mr. Berkley had a slightly different take on the situation.

"We're not in the insurance business, we're in the business of making money," he said. "It's just that we've chosen to make money through insurance. That's why there are cycles. It's the lack of awareness of the true objective by the industry as a whole."

Asbestos: Reform

Continued from page 4

bestos exposures, said Edmund F. Kelly, president, chairman and CEO of Liberty Mutual Insurance Co. in Boston.

In addition, while "the primary market is doing a good job of getting asbestos behind them," he said, "a lot of uncertainty remains for excess carriers" as the size of the losses mounts.

"We wondered what was going to be the next asbestos, and it turned out to be asbestos was the next asbestos," said Brian Duperreault, chairman and CEO of ACE Ltd., during another panel discussion held at the conference.

Indeed, the duration of the asbestos liability exposure has taken many in the industry by surprise, said John T. Sinnott, senior advisor at New York-based Marsh & McLennan Cos. Inc., the parent company of broker Marsh Inc.

"We were the broker for (former asbestos producer) Johns-Manville in 1982, and if anyone told me then we'd still be talking about asbestos 20 years later, I wouldn't believe it. No one could have predicted what happened," he said.

And the industry hasn't seen the last of reserve increases to cover asbestos exposures, Mr. Sinnott predicted. "More correction may be needed," he said.

It is because of these reserve increases that a trust fund was proposed, explained Mr. Delrahim. It would allow insurers to cap their asbestos liabilities and essentially walk away.

According to the asbestos reform bill, victims of asbestos-related diseases would be compensated by a multibillion-dollar no-fault national trust fund financed by defendant companies in asbestos liability cases and their insurers (*BI*, Dec. 1).

But Mr. Greenberg was skeptical, saying "there will never be a trust fund big enough to satisfy everyone."

Instead, the legislation should require that victims meet medical criteria, that all of the cases be handled in federal court and that legal fees be capped.

Despite Mr. Greenberg's naysaying, Mr. Delrahim said the AIG chairman "has done more to advance the cause of asbestos reform than anyone in the insurance industry."

"At the end of the day, if all he had to do is throw in his reserves and be done with it, he'd support it," Mr. Delrahim said. "He's just concerned it's too open-ended."

15th Annual Executive Conference

Insurers take aim at regulation

By JOANNE WOJCIK

NEW YORK—Cracking down on insurers through stepped-up regulatory action and rating agency downgrades will not help the industry get out of dire financial straits, industry executives assert.

Instead, regulators and rating agencies should take an approach similar to that taken with other parts of the financial services industry, banks in particular, insurance industry leaders suggested.

"The banking industry has a global approach to capital. We don't have that in insurance," said Brian Duperreault, chairman and chief executive of Bermuda-based ACE Ltd. He spoke during a panel held at the 15th Annual Executive Conference for the Property/Casualty Industry, held late last month in New York.

Because the U.S. insurance market is state-regulated, thus creating a convoluted patchwork of laws in the United States, there is no strong, single voice representing the domestic insurance industry in the international market, Mr Duperreault said.

U.S. regulators also seem to be averse to insurers making profits, which is the opposite way they treat banks and other parts of the financial services industry, said Edmund F. Kelly, chairman, president and CEO of Liberty Mutual Insurance Co. of Boston.

"When was the last time a regulator said an insurance company wasn't charging enough for a risk? Never. But they do this all the time for the banking industry. As a result, the banking industry has a higher profit," he said.

By contrast to the United States, "we're making a ton of money in Venezuela," Mr. Kelly said. "They love us there. I've never had a regulator here want us to make money."

Under federal regulation, banks get to be more discrete about their financial situations than insurers, said John T. Sinnott, senior adviser at Marsh & McLennan Cos. Inc..

"The FDIC rates banks from 1 to 5, but the public doesn't know who's rated 3, 4 or 5. This is not the same level of disclosure as for insurance," he said. The FDIC ratings are not made public to prevent a run on lower-rated banks.

Disclosing an insurer's financial woes is makes it difficult for the industry to raise the capital it needs to bolster itself, said Maurice R. Greenberg, chairman and CEO of American International Group Inc. of New York.

"Thirty-eight companies in the last year were taken under supervision by regulators," he said during a keynote speech at the conference.

"I've never seen a more hostile environment," he said, attributing the crackdown on the collapse of Enron Corp. and on the trading irregularities by mutual funds.

"There's never been more pressure on everybody—auditors, the SEC, FASB, accountants," Mr. Greenberg said. "The regulators are trying to regain credibility after Enron."

In addition to regulators' crackdown, rating agencies seem to be attacking the insurance industry in response to mounting losses, which is making life even more difficult for insurers, other industry leaders said.

Rating agencies "perform a valuable role. They are bringing more discipline to the business," said Mr. Kelly. But the way they review companies may not be sufficient to achieve their objective of separating the wheat from the chaff, he said.

Instead of just looking at the numbers, "they should do what stock analysts do, call companies and ask them why they're doing things," he suggested.

In fact, in some cases, a rating downgrade can create a Catch-22 for a company, said Mr. Duperreault of ACE.

"They need to improve their ratings," which requires having more capitalization, "but they can't get money because of being downgraded," Mr. Duperreault said.

He also said some rating agencies are so obsessed with certain insurers that they are overlooking other problem companies, describing an instance in which he called an analyst to complain about being downgraded when another company that was similarly situated was not.

"He said it will be fixed," but not by raising ACE's rating, he said. Instead, "he said he was taking everybody down," he said.

"S&P hasn't downgraded any company that was correcting itself the right way," said Steven J. Dreyer, managing director and practice leader, financial services ratings, North America insurance, at Standard & Poor's Corp. Mr. Dreyer spoke from the audience during a session.

220 attend conference

NEW YORK—The 15th Annual Executive Conference for the Property/Casualty Industry was attended by 220 insurance industry executives.

The conference, which is produced annually by The Conference Group Ltd. of New York, was co-sponsored this year by PricewaterhouseCoopers L.L.P., Standard & Poor's Corp., Black Diamond Group and J.P. Morgan & Co. Inc.

While the conference is directed primarily toward chief financial officers and chief executive officers, some executives at the senior vp level and higher were also invited to attend.

Next year's conference will be held in November in New York; dates will be announced in January. For additional information or to receive an invitation, contact Vanessa Wilson at *vwilson@conferencegroupltd.com*.

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California: Harassment ruling

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always report such conduct immediately to the employer through internal grievance mechanisms."

The employer may lack an adequate anti-harassment policy or adequate procedures to enforce it, the justice wrote. "The employer may not have communicated the policy or procedures to the victimized employee, or the employee may reasonably fear reprisal by the harassing supervisor or other employees," the ruling states.

"Moreover, in some cases an employee's natural feelings of embarrassment, humiliation and shame may provide sufficient excuse for delay in reporting acts of sexual harassment by a supervisor."

In contrast to federal law, which sets much clearer standards for employers to follow, the California decision now leaves more issues to the discretion of state trial courts, attorneys say. Such courts will have to decide such issues as whether an employee acted reasonably in delaying the reporting of harassment and just how well employers applied and communicated their anti-discrimination policies.

The decision will help plaintiffs put employers' anti-discrimination policies and procedures on trial, which could include questioning past claimants about how adequately an employer handled their complaints, said Jeffrey K. Winikow. Mr. Winikow is a Los Angeles attorney who filed an amicus brief on behalf of the California Employment Lawyers Assn., which represents plaintiffs attorneys.

"This is allowing us to selectively take skeletons from a closet and showcase them before a jury," Mr. Winikow said.

The California Supreme Court case stemmed from a claim filed by Theresa V. McGinnis, a former Department of Health Services employee. She charged in her lawsuit that a supervisor sexually harassed her from early 1996 to late 1997. She did not report the harassment to management until November 1997, about 20 months after it began, court records indicate.

The employer promptly investigated the claim and found the supervisor violated its policy against sexual harassment. Disciplinary action prompted the supervisor to retire, according to court records.

Ms. McGinnis then sued her employer, seeking damages. The employer moved for summary judgment, arguing that it had policies against sexual harassment and provided employees with training courses to discourage harassment. The Department of Health also argued that despite the plaintiff's participation in the training, she unreasonably failed to take advantage of measures that would have prevented the recurrence of harassment or avoided some of the harm for which she sought relief.

A trial and appeals court both rejected that argument, finding that an *Ellerth/Faragher* defense is not applicable to sexual harassment claims brought under California's Fair Employment and Housing Act.

On appeal, however, the Supreme Court said that FEHA does allow an employer to argue that an employee failed to make use of workplace anti-harassment remedies. But that defense does not allow an employer to escape liability; at most, the court said, it would only reduce the damages recoverable.

"And it reduces those damages only if, taking account of the employer's anti-harassment policies and procedures and its past record of acting on harassment complaints, the employee acted unreasonably in not sooner reporting the harassment," the decision states.

The decision will likely have the greatest impact on smaller employers, as they often are less vigilant about enforcing their workplace anti-harassment policies, Mr. Richardson said.

The ruling may benefit employers in some cases, he noted.

"To the extent that this can help reduce damages it certainly is a powerful tool at trial," Mr. Richardson said.

State Department of Health Services vs. Superior Court (McGinnis), Nov. 24, 2003. California Supreme Court, S103487

Taking stock

Poor returns call for industry changes

By Myron M. Picoult

The annual publication "Insurer Financial Results" by the Insurance Services Office is always a treasure trove of statistical information. The 2003 edition was of particular interest to me, as it helped to underscore my belief that, on a macro basis, the property/casualty business is a lousy business!

As shown in the latest edition, which summarizes the industry's results for 2002 and prior years, the average GAAP return on equity posted in 2002 was 2.2% vs. the negative 1.2% figure that was recorded in 2001. For the 10 years ending in 2000, the ROE averaged 8.1%, which was below the prior 10-year average ending in 1990 of 10.1%. The 10-year average that ended in 1980 was 13.5%.

With the exception of 1986 and 1987, the average ROE for the property/casualty industry as a whole was below the returns posted for the Fortune 500 in each of the past 20 years. For that timeframe, the Fortune 500 companies recorded an average return of 13.6%, which was some 5.5 percentage points above the property/casualty industry.

At this stage of the underwriting recovery, it is disturbing to see the reserve surprises that surfaced in the last quarter in terms of the number of insurers, the amounts and the names involved. I have harped on the sense that the deterioration in pricing and the horrendous compromising of terms and conditions in the 1997-2000 period was far worse than most industry observers recognized. Clearly, the pricing recovery has not yet filled in all of the potholes. Indeed, the relatively slow emergence of profits in this recovery cycle underscores the extent to which the industry's balance sheet has been compromised. As if this were not enough, one has to view all of this within the context of a distinct slowdown in the pace of rate relief and wonder where the cushion will come from.

The back-to-basics approach that most managements have embraced is to be lauded. However, I still believe that too many carriers have not been trimmed down enough. Historically, the machines always cry for volume, and many a management team has succumbed to that siren song. One can only wonder if it will be different this time.

The dynamics of the recovery are uneven. The old problems, including reserve adequacy and reinsurance recoverables, have improved, but they have not disappeared. Clearly exacerbating the situation are issues including the labored growth of net investment income, ongoing pressures from the rating agencies, expense pressures, a slowdown in rate relief and, finally, the ability to more effectively mine data and execute on it. The last point is critical, given the industry's focus on underwriting profits.

Insurance companies have generally lagged banks and other financial institutions in the effectiveness of technology investments. This is clearly the case with property/casualty carriers that have little to show for their technology expenditures as measured by reductions in expense ratios and enhancements to underwriting skills. For the most part, two-thirds to three-quarters of technology budgets are used to support inefficient legacy systems.

I recently heard an astute industry observer note that the property/casualty business was not an ordinary type of business. Clearly, top-line growth does not automatically translate into bottom-line growth. He also noted that this is an industry that aggregates liabilities. He is dead right! Current and prospective industry dynamics are placing a greater emphasis than ever before on underwriting skills and distribution prowess. In an industry where knowledge is power, the ability to harness and use technology is sure to become a defining factor in the business.

Myron M. Picoult is an adviser to Lazard Freres & Co. in New York. He is a past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts. View an archive of Mr. Picoult's Business Insurance columns at www.businessinsurance.com.

Results: Strong period for most

Continued from page 3

able ingredient in the quarter," which was unusually high catastrophe losses, including two hurricanes.

Results provided continued evidence of the flight to quality to higher-rated, stronger players, said Christopher Winans, senior property/casualty analyst with Lehman Brothers in New York. "More and more agents and brokers are increasingly comfortable representing a smaller number of stronger carriers, and you're starting to see that show up in the results," he said.

But reserves remain a concern, analysts say, noting that insurers frequently boost reserves in the fourth quarter.

Stephan Petersen, an analyst with Cochran, Caronia & Co. in Chicago, said that, as insurers begin to report their fourth-quarter results, "there's an increased risk of some surprise charges as people sort of true-up their balance sheets."

Mr. Winans said, "The industry is getting to the point now where the reserve requirements for prior-year losses is diminishing" for most lines of business besides asbestos. But for asbestos, there is "too much uncertainty as to how much could emerge in terms of additional exposures, especially since asbestos reform is a remote possibility at best at this point," he said.

In many cases, the reserve issue "really has offset much of the pricing improvements that we've seen over the past three years," said John Iten, a director at rating agency Standard & Poor's Corp. in New York.

James Inglis, managing director at Stamford, Conn.-based Philo Smith & Co., a boutique investment bank that specializes in the insurance industry, said that most companies say the rates they are now charging exceed anticipated claims-cost trends, "which suggests some room" to make up for past underreserving.

"I think that the worst is behind us," though you can't be sure until there are "a couple of quarters without some negative news about asbestos or some of those issues," Mr. Ward said.

Rates hikes will moderate next year—and property risks may see decreases—but the market overall will remain firm, say observers.

Karen Horvath, vp at Oldwick, N.J.-based A.M. Best Co., said rate hikes are decelerating, but "you have pockets of business where loss costs are rising and there's a lot of uncertainty."

Those uncertain areas include directors and officers liability, particularly for mutual fund companies, she said.

Casualty rates hikes will drop to the mid-single digits next year, said Mr. Petersen. Meanwhile, "we're continuing to see some softness creeping into property rates pretty much across the board, more so in catastrophe layers than in the lower attachment positions."

James B. Auden, senior director at rating agency Fitch Ratings in Chicago, said property pricing will be "pretty much flat to down going forward, and given where prices moved in the last couple of years, that may not be too bad."

Casualty, though, will be "somewhat mixed," he said. While some areas are adequately priced, others, including medical malpractice and workers compensation in some states, continue to underperform.

"The firmness of the cycle still has a ways to go," said Mr. Winans. "It makes me think that it may be another two full years of pretty good underwriting results for commercial carriers, meaning through 2005," he said.

"There's more underwriting discipline coming out of the last soft market than came out of the previous two" in the mid-1980s and mid-1970s, "and when you have that kind of change, where it's not so much about raising rates as it is reducing exposures, then profit margins are more durable," Mr. Winans said.

Observers differ on whether the planned merger of Travelers and The St. Paul Cos. Inc. signals a return to significant merger and acquisition activity.

Mr. Ward said, "I do see the possibility of more of that on the short-term horizon." The Travelers-St. Paul combination "could spur some more activity because it's a large transaction involving a distribution channel that's also consolidating—that is, the independent agency channel."

"I think there can be quite a bit more" M&A activity, said Mr. Inglis. "It's sort of an interesting time in that many companies have gotten out of lines of business for strategic reasons, making them more focused organizations," he said. "That makes them either better able to take advantage of acquisition opportunities or being in a position to be a more attractive target, potentially."

Property/casualty insurers' 2003 nine-month results

Ranked by net income. All amounts in thousands of dollars

	Corporate			Property/casualty operations					
	Net income 2003	Percent increase 2003-2002 (decline)	Consolidated revenues 2003	Combined ratio 2003 [1]	Combined ratio 2002 [1]	Net Premiums written 2003	Percent increase (decrease) 2003-2002	Policyholder surplus 2003	Percent increase (decrease) 2003-2002
American International Group Inc.	$6,567,000	16.8%	$59,124,000	92.8%[2]	94.8%[2]	$26,053,000[2]	29.0%	N/A	N/A
Travelers Property Casualty Corp.	1,207,300	57.5	11,097,200	96.5[2]	102.3[2]	9,811,400[2]	10.5	$8,196,600	11.0%
ACE Ltd.	972,877	296.8	7,524,209	91.3[2]	94.4[2]	7,642,176[2]	25.6	8,345,956	29.5
Chubb Corp.	736,500	342.9	8,401,600	95.8	108.7	8,137,500	22.9	6,200,000	75.4
The St. Paul Cos.	609,000	N/M[3]	6,531,000	96.5[2]	112.7[2]	5,719,000	(1.1)	5,228,000	5.9
Old Republic International Corp.	345,888	15.5	2,420,163	93.6	99.1	1,100,990[2]	18.2	1,812,341	15.0
Cincinnati Financial Corp.	244,661	34.3	2,341,670	96.7	101.4	2,135,798	13.4	2,988,427	14.5
SAFECO Corp.	173,000	(29.1)	5,413,300	102.7	106.6	3,837,000	11.1	2,567,800	21.0
American Financial Group	97,200	140.6	2,469,100	99.7	100.8	1,561,900	(18.1)	1,535,800	1.5
Argonaut Group Inc.	78,000	326.2	569,400	106.2	111.0	449,300	28.8	416,200	(4.1)
Ohio Casualty Corp.	48,100	N/M[3]	1,248,500	106.6[2]	114.6[2]	1,100,432[2]	-	813,921	19.7
RLI Corp.	43,117	58.8	271,713	92.5	96.1	350,002	15.3	463,009	15.4
Hartford Financial Services Group Inc.	(545,000)	N/M[4]	13,960,000	98.9	99.8	6,888,000	7.7	5,600,000	14.3
CNA Financial Corp.	(1,610,000)	N/M[4]	8,670,000	162.4	110.9	5,650,000[2]	(17.3)	5,210,000	(15.3)
Liberty Mutual Insurance Co. 2	N/A	N/A	N/A	107.4	107.1	8,909,000	12.4	6,007,000	16.5
Cumulative	$8,967,643	6.7%	$130,041,855	100.8%	102.4%	$89,345,498	13.6%	$55,385,054	15.8%

1. Includes dividends. 2. Statutory. 3. Comparison not meaningful due to 2002 nine-month loss. 4. Comparison not meaningful due to 2003 nine-month loss. N/A Company did not provide data.
Source: *BI* Survey

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Late News

Continued from page 1
found. While nearly half the employees changed from an expensive drug to a lower-priced one when their benefits switched to three tiers, many others quit getting their prescriptions filled entirely for chronic conditions, according to the study of two employer-sponsored health plans reported in the New England Journal of Medicine.

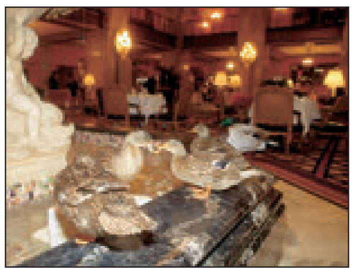
PHOTO: MICHAEL MARCOTTE

The Peabody Memphis Hotel is a Belz Enterprises property.

Belz seeks coverage for 9/11 interruption losses

Real estate developer Belz Enterprises is suing Allianz Insurance Co. to recover up to $10 million in business interruption losses relating to the Sept. 11, 2001, terrorist attacks. Belz owns shopping centers and hotels, including the Peabody Hotels chain. Belz argues that its business was severely disrupted by the Federal Aviation Administration's grounding of all aircraft in the United States in the two days after the attacks and that the resulting losses are covered under its manuscript Allianz property policy.

ACE to spin off guarantee business

ACE Ltd. is planning an initial public offering of its financial guarantee units. ACE said it plans to form a holding company and file with U.S. securities regulators a registration statement for an IPO to be held in the first half of 2004. The holding company will acquire the stock of ACE's financial guarantee subsidiaries, which include ACE Guaranty Corp. and ACE Capital Re International Ltd., ACE said in a statement. ACE expects to offer to investors about 65% to 75% of its interest in the holding company.

Crashed 747 jet insured at Lloyd's

A Boeing 747 jet operated by Hydro Air Cargo was damaged beyond repair Nov. 29 when it landed on a closed runway in Lagos, Nigeria, and plowed into construction equipment on the tarmac, according to sources. The hull was valued at $14 million, sources said. All seven crew members aboard the jet survived. A Lloyd's of London syndicate leads the coverage, which was placed by Hayward Aviation Ltd. The loss likely will have no impact on the commercial aviation insurance market, which so far is having a profitable year due to few losses, a broker said.

Solutia refuses to fund affiliates' asbestos deals

Financially strapped chemical manufacturer Solutia Inc. says it will not pay settlements totaling $3 million in two asbestos cases, contending that the liabilities should be borne by its former affiliates Monsanto Co. and Pharmacia Corp. The refusal sets the stage for a struggle between St. Louis-based Solutia and Monsanto, which created Solutia in a 1997 spinoff of several businesses and an array of past liabilities. Monsanto responded to Solutia's announcement by accusing Solutia of breaching its obligations under agreements governing the spinoff.

Aspen IPO raises $212 million

Aspen Insurance Holdings Ltd. raised around $212 million in its initial public offering last week. The Bermuda-based holding company with insurance and reinsurance units in the United States and United Kingdom plans to use the proceeds to provide capital to its subsidiaries and repay short-term debt and for other general corporate purposes. "We see opportunities and rising rates," said Chris O'Kane, chief executive officer of Aspen, "and we need more capital to take advantage of that."

Briefly noted

The Washington Business Group on Health has changed its name to the **National Business Group on Health**, which it says better reflects its membership....The **Pension Benefit Guaranty Corp.** has taken over three pension plans sponsored by Special Metals Corp. of Huntington, W.Va., which has emerged from bankruptcy. The PBGC took action because Special Metals' bankruptcy exit lender would not provide financing unless the plans were terminated. The plans are underfunded by about $155 million, of which the PBGC is liable for $129 million....Dennis Replogle has been named president and chief executive officer of **Broadspire**, which was formerly the services unit of Kemper Insurance Cos. Mr. Replogle, who was formerly a senior executive at the claims administration unit of Hartford Financial Services Group Inc., replaces Patricia A. Drago, who left Broadspire earlier this week....The Supreme Court ruled 7-0 Tuesday in *Raytheon Co. vs. Joel Hernandez* that the Lexington, Mass.-based employer had a "legitimate, nondiscriminatory reason" for **not rehiring a recovering drug user** who had completed treatment, because the company had an unwritten policy against rehiring employees who broke company rules. The court did not use the case to address broader questions regarding the protections granted recovering substance abusers by the Americans With Disabilities Act but held that the U.S. 9th Circuit Court of Appeals applied the wrong standard to the case when it ruled in favor of Mr. Hernandez. The high court remanded the case to the lower court for reconsideration....**Mercer Human Resource Consulting** is acquiring the Swiss consulting business of KPMG Benefit Consulting. Mercer will acquire KPMG's operations in Zurich and Geneva, and 24 KPMG employees will transfer to Mercer. Terms were not disclosed....Average **property/casualty rates** increased by 10% in November, compared with 12% in October, according to a survey of business placed through Internet portal MarketScout.com. Property rates are decreasing but increases are still being seen in several casualty lines, according to Richard Kerr, chairman and chief executive officer of Marketscout.

Check out BusinessInsurance.com

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

Online Poll

[12/1 -12/5]

With Medicare adding a prescription drug benefit, will your organization reduce or terminate prescription drug coverage for its retirees?

Yes	65.7%
No	15.7%
Undecided	18.6%

BI Stock Index

[12/1 - 12/5]

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	2084.76	0.62
Dow Jones	9862.68	0.82
S&P 500	1061.50	0.31

Largest gains

Unico American Corp.	31.20%
Vesta Insurance Co.	8.52%
Clark Inc.	7.01%
PMA Capital Corp.	6.05%
Allmerica Financial Corp.	5.85%

Largest losses

ESG Re Ltd.	-17.00%
Gainsco Inc.	-7.14%
PXRE Corp.	-4.96%
Zenith National Ins.	-4.29%
Selective Insurance Group	-4.02%

Weekly change by market segment

Brokers	1.53%
Insurers/Reinsurers	0.76%
Managed Care Organizations	1.59%

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

Compromise: Class action reform proposal

Continued from page 1
Senate Majority Leader Bill Frist, R-Tenn., hammered out a compromise acceptable to three Democratic senators who had voted against cloture but who had expressed willingness to craft a mutually acceptable bill.

One of the three lawmakers—Sen. Charles Schumer, D-N.Y.—released a document containing what he called the "BASIC highlights of the deal" that eight key senators had reached.

Sens. Chris Dodd, D-Conn.; Mary Landrieu, D-La.; Orrin Hatch, R-Utah; Charles Grassley, R-Iowa; Herb Kohl, D-Wis.; and Tom Carper, D-Del.; joined Sens. Frist and Schumer in a statement announcing the compromise, though only Sen. Schumer revealed even the broadest outline of what the compromise entailed.

Under the compromise proposal, attorney fees in class action settlements that are based on coupons instead of cash would be based on the number of coupons actually redeemed by class members rather than on a predetermined cash value, according to Sen. Schumer's document.

The compromise would still allow plaintiffs who initiate interstate class actions to receive greater compensation than those members who join the class at a later time, according to a statement.

Although details were not available, the compromise also would adjust the proposed standard to be used for removing interstate class actions to federal court "to better ensure that actions which are truly intrastate remain in state court while matters that are interstate in nature are adjudicated in federal court," according to the statement.

In addition, the compromise also makes clear that, under most circumstances, so-called "mass actions"—as Mississippi and West Virginia term class action-like lawsuits—would be treated like interstate class actions if they had the characteristics of interstate class actions.

Reform backers welcomed the compromise—at least what they knew about it.

"We haven't seen any details," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. "I do think it is a significant step, and it's something that we'll be supportive of," she said.

"Of course, the devil's always in the details. But based on our understanding of the parameters that have been reached, we're comfortable with it," said Matt Webb, vp-legal reform policy for the U.S. Chamber Institute for Legal Reform in Washington.

Class action reform has been one of the Risk & Insurance Management Society Inc.'s top legislative priorities, according to Nancy Chambers, first vp of New York-based RIMS.

"We are encouraged by the progress on the legislation. Even if we can't have everything we want in the Senate bill, at this point, some reform measures are better than none at all. And this bill is a great start; it will go a long way toward correcting the abuses in the legal system," said Ms. Chambers, who is also risk manager for the Waterloo Region Municipalities Insurance Pool in Kitchener, Ontario.

"RIMS encourages the Senate to adopt the class action reform bill as soon as possible," Ms. Chambers said.

Senators "said they want to move (on the bill) at the earliest possible opportunity," said Mr. Webb. "I think that translates into February or March of next year."

The lack of clear legislative detail led some class action reform supporters to stop short of embracing the proposal.

"We are glad to see that Sen. Schumer agrees that lawsuits have gotten out of control and something needs to be done to rein them in," said Charles Taylor, assistant vp-government relations in the National Assn. of Independent Insurers' Washington office. "We look forward to learning about the details of the bipartisan compromise reached by sponsors of class action reform."

The National Assn. of Mutual Insurance Cos. is "optimistic that Congress will pass a balanced, sensible and bipartisan class action reform bill," said Marliss Browder, federal affairs representative in the Indianapolis-based group's Washington office.

NAMIC, however, is holding off "further comment until we have seen the actual legislative language," she said.