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Rx savings may be costly

By JOANNE WOJCIK

New research shows that tiered drug plans are prompting employees to just say "no" to some maintenance medications, and benefits experts warn that employers' successful efforts to reduce utilization may have unintended consequences.

Although the reduced utilization may lower employers' drug costs in the short run, employees forgoing medications designed to prevent catastrophic health problems could ultimately increase medical plan costs, the experts say.

The study's findings highlight the need for better communication and education in cases where benefits plans are changed to promote greater cost sharing with employees, they say.

A study of two employer-sponsored drug plans published earlier this month in the New England Journal of Medicine found that a significant number of employees stop taking certain medications—rather than switching to generics—when their employers change to a three-tiered prescription drug plan that charges significantly more for brand-name drugs.

The study, conducted by researchers at the Harvard Medical School in Boston and pharmacy benefit manager Medco Health Solutions Inc. of Franklin Lakes, N.J., concentrated on the use of three medications: ACE inhibitors for high blood pressure and heart failure; statins for high cholesterol; and proton pump inhibitors for acid reflux. Generic equivalents were available in all of the categories.

The dropped-prescription rate was highest in the employer-sponsored plan that went from a $7 copayment for all prescriptions to $8 for generics, $15 for preferred brand names and $30 for third-tier brand

See DRUGS/page 6

Credit report act aids probes

By JUDY GREENWALD

WASHINGTON—Employers will find it much easier to conduct effective workplace investigations of employees suspected of sexual discrimination, harassment, threats of violence, fraud and other wrongdoing under legislation signed into law by President Bush earlier this month, observers say.

The Fair and Accurate Credit Transactions Act of 2003, which President Bush approved Dec. 4, removes the onerous, and often infeasible, rules employers have been required to follow in conducting third-party employee investigations.

"I think most employers are breathing a sigh of relief right now," said Lester S. Rosen, president of Novato, Calif.-based Employment Screening Resources.

Under current regulations,

See CREDIT/page 21

California weighs comp overhaul

Employers back Schwarzenegger reform package

By ROBERTO CENICEROS

SACRAMENTO, Calif.—Battle lines are being drawn in California as legislators meet in a special session to weigh an extensive workers compensation reform package proposed by Gov. Arnold Schwarzenegger.

The Sacramento-based California Chamber of Commerce is calling on the Democratic-controlled Legislature to enact the governor's legislation. The Sacramento-based California Coalition on Workers' Compensation also favors the measure.

The proposed bill contains many reforms that employers have long sought, said Tim East, the employer organization's chairman and director of risk management for the Walt Disney Co. in Burbank, Calif.

But the California Applicants' Attorneys Assn. says the Republican governor's proposals "would harm thousands of injured workers" by stripping away too many benefits. Instead of trimming benefits, the Sacramento-based attorney group recommends lowering system costs by granting the state's insurance commissioner the authority to regulate insurance rates.

The extensive reform proposals are contained in SBX4 3, introduced last month by Sen. Charles Poochigian, R-Fresno, and other legislators.

PHOTO: KRT

Calif. Gov. Arnold Schwarzenegger has proposed an extensive package of reforms designed to reduce costs associated with the state's workers compensation system.

The reform measure runs more than 125 pages long. According to a Chamber summary of the package, it would:

- Reform how indemnity benefits are calculated.
- Overhaul permanent disability ratings.
- Apply objective criteria to the evaluation of injuries.
- Expand utilization controls.
- Reform the penalties applied against insurers and employers for claims handling violations.

The Nov. 19 introduction of Gov. Schwarzenegger's reform package follows by two months the signature of former Gov. Gray Davis on a bill that reformed systemwide medical cost drivers (*BI*, Oct. 6).

Recent insurer rate filings with Insurance Commissioner John Garamendi show those reforms already are helping head off another year of double-digit price increases for workers comp.

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CORPORATE MANSLAUGHTER LAWS PASS

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Late News

Employer can examine stored e-mail: Court

An employer that searches employee e-mails stored in its computer system does not violate the Electronic Communications Privacy Act, the 3rd U.S. Circuit of Appeals has ruled. In the case, a Nationwide Mutual Insurance Co. agent sued the insurer, alleging wrongful termination and violation of the ECPA for examining his e-mail. Affirming a lower court's opinion, the 3rd Circuit said that although the ECPA prohibits "intercepts" of electronic communications, Nationwide Mutual's action did not constitute an such an "intercept" as it did not occur contemporaneously with transmission.

Health care spending growth slowing: Survey

The growth of health care spending is decelerating, according to a survey by the Washington-based Center for Studying Health System Change. The center found health care spending per privately insured American in the first half of 2003 rose 8.5%, down from 10% in the second half of 2002, the largest six-month drop in years. The study said the trend reflects slower spending growth for prescription drugs, physician services, and both inpatient and outpatient care.

Comp reimbursement blocked in Missouri

A Missouri county court has blocked the state's insurance department from enforcing rules that require workers compensation insurers to pay for the services of managed care organizations, even if the insurer has no contract with the managed care organization. A group of insurers and the Alliance of American Insurers sued the Missouri Department of Insurance over rules established in connection with a 1993 law designed to rein in workers comp costs. A judge agreed with the plaintiffs' argument that a workers comp insurer should not be

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NEWSPAPER

New Tillinghast-Towers Perrin study

Tort costs jump to $233 billion

By MARK A. HOFMANN

The costs associated with the U.S. tort system continued to rise at an above-average rate in 2002, fueled in particular by asbestos-related liabilities, a new study shows.

In the study, "U.S. Tort Costs: 2003 Update," consultant Tillinghast-Towers Perrin says that costs associated with the U.S. tort system were about $233 billion in 2002, or more than 2% of the gross domestic product.

The $233 billion price tag amounted to an increase of 13.3% from 2001's estimated figure, according to the report, which was released last week. That represented a slight slowing from the 14.4% increase between 2000 and 2001, the New York-based consultant noted. However, it far outstripped the average annual increase of 9.8% over the period 1950 to 2002.

Asbestos-related liabilities are the largest driver of tort costs, accounting for about 40%—or $11 billion—of the 2002 increase, the report notes. Other factors included increases in shareholder lawsuits against corporate boards, medical malpractice lawsuits and class action lawsuits.

Despite the overall increase in tort costs, the system is becoming less efficient as a way to compensate victims, according to Tillinghast. Only 22 cents of every tort system dollar goes to compensate plaintiffs' actual economic losses, according to the study. That's down from 1985, the first year in which Tillinghast prepared its periodic study of tort costs, when 25 cents of every tort dollar covered economic losses.

"While it is impossible to accurately predict future increases in tort costs, it does not seem unreasonable to assume that, absent sweeping structural changes in the U.S. tort system, annual increases will be in the 6% to 11% range over the next several years," said Tillinghast.

Tort reform advocates welcomed the report.

The study shows that the plaintiffs bar is a "recession-proof business," Steven B. Hantler, associate general counsel of DaimlerChrysler Corp. in Auburn Hills, Mich., said during a Dec. 11 discussion of tort law developments at the Washington Legal Foundation.

The results show that "legislators and regulators need to continue to take action to curb the costs our system has imposed on all of us," said Sherman Joyce, president of the American Tort Reform Assn. "Unless action is taken, this disturbing burden to our system will continue to grow."

See TORT/page 21

Adelphia D&O recision halted

Bankruptcy judge reinstates stay on insurers' suit

By DOUGLAS McLEOD

NEW YORK—The on-again, off-again effort of Adelphia Communications Corp.'s directors and officers liability insurers to rescind coverage is off again following a bankruptcy judge's order.

U.S. Bankruptcy Judge Robert E. Gerber on Dec. 5 reinstated a stay halting most action in a recision lawsuit filed by three D&O insurers against former Adelphia Chairman John J. Rigas and several other former company officials.

Judge Gerber initially issued the stay in 2002, finding that the policies—issued by Associated Electric & Gas Insurance Services Ltd., Federal Insurance Co. and Greenwich Insurance Co.—included entity coverage and were, therefore, assets of bankrupt Adelphia's estate.

New York-based U.S. District Judge Harold Baer Jr. overturned the stay in August on an appeal by Mr. Rigas, finding that Adelphia did not have a property interest in the policies because it had not yet made any payments for which it would be entitled to entity coverage.

At the same time, though, Judge Baer noted a stay might still be imposed under a section of the U.S. Bankruptcy Code that gives the bankruptcy court wide latitude in issuing orders needed to carry out code requirements. He remanded the case to the bankruptcy court for further hearings.

In his ruling, Judge Gerber cited the code section in reinstating most elements of the stay, noting that the recision action threatens reorganization efforts of Adelphia and an affiliate, Adelphia Business Solutions Inc. Not only could the policies' limits be drained by defense costs, he concluded, but a ruling against Adelphia officials in the recision case also could damage any later attempt by the companies to obtain entity coverage.

While staying the recision action and related deposition testimony, though, Judge Gerber allowed Mr. Rigas and other former Adelphia officials to seek an order that insurers must cover their defense costs up to $300,000 per defendant while the recision case is pending.

Mr. Rigas and three of his sons—all former Adelphia officers—won the bankruptcy court's approval in August to tap $15 million in funds held by Rigas-owned entities that had been managed by Adelphia. The funds, which the Rigases will use for criminal and civil defense costs, previously had been frozen by the court.

Coudersport, Pa.-based Adelphia collapsed last year after disclosing huge off-balance-sheet debts. Mr. Rigas, two of his sons and another Adelphia officer face criminal fraud and conspiracy charges filed by New York federal prosecutors. A trial is scheduled for January 2004. A fifth former officer pleaded guilty to federal fraud charges last year.

Senate impasse delays reform of pension funding

Additional relief efforts stall action

By JERRY GEISEL

PHOTO: KRT

Employers are hopeful that the pension reform bill will be back on the agenda when Congress returns in January.

WASHINGTON—Employers will have to wait until next year before Congress acts on pension reform legislation that would cut corporations' pension plan contributions by billions of dollars.

Last week, the Senate deferred action—at least until mid-January—on the stop-gap reform legislation that would allow employers to temporarily replace 30-year Treasury bond yields with long-term corporate bond yields when calculating their pension liabilities.

Such a change in the formula, long sought by employers and supported by a broad-based congressional consensus, would save companies $25 billion in pension contributions in 2004 and 2005, the government estimates.

But consideration of the funding reform legislation was put off by Senate leaders after legislators got hung up on another provision that would provide additional financial relief for employers with underfunded plans.

Still, Senate leaders pledged to return promptly to the funding legislation when the second half of this congressional session begins in January. Lawmakers also agreed to a procedure that could expedite consideration of the legislation.

"We remain hopeful the Senate will address this issue early next year, debate these proposals and finish its work on behalf of workers and employers," said Rep. John Boehner, R-Ohio, chairman of the House Education and the Workforce Committee and a leader in the funding reform effort.

Nonetheless, the failure of Congress to enact funding reform legislation before its December adjournment is a disappointment for employers, which have campaigned for years for funding reform and thought the current Congress might be its best chance for enactment.

"It is very disappointing. Now, it is a little too early to be optimistic again. There is a lot of hard work to be done," said Janice Gregory, a vp with The ERISA Industry Committee in Washington.

The employer-led drive to change funding rules began several years ago as interest rates on the 30-year U.S. Treasury bond—the financial instrument used to value plan liabilities—began to

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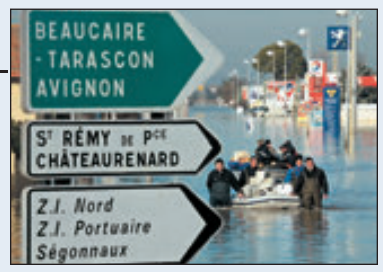
Inside Business Insurance



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: Are you optimistic Congress will pass pension funding reform legislation next year?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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PHOTO: REUTERS

The 2000 crash of a passenger train near Hatfield, England, has been a recent catalyst for changing the U.K. criminal code to allow corporate manslaughter charges. Reform legislation is expected to be introduced in Parliament in early 2004.

Australia, Canada, U.K. review laws

Employers can face manslaughter charge in deaths

By CAROLYN ALDRED

Companies in the British Commonwealth face an increasing exposure to corporate manslaughter charges when employees are killed, as a result of recent legislative activity around the world.

Legislation was adopted last month in Canada and Australia that will make it easier for authorities to prosecute large companies on charges of corporate manslaughter. Similar legislation is expected in the U.K. Parliament in 2004.

Although employers in those countries already can be criminally prosecuted if their negligence contributes to an employee's death, only a handful of cases are ever brought to trial because of the difficulty in successfully prosecuting employers under existing laws. Changing the laws to create a new criminal offense will simplify the prosecution of large companies that flout health and safety regulations, proponents of the legislation claim.

Risk managers contend, though, that the new criminal charge is not a threat for companies that take risk management and employee safety seriously.

Australia

Australian Capital Territory, home of the country's capital city of Canberra, last month became the first Australian state to formally adopt a criminal charge of "industrial manslaughter," but other states also are looking at the issue.

The ACT's Legislative Assembly on Nov. 27 passed The Crimes (Industrial Manslaughter) Bill 2002, which takes effect March 1, 2004.

"The government's position is clear—if a workplace death occurs and that death can be attributed to the employer, then the death should be treated with the seriousness it deserves," ACT Industrial Relations Minister Katy Gallagher said in a statement.

Under the state's current criminal code, anyone can be charged with manslaughter if they contribute to the death of another person. The addition of industrial manslaughter to the criminal code "simply ensures that companies can be held responsible where their criminally reckless or negligent conduct causes the death of a worker," stated Ms. Gallagher.

According to a fact sheet the ACT government prepared on the legislation, an employer can be convicted only if a court is satisfied, to a criminal law standard, that the employer has been criminally negligent or reckless and that this led to the death of a worker in the course of his or her employment.

Under existing manslaughter laws in Australia, Canada and the United Kingdom, the person whose reckless or negligent conduct caused the death of the worker must be proven to be the "directing mind and will" of the company for the company to be found guilty.

"This is particularly difficult to establish for large companies, who often have many levels of management between the directors, who are the 'directing mind and will' of the company, and the shop-floor managers whose conduct, in implementing the directors' policies, has the actual impact on workers," the ACT explained in its fact sheet.

"Where the directors' policies and decisions are what actually caused the death of a worker, or the directors allow a corporate culture to develop that disregards worker safety, the company should be held to ac-

See MANSLAUGHTER/page 22

MMC board makeup assailed

Pension fund shareholders seek to nominate directors

By SALLY ROBERTS

NEW YORK—Four large pension fund shareholders of Marsh & McLennan Cos. Inc. are looking to gain more influence over the makeup of the company's board of directors following the improper trading scandal at Putnam Investments Inc., MMC's mutual fund management subsidiary.

The funds—the American Federation of State, County and Municipal Employees' Pension Plan; New York State Common Retirement Fund; California Public Employees' Retirement System; and the California State Teachers' Retirement System—filed a shareholder proposal with MMC seeking access to the company's proxy to nominate and elect independent directors.

New York-based MMC's operations also include Marsh Inc., the world's largest insurance brokerage.

The shareholder proposal is in anticipation of new rules the Securities and Exchange Commission is expected to pass soon that would allow shareholders to nominate directors and that would require public companies to disclose information about the nominees in the companies' proxy statements.

The four pension funds, which collectively hold 6.85 million shares of MMC—or about 1.3% of the company—contend MMC's board lacks independence and failed to prevent and effectively respond to the Putnam scandal.

"We want to trigger the proxy access rules because they are the most powerful tool that we will have at our disposal for seeking improvements in boards of directors that we think have failed," said Richard Ferlauto, director of pension investment policy for the Washington-based AFSCME. "And, clearly, Marsh & McLennan, given not only the Putnam scandal but their history of insider control, has not been responsive to shareholders, and we think that the changes that they made at Putnam do not go far enough," he said.

"Investors have pulled more than $32 billion in assets out of Marsh's Putnam subsidiary due to its involvement in this terrible mutual fund scandal, and Marsh's stock price is down about 10%," Alan G. Hevesi, New York state comptroller and sole trustee of the New York State Common Retirement Fund, said in a statement released by the four pension funds. "I can't think of a stronger case worthy of shareholder involvement."

Sean Harrigan, president of CalPERS, added in the statement: "Shareholders do not have any interest in using the proxy statement process to nominate a director unless the problems are so severe they are Enron-esque. Putnam and Marsh & McLennan's problems are in that category."

See MMC/page 22

France to settle U.S. charges on purchase of Executive Life

By SARAH VEYSEY

PARIS—The French government said it has reached a settlement deal with U.S. prosecutors over the 1991 purchase of failed California insurer Executive Life Insurance Co. by French bank Credit Lyonnais.

French Finance Minister Francis Mer issued a statement Thursday saying that an out-of-court settlement had been reached and that details would be finalized in the coming days. The agreement would put an end to criminal proceedings, Mr. Mer said in the statement.

In October, the French government pulled out of a $585 million preliminary settlement with the U.S. attorney's office in Los Angeles (*BI*, Oct. 20), and last week the French government rejected a second settlement offer, according to Mr. Mer.

U.S. prosecutors charge that Credit Lyonnais, which at the time was state-owned, illegally purchased the assets of Executive Life at fire-sale prices and concealed its involvement in the deal. At that time, U.S. law prohibited banks from owning insurance companies. Earlier this year, Credit Lyonnais was acquired by French bank Credit Agricole.

The U.S. attorney's office in Los Angeles declined to comment.

When California regulators took control of Executive Life in 1991, the insurer had nearly 340,000 policyholders, assets of $10.1 billion and about $43 billion of life insurance in force. Its junk bond portfolio, of dubious value at the time, was sold to a unit of Credit Lyonnais for $2.7 billion but its worth has since increased.

Health plans cover flu vaccine

By JOANNE WOJCIK

Due to the nationwide shortage of flu vaccine, Aetna Inc. and CIGNA Corp. have said they will cover intranasal flu vaccines during the 2003/04 influenza season.

"Given the shortage of flu vaccine and in view of the emerging health threat to healthy individuals, CIGNA HealthCare will temporarily cover intranasally administered live attenuated vaccine under existing benefit plans for the reminder of the current flu season," Allen Schaffer, chief medical officer for the Bloomfield, Conn.-based insurer, said in a statement.

"With public health officials warning of limited supplies of the injectable vaccine, particularly in areas hardest hit by the flu, we believe it's important for our members to have peace of mind by being able to obtain and be covered for FluMist if their physician recommends it," Dr. William C. Popik, Hartford, Conn.-based Aetna's chief medical officer, said in an Aetna release.

At least two other major health plans—Humana Inc. and WellPoint Health Networks Inc.—were already providing coverage for the drug, which the Food and Drug Administration this year approved for use in healthy individuals between the ages of 5 and 49.

"But we do encourage them to review their specific plan...to find out what their benefits and copayments will be," said a spokeswoman for Louisville, Ky.-based Humana.

Copayments may be higher because the nasal flu vaccine is significantly more expensive than the injection, sources explained.

Errors & omissions

- Due to incorrect information supplied to *Business Insurance*, a Dec. 8 chart of the largest gains and losses by companies in the *BI* Stock Index contained errors. A corrected chart appears on page 23 of this issue.
- Due to a reporting error, a Dec. 1 story on risk management information systems contained incorrect information. RMIS from Marsh Inc. and Aon Corp. are available not only to clients but also to nonclients, according to both brokers. In addition, both Marsh STARS and Aon Safetylogic are as flexible as independent RMIS, the brokers said.

Drugs: Savings may be costly

Continued from page 1

names. In that group, about 16% of employees stopped taking their ACE inhibitors, 21% stopped statins and 32% dropped their acid reflux drugs.

The drop rate was slightly lower in the other employer group studied, with 6% dropping ACE inhibitors, 11% dropping statins and 19% dropping acid reflux drugs.

"What this study showed is the influence on many individuals of cost-sharing. But it's nothing that wasn't both known and wasn't intuitive. It just helps to document it," observed Dr. Paul Wernick, a senior consultant at Watson Wyatt in Minneapolis.

"It is definitely something that we're aware of," said Sean Brandle, a vp at The Segal Co. in New York. "We have seen evidence in journals and in the industry that, as you raise copayments, utilization drops."

"If you're on six or seven medications a month, and all of a sudden your copays go up by 30%, some folks are going to have to decide, 'Which medicines am I going to have to forgo?'" he said.

But employers should look at their success in reducing some prescription drug use with a jaundiced eye, some health benefit experts warn.

"It's a point of caution," said Dr. Dennis Richling, president of the Midwest Business Group on Health, an employer coalition based in Chicago.

"I think it's an article that says these decisions we make can have far-reaching implications," he said. "We may gain some short-term savings in pharmaceutical costs, but we may lose on the other side in the areas of productivity and absenteeism."

And, in the case of treatment for high cholesterol or hypertension, forgoing medication could lead to a higher incidence of heart disease down the road, he said.

'We may gain some short-term savings in pharmaceutical costs, but we may lose on the other side in the areas of productivity and absenteeism.'

Dr. Dennis Richling
Midwest Business Group on Health

"If employers look at their claims experience, they are most likely to find that they're spending most of their money on treating cardiovascular conditions," Dr. Richling said.

"If we chose to buy the lowest-quality lubrication fluid for our machine and essentially allowed it to fail two or three years faster, with a huge capital reinvestment that would be required, would we be looked at as good managers?" he queried. "We should use that same kind of discipline as we look at our employees."

"Employers really have to keep an eye on studies like this and work with their PBMs to keep an eye on what's going on within their populations," said Segal's Mr. Brandle.

It is perhaps for this reason that employers need to provide better consumer education when employees are being asked to shoulder more of the burden of their health care costs, said Fran Miller, president of WellCall, a health management company in San Francisco.

"It's an advertisement for people really needing to be educated about their benefit plans, and also their drug options," she said.

"If you're not really clear about all the choices and have the choices available and understandable to the consumer, they can treat (health care) as an economic good in a way that's bad for their long-term health," said Sheila Fifer, a principal of MaxGenRx, a San Francisco-based firm that assists employees and retirees in switching from brand-name medications to more cost-effective alternatives.

While agreeing on the need for better patient education, Dr. Wernick of Watson Wyatt said that employers aren't solely to blame for the consumerist behavior demonstrated by the study.

"I don't think there's any question that as you increase cost-sharing you will hear about people who either don't get prescriptions filled or who take less medicine than they should or they don't go to the doctor when they should. That's going to be a byproduct, and that's too bad," Dr. Wernick said.

"But I don't think it's fair to blame employers for this. Employers are balancing as best they can affordability to the company and affordability to their employees and feel very responsible for their employees' health," he asserted.

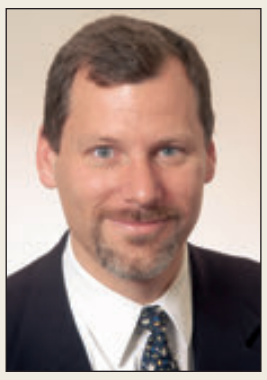
Complete copies of the study are posted on the journal's Web site, www.nejm.org, but are available only to journal subscribers.

Paul Winston

No more monkeys jumping on the bed

From an early age, children are being taught erroneous and dangerous lessons about the importance of safety, concludes a pair of Canadian medical researchers.

The researchers examined several well-known nursery rhymes and found that they often send the wrong message about risky behavior and seeking appropriate medical care when head-trauma injuries occur, according to their tongue-in-cheek study, reported recently in the Canadian Medical Assn. Journal.



Paul Winston

The study, "Head Injuries in Nursery Rhymes: Evidence of a Dangerous Subtext in Children's Literature," was written by Sarah Giles, a student at the School of Medicine and Sarah Shea, on the faculty of the Department of Pediatrics at Dalhousie University in Halifax, Nova Scotia. It was included in the journal's December issue, along with a few other whimsical reports (you can enjoy them all at *www.cmaj.ca/cgi/content/full/169/12/1294*).

"We found six rhymes in which head injury was mentioned or suggested: 'Humpty Dumpty,' 'Jack and Jill,' 'Hush-a-bye-baby,' 'Ten Little Monkeys,' 'It's Raining, It's Pouring' and 'Ring Around the Rosie.' No single category appears to have been spared injury. Babies, teenagers, old men, primates, nongendered, nondescript characters—everyone suffered," the researchers wrote in their report.

You all know what happened in these rhymes, right? A Mr. Dumpty with an unusually large and brittle cranium fell off an unsafe perch on a high wall and cracked his skull. Jack tripped while running down a hill at an unsafe rate of speed and cracked his skull. The cradle, which was placed in a high tree, of all places, fell in a windstorm and the resulting injuries are too horrible to contemplate. The monkeys were monkeying about on the bed and all fell and broke their necks. The old man struck his head and was rendered comatose. And an undetermined number of people with strange herbs and flowers in their pockets spin around until they lose their equilibrium and keel over.

When viewed in such stark terms, it's rather morbid that so many of us from an early age can musically recount these tragedies by heart. Perhaps they were intended as singsong risk management lessons?

The researchers conclude, however, that the nursery rhymes raise more questions than they answer.

"Studying these nursery rhymes raised several pertinent issues: the appropriateness of the response to injury, the importance of seeking a medical opinion, the need for clarity about the events precipitating the injury, and the need to use precise medical terminology," they reported.

In other words, where were the paramedics and cervical collars when Mr. Dumpty cracked his noggin, or when the bough broke? How many little monkeys must die before some adult intervenes and calls for emergency medical care?

In response to the unsound lessons contained in the traditional nursery rhymes, the talented researchers prepared their own cautionary rhyme, which is titled "A Medically Sound Nursery Rhyme":

Little Johnny rode his bike,
No helmet on his head.
He took a fall and split his skull,
His mother feared him dead.

She rushed him to the ER,
Where they checked his neuro signs.
They noted a blown pupil
And inserted IV lines.

They called the neurosurgeon,
Who came in and drilled a burr.
Now Johnny's fine; he rides his bike
But he's helmeted, for sure.

I applaud these researchers for their wit and humor. Just as people have told me it's rare to find humor in the world of insurance, imagine how rare it is in academic journals. Obviously, these two know the difference between the grim reality of head trauma and taking a lighthearted look at the circumstances of beloved nursery rhymes.

Sadly, though, some of their audience doesn't know how to take a joke. At the bottom of the article on The Canadian Medical Assn. Journal's Web site is an area devoted to reader responses. They are almost unanimous in their inability to recognize that the researchers were not intending to present a serious academic analysis.

I suggest that the researchers may already have their next topic in hand: "Lighten Up: An Examination of Irony Deficit Disorder in Medical Journals."

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Editorial

Pass pension funding reform

IT WOULD BE DIFFICULT not to be disappointed by Congress' failure to enact stop-gap pension funding reform legislation before adjourning.

Legislators have known since early 2002—when they last adopted a temporary reform measure—that they would have to act by the end of this year, which is when the 2002 law expires.

One would think two years would have been long enough to come up with a legislative package calling for long-term changes to pension funding rules, or, at the very least, another short-term fix.

And in light of the near-unanimity of support for one element of funding reform—switching to a long-term corporate bond index from the obsolete and flawed Treasury bond-based index—the failure to pass reform legislation is all the more baffling.

What doomed the effort is that legislators, instead of focusing on what truly is urgent—the need to replace the Treasury bond index—got diverted by a side issue: whether special funding relief should be provided to employers with underfunded plans.

Unlike funding reform, the funding relief issue is highly controversial.

Opponents of the relief proposal say that reducing the amount employers with underfunded plans must contribute to the plans—or exempting them from contributions entirely—will result in even more plan underfunding. If an employer sponsoring an underfunded plan later fails, the Pension Benefit Guaranty Corp., the government agency that guarantees pension benefits, will face even bigger losses. This is no small concern for an agency that already is more than $8 billion in the red.

Supporters of the proposal argue that if financially struggling employers receive some funding relief, that just might be enough to get them out of trouble, ensuring their survival—and that of their pension plans.

In sum, the issue is complex and controversial and will take some time to resolve. And for that reason, the matter had no business being bundled—as some members of the Senate wanted—with the urgent, noncontroversial funding reform measure.

Now, the best course of action is for legislators, when they return to Washington in January, to pass the temporary funding reform measure, which would prevent employers from contributing more to their pension plans than necessary.

Funding relief, if at all justified, can surely wait for another day.

Time is right for tort changes

A PERSISTENT criticism leveled against tort reform advocates is that they rely more on anecdotes than on hard data to make their cases.

We happen to disagree with that, although we admit that there have been some tort reform horror stories that ended up simply too good to be true. That's one reason Tillinghast-Towers Perrin's new study of tort costs is so welcome.

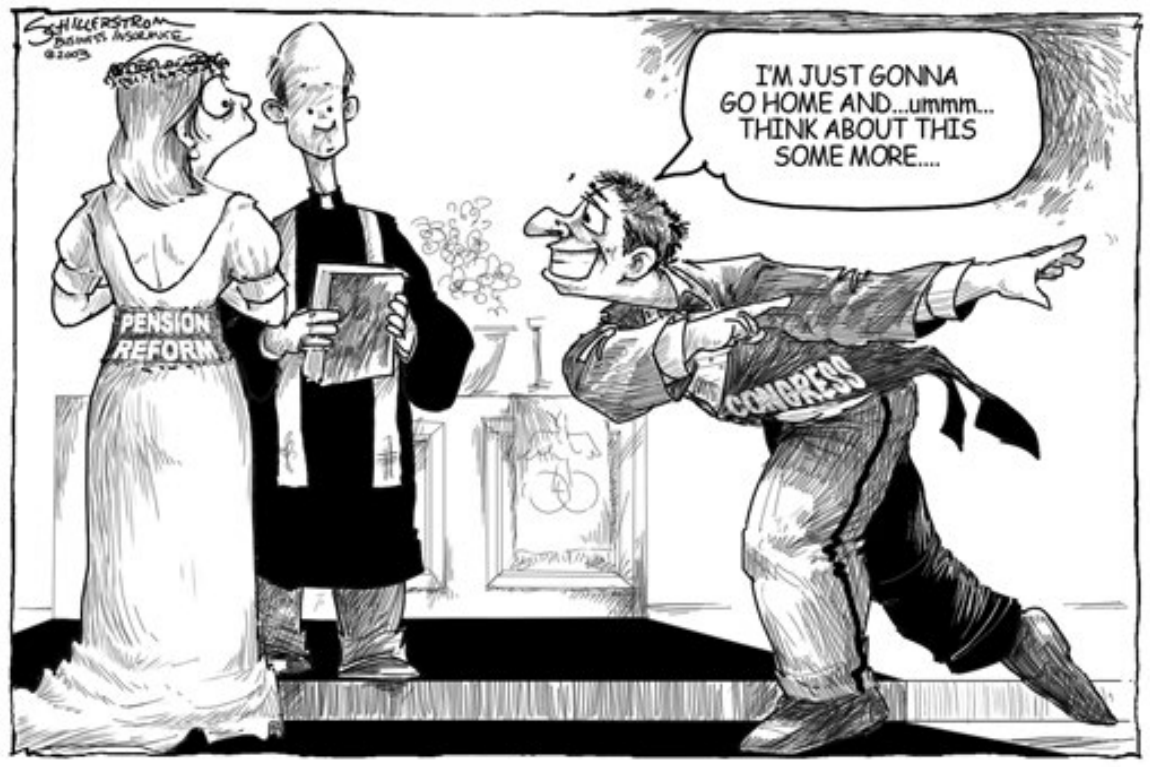
The study shows that costs associated with the tort system once again rose by double-digit percentages in 2002, reaching the point that they represent more than 2% of the gross domestic product. This happened when the economy was not in the best of shape, and it's reasonable to see a connection between rising tort costs and less-than-spectacular economic growth.

That's particularly significant given the survey's finding that asbestos-related costs accounted for an estimated $11 billion of the more than $24 billion increase in tort costs from 2001 levels. The ongoing asbestos litigation mess has been cited by no less an authority than Nobel Laureate Joseph Stiglitz—one of President Clinton's economic advisors and hardly a free-market conservative ideologue—as a drag on the U.S. economy.

The Tillinghast study appears at a most auspicious time, too. Senate Majority Leader Bill Frist, R-Tenn., has said that he intends to move asbestos liability reform legislation to the floor this spring. The Senate also appears certain to take up class action reform as one of its first orders of business when it returns in January. The Tillinghast study also cited class actions as one of the driving forces behind the jump in tort costs.

The time for meaningful federal civil justice reform may never be better than it will be in the next six months or so. Proponents have the facts available, and if they let those facts speak for themselves, the chances of reform will increase.

Schillerstrom



Letters to the Editor

Pickens' federal charter reflections surprising

To the editor: The reflections of National Assn. of Insurance Commissioners President and Arkansas Commissioner Mike Pickens in the Nov. 10 issue on the insurance industry's desire for a federal regulatory option were both surprising and deeply disappointing.

They were surprising because he failed to demonstrate even a basic appreciation of the factors motivating a large and increasingly impatient segment of the insurance industry to seek a federal regulatory option. They were disappointing in that he painted a fanciful picture of the progress states are making to modernize the present regulatory environment.

Let's look at several of his reflections and then consider the facts.

Reflection: A relatively small segment of the insurance industry is calling for a federal regulator.

Fact: Almost all life insurers, a significant segment of the property/casualty industry, a growing universe of insurance agents and even a prominent national consumer organization advocate a federal regulator.

Reflection: Insurers want an optional federal charter because banks are competing with them through the sale of insurance products.

Fact: We have no competitive concern with banks selling insurance products. It's good for our business. We are concerned with the speed-to-market implications of banks and securities firms competing with their noninsurance products in the same markets (e.g., retirement security) that we address with life insurance products.

Reflection: The states have made "a great deal of unprecedented progress" on speed-to-market.

Fact: In the three years between the NAIC's adoption of its first "Statement of Intent" and the publication of its latest "Action Plan," no tangible reforms have been implemented. The NAIC is now committed to addressing this issue through an interstate compact. And the progress? One state has adopted the compact—in a form different from the model legislation. Even if the NAIC achieves its stated goal, the states will spend five more years working to get only 60% of the states to adopt the compact.

Reflection: A federal charter option would result in a loss of premium tax revenue for state governments.

Fact: One look at national banks makes clear that federally chartered and regulated financial intermediaries continue to pay state taxes. The same would hold true for national insurers and is explicitly provided for in our draft legislation. Insurers would fund the cost of a new federal regulator out of their own pockets and not federal tax dollars (which, incidentally, insurers already pay).

Mr. Pickens' other reflections—on the NAIC's "SERF" project, the

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Letters to the Editor

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impact of statutory reserve requirements, the cost of federal insurance regulation, consumer protections under an OFC, guaranty funds—are equally misleading.

For life insurers, regulatory inefficiency is nothing short of a crisis. A recent poll of the American Council of Life Insurance's board of directors ranked it as the top concern of CEOs.

If we fail to deal with the issue appropriately, we risk marginalizing the life insurance business. And it is this business—and none other—that makes products that protect against life's uncertainties and that acts as a principal source of long-term capital for the U.S. economy.

Regulators and regulated alike must address this issue with the utmost seriousness and commitment. Unfortunately, a letter like that of Mr. Pickens, which represents not only his views but purportedly those of the NAIC, belies the grave nature of the situation and does nothing to add constructively to the debate.

Gary Hughes
Senior Vp and General Counsel
American Council
of Life Insurance
Washington

Benefits sponsors are unappreciated

To the editor: Employers and the employee benefits community are caught in a damned-if-they-do, damned-if-they-don't predicament.

For 30 years, I have been on the front lines of government policymaking and public opinion on employee benefits. I have presented testimony before Congress and other forums in which I was harangued that employers were grinches who should provide more, more, more in tax-favored benefits. When we were apparently not generous enough, Uncle Sam joined the states in playing Santa by mandating all sorts of things and, in the process, probably doubled the costs employers now pay for benefits.

I have also testified to Congress and other forums in which I have been harangued that the problem with health inflation is that employers have done a disservice by insulating workers and dependents from the real cost of medical services and the health decisions patients make. "Employees should pay more!" I have been told.

With the recent health inflation (on top of expensive mandated benefits and procedures such as privacy, electronic data interchange, security, Department of Labor claims regulations, etc.) employers are asking workers to pitch in to carry a heavier load. Employers are again getting blamed. It is generally portrayed as the heartless boss dumping on the struggling workers. However, maybe it is the consumer education some in government have said is desperately needed. Remember, these are consumers who are told 50 times a night to make a doctor's appointment to ask about pink, orange, or striped pills to take for the rest of their lives (sometimes spending employee benefit money without knowing what illness the pills are supposed to treat).

What if employers hugged their workers and said that they would pick up 100% of health costs? That would bring wild applause from the do-gooders, and patients could buy pills and services like a kid in a candy store.

Having employers pay 100% for health care with tax-favored money would be efficient too. However, the employer would probably have to say that, because of that large employer expense, the paychecks would be lowered accordingly each year to match the added cost for the 100% paid health coverage. That would instantly generate screams, anger and gnashing of teeth from the do-gooders and workers.

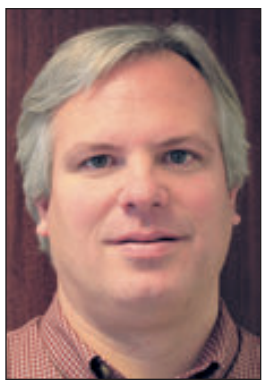
So, sponsors of employee benefits are underappreciated and damned if they do and damned if they don't. They are trying to react logically to an illogical muddle of government and public attitudes. It's not fair, and it won't work. Politicians and workers need to decide their priorities so employers can react.

Fred Hunt
President
Society of Professional
Benefit Administrators
Chevy Chase, Md.

Collateral rules provide solvency protection

By Steven A. Bennett

The Oct. 27 *Business Insurance* editorial "Reconsider Collateralization Rules" failed to address the critical role that collateralization plays in safeguarding solvency in the insurance market. By suggesting that collateralization is solely a "protectionist" matter that "hamper(s) free trade," the editorial failed to assess the risks to solvency protection if collateralization rules are relaxed. A better appreciation for solvency concerns would make clear why the U.S. cedent community is united in retaining the current 100% collateral requirement.



The purpose of collateral requirements is not to limit free trade but to protect cedents—and U.S. policyholders—against the risk of unrecoverable reinsurance. Non-U.S. reinsurers can do business in this country through a licensed U.S. subsidiary and by submitting to state financial and solvency regulation. Or, in lieu of submitting to such regulation, non-U.S. reinsurers may elect to post collateral. Clearly, the requirement that unauthorized reinsurers post collateral is not some protectionist rule to limit foreign competition; it is a critical, substantive requirement to secure reinsurance payments to cedents.

Unauthorized reinsurers are not subject to financial regulation and review by state regulators. For example, they are exempt from U.S. regulations governing risk-based capital, loss reserves, CPA audits, Holding Company Act regulation and detailed financial statements. In contrast, regulation of reinsurance outside the United States varies widely—from no regulation at all to relatively higher regulatory standards. However, no country has as comprehensive a financial regulatory approach as the United States.

Likewise, international accounting standards are not comparable to U.S. accounting standards. Given the widely divergent accounting standards, it is not possible for state regulators or cedents to accurately determine the financial status of unauthorized reinsurers. The results of applying U.S. accounting standards to companies that formerly used other international standards can be alarming. For example, ING Group recently reported a $15 billion difference when it switched from Dutch accounting rules to U.S. accounting standards. A $4.6 billion profit under Dutch generally accepted accounting principles became a $10.4 billion loss under U.S. GAAP. Similarly, AXA S.A. recently reported a $3.1 billion loss under U.S. accounting standards and—using the same data—an almost $1 billion profit under French accounting standards.

Now is a most inopportune time to consider relaxing the collateral requirement. Solvency concerns and the financial security of both the insurance and reinsurance markets should be of paramount interest to all legislators, regulators and industry stakeholders.

The state guaranty fund system, which protects U.S. policyholders when an insurer becomes insolvent, has been severely stressed in recent years. In the last three years, there have been 46 new property/casualty insurer insolvencies, including such large insurers as Reliance Insurance Co., Fremont Indemnity Co. and Legion Insurance Co. Total guaranty fund system liabilities for these new insolvencies easily will reach billions of dollars. During the first three decades of the guaranty fund system—1969 through 2000—claim payments totaled $10.4 billion; in 2001 and 2002 alone, claim payments have been almost $3 billion. These numbers are certain to increase in the next few years due to the new insolvencies.

Reducing collateral will only exacerbate the problems of the already-strained guaranty fund system. Removing the protection afforded by collateral would make reinsurance recoverables more uncertain for those insurers that use unauthorized reinsurers. Failure to obtain reinsurance recoverables may push many insurers to insolvency, further increasing guaranty fund liabilities. A May 1, 2003, memorandum from National Assn. of Insurance Commissioners President Mike Pickens to the NAIC's Reinsurance Task Force concluded that reducing the collateral requirement would represent a "tremendous solvency risk" for U.S. ceding insurers, creating up to $22.2 billion in new credit risk for insurers. A.M. Best Co., in a June 18, 2003, letter to the NAIC, indicated that relaxing collateral requirements would lead to increased rating downgrades for U.S. insurers.

Collateral reduction would impair guaranty funds' ability to collect from an insolvent insurer's reinsurers. Without access to the collateral as a source of funding, guaranty funds would need to increase assessments on insurers. Ultimately, these increased assessments would be borne by U.S. policyholders through either increased rates or separate surcharges.

The reinsurance market is also under financial stress. Perhaps the most noteworthy example is Gerling Global Re. Once the seventh-largest reinsurer in the world, it is now in runoff. In addition, Standard & Poor's Corp. has downgraded 14 of the top 20 global reinsurers since mid-2001. Eight of these companies have been downgraded more than once.

Based on the current solvency concerns of both U.S. insurers and global reinsurers and the severe financial pressures facing the guaranty fund system, there could not be a worse time to relax the 100% collateral requirement. Instead, policymakers should be taking every opportunity to help maintain much-needed solvency requirements and to safeguard insurers and U.S. policyholders against the risk of uncollectible reinsurance recoveries.

Steven A. Bennett is assistant general counsel of the American Insurance Assn. in Washington.

Ask a Risk Manager: Christopher E. Mandel

COSO gives a good start to implement ERM

Q: What is the COSO enterprise risk management framework document, and how should risk managers view and potentially use it?

A: The Board of the Committee of Sponsoring Organizations of the Treadway Commission—COSO—appointed an advisory council and engaged PricewaterhouseCoopers L.L.P. to develop a broadly accepted framework for enterprise risk management. This is a group composed exclusively of accountants and auditors. With the interests of its members and practitioners generally in mind, the Risk & Insurance Management Society Inc. provided extensive review and feedback to COSO on this draft.

RIMS found the document to be a fairly thorough treatment of enterprise risk management, with some qualifications. Among those were the critical issue of which among many risk stakeholder groups is best qualified to lead the implementation of an ERM framework, and what internal partnerships should be formed to optimize the approach to that objective. Let me share some thoughts on these and a few other issues related to these questions, some content issues and the ultimate question we started with.

The framework document provides the direction for the design and implementation of enterprise risk management in any organization concerned with managing risk effectively. It addresses numerous roles in the process with flexibility, and, as such, I believe the risk managers of business, government and nonprofit organizations are uniquely qualified—by virtue of their understanding, knowledge and practical experience—to assume a leadership position in implementing this broader approach to risk management.

However, it will be critical for strong partnerships to be formed across functional lines in order to execute the strategy in most organizations. Partnerships with those responsible for internal audit, accounting, legal and planning are especially important. Other functional partnerships will be as important, depending upon your industry. A strategy of such breadth and depth cannot be implemented without these functional partnerships formed and working effectively.

A variety of other content issues need to be addressed in the final version. These include:

- The consistency of terminology, which is important to facilitating useful dialogue and meaningful exchanges.
- The interrelatedness of consequences, which affects accuracy and usefulness of results.
- The issue of catastrophic loss, including a framework or process for assessing worst-case scenarios.
- The need for more attention and detail around the myriad reporting requirements that emanate from the ERM process.
- The need to ensure that the process is adapted to the culture and then used to influence change in the chosen direction. There is no "one size fits all" approach.
- Recognition of the many other consequences of risk that go beyond the financial to include such issues as reputation, personal criminal penalties, regulatory activism and others.
- Making sure that whoever fulfills the lead role in enterprise risk management is empowered to execute and be accountable for the design of the process.

The risk leader's role must include coordinating and optimizing the management of risk throughout the enterprise, which entails effectively interfacing with all key senior risk professionals in the organization.

To be truly effective, ERM must be as focused on external issues as internal ones, to ensure that bad things that may be happening to others in related (or even unrelated) industries do not happen at home.

I would encourage those interested in leading change in risk management to embrace the spirit of this document and to adopt the general framework outlined in this report but to put special emphasis on a number of considerations.

Focus on process. Adopt a business process engineering approach that focuses on optimizing process through improving existing processes or creating entirely new ones to execute an ERM strategy.

Minimize complexity. Implement ERM using simplified models and metrics that work on a cost-effective, cost-benefit basis for the sake of understanding and user-friendliness.

Distinguish among accountability, responsibility and process. Develop models that clearly indicate who is accountable and responsible for ERM and who owns and controls the process of implementation.

Provide authority. Match an appropriate level of authority with each individual assigned ERM responsibility. Empower the most senior executive responsible for the process to fully execute the strategy.

Develop skill sets for financial, business and operating risks. Organizations must manage operating and business risks using different methods and processes, which requires considerable interpersonal interaction. These often rely on qualitative rather than quantitative measures.

View ERM in horizontal and vertical systems. A horizontal view covers operations from the product or service through creation, distribution, marketing and servicing to the client or customer. A vertical view goes from the board of directors to the front-line employee or customer. Any process should incorporate both views.

View compliance as a subset of ERM. Implement an ERM system that effectively

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Ask: COSO gives a good start to implement ERM

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responds to and addresses compliance responsibilities.

View insurance and risk financing as subsets of ERM. Insurance and risk financing are only two of many risk mitigation techniques. As such, they are only a part of the enterprise risk management process. If the traditional risk professional does not pursue a broad mandate, the result for risk managers would be a significantly diminished role in the ERM process.

Ask A Risk Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on risk management issues was written by Christopher E. Mandel, assistant vp-enterprise risk management at USAA Group in San Antonio and immediate past president of the Risk & Insurance Management Society Inc.

William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues. And Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.

Address your questions to ASK, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Severability creating new D&O challenges

By Dan A. Bailey

Generally, courts have held that a misrepresentation made by one insured in the directors and officers liability insurance application can void the policy for all insureds, including those who had no knowledge of the misrepresentation or the facts that were not properly disclosed. Because underwriters rely on the information in the application when making underwriting decisions regarding the entire policy, this rule allows insurers to rescind the entire policy if that information is false.

To avoid that result, most D&O policies contain one of two types of an application severability provision:

- Full severability states that the knowledge of one insured is not imputed to another insured for purposes of the application.
- Limited severability is the same as full severability except that the knowledge of any signers of the application or of certain executive officers is imputed to all insureds. Thus, coverage for all insureds could be rescinded if the signers of the application or any of the designated executive officers knew of the false information that was not properly disclosed to the insurer in the application.

Although most insurers have used a full severability provision, many insurers today are moving toward some form of limited severability.

The facts that the insurer must prove to rescind coverage vary from state to state. At a minimum, the insurer must prove that the insureds made representations to the insurer in the underwriting process that were materially false and that were relied upon by the insurer in underwriting the policy.

Most states do not require the insurer to prove that the insureds intended to deceive the insurer, though some states require the insurer to prove that the insureds either intended to deceive the insurer or had knowledge of the misrepresentation in order to rescind coverage.

If the insurer must prove the knowledge or intent of the insured in order to rescind coverage, the existence and quality of an application severability provision is critically important. For claims that cannot be indemnified by the company—such as settlements in shareholder derivative suits and situations where the company is insolvent—the personal assets of the defendant director and officer may be at risk unless the D&O insurance coverage can be protected from rescission.

Even if the D&O policy provides full severability, the insurer may still rescind coverage under certain circumstances. In states in which an insurer need not prove the insureds knew of the misrepresentation or intended to deceive the insurer in order to rescind coverage, knowledge or intent is irrelevant to a rescission analysis based on false objective information in the application. Thus, the existence of a severability provision may likewise be irrelevant.

Both insureds and insurers have legitimate but conflicting concerns regarding misrepresentations in a D&O insurance application.

On the one hand, directors and officers, particularly outside directors, want to be protected even if another insured lied in the underwriting process. On the other hand, insurers who relied on false information want a remedy for such misrepresentation, particularly if the insurer would not have issued the policy at the agreed terms but for the misrepresentation. Simply denying coverage for the insured who made the misrepresentation affords little relief to the insurer because, in most claims, the insurer would still be required to pay out large amounts for other insureds under the improperly obtained policy.

Unfortunately, these two conflicting perspectives cannot be fully reconciled. Both the "innocent" insureds and the insurer are victims of the misrepresentation, yet only one of those two victims can obtain relief from the misrepresentation.

One reasonable severability solution that is gaining some popularity today recognizes that the preferred type of severability provision varies depending on the type of coverage being afforded. Coverage for non-indemnifiable losses of directors and officers (i.e., "Side A" coverage) protects the personal assets of directors and officers and therefore deserves the greatest protection against rescission. Many insurers are willing to grant full severability protection for Side-A coverage, and some insurers expressly waive in the policy their right to rescind Side-A coverage.

In contrast, the more frequently invoked coverage for the company—i.e., coverage under either the corporate reimbursement Insuring Clause B or the entity securities Insuring Clause C—merely protects the corporation. It is reasonable to impute the knowledge and intent of the executive officers to the corporation for purposes of rescinding coverage for the corporation. This approach does not harm and, to some extent, helps the insured directors and officers, because more of the policy's limit of liability is preserved for the critically important Side-A coverage.

Like many other aspects of a D&O insurance policy, application severability creates difficult and challenging issues for both insureds and insurer. There are no simple or easy solutions. Instead, both parties need to understand and appreciate the legitimate concerns of the other and be willing to work together to best address these competing concerns.

Dan A. Bailey is a member of the Columbus, Ohio, law firm of Bailey Cavalieri L.L.C.

Loss of neglected property not 'fortuitous': Court

Legal briefs

The collapse of the roof on a policyholder's dilapidated warehouse was not a fortuitous event under a property insurance policy, according to an Illinois appellate court.

Johnson Press of America Inc. owned a warehouse in Pontiac, Ill. The property included two adjacent warehouses, one of which was a one-floor prefabricated steel building. Adjacent to this building—and sharing a common masonry wall with it—was a two-story brick building built during the early 1900s. In 1998, without any interference from natural forces, portions of the roof, the second floor and the first floor of the old brick building collapsed into the basement. This collapse rendered the masonry walls unstable. Thus, the City of Pontiac ordered that the warehouse be razed. The Johnson Press buildings were covered under a property insurance policy from Northern Insurance Co. of New York. The policy covered the buildings, fixtures and personal property against loss covered by certain accidental fortuitous events. The policy excluded coverage for damages caused by deterioration and faulty or defective maintenance. Johnson Press filed a claim for damages that was denied. Johnson Press sued the insurer but lost in the trial court.

The appellate court said that in order to prevail, Johnson Press needed to show that the loss resulted from a fortuitous event. "Fortuitous," the court said, meant happening by chance or accident or occurring unexpectedly or without known cause. According to the court, Johnson Press' own expert concluded that the collapse was due to long-term deterioration and water infiltration. The court said that the dilapidated condition of the building demonstrated that the collapse of the building did not happen by chance or accident. Thus, the court agreed that the insurer was not liable.

Johnson Press of America vs. Northern Insurance Co., Appellate Court of Illinois, June 13, 2003 (BI/01/D.-$10)

Execs not fiduciaries under ERISA plan

The general manager and president of an employer could not be imputed fiduciary duties and, consequently, held personally liable for unpaid employer contributions to an Employee Retirement Income Security Act pension fund, according to the 11th U.S. Circuit Court of Appeals.

Roger Hall and Hope Hall are the general manager and president, respectively, of H&R Services. Under collective bargaining agreements with a union, H&R Services was obligated to contribute funds to the union pension fund for the future security of its unionized employees. H&R Services failed to make those contributions. In 1999, the pension fund filed suit for the recovery of the delinquency. The federal trial court ruled for the pension fund and assessed damages in the amount of $123,767 against H&R Services. Even then, H&R Services failed to remit payment to the pension fund. The pension fund then filed the ERISA suit directly against Mr. Hall and Ms. Hall, claiming they were in violation of the fiduciary duty that ERISA places on persons with control over the assets of an ERISA plan. The trial court ruled against the pension fund, and the fund appealed.

The appellate court said that unpaid employer contributions are not assets of an ERISA fund to which fiduciary responsibility attaches unless the agreement between the fund and the employer specifically and clearly declares otherwise. In this case, the court said, the governing agreement between the employer and the pension fund was ambiguous as to whether such contributions were assets of the fund. According to the court, a person should not be attributed fiduciary status under ERISA—and held accountable for performance of the strict responsibilities required of him or her in that role—if he or she is not clearly aware of the fiduciary status. The court sent the case back to the trial court for a determination of the parties' intent in the agreement.

ITPE Pension Fund vs. Hall, 11th U.S. Circuit Court of Appeals, June 19, 2003 (BI/02/D.-$10)

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

Commentary

Spirit of the season slightly skewed

Weeks ago, this holiday season's spirit of giving set in motion the crass commercialism that many complain defiles the season—but which is such an important component of our economy.

In keeping with that kind of conflicting reality, here's my holiday wish list for the risk management and employee benefits community. If you are one who rarely believes the end justifies the means, some of this won't be pretty.

But, for what it's worth, it's (mostly) sincere.

At the risk of hoping for a jobless economic recovery, I wish that security consultants lose tons of business as a suicide bomber accidentally flips the wrong switch in an isolated safe house where the world's terrorists have gathered for their annual convention.


Dave Lenckus

Either that...or peace on Earth.

I know this next one isn't quite in keeping with the holiday spirit, but I think I've already set the tone for it. Instead of hatching plots to launch Internet viruses or hacking into corporate computer systems, I wish that computer whiz kids who are intent on demonstrating system weaknesses would instead develop a sense of social responsibility and use their talents for good.

How about developing a security system that emits an electric shock to any numskull who releases a computer virus or tries to hack into a system? It doesn't have to be lethal—just a hair-raising, knock-you-on-your-keester message to stop being such pompous, inconsiderate morons.

Alternatively, I guess peace on Earth might work there, too.

I wish that courts throughout the land would clearly and uniformly decide what the terms "absolute" and "sudden and accidental" mean in pollution insurance exclusions, so we don't have to endure another couple decades of litigation over that policy language.

Court decisions that interpret those terms can be extremely interesting reading, and the rulings give attorneys from both sides important spin-control practice.

But, we need the courtrooms cleared so policyholders and insurers can battle over contingent business interruption claims stemming from the Sept. 11, 2001, terrorist attacks.

I wish for an asbestos liability reform measure that compensates victims adequately without imposing overly harsh financial requirements on insurers.

In negotiating a compromise, I hope that both sides pull their heels out of the ground after considering the legal costs they would avoid under such a measure. Perhaps removing from the negotiations anyone with—or thinking about earning—a law degree should be the next step, since it should have been the first order of business.

I wish Congress would figure out a way to pool Medicare recipients in a way that would drive down the cost of prescription drugs.

To put additional pricing pressure on prescription drugs, I also wish that the U.S. Food and Drug Administration would gain confidence in the safety of the less expensive prescription drugs available in Canada.

Could the drugs from our neighbors to the north be so much more risky than the FDA-approved list of pharmaceuticals, with their self-acknowledged catalog of side-effects ranging from foot odor to the very maladies the drugs were formulated to cure?

I wish that all employers, even if in just some small way, would develop programs that promote fitness among their overweight workers. For example, in October I wrote about several employers that promote riding bikes to work or while commuting between worksites. The resulting improved fitness and reduced risk of illness among those workers would be wonderful rewards for those workers and their employers.

I also wish that in trying to get fit by, say, riding a bike to work, no one hits a road hazard that throws them from his or her bike, causing injuries requiring thousands of dollars to treat. That would really send the wrong signal throughout the whole organization.

I wish that medical researchers would quickly determine which experimental medical treatments offer more promise than existing protocols, so severely ill patients don't have to spend their remaining days fighting for health insurance benefits to cover potentially life-saving treatment they otherwise could not afford.

I wish the president, already two years tardy, would award the Presidential Medal of Freedom to the United Airlines Flight 93 passengers and crew for their heroism in preventing the Sept. 11 terrorists from ambushing our government representatives and destroying important symbols of our freedom.

And, did I mention peace on Earth?

Senior Editor Dave Lenckus can be reached at dlenckus@crain.com.

Comings & Goings


Mr. Bessette


Mr. Clifford


Mr. Liss


Mr. Heyman


Mr. MacColl


Mr. Butterworth

Insurers

The St. Paul Cos. Inc. and Travelers Property Casualty Corp., which have announced plans to merge (*BI*, Dec. 8), have made several executive appointments. The appointments will become effective on completion of the merger, which is expected in the second quarter of 2004:

- **Jay S. Benet** has been named executive vp and chief financial officer. Mr. Benet served in the same capacity for Hartford, Conn.-based Travelers.
- **Andy F. Bessette** has been named executive vp and chief administrative officer. He had the same title at St. Paul, Minn.-based St. Paul.
- **William A. Bloom** has been named senior vp and chief information officer after serving Travelers in the same capacity.
- **John P. Clifford** has been named senior vp of human resources, a position he held at St. Paul.
- **William H. Heyman** has been named executive vp and chief investment officer. He served St. Paul in the same position.
- **Samuel G. Liss** was named executive vp of strategic development. Previously, Mr. Liss was executive vp of business development for St. Paul.
- **John A. MacColl** has been named vice chairman and general counsel. Previously, Mr. MacColl was general counsel and vice chairman for St. Paul.
- **Maria Olivo** has been named executive vp of financial planning/analysis and investor relations. She served St. Paul in the same capacity.

In other insurer changes:

Lloyd's of London-based Liberty Syndicate Management Ltd. has named **Mark Butterworth** as chief operating officer. Previously, Mr. Butterworth was group insurance risk manager for Prudential P.L.C.

The Hartford Financial Services Group Inc. has named **Joseph Boures** as president of its Specialty Risk Services Inc. subsidiary. Before his promotion at the Hartford, Conn.-based third-party claims administrator, Mr. Boures was vp of strategic business development for Hartford's property/casualty operation.

Agents/brokers

Willis Group Holdings Ltd. has named **Jim Iacino** as senior vp in its Denver office. Before joining Willis, Mr. Iacino was senior vp at Marsh Inc.

John E. Grob has joined Aviation Insurance Services as senior vp in the company's Las Vegas headquarters. Before joining AIS, Mr. Grob was vp and West Coast regional manager for AIG Aviation.

Ross Corradino has been appointed senior vp-loss control, for Lockton Cos. of Colorado Inc. in Denver. Before his promotion, Mr. Corradino was a loss control consultant.

Other suppliers

Ed Velasquez has been named executive vp of New York-based underwriting manager NIF Risk Management. Before joining NIF, Mr. Velasquez was executive vp for Aon Corp.'s Combined Specialty Group.

Attenta Inc. has named **Frank Vidrik** as president. Before joining the Birmingham, Ala.-based third-party administrator, Mr. Vidrik was senior vp and national sales director of Cambridge Integrated Services Group Inc.

Professional MarketPlace

HELP WANTED

Arthur J. Gallagher & Co.

Insurance Brokerage and Risk Management Consulting

Arthur J. Gallagher & Co. (NYSE AJG), one of the world's leading insurance brokers, plans, designs and administers a full array of insurance, reinsurance, risk management and self-insurance programs. We seek energetic, customer-driven individuals, looking to grow with an industry leader in a team-oriented culture. Successful candidates will have a minimum of two years experience in the insurance/risk management profession, or in related areas of technical expertise. We offer an attractive compensation and benefits package with potential for significant performance rewards.

Positions Available

Sales/New Business Production (Including Account Executives with Sales Experience)
Technical Assistants (Property and Casualty Account Servicing)

For consideration, please forward your resume and area of interest to:

Penny Campbell
c/o Arthur J. Gallagher & Co. of New York, Inc.
444 Madison Avenue, 20th Floor
New York, NY 10022
E-Mail Address: **Penny_Campbell@ajg.com**
Fax: 212-994-7112

HELP WANTED

ACCOUNT EXECUTIVE

Highly skilled and experienced account executive to generate health benefit sales for ag association Salinas field office. Looking for motivated and enthusiastic person to join our team in providing sales and service of insurance products to members. BA/BS degree with prior sales or management experience preferred. Large group health experience at retail or wholesale level, strong knowledge of employee benefits and WC exper, L&D and F&C licenses preferred. Must have clean driving record and valid driver's license. Excellent benefit package. Send resume and salary requirements to: **JHarper@wga.com** or FAX to (949) 809-6296.

HELP WANTED

ACCOUNT REPRESENTATIVE

Highly skilled and experienced account representative to generate health benefit sales for ag association LA field office. Looking for motivated and enthusiastic person to join our team in providing sales and service of insurance products to members. BA/BS degree with prior sales or management experience preferred. Large group health experience at retail or wholesale level, strong knowledge of employee benefits and WC exper, L&D and F&C licenses preferred. Must have clean driving record and valid driver's license. Excellent benefit package. Send resume and salary requirements to: **JHarper@wga.com** or FAX to (949) 809-6296.

LEGAL NOTICE

NOTICE OF APPOINTMENT OF JOINT LIQUIDATORS

Name of Company	**Bradstock Limited**
Date of Appointment	22 October 2003
Appointed by:	Secretary of State
Joint Liquidators' names	Gareth Hughes & Martin Fishman, Ernst & Young LLP
Name of Company	**Bradstock Insurance Brokers Limited**
Date of Appointment	3 December 2003
Appointed by:	Secretary of State
Joint Liquidators' names	Gareth Hughes & Margaret Mills, Ernst & Young LLP
Address of registered offices & Joint Liquidators	1 More London Place London SE1 2AF, England
Nature of businesses	Non-life insurance and reinsurance broker

NOTICE TO CREDITORS

Bradstock Limited (In Compulsory Liquidation)

Bradstock Insurance Brokers Limited (In Compulsory Liquidation)

The creditors of the above-named companies are requested, on or before midday on 7 January 2004 to send their names, addresses and particulars of the claims to the undersigned, the Joint Liquidator of the company, at Ernst & Young LLP, 1 More London Place, London SE1 2AF, England, Claim and proxy forms for the respective companies may be downloaded from the Bradstock Group plc website, the address of which is www.bradstockgroup.com or by application to Mr Rodney Jeffreys or Mrs Catherine Simpson at the following address: Knollys House, 9-13 Byward Street, London EC3R 5AS, England, Tel: 0044 (0) 20 7712 7500.

Please return proxy forms to Matthew Shaw, 1 More London Place, London SE1 2AF, England, or by facsimile +44 (0)207 951 9998, by midday 7 January 2004. The Joint Liquidators propose to convene meetings of creditors pursuant to section 141 of the Insolvency Act 1986 for the purpose of determining whether liquidation committees should be established. These meetings will take place on 8 January 2004 at 2.30pm and 3.30pm respectively at: The Insurance Institute of London, 20 Aldermanbury, London EC2V 7HY, England.

All parties who believe themselves to be creditors of the companies are welcome to attend.

Dated this 9th day of December 2003

Gareth Hughes, Joint Liquidator

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**In Petition under Section 304**
Petition of Dan Yoram Schwarzmann and Douglas Nigel Rackham, as Foreign Representatives of La Metropole S.A.,	**Case No. 03-17495-CB**
Debtor in Foreign Proceedings.	

SUMMONS: TO ALL INSURANCE AND REINSURANCE CREDITORS: A petition dated November 25, 2003 (the "Petition") in a case ancillary to a foreign proceeding has been filed in the United States Bankruptcy Court for the Southern District of New York, The Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408 requesting an order pursuant to 11 U.S.C. § 304 (the "Order") giving full force and effect in the United States to the Scheme of Arrangement (the "Solvent Scheme of Arrangement") of La Metropole S.A. (the "Company") in respect of certain insurance and reinsurance liabilities, and making the Solvent Scheme of Arrangement binding on and enforceable against all Scheme creditors in the United States.

YOU ARE SUMMONED and required to submit to the Clerk of the said Court, on the Court's internet site: www.nysb.uscourts.gov, with a copy to the chambers of the Honorable Cornelius Blackshear, United States Bankruptcy Judge at the said Court, at Room 604, a motion or answer to the Petition, on or before January 20, 2004. At the same time you must also serve a copy of your motion or answer on the Petitioners' United States counsel at the address listed below. If you make a motion, your time to serve an answer is governed by Fed. R. Bankr. P. 1011(c). If you fail to respond to this summons, the Order may be entered.

A hearing to consider any timely opposition to entry of the proposed Order will be held at the said Court, Room 601, on January 29, 2004, at 2:00 p.m.

The foregoing summons is served upon you by publication pursuant to an Order of the Honorable Cornelius Blackshear, dated December 3, 2003 and filed with the Petition and other papers in the office of the Clerk of the said Court.

PLEASE TAKE NOTICE that copies of the Solvent Scheme of Arrangement, together with the Summons, the Petition, and a form of the proposed Order are available upon written request to the Petitioners' counsel:

KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 Third Avenue, New York, New York 10022
Tel: (212) 715-9100. Fax: (212) 715-8000.
Attention: James C. McCarroll, Esq.

HELP WANTED

Personal Lines Insurance Account Executive

A fast-growing national insurance broker located in Boston is looking for a full-time Personal Lines Insurance Account Executive. Responsibilities include providing top notch client service to a book of business consisting of homeowners, auto, and other miscellaneous lines of insurance. Duties will include processing and billing of endorsements, renewals answering client questions, and writing new business. Also will be required to maintain transactional and electronic client files in accordance with departmental procedures. Requirements: must hold a Massachusetts P&C Broker's license, must have 3-5 years experience in servicing Personal Lines accounts, good working knowledge of MS Office products, a familiarity with Personal Lines rating software such as Winrater as well as insurance carrier software such as Collaborative Edge. A working knowledge of an Agency Management software. Competitive benefit program offered. Send resume along with references and requested salary range to: **donnafennell@acordia.com.**

REQUEST FOR PROPOSALS

LEGAL NOTICE
CITY OF NAPERVILLE
REQUEST FOR PROPOSALS
RFP 04-116

Excess Liability Insurance Coverage

The City of Naperville, Illinois does hereby invite proposals for excess liability insurance coverage for the period beginning May 1, 2004.

Market Assignment Requests: will be received beginning at 8:00 A.M. December 18, and ending close of business on December 29, 2003.

Proposals will be received at the City of Naperville, Purchasing Division, 400 South Eagle Street, Naperville, Illinois 60540 until **3:00 p.m.**, local time, on **February 16, 2004.**

Those desiring to tender proposals may obtain copies of the specifications between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, in the Purchasing Division, at the above address, or by downloading from the City's website **(http://www.naperville.il.us).**

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

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of John C. Gibbons, as Liquidator of
NEW CAP REINSURANCE CORPORATION LIMITED,
DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 99-B-42752 (CB)

NOTICE IS HEREBY GIVEN THAT ON DECEMBER 3, 2003, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT UNTIL JUNE 10, 2004 (THE "INTERIM PERIOD"). A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED AFTER THE INTERIM PERIOD IS SCHEDULED TO BE HELD ON JUNE 9, 2004 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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

HELP WANTED

MARKETING EXECUTIVE
NY Tri-State Territory

Financially sound regional comm'l lines P&C carrier recruiting experienced marketing/production professional to expand present agency plant and niche programs. Solid carrier experience and Degree and Designation desired. Attractive compensation and career package. Reply in confidence to: *Business Insurance,* Box 3209, 360 North Michigan Avenue, Chicago, Illinois 60601-3806; E-mail: **bibox3209@crain.com**

LEGAL NOTICE

NOTICE OF SCHEME CREDITORS' MEETINGS

IN THE HIGH COURT OF JUSTICE ENGLAND AND WALES, CHANCERY DIVISION, COMPANIES COURT
CLAIM No. 6562 of 2003
IN THE MATTER OF

KINGSCROFT INSURANCE COMPANY LIMITED
(formerly Kraft Insurance Company Limited, Dart and Kraft Insurance Company Limited and Dart Insurance Company Limited)
WALBROOK INSURANCE COMPANY LIMITED
EL PASO INSURANCE COMPANY LIMITED
LIME STREET INSURANCE COMPANY LIMITED
(formerly Louisville Insurance Company Limited)
MUTUAL REINSURANCE COMPANY LIMITED
and IN THE MATTER OF THE COMPANIES ACT 1985

IN THE SUPREME COURT OF BERMUDA
CASE No. 417 of 2003
IN THE MATTER OF

MUTUAL REINSURANCE COMPANY LIMITED
and IN THE MATTER OF THE COMPANIES ACT 1981 OF BERMUDA

(all the above companies being subject to a scheme of arrangement, which became effective on 15 December 1993, with their respective Scheme Creditors pursuant to Section 425 of the Companies Act 1985 of Great Britain and, in addition, in respect of Mutual Reinsurance Company Limited only, Section 99 of the Companies Act 1981 of Bermuda)

NOTICE IS HEREBY GIVEN that, by an Order dated 28th day of November 2003 made in the High Court of Justice of England and Wales in the matter of Kingscroft Insurance Company Limited, Walbrook Insurance Company Limited, El Paso Insurance Company Limited, Lime Street Insurance Company Limited and Mutual Reinsurance Company Limited (the **"KWELM Companies"**) and in the matter of the Companies Act 1985 of Great Britain, and by an Order dated the 2nd day of December 2003 made in the Supreme Court of Bermuda in the matter of Mutual Reinsurance Company Limited (**"Mutual Re"**) and in the matter of the Companies Act 1981 of Bermuda, separate meetings were ordered (hereinafter called the **"Meetings"**) to be summoned of the Scheme Creditors (as defined in the Amending Scheme hereinafter mentioned) of each of the KWELM Companies for the purpose of considering and, if thought appropriate, approving (with or without modification) an Amending Scheme of Arrangement (the **"Amending Scheme"**) proposed to be made between the KWELM Companies and their respective Scheme Creditors (hereinafter mentioned) pursuant to section 425 of the Companies Act 1985 of Great Britain (**"Companies Act"**) and, in addition, in relation to Mutual Re only, section 99 of the Companies Act 1981 of Bermuda (**"Bermudian Companies Act"**). The purpose of the Amending Scheme is to amend certain provisions of a Scheme of Arrangement dated 8 September 1993 which took effect from 15 December 1993 (hereinafter called the **"Original Scheme"**) between the KWELM Companies and their respective Scheme Creditors.

The Scheme Creditors referred to herein are:

(1) Protected Scheme Creditors (being Scheme Creditors whose claims are eligible for protection under the applicable provisions of the Policyholders Protection Act 1975 by the Financial Services Compensation Scheme Limited); and

(2) General Scheme Creditors (being any other Scheme Creditors).

Such Meetings will be held at The Chartered Insurance Institute, 20 Aldermanbury, London, EC2V 7HY, United Kingdom on the 29th day of January 2004 at the times mentioned below, namely:

1 the chairman of the Meetings will address Scheme Creditors generally on the Amending Scheme and on issues relevant to voting at the commencement of the first Meeting at 2.00 p.m.

2 in the case of General Scheme Creditors:
- (a) the Meeting of Kingscroft Insurance Company Limited at 2.00 p.m.;
- (b) the Meeting of Walbrook Insurance Company Limited at 2.05 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (c) the Meeting of El Paso Insurance Company Limited at 2.10 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (d) the Meeting of Lime Street Insurance Company Limited at 2.15 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (e) the Meeting of Mutual Reinsurance Company Limited at 2.20 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned); and

3 in the case of the Protected Scheme Creditors:
- (a) the Meeting of Kingscroft Insurance Company Limited at 2.25 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (b) the Meeting of Walbrook Insurance Company Limited at 2.30 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (c) the Meeting of El Paso Insurance Company Limited at 2.35 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);
- (d) the Meeting of Lime Street Insurance Company Limited at 2.40 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned); and
- (e) the Meeting of Mutual Reinsurance Company Limited at 2.45 p.m. (or as soon thereafter as the preceding Meeting shall have concluded or adjourned);

A copy of the said Amending Scheme, a copy of the Explanatory Statement, prepared in connection with the Amending Scheme under section 426 of the Companies Act and, in addition, in relation to Mutual Re, section 100 of the Bermudian Companies Act (the "Scheme Document") and the Form of Proxy (including Claims Table) for use at the Meetings can be downloaded from www.kwelm.com. Alternatively, copies of those documents can be obtained from the Creditor Help Desk by telephone on +44 (0) 20 7645 4991, fax +44 (0) 870 600 7588 or email creditor.helpdesk@kwelm.com or by post from the Scheme Administrators:

CJ Hughes and IDB Bond Scheme Administrators of the KWELM Companies
John Stow House, 18 Bevis Marks, London, EC3A 7JB, United Kingdom

Scheme Creditors may attend and vote in person (or, if a corporation, by a duly authorised representative) at such of the Meetings as they are entitled to attend. Alternatively they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

In any event, whether or not Scheme Creditors are intending to be present at any Meeting in person, they are requested to complete the Form of Proxy in accordance with the instructions contained therein and with pages 4, 5, 21, 22, 46, 47 and 81 to 85 of the Scheme Document and return it to the Scheme Administrators of the KWELM Companies at the address indicated above by 6.00 p.m. (Greenwich Mean Time) on 28 January 2004. If not so returned, Forms of Proxy will be accepted at any time prior to the commencement of the Meetings (and may be handed in no earlier than 12.30 p.m. on the day of the Meetings and at the place fixed for them).

The chairman of the Meetings will accept faxed Forms of Proxy received before 6.00 p.m. (Greenwich Mean Time) on 28 January 2004 on +44 (0) 870 600 7587, if legible, subject to receipt of the original within 7 days of the Meetings.

Each Scheme Creditor or his proxy will be required to register his attendance at such meetings as he is entitled to attend prior to its commencement. Registration will commence at 12.30 p.m. on the day of the Meetings.

The Amending Scheme is proposed between the KWELM Companies and their respective Scheme Creditors (being creditors in respect of any claim arising out of a liability to which the KWELM Companies were subject at 8 September 1993 (the date of the Original Scheme) or to which they became subject thereafter, by reason of an obligation incurred before that date) but excepting any claim which would have been preferential in a liquidation of the KWELM Companies or a claim in respect to the costs or expenses of the Original Scheme or Amending Scheme which will be payable in full.

By the said Orders, the courts have appointed Christopher John Hughes or, failing him, Ian Douglas Barker Bond or, failing him Christopher Glenn Reynolds to act as chairman of the Meetings and has directed the chairman to report the results thereof to the respective courts.

The said Amending Scheme will be subject to the subsequent sanction of the respective courts.

DATED the 5th day of December 2003

Cadwalader, Wickersham & Taft LLP, 265 Strand, London WC2R 1BH, United Kingdom

Appleby Spurling & Kempe, Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda

Solicitors to I D B Bond and C J Hughes, Scheme Administrators of the Scheme Companies

LEGAL NOTICE

French floods to hit catastrophe fund

Insured losses yet to be tallied, but CCR expecting to pay claims

By SARAH VEYSEY

MARSEILLE, France—Most of the losses from the severe flooding in southeastern France earlier this month will be borne by France's natural catastrophe reinsurance fund, the Caisse Centrale de Reassurance.

The floodwaters, brought on by heavy rains, have begun to recede in the area around Marseille, but no estimates of insured losses are yet available, sources said.

French Prime Minister Jean-Pierre Raffarin on Dec. 2 declared the flooding a natural catastrophe, meaning that coverage would be triggered under the CCR. The government reinsurance fund covers insurers' losses above a certain level.

In addition, French President Jacques Chirac has pledged 12 million euros ($14.3 million) of immediate financial aid to the region because of the floods, which killed at least five people.

The affected region does not normally flood, according to David Crichton, visiting professor at the Benfield Greig Hazard Research Centre at University College London.

French reinsurer SCOR S.A. said its financial results would not be affected by the floods, though it did not provide an estimate of its losses.

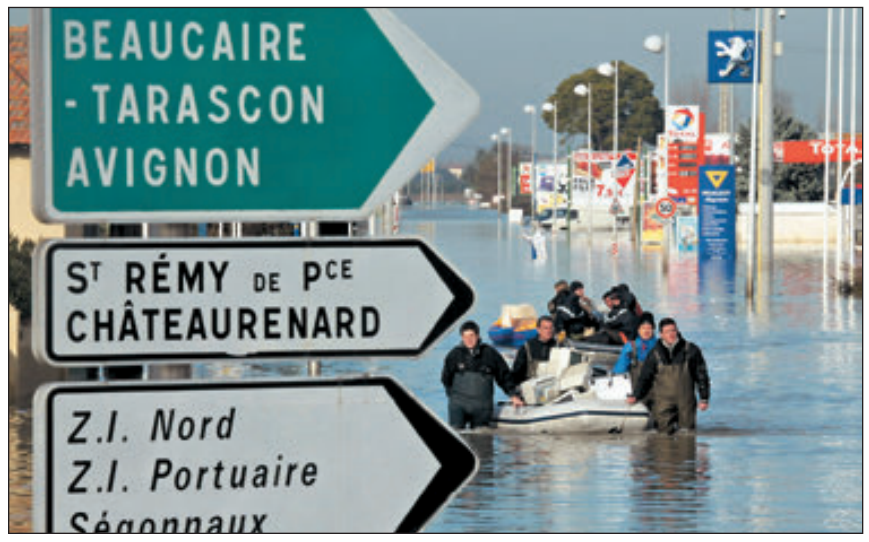

PHOTO: AFP

Losses from recent flooding in southeastern France are expected to be covered by the state-sponsored catastrophe reinsurance fund.

Assn. of Risk & Insurance Managers of Australasia conference

HIH lacked good risk management: Judge

By ELIZABETH FRY

CAIRNS, Australia—The $5.3 billion collapse of HIH Insurance Ltd. was due to a failure of the company's internal control systems, according to Justice Neville Owen, a judge of the Supreme Court of Western Australia and head of the Royal Commission inquiry into the insurer.

And as a consequence of that failure, and other Australian corporate failures, more strict corporate governance laws have been implemented.

But, Justice Owen told attendees at the Assn. of Risk & Insurance Managers of Australasia Ltd. conference earlier this month, there is a danger that corporate reforms will go too far, stifling entrepreneurial spirit.

"I don't believe that the reforms put in place so far will have that effect, but we are in danger of knee-jerk reactions to (corporate collapses) which might restrict some organizations that want to operate differently, which they must be allowed to do," he said.

Justice Owen said that risk management should be the central focus of corporate governance reform. Recent corporate collapses have made regulators more aware of the need for risk management, as is evidenced by the implementation of some of the policy recommendations from the Royal Commission following the failure of HIH, he said.

ARIMA 2003 conference coverage continues page 20

"The concept of corporate governance has broadened, and has now become part of the regulatory framework," Justice Owen said, referring to the Australian Stock Exchange Code of Practice, and the Corporate Law and Economic Reform Program, which contain a number of reforms. The reforms include requiring executive sign-off on financial statements, stronger internal audits, independent directors and independent auditors.

Justice Owens said, though, that reforms being proposed by Australia's insurance watchdog, the Australian Prudential Regulation Authority, will force insurers to adhere to stricter corporate governance rules than other companies.

He agrees with Sydney-based APRA's development of a detailed template for risk management strategies. The regulator will require a company's risk management strategy to include financial information it considers an essential part of corporate governance.

But Justice Owen questioned APRA's inclusion, in its general prudential standard, of some of the elements of corporate governance standards contained in the ASX Code. "Is it in the interests of the commercial community to move into an area where basic requirements of corporate governance have the force of law?" he asked. "That is tantamount to requiring a one- size-fits-all law."

Justice Owen said that the key elements of corporate governance are openness, accountability and integrity. Companies should foster a culture of compliance rather than fearing what happens when a potential risk is exposed. Employees should be encouraged to report mistakes whenever they occur. "This way, a climate of fear is replaced with a climate of proactive problem solving," Justice Owen said. "When mistakes are buried, they compound other mistakes, which weaken an organization so that it is unable to sustain shocks."

On the issue of accountability, Justice Owen champions the independence of auditors. He said one of his recommendations to government was that the standard for auditor independence be similar to the standard that applies to judges. Under such a standard, an auditor is not independent of a client if he or she might be impaired—that is, whether a reasonable person, in full knowledge of relevant facts, might not be impartial.

The federal government had indicated that it would accept this definition but under pressure from Australian accountants, it proposed changing the rule to say an auditor isn't independent if he or she *would* be impaired.

White Mountains diversifies book with deal to acquire Swedish insurer

By RODD ZOLKOS

HAMILTON, Bermuda—White Mountains Insurance Group Ltd. has agreed to purchase Stockholm, Sweden-based insurance and reinsurance organization Sirius International Group from ABB Ltd. for approximately $425 million.

The primary Sirius International Group companies include Scandinavian reinsurer Sirius International Insurance Corp., U.S. insurance company Sirius America Insurance Co. and Scandinavian Reinsurance Co. Ltd., a Bermuda-based finite reinsurer in runoff.

In 2002, Sirius International Group reported gross premiums of 6.62 billion Swedish kronor ($680.5 million). White Mountains reported earned insurance and reinsurance premiums in 2002 of $3.58 billion.

Hamilton, Bermuda-based White Mountains said it expects the transaction to close in the second quarter of 2004, subject to regulatory approvals and other customary closing conditions.

Following the purchase announcement, Standard & Poor's Corp. affirmed its ratings on White Mountains and Sirius International, with a stable outlook.

While acknowledging that the transaction did pose some near-term integration risks, S&P said its view was based on the acquisition's potential long-term benefits for White Mountains offered by the international scale of Sirius International's business and the earnings diversification that the business would provide.

World Updates

Talisman buys Trenwick's Lloyd's operations

Talisman Holdings Ltd. has completed a management buyout of the Lloyd's of London operations of Bermuda-based Trenwick Group Ltd. and rebranded its Lloyd's managing agency as Canopius. Canopius will manage composite syndicate 4444 and life syndicate 44. Syndicate 4444 has capacity of £250 million ($432.3 million) for the 2004 year of account, while syndicate 44's 2004 capacity is £3 million ($5.2 million).

Swiss Re securitizes life insurance portfolio

Swiss Reinsurance Co. has securitized a life insurance portfolio through a $400 million bond issue. Under the deal, which is the first mortality risk securitization Swiss Re has performed, Cayman-domiciled special-purpose vehicle Vita Capital Ltd. has issued a $400 million bond to cover against "certain extreme mortality risk scenarios," Swiss Re said. The bond will mature on Jan. 1, 2007. The deal uses a mortality index for five countries—France, Italy, Switzerland, the United Kingdom and the United States—and is weighted using factors such as public mortality data and population size. The coverage would be triggered if the index exceeds 130% of its baseline 2002 level in any calendar year.

Best gives A rating to Amlin syndicate

Amlin P.L.C.'s Lloyd's of London syndicate 2001 has been assigned an A rating by Oldwick, N.J.-based A.M. Best Co. The rating agency said that composite syndicate 2001 has consistently performed above the Lloyd's market average since its formation in 1997. The Lloyd's market as a whole is rated A-.

Aviva exec appointed to CEA ruling council

Philip Scott, executive director of Aviva Life International, a unit of London-based Aviva P.L.C., has been appointed to the presidential council of the Comite Europeen des Assurances. The presidential council is the executive body of the Paris-based CEA, which represents European insurance companies.

Zurich exec to chair London risk institute

Ian McNeil has been appointed chairman of the London-based Institute of Risk Management for 2004. Mr. McNeil, national risk manager at Zurich Risk Services, a London-based subsidiary of Zurich Financial Services Group, succeeds Paul Howard, head of insurance and risk management at London-based J. Sainsbury P.L.C.

Assn. of Risk & Insurance Managers of Australasia conference

Business-government pairing needed on terror risks

By ELIZABETH FRY

CAIRNS, Australia–Australian companies are ill prepared for terrorist risks because of the federal government's failure to pass on critical intelligence, according to Neil Fergus, a plenary speaker at last week's 27th National Conference of the Assn. of Risk & Insurance Managers of Australasia Ltd. in Cairns, Queensland.

Mr. Fergus, the chief executive officer of security consulting firm Intelligent Risks Pty. Ltd., based in Sydney and Canberra, and a former director of intelligence for the Sydney 2000 Olympic Games, also blames Australian corporations for their high exposure to terrorist attacks. He estimates that 50% of them do not integrate their security risk management processes into an enterprisewide framework. He told his audience that Australian companies have a bad habit of delegating security issues to a number of different areas of the organization, resulting in a fragmented approach to security risk management.

Mr. Fergus warned delegates that there now exists a body of Australian case law that unequivocally places a duty of care on companies at which incidents occur that place their employees in danger.

"Australian companies lack proper security risk assessment processes and depend too much on experimental methodologies or intuition," Mr. Fergus said. He further warned delegates to beware of "snake oil salesmen" hawking corrupted risk management methodologies, alluding to consultants who cobble together a model from a variety of sources and tout it as an original solution for a specific corporate problem.

'Practical security risk management is critical for Australian businesses, and they are being let down by the Australian government's lack of engagement with the industry.'

Neil Fergus
Intelligent Risks Pty. Ltd.

Most of Mr. Fergus' criticism, though, was aimed squarely at the federal government of Australia. "Practical security risk management is critical for Australian businesses, and they are being let down by the Australian government's lack of engagement with the industry. Even when large or critical industries do receive advice, it is almost never consistent," he said.

"There is a frustration in the private sector at the failure of government to provide consistent advice," Mr. Fergus said.

This view jibes with that of Julian Talbot, Canberra-based risk management specialist, business strategy, with the federal Department of Health and Aging. Mr. Talbot, a delegate at the conference who voiced his opinion at the end of the plenary session, said that business must be involved with intelligence for planning and for the proper allocation of resources. He said that, since the terrorist attacks on the United States and on Bali, it has become more noticeable that Australian national security has no mechanism for advising the private sector. Mr. Talbot suggested that Australian industry should have access to the same sort of direct information that U.S. industry gets from the U.S. State Department.

Mr. Talbot said, "In Australia, the prime minister's department has a security risk management meeting with the captains of industry each quarter, but that is not nearly sufficient."

Assn. of Risk & Insurance Managers of Australasia conference

Weak insurer balance sheets seen for near future

By ELIZABETH FRY

CAIRNS, Australia—Rates will remain high for some time, and risk managers and insurers should all stop talking about when they will begin to ease, according to a panel of industry leaders at the annual conference of the Assn. of Risk & Insurance Managers of Australasia Ltd. this month in Queensland, Australia.

Julian James, director of worldwide markets at Lloyd's of London, noted that the returns of U.S. insurers, for example, have failed to meet the insurers' cost of capital since 1988. Unless insurers can improve their financial performance, investors will go elsewhere, he warned. Mr. James quoted figures from Fitch Ratings that estimated U.S. insurers' reserve deficiency at up to $77 billion.

Hugh Loader, director of group insurance and risk management for Tetra Laval, a Switzerland-based international packaging and engineering group, questioned why a financially strong company would want to buy insurance from a provider that had a weak and deteriorating balance sheet and that might not be able to pay claims when they arise.

'Unless insurance companies can make money in a hard market, they have no right to continue to operate.'

Julian James
Lloyd's of London

Lloyd's Mr. James agreed it was not sensible. "Unless insurance companies can make money in a hard market, they have no right to continue to operate," he said. "Insurance buyers are very disturbed, and ratings agencies have lost patience with us because of our weak balance sheets."

Mr. James told ARIMA attendees, though, that he did see some encouraging signs in Australia. While Australian companies are a long way from achieving their cost of capital, the Australian government has done the right thing by implementing state tort reforms, which are starting to provide some security to insurance providers, he said.

Les Emerson, managing director of claims management company Emersons Australia, said insurers and claims managers still face an unwieldy legal system and costs of complying with the reforms are high. "A common legislative approach would make complete sense," he said.

In addition, legislative intervention on public liability claims has made compliance difficult, Mr. Emerson said. "That has been caused by having to comply with a massive amount of legislation in the various states. So while there might have been a significant reduction in claims going to court, that benefit is offset by the cost of adhering to new and specific procedures."

Another major issue for the claims management industry is the inability of insurance companies to service clients. "Restricted capacity is a global problem, and a number of service providers here, in Australia, are undergoing something of the same process," Mr. Emerson said.

Other attendees raised the topic of selective underwriting, especially when risks are seen as relatively small.

Mike Kelly, manager-risk control and insurance at Melbourne-based packaging giant Amcor Ltd., noted the importance of good risk management practices when insurers don't want to write risk. He said Amcor has been funding risk for 12 years through its captives and if it were not so active about managing risk, the company's whole global insurance program would quickly cease to be cost-effective.

"Our risk management program gives us power to help manage risk, and it is a key driver for us. If insurers don't want to write risk to the bottom end for us, it allows us to take a big chunk of the premium to make the captives viable," he said.

Gavin Pearce, chief executive officer of broker Heath Lambert Australia Pty. Ltd. in Sydney, said local underwriters were unsure where to put their capital for a while. Driven partly by shareholder demand for a solid financial performance, some insurers reacted by putting more of their resources into personal lines.

"Clearly, the cut in capacity caused tremendous heartache, but new people are coming into the market. There are local operators looking for an opportunity," Mr. Pearce said.

Assn. of Risk & Insurance Managers of Australasia conference

ARIMA, AIRM merger draws praise, some criticism

By ELIZABETH FRY

CAIRNS, Australia—The Assn. of Risk & Insurance Managers of Australasia Ltd. at its recent annual conference approved plans to merge with the Australasian Institute of Risk Management, despite opposition from some risk managers at several of Australia's largest companies.

At the meeting early this month in Cairns, Queensland—which attracted more than 550 attendees, ARIMA's largest turnout in a decade—ARIMA National President Brad Greer acknowledged concerns expressed by some members but said the merger will improve efficiency, cut costs and give members a stronger voice.

The merger was overwhelmingly approved by ARIMA and AIRM members, with the ARIMA vote 102-5 and the AIRM vote 153-2. The new entity, which will have a membership of more than 1,400, will be called the Risk Management Institution of Australasia and will be devoted to professional development and education.

Some risk managers doubt, though, whether the merger will strengthen lobbying power because the combined entity comprises diverse members, including brokers, underwriters, lawyers and consultants.

"The proposed merger is an emotional issue for us, since we are a founding member of ARIMA and we liked having an association of professional risk managers," said Mike Kelly, manager-risk control and insurance at Melbourne-based packaging giant Amcor Ltd.

But Sydney Water's corporate risk manager, Peter Hanzlicek, supports the merger. "We have to come together as one body to be heard at the federal and state government level," he said.

AIRM President Kevin Knight noted that buying insurance is only part of the risk management process and said that the merger will allow the two associations to "support and encourage practitioners to develop their skills in both the public and private sectors."

A change in ARIMA's constitution allows individuals to become members. Previously, corporate membership was required.

The conference theme, "Global Risks," is relevant because ARIMA members face the same hard-market issues as their U.S. counterparts, pointed out Lance J. Ewing, president of the New York-based Risk & Insurance Management Society Inc.

"We've had the age of enlightenment, the industrial age and the technological age. Now, we have arrived at the age of risk, and it's unnerving and turbulent. We have seen terrorist attacks, company collapses and executives taken away in handcuffs for impropriety, liquidity and political risk. Consequently, risk management specialists face challenges and responsibilities not seen in 50 years," Mr. Ewing told attendees.

'The proposed merger is an emotional issue for us, since we are a founding member of ARIMA and we liked having an association of professional risk managers.'

Mike Kelly
Amcor Ltd.

The first conference for the new Risk Management Institution of Australasia will be held Nov. 14-17, 2004, in Tasmania.

The ARIMA Risk Manager of the Year Award, sponsored by Munich-American RiskPartners Australia Pty. Ltd., went to Peter Brass, risk manager at the Adelaide-based Department of Primary Industries & Resources South Australia.

Mr. Brass, the president of ARIMA's South Australian chapter, was given the award for implementing a risk management and audit strategy for PIRSA, for developing the concept of risk champions through his organization and for his work in developing the South Australian chapter.

Credit: Law aids employer investigations

Continued from page 1

employers have been required to comply with the panoply of notice and disclosure requirements called for under the Fair Credit and Reporting Act when using a third party to conduct an employee investigation. Among other requirements, employers first had to obtain the employee's written authorization for an investigation, then provide him or her with a complete copy of any subsequent report, including the names and comments of any witnesses.

The issue arose as a result of a 1999 Federal Trade Commission staff opinion letter that said employers that work with outside professional investigators must satisfy the same requirements used in credit investigations.

Under the new law, employers that suspect their employees of misconduct and violations of state and federal law are exempt from these requirements. They still must provide the employee with a summary of the report if any adverse action is taken based on the investigation, but details, including the names of witnesses, can be excluded. The law also reauthorizes the FCRA and addresses a wide range of credit reporting and identity theft issues.

The employee investigation provision's effective date will be announced by Feb. 4, 2004, said Christopher W. Keller, a staff attorney with the FTC's division of financial practices.

Observers say third-party, objective investigations are often needed to provide employers with an adequate defense against such charges as sexual harassment or discrimination. Furthermore, they say, in-house human resources staff cannot reasonably be expected to provide an objective investigation when a top company official is the investigation's target.

Yet warning an employee suspected of wrongdoing that he or she is about to be investigated—and asking his or her permission to proceed—has obvious drawbacks. It is also potentially dangerous to fellow employees who have complained about the individual, assuming they even agree to cooperate under the circumstances.

Rich Gisonny, a principal with Towers Perrin in Valhalla, N.Y., said the 1999 FTC opinion letter "had very troubling implications for employers who were looking to conduct investigations."

The FTC opinion letter "created a tremendous degree of difficulty and uncertainty for employers," said Mr. Rosen. Employers were suddenly forced to choose between "the lesser of two evils," he said. Compliance with the FTC's requirements for third-party investigations is difficult. Yet there is a "near legal mandate" to conduct them in cases involving sexual harassment and discrimination charges, he said. This is because the courts have made it clear that the fair and reasonable investigation a third party provides is necessary to mount an effective defense.

The regulations were also particularly problematic in certain types of investigations, such as where embezzlement or drug use is suspected, said Mr. Rosen. "It's very difficult to do an undercover investigation of the embezzler if first you have to say to the embezzler, 'We want to conduct a secret investigation, and would you please sign this paper?'"

Jack Lichtenstein, director of government affairs for the Alexandria, Va.-based ASIS International, an organization of security professionals, said employers that wanted to get around the problem of giving employees prior warning had to use their own in-house investigators.

But "most businesses just don't have the resources to conduct that kind of investigation internally, and not only that, but there are some cases where the types of suspected misconduct might not lend itself" to an internal investigation, such as when the company's chief executive officer or chief operating officer is suspected of misconduct, said Mr. Lichtenstein.

Geoff Weirich, an employer attorney with Paul, Hastings, Janofsky & Walker in Atlanta, said that while the new law is "not going to have a huge impact on the number of investigations that are done, it will make doing those investigations much, much easier administratively for employers."

"The ability to conduct investigations of criminal misdoing…is not only good for the employers, it's also good for the employees," said Marene Allison, director of security for Basking Ridge, N.J.-based Avaya Inc., who said she welcomes the new law. "The first one to complain about a co-worker stealing is usually another employee," she said.

Mike Aitken, government affairs director for the Society for Human Resource Management in Alexandria, Va., said the new law "strikes the right balance," because if the investigation does lead to an employee's discharge, he or she would still be advised of its findings, "short of the names."

Other sections of the law include a provision that calls for a study of the effects of credit scores on the availability and affordability of financial products, including personal lines property and casualty insurance. The FTC must submit its report to House and Senate committees within the next two years.

Tort: Costs increase

Continued from page 3

to grow."

Costs examined by the study include awards for economic and noneconomic damages, plaintiffs and defense attorneys fees, insurance company overhead and self-insurance costs. The costs related to administering state and federal courts were not taken into consideration.

The survey used Tillinghast's own data as well as data from A.M. Best Co. and other sources.

This led a spokesman for the Assn. of Trial Lawyers of America to denounce the report as being based on "phony data and phony conclusions." He said it was "an incredibly creative and misleading use of insurance industry data that is not available to the government, consumers or anyone else."

To request a free copy of "U.S. Tort Costs: 2003 Update," send an e-mail

Manslaughter: Changed laws will simplify prosecution

Continued from page 4

count," the government stated.

The new legislation will apply to all employers, including the state government. It includes a separate manslaughter offense for senior officers, which includes directors and other senior decision-makers in corporations and senior government officials. This offense will apply only if the senior officer's own conduct led to the death of a worker.

The ACT legislation provides for courts to impose a maximum fine of $1.25 million Australian ($920,625) on companies, as well as order guilty companies to undertake "community service" projects up to a total cost of $5 million Australian ($3.7 million). Individuals found guilty of industrial manslaughter will be subject to a maximum penalty of 25 years imprisonment, a $250,000 Australian ($184,125) fine or both.

Other Australian states also are reviewing their existing legislation. According to ACT, these include New South Wales, Queensland and Western Australia. The Queensland government produced a discussion paper in 2000 that outlined new criminal offenses for dangerous industrial conduct, while Western Australia, in a review of its safety legislation, included a recommendation to enact legislation to hold corporations and senior officers of corporations accountable for fatal workplace accidents.

But the movement has its detractors. Brad Greer, national president of the Assn. of Risk & Insurance Managers of Australasia Ltd. said, "Imposing criminal penalties against employers who negligently kill employees may be fine in theory, but in a practical sense it is trying to use the scare factor to resolve an issue that requires sound risk management."

Using sound risk management would be a "more sensible approach on governments' behalf," Mr. Greer said. He noted that the "ACT legislation, which has now been passed, like similar legislation proposed in other states, has substantial flaws."

Canada

The Canadian Parliament on Nov. 7 passed Bill C-45, which amends the country's criminal code to hold corporations, their directors and executives accountable for criminally negligent acts in the workplace.

The legislation, which came into effect immediately, states that "everyone who undertakes, or has, the authority to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

It also states that an organization is a party to an offense if a "representative" commits an offense while acting in the scope of his or her authority and when senior officers of an organization depart "markedly" from a standard of care that would have prevented the offense from occurring. Representatives include people with authority to make day-to-day decisions, including directors, partners, employees, members, agents or contractors of an organization.

'It would be very hard for the state to prove criminal negligence against a company which has a risk manager, a risk management department, health and safety committees and adheres to good risk management procedures.'

Bal Bhullar
Vancouver Port Authority

According to Canada's Department of Justice, Bill C-45 "will modernize the law to reflect the increasing complexity of corporate structures. Bill C-45 deals only with the criminal responsibility of the organization and makes no change in the current law dealing with the personal liability of directors, officers and employees (who are) liable for all crimes that they commit personally, whatever the context."

Under the Canadian measure, the maximum fine that can be levied on a company for a summary conviction, which is a less serious offense, is $100,000 Canadian ($76,620). For more serious, indictable offenses, there is no limit under the new law to the size of the fine that can be imposed on an organization found guilty.

Canadian risk managers say the law creates little exposure for safety-conscious companies and their executives.

"It would be very hard for the state to prove criminal negligence against a company which has a risk manager, a risk management department, health and safety committees and adheres to good risk management procedures," noted Bal Bhullar, risk manager for Vancouver Port Authority and vp of the British Columbia chapter of the Risk & Insurance Management Society Inc.

"These days, most risk management programs go up to the board and the board must feel comfortable with the way the company's risks are being managed. A corporate executive of a company which is managing its risks in accordance with existing regulations will be able to sleep at night under this new legislation," said Joseph Restoule, senior risk consultant with Calgary, Alberta-based NOVA Chemicals Corp. and a member of the RIMS Executive Council.

United Kingdom

In the United Kingdom, a draft bill reforming the law of corporate manslaughter is scheduled to be brought before Parliament next year, according to a Home Office spokesman.

Although details of the bill have yet to be disclosed, any changes likely would make it easier to prosecute and would increase the penalties on companies whose negligence leads to the death of an employee, the spokesman confirmed.

Changes to U.K. law to make it easier to prosecute companies for charges of manslaughter have been discussed for decades but gained new momentum in the wake of the 2000 Hatfield train crash, which killed four people and injured more than 30 others.

Earlier this year, U.K. authorities brought negligent manslaughter charges against two rail companies and six executives in connection with the Hatfield crash (*BI*, July 14). Only a handful of companies have successfully been prosecuted in U.K. courts for corporate manslaughter under existing law.

David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers, stated that though it is only right for companies whose gross negligence leads to employee deaths to be held accountable, there is concern about future legislation because "no one knows how it is going to play out." He questioned, for example, whether companies in the future will be prosecuted if their employees were to die from stress-induced illnesses or be killed in auto accidents due to driving to meetings while tired.

California: Gov's proposal eyed

Continued from page 1

The commissioner on Dec. 3 announced that rate filings for 2004 dropped an average of 3.6% compared with current prices. His announcement was based on filings from 95 insurers representing 75% of total workers compensation premiums written in California's market.

But additional reforms are needed, employers, insurers and the commissioner insist. According to the California Chamber, employers' workers comp costs on average have risen 136% over the past four years.

Among other measures, Gov. Schwarzenegger's reform bill calls for the creation of an "independent medical review system" to resolve disputed workers comp medical claims. Employers or employees could submit disputed claims to this mechanism and the final outcome would be binding on both parties.

The bill also would require physicians to follow objective standards for evaluating permanent impairments stemming from workplace injuries. To promote more objective analysis, the legislation would require doctors to base their impairment evaluations on standardized techniques "generally accepted by the medical community," the bill states.

Objective impairment findings would not rely on "subjective responses" that are not "reproducible, measurable or observable," according to the legislation.

This approach might reduce litigation by raising the bar for the evidence required to obtain full benefits in low-level permanent disability cases, employers contend.

The reform bill calls for the creation of an 'independent medical review system' to resolve disputed workers compensation claims.

Clear objective medical standards already are applied to assess permanent disability in severe injury cases, Mr. East said. But subjective medical opinions are often rendered in low-severity cases, which means this is where the bulk of litigation occurs, he said.

A California Workers' Compensation Institute study released last month found that between 1993 and 2000, both employer and claimant attorneys were involved in more than three out of four permanent disability claims on average, accounting for 93% of the litigation expense in the system. Attorney involvement in such claims varied by region as well as employer size, the study found.

Claimant attorneys oppose revising how injuries are evaluated.

By calling for objective standards for assessing permanent impairment, Gov. Schwarzenegger's legislation would change the definition of a covered injury to the detriment of workers, said Mark Gerlach, a policy consultant for the California Applicants' Attorneys Assn. Someone who twists an ankle or suffers severe headaches from inhaling chemicals would no longer have a claim, he contends, because such injuries are not measurable by objective criteria.

The legislation also would cut benefits to employees in other ways, Mr. Gerlach said. Current law, for example, allows employers to select a treating doctor for 30 days following an injury. After 30 days, employees can select another doctor to treat them. Under the proposed legislation, after the first 30 days had expired, the employee could receive treatment from another doctor of his or her choice only if the employer approves of the physician.

Whether legislators adopt all or only some of the governor's proposals remains to be seen, Sacramento observers say. Although legislators already have held informational hearings on the proposals, final action could be months away, they add.

MMC: Shareholders seek more control

Continued from page 4

In October, MMC and Boston-based Putnam were hit with regulator and shareholder securities lawsuits relating to alleged improper market timing practices by certain mutual fund managers, in violation of company policy and controls (*BI*, Nov. 10). Putnam is one of several mutual fund companies being investigated for improper trading practices in the United States.

In response to the pension fund executives' move, William L. Rosoff, MMC's senior vp and general counsel, said in a letter to them: "We were surprised and disappointed that serious investors concerned with corporate governance would communicate their opinions through a press release and not directly to our management and board. Moreover, any sense of objectivity is undermined by your outrageous reference to Enron in your characterization of what has occurred at our Putnam Investments subsidiary."

Mr. Rosoff went on to defend MMC's board of directors and the actions taken at Putnam.

He noted that a "substantial majority" of MMC's board of directors—nine of the 15—is independent and that the audit committee, the compensation committee and the directors and governance committee, which is responsible for nominations to the board, "are made up entirely of independent directors."

In addition, "we have put in place a new management team and have taken decisive actions to establish the most rigorous governance, oversight, trading and compliance standards in the mutual fund industry," he said, referring to Putnam.

ADVERTISER INDEX

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Late News

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required to reimburse a managed care organization unless it has a contract with the insurer.

Benefit satisfaction drops, survey finds

Employees are becoming less satisfied with their benefit packages as employers shift more of their costs to workers, according to a MetLife Inc. study. The study found that 32% of workers are satisfied with the benefits provided by their employers, down nine percentage points from a year ago. The survey also found that 63% of employees spend less than an hour selecting benefits during open enrollment.

Ohio House OKs asbestos reform bill

The Ohio House of Representatives has passed an asbestos reform bill that would set minimum medical requirements for asbestos bodily injury claims. Among other things, H.B. 292 would define asbestos-related bodily injury as a physical impairment and would require tort claims to be accompanied by a written report and supporting test results detailing the impairment. The provisions were originally included in a larger tort reform bill passed by the Ohio Senate earlier this year. The Senate must still vote on the House asbestos measure and is expected to consider it next year.

PHOTO: EPA PHOTOS

Recent wildfires in California are expected to cost insurers $2.0 billion.

Wildfire property losses trigger policies at Lloyd's

Lloyd's of London said it is expecting gross property damage claims of up to £200 million ($345.4 million) from the Southern California wildfires in late October. A Lloyd's spokeswoman said the market was not expecting significant business interruption claims from the fires. The Insurance Services Office Inc.'s Property Claim Services unit estimates total insured losses from the fires will exceed $2.0 billion.

California stresses toll of comp cost hikes

Workers compensation cost increases borne by Los Angeles since 2000 could have paid one year's salary for 400 police officers or 429 firefighters. The city's costs rose from $99 million to $129 million during the period, according to a report by the California state controller. The San Bernardino City Unified School District's workers comp costs rose 40% since 2000, which could have funded 25 teachers for one year. The controller released the report to note that schools, the state budget and local services suffer from "out of control" workers comp costs. Overall, the state government's workers comp costs jumped 29% in the past three years, the report says.

Judge allows RICO claims in docs' class action

Doctors suing several managed care companies in class action litigation can seek treble damages under the federal anti-racketeering law, ruled Judge Federico Moreno of U.S. District Court in Miami. The suit was filed by about 700,000 doctors, who are represented by the California Medical Assn. and Texas Medical Assn. The physicians charge that the managed care companies have followed a pattern of routinely delaying claims payments. Defendants include UnitedHealth Group, WellPoint Health Networks Inc., Humana Inc. and PacifiCare Health Systems Inc.

Briefly noted

Congress has given final approval to legislation that extends through Dec. 31, 2004, a 1996 federal law that bars most employers from offering lower annual and lifetime dollar limits for **mental disorders** than for other medical conditions in their group health care plans....The **American Assn. of Health Plans and the Health Insurance Assn. of America** have completed their merger. The group will be known—on an interim basis—as the AAHP-HIAA while its board considers a permanent new name....Sen. Christopher Dodd, D-Conn., last week detailed a bipartisan compromise **class action agreement** reached shortly before Thanksgiving. In addition to altering the formula by which trial attorneys would receive cash payments in so-called "coupon settlements," the compromise also tightens the appeals process for a defendant seeking to overturn a federal judge's decision to remand a class action to state court.

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Online Poll

[12/08 - 12/12]

Do you think that class action reform will be passed in the next Congressional session?

Yes	24%
No	76%

Funding: Reform action deferred

Continued from page 3
fall. That decline began when the then-robust economy bolstered government finances and with it the need for the Treasury to borrow. The yield dropped further when the Treasury in 2001 stopped issuing the 30-year bond, drying up supply.

The result was an increase in reported pension liabilities and the need for employers—unnecessarily, they complained—to boost contributions to their plans.

Two years ago, Congress responded to employer complaints by adopting a short-term fix. For 2002 and 2003, employers were allowed to value plan liabilities using an interest rate equal to 120% of the four-year weighted average yield on the 30-year Treasury bond. That temporary change replaced the prior interest rate formula of 105% of the four-year weighted average of the 30-year Treasury bond yield, a change that cut liabilities and contributions.

During the two years this temporary formula was in effect, Congress intended to come up with a permanent formula, along with other changes to assure better funding of pension plans.

Coming up with a permanent formula, though, proved difficult. Seeking to buy more time, the House earlier this year passed yet another stop-gap bill with scant opposition. This one called for use of a long-term corporate bond index in 2004 and 2005 to value liabilities, a change that would reduce corporate pension contributions by more than $25 billion compared to using Treasury bond yields.

But the legislative situation became more complicated when the Senate Finance Committee passed legislation that called for both short-term and long-term changes in funding rules.

One of the most controversial proposed changes—and one that triggered intense opposition from the Bush administration—would exempt for the next three years many employers with underfunded plans from a requirement that requires them to significantly accelerate contributions to their underfunded plans.

Administration officials worried that such an exemption would lead to more plan underfunding and expose the Pension Benefit Guaranty Corp. to even bigger losses if plans receiving the exemption from this so-called deficit reduction contribution, or DRC, later failed.

Seeking to break what became a legislative impasse, the House passed legislation that would provide another short-term fix. The latest one called for the use of a long-term corporate bond index for two years and limiting the DRC exemption to two years. It also would limit the exemption to just commercial airlines and require the airlines to pay 20% of the DRC contribution they otherwise would owe.

But in the Senate, a consensus on the DRC issue proved elusive. Some members wanted to limit the DRC exemption to certain industries, such as airlines and the steel industry, while others wanted to extend to all eligible employers. Some were opposed to any DRC exemption.

As a result, Senate leaders put off action on the bill until after Jan. 20, when Congress reconvenes.

Some benefit experts are optimistic—given the near universal support that the switch to a corporate bond index enjoys—that a stop-gap funding reform proposal will be quickly enacted in 2004.

"I'm reasonably optimistic, as it is obvious that something needs to be done," said Lynn Dudley, a vp with the American Benefits Council in Washington.

Others note that a procedural rule the Senate agreed to last week could aid in its passage. Under that agreement, the only amendments allowed would be those relating to the interest rate change, the DRC and funding relief for multiemployer plans. That will prevent extra and potentially controversial amendments being tacked on.

"I was afraid it was going to get bogged down by nonfunding issues," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

In the absence of a change, the old formula—105% of the four-year weighted average of the 30-year Treasury bond yield—to value plan liabilities will kick in Jan. 1. But, the first 2004 contributions generally are not due until mid-April and any legislative change is certain to be retroactive.

Still, the delay in enactment of the funding reforms already is having an impact on some employers.

"Corporate treasurers have to budget pension contributions and banks have to decide if they will loan money" to employers with underfunded plans, said Ethan Kra, chief actuary with Mercer Human Resource Consulting in New York. "These are not decisions that are waiting until April," he added.

And if Congress fails to act, "some employers will throw up their hands and say they simply cannot afford their pension plans anymore," said Sheldon Gamzon, a principal in the HR unit of PricewaterhouseCoopers L.L.P. in New York.

BI Stock Index

Corrected numbers for

[12/1 - 12/5]

Largest gains

Unico American Corp.	30.84%
Vesta Insurance Co.	8.81%
Clark Inc.	6.76%
WellChoice Inc.	6.52%
PMA Capital Corp.	5.89%

Largest losses

ESG Re Ltd.	-36.00%
Gainsco Inc.	-7.14%
PXRE Corp.	-4.34%
Zenith National Insurance	-3.98%
American Safety Insurance	-3.93%

Weekly change by market segment

Brokers	1.23%
Insurers/Reinsurers	0.41%
Managed Care Organizations	1.72%

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

BI Stock Index

[12/8 - 12/12]

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**	
2117.27	▲ 1.67
Dow Jones	
10,042.20	▲ 1.82
S&P 500	
1074.14	▲ 1.19

Largest gains

ESG Re Ltd.	12.50%
Clark Inc.	9.25%
Fairfax Financial Holdings	8.99%
Harleysville Group	7.74%
AIG	5.95%

Largest losses

SCOR	-29.74%
Gainsco Inc.	-15.83%
Trenwick Group	-12.00%
Unico American Corp.	-8.57%
Penn-America Group Inc.	-7.41%

Weekly change by market segment

Brokers	1.73%
Insurers/Reinsurers	-0.44%
Managed Care Organizations	-0.63%

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