

Business Insurance

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In Brief

**NY attorney general
eyes more doc rankings**

The New York Attorney General's office is seeking information about programs used by Aetna Inc. and a CIGNA Corp. unit to rank doctors based on quality and cost-effectiveness. In letters sent to the two insurers, the attorney general's office expresses concern that the companies' physician rating programs carry "a significant risk of causing consumer confusion, if not deception." The office expressed similar concerns in a letter sent to a unit of UnitedHealth Group Inc. last month, though that letter went further, noting a possible injunction to halt the program.

**City can sue gun dealers
in other states: Judge**

A federal district court judge ruled last week that New York City can sue out-of-state gun

See **IN BRIEF** page 34

SPOTLIGHT

**2007 Readers Choice
Business Insurance**

The votes have been tabulated and *Business Insurance* recognizes the 2007 Readers Choice award winners.

2007 marks the third year of the program in which *BI* readers vote for the best companies in the commercial insurance industry. Voters considered which companies offer the best combination of service, value, quality and innovation. **PAGE 11**



Online instant messaging opens employers to the same risks that are associated with workplace use of e-mail.

Online chat tools create exposures

*Instant messages
leave electronic trail
similar to e-mails*

By BETH MURTAGH

Exposures arising from workplace instant messaging are nothing to LOL at, experts say.

As more employees use the real-time "chatting" applications at work, both for personal and business purposes—such as talking to colleagues and customers—observers warn that it's imperative for employers to take steps to limit their risks and maintain control over the practice.

Many companies are aware of liabilities associated with workplace e-mail, including exposing systems to computer viruses, providing a medium for harassing or defamatory communications, and opening up sensitive information or trade secrets to theft.

And while many of the same risks are involved in instant messaging,

observers say messaging in the workplace has been overlooked by many employers as it seeps from home use and into the office. And instant message conversations, like e-mails, are subject to discovery in litigation.

"Instant messaging is where the conversations that used to occur around the water cooler are now occurring," said Michele Lange, a staff attorney at Eden Prairie, Minn.-based Kroll Ontrack Inc., a computer forensics and electronic and paper discovery firm. "Even though you might think it's protected or seems fleeting or somewhat secretive, should something ensue in which the court system needs to get involved, (the IMs) are not sacrosanct."

Changes to the Federal Rules of Civil Procedure in December 2006 made all electronically stored information discoverable (*BI*, Dec. 18, 2006). Employers are liable for subpoenaed workplace IM chats, even if the employer is not aware that

See **MESSAGING** page 33

Few risk managers join SOX compliance efforts

*Companies' focus
largely on financials
not risk assessment*

By SALLY ROBERTS

When Congress passed the Sarbanes-Oxley Act in 2002 as a means to prevent accounting scandals, it was seen by some as an opportunity for risk managers to get involved in new compliance regulations, but five years later, a recent report and observers say risk managers have largely stayed on the sidelines of Section 404 compliance processes.

Some observers say risk managers have failed to seize the opportunity, especially when it comes to enterprise risk management for which 404 compliance is seen as springboard.

Others, though, point out that while there was an initial link

between Section 404 and risk management, the focus over time really narrowed to that of proper controls over accurate financial statements rather than risk assessment, which falls more to the purview of auditors and accountants.

And while Section 404 compliance can be a catalyst for an ERM program, the fact that risk managers are not involved in the 404 compliance process does not stymie those efforts, they note.

According to a report issued last week by New York-based Advisen Ltd., a survey of 302 risk managers found that of those who said their companies had a team or committee overseeing the Sarbanes-Oxley Section 404 compliance, the risk management department was represented on only 23% of the panels.

In addition, only 18.5% said the risk management department had a

See **SARBANES** page 33

IRS flex benefit rules boost plans' appeal

Experts welcome proposed regulation changes

By JERRY GEISEL

WASHINGTON—Proposed Internal Revenue Service rules for flexible benefit plans give employees expecting big orthodontia expenses a new reason to smile.

The rules would allow employees to be reimbursed from their flexible spending accounts as soon as they pay an orthodontist's bill—a major exception to longstanding IRS policy that health care-related reimbursements from FSAs could not be made until after a service had been delivered.

That requirement posed cash-flow problems for employees with children needing orthodontia work. Because of the large expense for such services and dental insurance covering only part of the charges, orthodontists typically require that a significant portion of the bill be paid before performing the services.

MORE FLEXIBLE FLEX PLANS

How the IRS' new Section 125 rules increase the appeal of flex plans:

- Allows employees to be reimbursed from FSAs for orthodontia bills before services are performed.
- Allows reimbursement of dependent care expenses from FSAs after employees terminate employment.
- Gives new employees more time to make flexible benefit plan choices.
- Permits employees to pay COBRA premiums with pretax contributions.
- Allows employees to use pretax contributions to buy coverage in the individual market or other markets.

But employees couldn't immediately tap their FSAs to get reimbursed.

Now, under the IRS rules pro-

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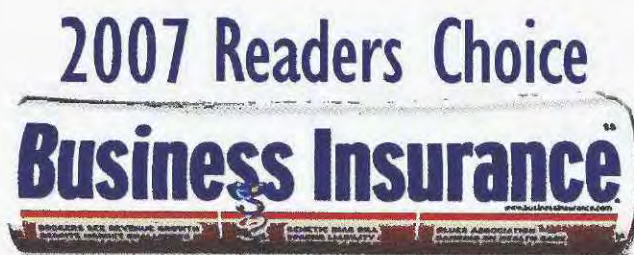
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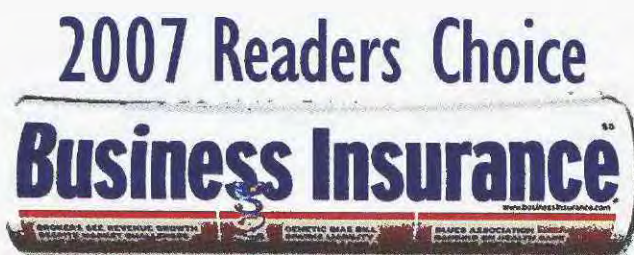
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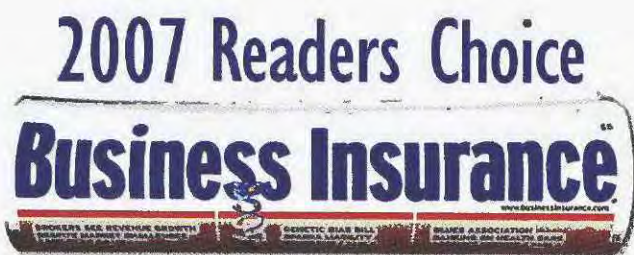
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On the Web

READERS CHOICE AWARDS

View awards for 2007, previous years online

Business Insurance's annual Readers Choice Awards recognize the best commercial insurance industry companies in 11 categories, including property/casualty and benefits. View this year's winners—as well as the winners from 2006 and 2005—at www.BusinessInsurance.com/ReadersChoice.

EMERGING RISK STRATEGIES

Rethinking approach to central risk function

Business Insurance columnist John J. Hampton, professor of business and dean at St. Peter's College in New Jersey, addresses the issues that can bog down



enterprise risk management programs. One initiative that can help is to revise the idea of a central

risk function, he says in his latest column. To read this as well as his previous columns, go to www.BusinessInsurance.com/ERM.

ONLINE EXECUTIVE FORUM™

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Consumer-driven health care plans focus on encouraging employees to take more responsibility for their health care needs, but there is also a wellness component. Now, last week's *Business Insurance* Online Executive Forum™ on this topic is archived and available for viewing at your convenience. To view this discussion, go to www.BusinessInsurance.com/webinars.

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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LANDOV

Earthquake losses tallied

By ROBERTO CENICEROS

PISCO, Peru—Insured losses from a magnitude 8.0 earthquake, which killed hundreds and left tens of thousands homeless in Peru, are not likely to exceed \$1 billion, Boston-based catastrophe modeler AIR Worldwide estimated.

Economic losses from last week's temblor, meanwhile, could reach between \$10 billion and \$20 billion, according to EQECAT Inc., an Oakland Calif.-based catastrophe modeling company.

EQECAT estimated residential areas sustained about half the economic damage, with commercial/industrial structures suffering the remainder.

Both modeling companies reported

that the percentage of residential property that is insured is likely to be low. But insurance takeup rates for commercial structures, especially those owned by multinational companies, are much higher and will drive insured losses.

The earthquake was centered 90 miles southeast of the country's capital, Lima.

In Lima, where most of the country's businesses and industries are located, property and business interruption claims are not expected to be substantial, said Nicolas Salazar, chief executive officer for Segurnet S.A., an insurance broker serving large commercial policyholders in Lima.

Peru's main port in Pisco, about 125

See **QUAKE** page 6

More states mandating domestic violence leave

Florida becomes latest to require time off for care, legal concerns

By JUDY GREENWALD

Momentum may be building on both the state and federal level to enact legislation that will require employers to provide time off to employees who are domestic violence victims, say observers.

But they also note that some employers already grant time off to domestic violence victims that often goes beyond any likely legislative mandates.

Florida became the latest state to enact domestic violence legislation, which went into effect July 1. The law permits employees to take up to three days leave from work in any 12-month period for a variety of activities connected with domestic violence issues, such as seeking an injunction for protection or obtaining medical care or mental health counseling.

Florida joined six other states—California, Colorado, Hawaii, Illinois, Kansas and Maine—that give domestic violence victims the right to take time off, although the specifics of their laws vary, according to New York-based Legal Momentum, an advocacy group.

In addition, New York and North Carolina have laws that allow vic-

tims to take time off to seek civil protective orders, although they do not address victims' need to take other steps related to the violence, according to Legal Momentum.

Meanwhile, nine other states, plus the District of Columbia, introduced domestic violence leave bills last year that failed to become law, according to Legal Momentum.

On the federal level, in April Sen. Patty Murray, D-Wash., proposed legislation, The Survivor's Empowerment and Economic Security Act, which would allow domestic violence victims to take leave without penalty to appear in court, seek legal assistance and get help with safety planning. The bill is now in committee. Comparable legislation has been introduced in the House of Representatives as well. Two previous attempts to enact such legislation were unsuccessful.

Sue K. Willman, an employment attorney with Spencer Fane Britt & Browne L.L.P. in Kansas City, Mo., who spoke at a hearing on domestic violence as a representative of the Society for Human Resource Management, said SHRM opposes federal legislation in this area "because we already believe that employers provide adequate leave of absence in various forms to employees already, and so there is a real question as to whether there is a need for this."

See **LEAVE** page 30

MAJOR MANAGED CARE ORGANIZATIONS: 2007 FIRST HALF RESULTS

Ranked by net income. Dollar figures in millions.

Company	Net income first-half 2007	% Increase (Decrease)	Revenues first-half 2007	% Increase (Decrease)
UnitedHealth Group	\$2,124.0	13.4%	\$37,973.0	7.0%
Kaiser Permanente*	1,823.0	NM	18,800.0	9.9
WellPoint Inc.	1,618.3	9.1	30,339.0	8.3
Aetna Inc.	885.9	12.0	13,493.9	8.1
CIGNA Corp.	487.0	(22.1)	8,755.0	6.7
Humana Inc.	288.1	66.3	12,631.6	24.9
Coventry Health Care Inc.	273.0	6.5	4,569.0	17.6
Health Net Inc.	180.6	17.6	6,893.1	6.8

* Percentage increase figure not meaningful because Kaiser experienced a "positive anomaly" in earnings in the first half of 2007.

First-half profits surge for managed care firms

Most companies expect continuing membership declines

By GLORIA GONZALEZ

Major managed care companies experienced strong profits in the first half of 2007 thanks to a robust second quarter, with commercial health care cost and premium increases hovering in the 6% to 8% range.

Indianapolis-based WellPoint

Inc., the largest managed care company in membership, said it expects its medical cost trend to remain relatively flat in 2007 at just less than 8%, while Hartford, Conn.-based Aetna Inc. said its medical cost trend is projected to remain stable at 7.5%, plus or minus 0.5%.

"Premiums and rate increases at the present seem to be fairly stable," said Sally Rosen, managing senior financial analyst with Oldwick, N.J.-based A.M. Best Co. Inc. "They're expected to remain fairly stable at

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ON OCT. 8, 2007, *Business Insurance* will celebrate its 40th anniversary of publication. Each week until then, *BI* will offer a peek at news we reported during the past four decades.

JAN. 6, 1997 Lloyd's of London Chairman David Rowland is knighted in honor of his 40-year career in the London insurance market and for reforms that were deemed to have saved Lloyd's from financial disaster. He oversaw Lloyd's reconstruction and renewal program, a component of which introduced corporate capital into the market.

MARCH 3, 1997 Martin Slate, executive director of the Pension Benefit Guaranty Corp., dies at age 51 at his home following a heart attack. Mr. Slate, who was appointed head of the pension insurance agency in 1993, had been credited with helping enact 1994 legislation to put the PBGC on a sound financial footing.

Bias charge stands regardless of worker's national origin

Appeals court says hostile work environment allegation not dependent on specifics of slur directed at employee

By JUDY GREENWALD

NEW ORLEANS—A plaintiff can pursue a discrimination claim based on religion and national origin even if the harassers are wrong about the victim's actual country of origin and even if his work performance has not apparently suffered, a federal appeals court has ruled.

The Aug. 10 opinion by the 5th U.S. Circuit Court of Appeals in *Equal Employment Opportunity Commission vs. WC&M Enterprises Inc.* overturns a lower court decision that had dismissed the case.

According to the ruling, Mohommed Rafiq, who was born in India and is a practicing Muslim, began to have problems at his job as a car salesman at Streater-Smith Honda Inc., a Conroe, Texas-based dealership owned by WC&M Enterprises, following the Sept. 11, 2001, terrorist attacks.

Co-workers and supervisors repeatedly called him "Taliban" and mocked his religious dietary restrictions and his need to pray during the workday. They also referred to him as an Arab, even though he told them he was from India.

In October 2002 when Mr. Rafiq

questioned mandatory attendance at a United Way meeting, his direct supervisor issued a written warning stating Mr. Rafiq "was acting like a Muslim extremist" and that he could not work with him because of his "militant stance."

In addition, a finance manager would bang on the partition separating Mr. Rafiq's office from the sales floor every time he walked by and say, "Got you," to startle Mr. Rafiq, who was fired two days after he told the manager not to do it.

Mr. Rafiq filed a discrimination charge with the U.S. Equal Employ-

ment Opportunity Commission, which filed suit charging the dealership with subjecting him to a hostile work environment on the basis of his religion and national origin in violation of Title VII of the Civil Rights Act of 1964.

In dismissing the case, the U.S. District Court for the Southern District of Texas said the EEOC could not bring a claim because none of the harassing comments specifically referred to the fact that Mr. Rafiq was from India.

The appeals court said, however, that EEOC guidelines broadly define discrimination to include

discriminatory acts undertaken "because an individual has the physical, cultural or linguistic characteristics of a national origin group."

"Nothing in the guidelines requires that the discrimination be based on the victim's actual national origin," the court ruled.

The appeals court said the lower court also incorrectly concluded the hostile work environment claim was invalid because the EEOC had not shown Mr. Rafiq lost sales as a result of the alleged harassment he

See **BIAS** page 6



Hopes rise for passage of federal charter bill

Backers encouraged by growing interest in catastrophe issues

By MARK A. HOFMANN

WASHINGTON—Proponents of allowing insurers to seek optional federal charters hope that heightened congressional interest in natural catastrophe policy will bolster their cause.

As the height of the hurricane season approached before Congress left for its August recess, lawmakers dealt with several natural catastrophe-related matters, including the House Financial Services Committee's vote to expand the National Flood Insurance Program to cover wind risks. On the other side of Capitol Hill, the Senate Banking, Housing and Urban Affairs Committee gave its blessing to a bill that would create a national commission to deal with insurance and risk management issues associated with natural catastrophes.

Advocates of letting insurers choose to be regulated by federal rather than state authorities wel-

come the new attention, if not the particulars of all the legislation. OFC backers say that removing insurers from the restrictions imposed by state regulators could mean a greater willingness on the part of underwriters to cover property in catastrophe-exposed areas, resulting in more competition and choice for consumers.

OFC backers agree, though, that allowing insurers to choose federal rather than state regulation will not solve all of the problems associated with insuring catastrophe-exposed property.

The heightened interest in natural catastrophe policy is a "net plus" for proponents of the optional federal charter, said Joel Wood, senior vp for the Council of Insurance Agents & Brokers in Washington. Still, "backers of the OFC have to be judicious in connecting those dots. There is no magic wand for problems associated with the vulnerability of coastal areas and the consequences of zoning laws," he said.

"Nonetheless, the fact that the anachronistic state-by-state rating system impedes the ability of insur-

See **OFC** page 32

Owners should consider all factors before switching captive domiciles

Moving location can create problems despite attractions

By RUPAL PAREKH

BURLINGTON, Vt.—Captive owners must carefully weigh the pros and cons before pulling up a captive's roots and planting them in another domicile.

Initial decisions in forming a captive often center around location—particularly whether the captive will be onshore or offshore—and each offers advantages, said Paul Smith, manager at the insurance and actuarial advisory services division of Ernst & Young L.L.P. in Chicago.

Mr. Smith made his comments during a panel discussion at the annual Vermont Captive Insurance

Assn. meeting in Burlington, Vt., earlier this month.

To contain costs, some organizations avoid setting up captives offshore or in a domicile in a distant U.S. location. On the other hand, capitalization and surplus requirements are typically lower offshore, and easy access to reinsurers is a big reason why many select Bermuda as a domicile, Mr. Smith noted.

Captive owners may choose to stay put for a variety of reasons, he said. Those reasons include so-called "frictional" costs since it can be expensive to change domiciles; regulatory hurdles since some domiciles are more accommodating about moving captives than others;

and relationship management since moving a captive may require breaking longstanding arrangements with managers, local lawyers and service providers.

Among captive owners currently considering a domicile shift—often termed "redomestication"—the most common reason for moving is perception issues linked to offshore entities, Mr. Smith said.

He cited an example of a philanthropic health care organization's Cayman Islands-based captive that, even though it did not experience problems in the Caymans, decided to bring its captive onshore over reputational concerns that it was using funds irresponsibly.

Personnel changes in a domicile's regulatory structure or a captive's parent company also may result in

See **DOMICILE** page 30

Vermont ready to keep changing to uphold top U.S. domicile ranking

Captive numbers continue to grow despite competition

By RUPAL PAREKH

BURLINGTON, Vt.—With its steady stream of new formations and flexible approach to regulation, Vermont continues to cement its position as the nation's largest captive domicile.

Through early August, the state licensed 18 new captives, putting it on track for 2007 to be another solid year of incorporations. Vermont had 37 captive formations in 2006.

With 562 captives, Vermont is not only the biggest domestic domi-



AP PHOTOS

Vermont Gov. James Douglas spoke at the Vermont Captive Insurance Assn.'s annual conference this month.

cile, it also is the third largest in the world, trailing only Bermuda and the Cayman Islands. Still, Vermont officials recognize that the state faces competition from other domiciles.

"There is more competition, but we welcome that. We believe we can compete with the quality of our regulation (and) our longstanding reputation," Gov. James Douglas said at a news briefing at the Vermont Captive Insurance Assn.'s annual conference held in Burlington August 7-9.

To help retain existing captives and attract new ones, Vermont is committed to making changes to state captive laws to meet the

See **VERMONT** page 30

OBJECTS IN MIRROR
ARE A LOT CLOSER
THAN THEY APPEAR.



WAUSAU COMMERCIAL AUTO AT WORK. While looking at the claim history of a food distributor we insure, we noticed a number of issues with its fleet safety. During the previous two years there had been 15 accidents, including a few sideswipes, that accounted for almost \$62,000 (nearly 50% of total costs). Part of the problem was poor visibility, especially when changing lanes. This was easily remedied by installing fender-mounted elliptical mirrors on all of the trucks. Another problem was finding the right drivers. With our help, they established new hiring methods

(including background checks and road testing) and formalized the driver selection process. As a result, even with a significant increase in annual mileage, the number of accidents dropped 30% and dollar losses dropped 60%. And thanks to fewer collisions, the delivery schedule ran smoother as well. It's all part of Wausau TotalValueSM and our commitment to lowering your total cost of risk. And it's backed by the financial strength of the Liberty Mutual Group. To learn more, visit wausau.com or contact your Wausau representative.



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Quake: Loss estimates

CONTINUED FROM PAGE 3

miles south-southeast of Lima, suffered significant damage and disrupted trade. Some international companies had already arranged to ship cargo through other ports, he said.

Most claims are likely come from communities to the south where damage was heavy. Hotels, fisheries and the electrical system were also affected with some businesses suffering serious damage, Mr. Salazar added.

Peru, which has a history of large quakes, implemented a seismic code for buildings in 1970. But about 60% of the country's construction is masonry and another 15% is adobe, according to AIR Worldwide.

"Unfortunately, while Peru's building code is now quite good, many commercial structures in the region predate it," Guillermo Franco, senior research engineer at AIR Worldwide, said in a statement.

Bias: Court allows lawsuit

CONTINUED FROM PAGE 4

suffered.

"To determine whether the victim's work environment was objectively offensive, courts consider the totality of the circumstances," the appeals court said. "No single factor is determinative. In short, a showing that the employee's job performance suffered is simply a factor to be considered, not a prerequisite."

"Although no single incident of harassment is likely sufficient to establish severe or pervasive harassment, when considered together and viewed in the light most favorable to the EEOC, the evidence shows a long-term pattern of ridicule sufficient to establish a claim under Title VII," said the court, which remanded the case to the lower court for further proceedings.

Barry C. Barnett, an attorney with Susman Godfrey L.L.P. in Dallas, said the decision tells employers that "a series of taunting events over a period of time, particularly if they include managers, will be sufficiently offensive

to a person that you become liable," even if a salesman, for instance, does not necessarily lose sales because of it.

"It's not just that the employee can't do his or her job as well anymore. It's also the pattern of behavior is so offensive that nobody should be expected to handle that at work," said Mr. Barnett.

Michael W. Fox, an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas, said international tensions will be reflected in the workplace "and employers need to be sensitive to that dynamic."

People who make such comments may consider them to be "just fun and games," but they "always sound worse when they come back in the context of a lawsuit," said Mr. Fox.

Equal Employment Opportunity Commission, plaintiff-appellant, vs. WC&M Enterprises Inc., doing business as Streater-Smith Honda, defendant-appellee, 5th U.S. Circuit Court of Appeals, No. 05-21090; Aug. 10, 2007.

Commentary

Pants suit should spur legal system alterations

For all the wretched, powerless and dissatisfied tort reform advocates everywhere, Roy L. Pearson also might be a hero.

Mr. Pearson is the District of Columbia administrative law judge who is waging a determined—some might say obsessive, abusive or deranged—legal battle to win \$54 million in damages from a family dry cleaning business that allegedly lost a pair of his pants (*BI*, Aug. 13). Although he lost his pants suit at trial, last week the intrepid Mr. Pearson filed an appeal.

In 2005, Mr. Pearson brought several suits for alterations to Custom Cleaners, a dry cleaning business operated by South Korean immigrants Jin Nam Chung, Ki Chung and their son, Soo Chung. Two days later, when he returned, one pair of pants was missing. Mr. Pearson demanded the cleaners pay him \$1,150 for the cost of a new suit.

A week later, the Chungs said the pants had been found and presented them in lieu of payment, but Mr. Pearson claimed they were the wrong trousers and delivered another suit to the cleaners: A lawsuit seeking damages of \$67.3 million (later hemmed to \$54 million).

Mr. Pearson's claim was based on his strict interpretation of local statutes protecting consumers from deceptive advertising and unfair trade practices. Mr. Pearson named each of the Chungs as a defendant and alleged 14,400 causes of action (12 violations over 1,200 days) at \$1,500 each, plus a few million dollars worth of mental anguish and inconvenience, \$500,000 in legal fees (the judge represented himself), and \$15,000 for the cost of renting a car to drive to a different dry cleaner for the next 10 years.

At the heart of Mr. Pearson's complaint is his assertion that the Chungs' actions were in breach of signs displayed in their shop proclaiming "Satisfaction Guaranteed" and "Same Day Service." His suit seeks to uphold the rights of pants-wearing customers throughout the District from such fraudulent dry cleaning claims.

Several offers by the Chungs to settle the dispute, the last for \$12,000, were rejected and the case went to trial in June.

After two weeks—during which it was disclosed that Mr. Pearson had been sanctioned for "unnecessary litigation" in his 2003 divorce complaint—District of Columbia Superior Court Judge Judith Bartnoff ruled in favor of the Chungs. In her ruling, she wrote: "A reasonable consumer would not interpret 'Satisfaction Guaranteed' to mean that a merchant is required to satisfy a cus-



PAUL WINSTON

Associate Publisher and Editorial Director
Paul Winston's commentary appears monthly. E-mail: pwinston@businessinsurance.com

tomers' unreasonable demands."

Dissatisfied with the ruling, as well as the court's refusal to reconsider its decision, Mr. Pearson continues to press his suit, and last week he filed an appeal with the District of Columbia Court of Appeals.

Meanwhile, the commission that oversees D.C. administrative law judges sent him a letter this month notifying him that his

This dispute might provide a tailor-made example of serious wrongs with our legal system.

application to be reappointed to the bench might be in jeopardy.

It would be easy to dismiss Mr. Pearson as just another nutty, litigation-happy plaintiff looking for pants with deep pockets (if his position as a judge did not make this case so pathetic). But ironically, this dispute might provide tort reform advocates with a tailor-made example of serious wrongs with our legal system.

Consider that Mr. Pearson's claim so appalled trial lawyers that the American Assn. for Justice (formerly the Assn. of Trial Lawyers of America), filed an ethics complaint against him in May with the D.C. Bar.

The case also helped the American Tort Reform Assn. and the U.S. Chamber of Commerce Institute for Legal Reform organize a successful fundraiser to help cover the Chungs' legal costs that raised more than \$64,000, with pledges continuing to pour in.

Mr. Pearson's dogged effort to line his pockets just might provide the kick in the pants needed for overdue legal reforms. I hope so, but unfortunately, as with the dry cleaners' signage, satisfaction is not guaranteed when it comes to removing such nasty stains.



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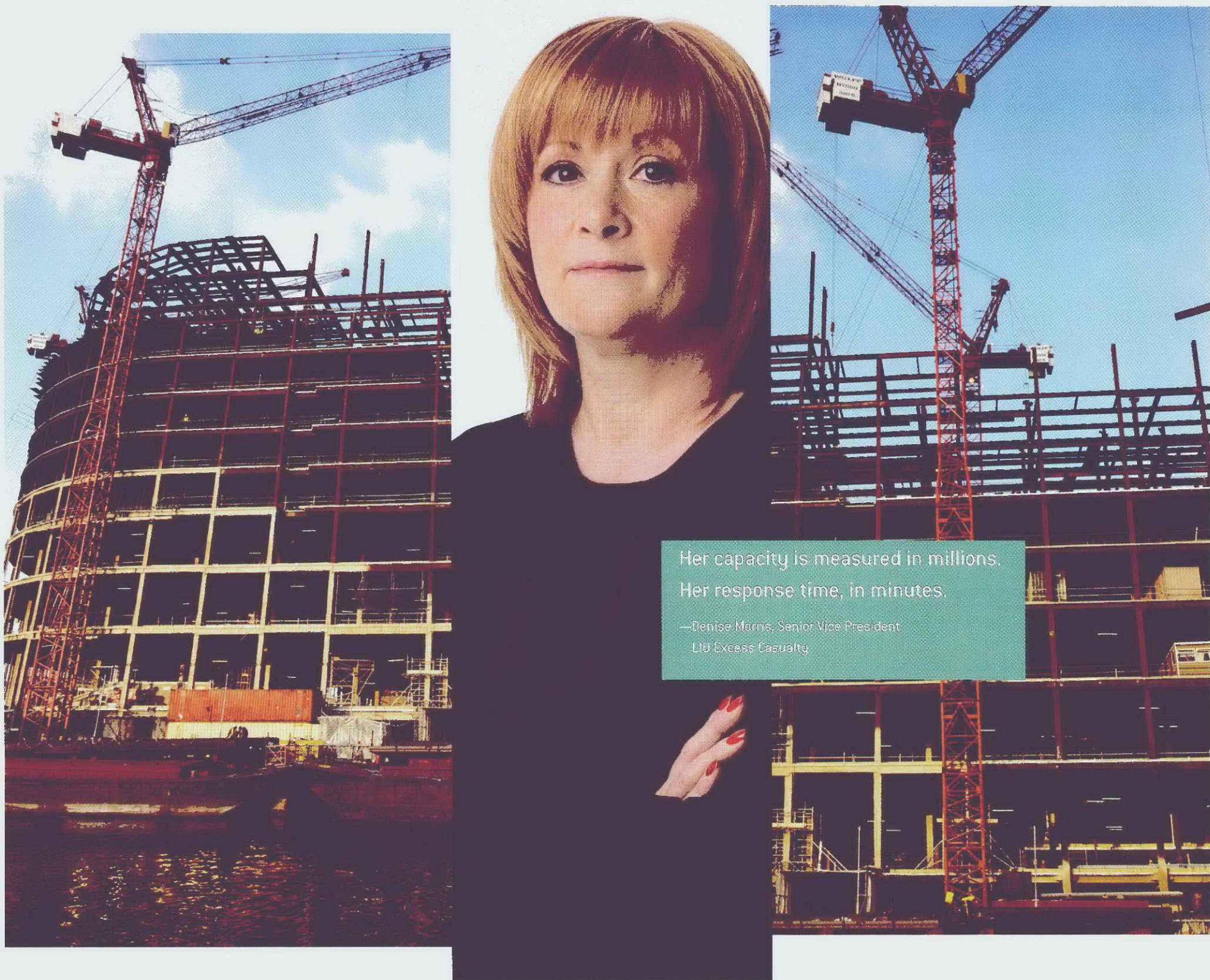
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Business Insurance OPINIONS

Rules on flex benefits offer needed changes

IT ISN'T OFTEN that we praise the Internal Revenue Service, but we think the agency does deserve recognition for at least part of its recently proposed rules covering flexible benefit plans.

As we report on page 1, the rules are a good attempt to make the arrangements fit better with real-world situations.

One example is orthodontia expenses. In the real world, orthodontists often bill and require patients to pay in advance for future services.

That presented a problem to employees with flexible spending accounts because of a general IRS requirement that FSAs cannot be used to reimburse employees for health care services until the services are delivered. That meant employees would have to pay the bill and then wait until the orthodontia work was performed before they could receive reimbursement from their FSAs. The IRS rules end that unfair situation.

More broadly, the rules make clear that employees can make pretax contributions through salary reduction to purchase health insurance coverage, not only from their employers, but through the individual market as well.

That addresses yet another real-world situation: Some employers, especially smaller firms, cannot afford to offer health care coverage. But they can set up a flexible benefit arrangement—as there is no cost involved—to allow employees to pay, on a pretax basis, for coverage from an insurer selected by the employee.

In our view—and now the IRS'—if employees can get tax breaks by purchasing coverage from their employers, there is no good policy reason why that same favorable tax treatment shouldn't be available if coverage is purchased elsewhere.

That's a vote for common sense, and we are happy to see that the IRS is providing it.

The rules are a good attempt to make the arrangements fit better with real-world situations.

Opportunity knocks in dealing with SOX

HOPES WERE HIGH when the Sarbanes-Oxley Act became law in 2002 that the measure—designed to ensure proper internal controls and financial reporting—would allow risk managers to raise their profile by getting involved in the compliance process.

But as we report on page 1, a recent survey indicates that most risk managers haven't gotten involved in SOX Section 404 compliance-related activities, which many observers see as a possible springboard to creating an effective enterprise risk management program.

While the linkage between SOX and ERM may not always be readily evident in all organizations, we believe more risk managers should at least examine whether SOX presents an opportunity to promote their professional discipline.

After all, any opportunity to enhance risk management's standing within an enterprise deserves consideration, and SOX compliance work is no exception.

We know that some risk managers may discover that there is no upside for them or their departments in getting involved in the compliance processes. Nevertheless, making the effort to see whether there is a role for risk management in the process is worth some consideration. You cannot seize an opportunity until you've determined whether one actually exists.



Letters

Docs' Medicare reimbursements inadequate

TO THE EDITOR: As an employee of the American Osteopathic Assn., I am concerned about access to health care. In 2008, physicians will experience a 9.9% reduction in Medicare reimbursements, with additional cuts projected through 2015. Without congressional intervention, these cuts potentially could reach 37% over the next nine years, while physicians joining the medical profession are expected to grow at a rate of 2% to 3% per year. Physician reimbursements under Medicare are already well behind most physicians' actual costs of providing care.

These cuts come at a time when millions of baby boomers are becoming eligible for Medicare benefits, placing greater strain on the Medicare program. As a baby boomer, I am fully aware and concerned that additional cuts compound the discrepancy between actual reimbursements

and practice costs, forcing physicians to weigh their continued participation in the Medicare program and thus affecting overall medical care for the largest segment of the population. This will result in reduced access to physician services for millions of Medicare beneficiaries in the future.

The physicians I have the honor to serve went into medicine to help patients and to improve quality of life. That fact does not mean that a physician's practice (business) is any different from any other business owner.

No business can survive working at a loss over such a prolonged period of time. As a future Medicare beneficiary, I should be concerned about continued access to physicians and specialists. And, I am.

Ellen Woods
Executive Director
American Osteopathic Assn.

Online Poll at www.businessinsurance.com

Does full disclosure of insurer payments to brokers effectively guard against conflicts of interest?



NEXT WEEK'S POLL: Do you think the 2007 hurricane season will be worse than last year's?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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MANAGED CARE ORGANIZATION:	
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Readers Choice Awards

SPOTLIGHT

BI readers head to the ballot box to pick the best in the business

Business Insurance's 2007 Readers Choice Awards recognize the best overall commercial insurance industry companies in 11 categories.

2007 marks the third year of this award program. *BI* launched the Readers Choice Awards in 2005 to let readers vote for the companies that they believe offer the best combination of service, value, quality and innovation.

The categories are:

- Best admitted property/casualty insurer.
- Best employee assistance program provider.
- Best employee benefit consulting firm.
- Best insurance wholesaler.

2007 Readers Choice *Business Insurance*

- Best managed care organization.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.
- Best retail brokerage.
- Best risk management consulting firm.
- Best surplus lines insurer.
- Best third-party claims administrator.

This year, *Business Insurance* part-

nered with Erdos & Morgan Inc., an internationally respected business-to-business market research firm, to devise an electronic ballot and tabulate the results. *BI* invited readers of the news magazine as well as *BusinessInsurance.com* to

cast their votes on confidential ballots. Balloting closed June 13, and the results were tabulated and analyzed to determine the winners as well as runners-up.

Profiles of the winning companies begin on page 12. To view profiles of this year's winners as well as those in the previous Readers Choice Awards competitions, please visit www.BusinessInsurance.com/ReadersChoice.

Chubb Corp.2006 REVENUES: **\$14 billion** 2006 EMPLOYEES: **10,800**

'I think over the years we've proven that we take care of those who are important to us.'

Robert Cox, COO
Chubb Specialty Insurance

Keeping all customers satisfied seen as key to Chubb's success

Chubb Corp.

15 Mountain View Road
Warren, N.J. 07059
908-903-2000; fax: 908-903-3134
www.chubb.com

Keeping its promises is a key to Chubb Corp.'s success, says Robert Cox, Warren, N.J.-based chief operating officer of its Chubb Specialty Insurance unit.

"We do a darn good job of keep-

ing the promises we make, and I think over the years we've proven that we take care of those who are important to us," including customers, agents and brokers and employees, said Mr. Cox.

Chubb was voted best admitted commercial lines property/casualty insurance company in *Business Insurance's* 2007 Readers Choice Awards.

"Everything we're doing these days, and every dollar that we spend

on improving our infrastructure, our people, our technology, is about how we have to answer the question: How is it going to make it easier for customers to do business with us? What types of technical solutions, what types of other services and tools are helpful to them, and how can we best deliver them in a way that is responsive to what the customer is looking for?" he said.

One of the ways Chubb has pursued this goal is to use its already

2007 Readers Choice
Business Insurance
Best Admitted P/C Insurance Company

established global network to offer locally admitted directors and officers liability insurance for its multinational clients. That is a "very big topic" in this post-Sarbanes-Oxley era, said Mr. Cox.

Another area in which Chubb is involved, in which few others have ventured, is cyber risk and cyber security, for both first- and third-party coverages, said Mr. Cox.

Paul Krump, Whitehouse Station, N.J.-based chief operating officer of Chubb Commercial Insurance, which offers standard lines of coverage, said the insurer has also been very involved in developing insurance products for federal government contracts and educational institutions.

The insurer is also focused on energy risks. "We've been expanding our capabilities in the energy area to work on so-called green energy areas," said Mr. Krump.

"There's no magic bullet" to responding to clients' changing needs, said Mr. Krump.

It is a matter of "sitting down with the producers and the insureds and the potential insureds and asking probing questions," then "making certain we can get something together that really meets their needs."

"Anyone can copy the words on an insurance policy," said Mr. Cox. "But what they can't necessarily duplicate is the underwriting expertise, the local relationships that exist between Chubb underwriters and our producers and our customers, our ability to listen" and develop customized solutions, he said.

—By Judy Greenwald

THANK YOU.

THANK YOU.

THANK YOU.

I want to thank the readers of Business Insurance for selecting Swett & Crawford as the Best Wholesale Broker in the U.S. This is the third straight year you have selected us as the Best in class. We are honored.

In addition, I want to thank and congratulate the 850 Swett employees who made this award possible. Their dedication and commitment to service are what makes it possible for us to continue to be recognized as the "best."

In a note to the employees, I challenged them: *"To maintain our #1 ranking, we must continue to be innovative and responsive to client needs. We have to continue to enhance the effectiveness of our Practice Groups and make sure we are bringing Swett's best resources to our clients."*

I know that Swett & Crawford is up to this challenge. We look forward to keeping this commitment to our retail brokers, their insureds and our insurance carrier partners.

Thank you again for your support and confidence in Swett & Crawford.

J. Neal Abernathy

President and Chief Executive Officer

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RUNNERS-UP

2ND PLACE:

American International Group Inc.

3RD PLACE:

Travelers Cos. Inc.

IN THEIR OWN WORDS

Bernard K. McElroy, Vice President, Pep Boys



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UnitedHealth relies on innovation to stay ahead of the pack

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Innovation is a core aspect of UnitedHealth Group Inc.'s business model that allows the company to differentiate itself from key competitors.

For the third straight year, the Minnetonka, Minn.-based health insurer has been voted the

**2007 Readers Choice
Business Insurance**

Best Managed Health Care Organization

best overall managed care company in *Business Insurance's* 2007 Readers Choice Awards.

The company, like the general

offer affordable benefits to their employees.

Vital Measures, a program that reduces out-of-pocket health care

managed care industry, is contending with sluggish commercial membership growth. To combat this the company is seeking to introduce innovative new products. For example, it is introducing two products to help small employers

expenses for individuals and families with healthy lifestyles, was introduced in July. It is aimed at employers with 100 to 1,000 fully insured employees in Colorado, Ohio, Pennsylvania and Rhode Island. A national launch is slated for 2008.

The company soon will launch UnitedHealthcare Edge, a benefit product for small businesses that helps connect employees to quality premium network providers.

"We believe this product will enhance our small-business offerings and compare favorably with

UnitedHealth Group

2006 REVENUES: \$71.5 billion

2006 EMPLOYEES: 70,000

the narrow-network restrictive-access products that others offer," Stephen Hemsley, president and chief executive officer, said during the company's second-quarter earnings conference call.

UnitedHealth has faced challenges over the past year, notably dealing with the stock options backdating scandal that led to the resignation of former Chairman and CEO William McGuire, but has made "significant strides" in the advancement of its governance initiatives, Mr. Hemsley said.

UnitedHealth re-entered the mergers and acquisitions game in a major way this year, with its planned purchase of Sierra Health Services Inc., the second-largest insurer in Nevada. However, the deal has run into strong objections from health care providers, some local politicians and consumer groups. Sierra has a major presence in the Las Vegas market, one of the few U.S. markets experiencing significant commercial membership growth.

—By Gloria Gonzalez

RUNNERS-UP

2ND PLACE:

Aetna Inc.

3RD PLACE:

CIGNA Corp.

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Lloyd's of London officials have reason to be pleased with the market's recent performance, both in general and in its reinsurance sector particularly.

**2007 Readers Choice
Business Insurance**

Best Reinsurance Company

Earlier this year, Standard & Poor's Corp. and Fitch Ratings raised their financial strength ratings of Lloyd's to A+ from A, citing the completion of the first phase of Equitas Ltd.'s reinsurance deal with Berkshire Hathaway Corp. and the progress of Lloyd's business process reforms.

The reinsurance sector—which accounted for 34%, or £5.56 billion (\$10.89 billion), of Lloyd's £16.41 billion (\$32.15 billion) in 2006 gross written premiums—has also done well after a rough 2005. The sector's calendar-year 2006 combined ratio was only 80.8%, thanks partly to a light U.S. hurricane season. A large part of Lloyd's reinsurance business consists of property nonproportional treaty catastrophe excess of loss and property facultative risks.

Business Insurance readers are also

Lloyd's of London

**2006 GROSS WRITTEN
PREMIUMS: £5.56 billion**



'People talk about globalization, but it's nothing new for Lloyd's.'

Wendy Baker,
president of Lloyd's America

pleased with Lloyd's: They voted Lloyd's the best overall property/casualty reinsurer in BI's 2007 Readers Choice Awards.

Lloyd's benefits from a number of strengths, says Wendy Baker, president of Lloyd's America in New York.

Most important are the financial security, stability and size that are reflected in Lloyd's rating upgrades from S&P and Fitch, she said.

The reinsurance industry needs a subscription market such as Lloyd's, she added, to take on risks that are too large or too hazardous for individual reinsurance companies to assume much of. The Lloyd's market is especially efficient at spreading those risks, she said.

And while it's sometimes hard for buyers to meet with the top underwriting executive at a reinsurance company, key Lloyd's underwriters are almost always available and have the authority to act for their syndicates, Ms. Baker said.

"They have the ability to make that (underwriting) decision. They don't have to go to a committee or the chief underwriting officer," she said.

Lloyd's is also "a truly global organization, and has been for its history," going back to 17th century London, she added.

"People talk about globalization, but it's nothing new for Lloyd's," Ms. Baker said.

—By Douglas McLeod

RUNNERS-UP

2ND PLACE:

**Berkshire Hathaway
/Gen Re**

3RD PLACE:

Swiss Reinsurance Co.

Aon Corp.

**2006 BROKERAGE
REVENUES: \$6.71 BILLION**

**2006
EMPLOYEES: 43,100**



'When you look at what we're trying to do, it's recognizing this is a people business.'

Steve McGill,
CEO Aon Risk Services America

Aon keeps its focus on service to buyers

Aon Corp.

200 E. Randolph St.
Chicago, Ill. 60601
312-381-1000; fax: 312-381-6032
www.aon.com

A large helping of client service peppered with innovation are the key ingredients to Aon Corp.'s success in being one of the world's leading insurance brokers, according to one of its executive officers.

Aon was voted the best retail insurance broker in the Business Insurance 2007 Readers Choice Awards.

together all the resources, capabilities, industry knowledge, technology platforms and international network of the company in "an even more focused and coordinated way to serve the major global buyers," said Mr. McGill, who also serves as CEO of the new unit.

Underpinning Aon's efforts, Mr. McGill said, is an emphasis on innovation.

Two such examples are its new "Rapid Response" claims advocacy product that was borne out of Aon's efforts following Hurricanes Katrina, Rita, and Wilma in 2005; and its new three-year fixed term property/casualty product for middle-market clients.

Those efforts served as catalysts for the company's first ever "innovation challenge," where all Aon employees from around the globe compete for prizes to come up with ideas to help Aon deliver distinctive value and products and services to clients, Mr. McGill said.

Aon has earmarked \$50 million to support and invest in winning ideas, which are filtered by a committee. The winners of the contest will be announced Oct. 25.

"We've narrowed down the list to 41 really compelling ideas from colleagues around the world," Mr. McGill said.

Overall, "when you look at what we're trying to do, it's recognizing this is a people business and how we harness the resources within the firm in a way that brings the best of Aon to our clients," Mr. McGill said. "It's a journey that we're very focused on and continue to work on."

—By Sally Roberts

2007 Readers Choice Business Insurance

Best Retail Agent/Broker

Within Aon's retail business in the United States over the past two years, "we've been on a journey that has been focused on three themes: winning with clients, winning with markets and simplifying the organization," said Steve McGill, chief executive officer of Aon Risk Services Americas.

Toward that end, Aon in January formed Aon Global, which brought

Business Insurance

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RUNNERS-UP

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3RD PLACE:

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RMI Consulting Inc. has been filling the role of risk manager—not just insurance buyer—for many of its clients for more than 30 years.

Its approach not only has shot the company to the top of the list of the nation's largest independent risk management consultants, it also has made RMI the top pick for

2007 Readers Choice Business Insurance Best Risk Management Consultant

RMI has 44 employees, about half of whom are risk management professionals.

Among issues that RMI focuses on is how more clients can leverage their purchasing clout with insurers and meet their coverage needs by

banding together, Ms. Sackman said.

"We're looking into our client base to see if we can get them together on a group basis," she said. RMI already has been able to help three other groups of clients, largely in the food industry, form purchasing groups to help them hold down their insurance costs while also arranging broader coverage.

But "it's very difficult to put these things together, especially when

you're not selling insurance," Ms. Sackman noted. "Clients are a little reluctant to share information if they think private information is being shared. Insurers also are a little reluctant," because they want to make certain they are underwriting good risks.

"So you need to convince both sides," Ms. Sackman said.

At the same time, RMI continues to emphasize safety and loss programs, Ms. Sackman noted. "If we can have a client focus on safety loss control, it will eventually make their loss factor better" with insur-

ers, which will drive down their insurance costs.

—Dave Lenckus

RUNNERS-UP

2ND PLACE:

**Aon Consulting/
Aon Risk Services**

3RD PLACE:

**Risk International
Services Inc.**

RMI Consulting Inc.

2006
REVENUES: **\$11.7 million**

2006
EMPLOYEES: **44**



'We're filling a role for businessmen who can't afford to spend on someone to serve as their full-time risk manager.'

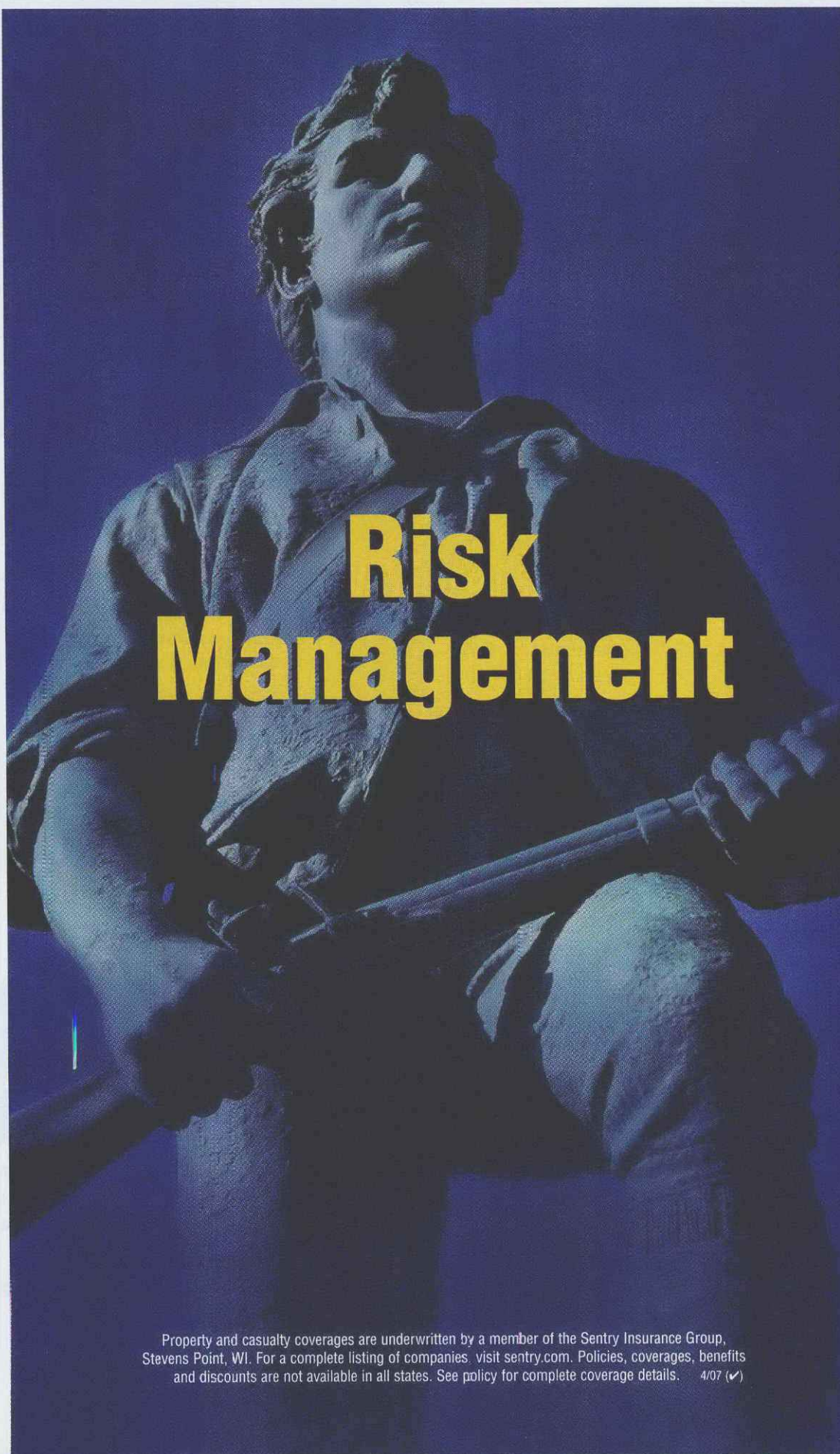
MaryAnn Sackman,
president

independent risk management consultant in the *Business Insurance* 2007 Readers Choice Awards. This year's award marks RMI's second consecutive honor.

RMI's client base is primarily small to midsize companies with revenues of at least \$10 million, said MaryAnn Sackman, president. Its clients' annual insurance budgets range from a couple hundred thousand dollars to several million dollars, she said.

RMI reported \$11.7 million in revenues in 2006; revenues in 2007 are expected to total \$11.2 million, she said.

"Most clients don't have formal risk management departments," Ms. Sackman said. "So I think we're filling a role for businessmen who can't afford to spend on someone to serve as their full-time risk manager."



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Aon Re Global

2006 REVENUES: \$922 million 2006 EMPLOYEES: 3,000



'We've invested a huge amount of money to make certain that we have depth and breadth in everything we do.'

Michael D. O'Halleran, executive chairman

Aon Re's integrated, global services cited as key elements in its success

Aon Re Global

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Aon Re Global's ability to reach worldwide and its ability to provide its clients with integrated capital solutions and services are two factors that distinguish the Aon Corp.



unit from its competitors, says Michael D. O'Halleran, its executive chairman.

Those capabilities may be why Chicago-based Aon Re has been voted best reinsurance intermediary in Business Insurance's 2007 Readers Choice Awards. It is the second consecutive year Aon Re has been honored.

"Aon Re is truly a global, seamless, borderless" company that has organized around its clients "through segmentations, through specialization and through really investing in the most talented people we possibly can," said Mr. O'Halleran.

Furthermore, integrated capital solutions and services is a company theme, he said.

"We're No. 1" in treaty, facultative and the capital markets area "and we've done that by design," said Mr. O'Halleran, former chairman and chief executive officer who was named executive chairman earlier this month.

In today's evolving marketplace, "we don't really care what form of capital we bring to our client" so long as it is the most efficient and effective form. Aon Re considers "in a very objective way what's best for them," Mr. O'Halleran said.

Meanwhile, recently appointed CEO Ted D. Devine said, "I think Aon Re Global has done more capital markets solutions than anyone in the industry, both in sophistication and size," and has been able to help its clients' balance sheets.

In addition, said Mr. O'Halleran, Aon is a "world-class services organization" that offers actuarial services, catastrophe exposure modeling, capital markets opportunities and a dynamic financial analysis program, among others.

Over the years, "we've invested a huge amount of money to make certain that we have depth and breadth in everything we do in each one of these areas," Mr. O'Halleran said.

One major recent change is Mr. Devine's promotion. He previously served as Aon Risk Services America's chief operating officer and head of global strategy for Aon Corp.

Now, Mr. O'Halleran will focus on clients, while Mr. Devine will concentrate on Aon Re's day-to-day activities, said Mr. O'Halleran.

"It's not about a change in leadership. It's about an investment in leadership," said Mr. Devine.

—By Judy Greenwald

Workers Compensation: Protecting People in the Age of Terrorism

A Business Insurance Online Executive Forum™



Join Business Insurance Senior Editor Roberto Cenicerros on November 14, 2007, along with our expert panel, for a webinar devoted to exploring workers comp in the face of terrorism.

Terrorism has not abated since September 11, 2001, and concentrations of workers in office buildings present significant exposures in the event of another attack. A catastrophic loss could easily result in workers comp losses in the billions of dollars.

Attend this Online Executive Forum™ for an in-depth discussion on risk management and insurance options, ways to protect concentrations of workers, and status of the TRIA backstop. Hear the viewpoints of expert panelists, and ask questions during this live event.

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- **Mark J. Noonan**, Managing Director and Workers Comp Practice Leader, Marsh Inc., Boston
- **Richard L. Thomas**, Sr. VP and Chief Underwriting Officer, Domestic Brokerage Group, American International Group Inc., New York

QUESTIONS TO BE ADDRESSED:

- What choices do employers have for protecting their workforces from terrorist attacks?
- Should employers avoid concentrations of workers in urban areas?
- What coverages are available to respond to catastrophic workers comp risk?
- How should employers communicate risk mitigation plans to their workers?
- What role should government play in addressing catastrophic workers comp risks?

WHO SHOULD ATTEND:

- Risk Managers & Risk Financing Executives
- Senior Corporate & Financial Management
- Employers
- Benefits & HR Executives
- Insurers, Brokers, & Consultants

SAVE THE DATE: Wednesday, November 14, 2007

TIME: 11:00 a.m. Eastern / 8:00 a.m. Pacific

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RUNNERS-UP

2ND PLACE:

Guy Carpenter & Co.

3RD PLACE:

Willis Re

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800-241-2541;
Fax: 404-845-3142
www.crawfordandcompany.com

Crawford & Co. Inc. is experiencing a rebirth of sorts, thanks largely to a commitment to improve client service by investing in its employees.

"We're coming back stronger than we ever were before," said Tom Crawford, president and chief executive officer of the Atlanta-based third-party administrator, which has been voted best TPA in *Business Insurance's* 2007 Readers Choice Awards.

"There was a period of time in the late '90s where we failed to invest in our associates in the way we should have," Mr. Crawford said.

"If you've got service or quality issues, it usually comes from leadership and leadership's lack of knowledge about the importance" of a company's employees to the success of the organization, Mr.

2007 Readers Choice Business Insurance

Best Third-Party Claims Administrator

Crawford said.

The TPA has been working hard to overcome its "slippage in the '90s," and "the feedback we get from our clients is that there has been an amazing change in the quality of Crawford," he said.

Since he joined the TPA as its president and CEO in 2004, the company has made strides in enhancing connectivity between senior management and employees under leadership of Mr. Crawford, who is not related to the family that formed Crawford & Co.

For example, every two weeks, 10 employees—from new hires to 20-year veterans and from adjusters to administrators—are invited to the executive offices in Atlanta to meet with Crawford's senior officers and address any pressing questions. It's vital that every Crawford employee "know what we're doing, why we're doing it and where we are going," said Mr. Crawford.

And the TPA is looking to go big places.

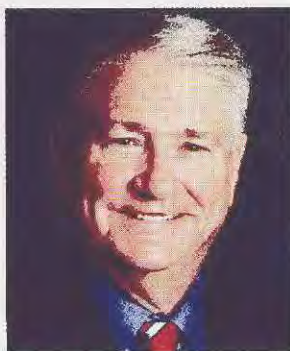
It's already reaping the benefits of its purchase last year of Plantation, Fla.-based Broadspire Services Inc., the largest acquisition in Crawford's 66-year history. The deal more than doubled the company's revenues from self-insured clients. Broadspire, which was merged with Craw-

ford Integrated Services last October, reported 2006 revenues of \$367 million from self-insured clients. Broadspire was ranked the second-largest TPA according to *BI's* 2007 ranking in February.

Crawford & Co. Inc.

2006 GROSS
REVENUES: \$900 million

2006
EMPLOYEES: 10,000



'The feedback we get from our clients is that there has been an amazing change in the quality.'

Tom Crawford,
president and CEO

RUNNERS-UP

2ND PLACE:

Gallagher Bassett
Services Inc.

3RD PLACE:

Cambridge Integrated
Services Group Inc.



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In addition to expanding in scale, the company intends to grow its diversity of offerings. While its core business will remain centered on claims management, the TPA will eventually expand to call centers and legal claims administration, such as class action settlements, Mr.

Crawford said.

But regardless of size, Crawford plans to stay committed to its workforce. "There is nothing stronger to a company than its associates," Mr. Crawford said. "Investment in people is not a short-term project."

—By Rupal Parekh

EAP helps employees navigate health care

CIGNA Behavioral Health Inc.

11095 Viking Drive, Suite 350
Eden Prairie, Minn. 55344
952-996-2000;
Fax: 952-996-2659
www.cignabehavioral.com

For the average employee, staying on top of health insurance changes, issues and trends can be confusing and stressful.

So says CIGNA Behavioral Health Inc. President and Chief Executive Officer Keith Dixon, whose company is six months into a major transformation that merged employee

2007 Readers Choice Business Insurance

Best EAP Provider

health?' There are none."

The movement, Mr. Dixon said, has much to do with health care's shift towards consumerism: Giving employees the responsibility of steering themselves through the health care maze.

"Employees need guidance on going into the health care system and employers are increasingly interested in providing guidance," he said. "What employers are asking us to do is provide that guidance."

Operators of "nursing lines have said that 85% of people they were talking to had issues related to mental health: fears, stress, communication issues," he said. "You can only imagine the stress level when you are dealing with maternity issues, when a child is born with disabilities, for example."

Since the merger, telephone operators for both CIGNA Corp.'s nursing hotlines and CIGNA Behavioral Health's EAP have been engaged in re-training across medical disciplines.

As a result, employers are now beginning to brand their EAP offering as "People Help," and other catchier titles that make the EAP sound less like a port for mental health issues and more like a one-stop shop for overall health care concerns and questions, according to Mr. Dixon.

It's this sort of evolution that helps CIGNA Behavioral Health stand out, he said.

"Our EAP service is undergoing continuous evolution and we embrace continuous change," he said. "This is what works to make CIGNA a better company. We keep innovating."

CIGNA Behavioral Health was voted the best EAP provider in *Business Insurance's* 2007 Readers Choice Award poll for the third consecutive year.

—By Louise Esola

CIGNA Behavioral Health Inc.

2006
REVENUES: \$454 million
2006
EMPLOYEES: 950



'Employees need guidance on going into the health care system.'

Keith Dixon,
president and CEO

assistance program services, those that typically dealt with mental health and substance abuse, and CIGNA Corp.'s nursing hotlines, which deal with general health questions, to better serve clients.

"When we listen to our customers, we hear that their employees are often confused, scared of the health care system. If someone calls an EAP, we can't say, well, you called the wrong number," said Mr. Dixon. "We need to be able to help people with issues that are broader. We have said to ourselves, 'what are the boundaries between physical and mental

RUNNERS-UP

2ND PLACE:

Ceridian Corp.

3RD PLACE:

Magellan Health
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PLEASE TAKE NOTICE that on August 8, 2007, the
Bankruptcy Court for the Southern District of New
York entered an order (the "Order") pursuant to 11
U.S.C. § 541, 542, 543, 544, 545, 546, 547, 548,
549, 550 and 551 granting the Petition filed by the
Honorable Robert D. Drain in the Alexander
Hamilton Custom House, One Bowling Green,
New York, New York on August 8, 2007 for injunctive
relief that, among other things, gives full force and
effect in the United States to the Scheme of Arrange-
ment between Arion Insurance Company Limited and
its Scheme Creditors (the "Scheme") and enjoins all
persons and entities from taking any action inconsis-
tent with the Scheme.
Any person wishing to obtain a copy of the Order
should contact Tania Ingman at (212) 610-6300 or at
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Attention: Ken Coleman, Stephen Doody

Products & Services

XL's pollution policy covers airport services

EXTON, Pa.—XL Insurance, the global insurance operations of XL Capital Ltd., unveiled a new pollution insurance program designed to address the environmental exposures of fixed-base operators and other aviation services at the nation's airports.

Fixed-base operators provide airlines and airport visitors with a variety of services that include aircraft refueling, de-icing and parking; flight training; and ground services such as baggage handling, lavatory cleaning, aircraft cleaning and more.

XL Insurance's Pollution and Remediation Legal Liability policy, provided by XL Insurance companies Greenwich Insurance Co. and Indian Harbor Insurance Co., offers coverage for loss, remediation expense and legal defense from covered airport locations. The policy offers contractors liability as well as coverage for storage tanks in a single policy form. Limits of up to \$50 million are available.

XL Insurance's specialized environmental risk control and claims administration services are also available to the company's fixed-base operator clients. These services include emergency response planning assistance, fleet safety assistance and access to XL Insurance's specialized claims assistance.

For more information, contact Marcel Ricciardelli, senior vp of XL Insurance Environmental, at 610-321-9338, or by e-mail at marcel.ricciardelli@xlgroup.com.

Policy covers needs of senior care facilities

NOVATO, Calif.—To meet the unique business needs of small, large or multiunit senior living facilities, Fireman's Fund Insurance Co. has launched Property-Gard, a comprehensive coverage created to protect residents, guests, property and income streams of senior care facilities.

With the number of seniors entering residential communities rapidly growing, senior living businesses—from independent and assisted living facilities to skilled nursing centers, as well as continuing care retirement communities—are expected to continue to grow over the next decade.

Property-Gard provides coverage for risks such as contaminated food, communicable diseases, emergency evacuating, property of residents and medical staff, employee theft, lost keys and mobile medical equipment. The policy also offers:

- Crisis management coverage to protect the reputation of senior care facilities.
- General and professional liability on an occurrence basis, not a claims-made basis.
- Prior acts coverage that bridges gaps that may occur when moving

from a claims-made to an occurrence form.

• Specialized coverage for sexual misconduct and physical abuse vicarious liability.

The Property-Gard full-service package also includes specialized services for complete asset protection. A senior living loss control specialist will review care facilities to identify risks; reduce injuries; and control property damage, auto and liability claims.

For more information, contact Amy Lee Richardson, assistant vp, certification director, at 503-869-4307, or by e-mail at arichar1@ffic.com.

U.S. Chemical Safety Board releases safety video

WASHINGTON—The U.S. Chemical Safety Board has released a safety video concerning the dangers of uncontrolled chemical reactions. The video features computerized simulations and descriptions of four major reactive chemical accidents investigated by the CSB, as well as commentary by two prominent chemical process safety experts.

The video, "Reactive Hazards: Dangers of Uncontrolled Chemical Reactions," is being released simultaneously with the CSB's final report on the Synthron Inc. accident, which killed one worker and injured 14 others in Morganton, N.C., on Jan. 31. The video features a computer animation of that accident narrated by lead investigator Jim Lay.

Other accidents discussed in the video involve MFG Chemicals Inc. in Dalton, Ga.; BP Amoco in Augusta, Ga.; and First Chemical Co. in Pascagoula, Miss.

Reactive hazards include those involving uncontrolled chemical reactions, with significant increases in temperature or pressure. The CSB released a study of reactive hazards in 2002 and made numerous safety recommendations. The agency has investigated several such accidents since that time. The video was made to create a heightened awareness of the dangers of these types of uncontrolled chemical reactions.

The production marks the 13th safety video produced by the CSB. The videos may be viewed online in the Video Room of the agency's Web site, www.csb.gov. Free DVD copies may also be obtained by filling out a request form on the Web site.

The CSB is an independent federal agency charged with investigating industrial chemical accidents. CSB investigations look into all aspects of chemical accidents, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards and safety management systems.

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International NEWS



AP PHOTOS

Four storms, including July flooding in Vallengbaek, have hit Denmark since November. The Danish Storm Council says claims could reach \$92 million.

Denmark mulls making flood cover compulsory

By RICHARD MILLER

COPENHAGEN, Denmark—After the worst flood losses in years, Denmark is to consider a proposal that would require property owners in areas most at risk from coastal floods to buy insurance.

The Danish Storm Council, a government administered storm-related sea flood insurance pool, made the proposal because it views the current government-backed system as inadequate to handle claims in the event of a string of major floods, said Mads Molgaard Brauner, the secretary to the council.

The mandatory insurance proposal is likely to increase premium spending for small and midsize companies, but not for large Danish companies, which tend to have flood cover under international policies, said Suzanne Svendsen, vp at Marsh Denmark in Copenhagen, part of New York-based Marsh Inc.

Floods in Denmark have led to 4,100 damage claims from a total of four storms since last November, according to the Storm Council. The Storm Council estimates the total claims will amount to about 500 million kroner (\$92.0 million).

Most of those losses stem from a single storm in November, from which there were roughly 3,900 claims, Mr. Brauner said.

In the course of this single season, more damage has been caused by the storms than during the 16-year existence of the current system, he added.

The current government system, which was enacted in 1991, is financed by private insurance companies, which pay 20 kroner (\$3.68) for each fire policy, whether from a homeowner or business. Sea flooding is therefore covered by the gov-

ernment system, not the insurers.

The council said that claims from the recent storms almost exhausted the fund, although the pool can go to the government to make up any shortfall. Under the circumstances, the council in May recommended to the country's minister of economic and business affairs that the current system—and the law on which it is based—be updated.

"One particular point made by the council is that the Act does not, to a sufficient degree, take into account the possibility of a string of very serious storm floods—for instance as a result of climate changes—which may in the future entail very costly claims," said Mr. Brauner.

The council suggested the introduction of a mandatory insurance system to cover property in high-risk areas, with the amount of premium dependent on whether the policyholder has taken precautionary measures to prevent damage, Mr. Brauner said. Under the proposal, the Storm Council would continue to provide flood insurance in low-risk areas.

The council has also suggested using existing technology to define the major flood risk areas in Denmark for insurance purposes.

The council expects a response to its proposal by the fall, at which time the ministry may choose to change the law. Any legislative change would need to be passed by the Danish Parliament, according to the council.

Denmark has also experienced an increase in flood damage from streams and lakes, which is not covered by the government system. Therefore the council, in cooperation with Danish insurance companies and the Danish government, is considering whether to insure this damage as well, Mr. Brauner said.

Deal moves liabilities from Lloyd's

Nonlife book of business transferred to company market for first time

By STUART COLLINS

LONDON—The first transfer of a book of nonlife business from a Lloyd's of London syndicate to outside the market is expected to be followed by other similar deals.

The recent shift of a book of U.K. auto insurance policies is likely to be the first of many as the London-based insurance market seeks to reduce its hefty liabilities from syndicates in runoff, experts say.

But such actions, which transfer the assets and liabilities from a Lloyd's syndicate to an insurance company outside the market, are expected to be limited to non-U.S. casualty business. Deals that involve complex casualty claims or U.S. policyholders are highly unlikely, according to Steve McCann, the London-based head of runoff business at Lloyd's.

Earlier this month, auto insurer Highway Insurance Holdings P.L.C. received court approval to transfer the business of its Lloyd's syndicates 37 and 2037 to a non-Lloyd's insurance company, Highway Insurance Co. Ltd. The transaction, which transferred the liabilities and assets of syndicate 37 and 2037 to Brentwood, England-based Highway, used a Part VII transfer mechanism.

A Part VII transfer is a court-sanctioned transfer of assets and liabilities from one insurer to another.

The Highway transaction puts only a small dent in Lloyd's sizable liabilities for open years, reducing the market's gross liabilities by just £50 million (\$101.0 million). But while the number is small, the deal is important strategically as it shows Lloyd's is prepared to work with managing agents to allow Part VII transfers out of the market, Mr. McCann said.

World Trade Center and U.S. casualty claims have left Lloyd's

with a large runoff legacy, according to experts.

Lloyd's has a huge amount of business in runoff and cannot afford to be idle about that business, said Paul Murray, director at nonlife



Lloyd's of London

actuary EMB Consultancy L.L.P. in London.

Gross liabilities for Lloyd's business in runoff at the end of last year were £4.7 billion (\$9.26 billion), although this was down from £7.0 billion (\$11.97 billion) at the end of 2005.

And according to Lloyd's, more business in runoff is likely to be soon transferred outside the market.

"We are expecting another Part VII transfer of Lloyd's business—similar to Highway in that it will be mainly U.K. business," said Mr. McCann.

And the Highway deal was not the first to use a Part VII transfer to move business out of the Lloyd's market. In 2002, Lloyd's allowed the Lloyd's life insurance business of Crowe Life to be transferred to Sterling Life Ltd., an unrelated non-Lloyd's insurer.

Lloyd's is now much more comfortable with Part VII transfers,

according to Mr. Murray. "Lloyd's will be very selective about any transfers as it is fiercely protective of its reputation." It has been careful as it has chosen less volatile books—the first transaction was life and Highway was motor, he said.

Part VII transfers are not a panacea for Lloyd's runoff liabilities, said Mr. McCann, and they can go ahead only if the syndicates meet tough criteria.

"Highway was a book of direct U.K. motor business, and this is a world away from almost all other syndicates in runoff with casualty exposures," Mr. McCann said.

The three biggest issues for Lloyd's runoff liabilities are claims stemming from the terrorist attacks of Sept. 11, 2001, in the United States; personal accident spiral claims; and U.S. general liability claims, he added.

But Lloyd's does not think that Part VII transfers currently are suitable for U.S. casualty business, Mr. McCann said. "We cannot say never forever, but we have had legal advice that says there are real and material issues around Part VII transfers that involve U.S. policyholders and that would have to be overcome," he said.

In a bid to tackle the open-year liabilities, Lloyd's recently "tweaked" its rules to make it easier and less expensive for a third party to underwrite reinsurance to close. Reinsurance to close is the traditional way in which Lloyd's syndicates draw a line under the liabilities of a certain syndicate year of account, by reinsuring 100% of those liabilities into a new year of account, another syndicate or a third-party syndicate.

There is a great deal of interest in underwriting third-party reinsurance to close at Lloyd's, according to Mr. McCann.

Insurance rates continue to soften in Australia, New Zealand: Report

By MARK A. HOFMANN

The Australian property/casualty insurance market remains robust, according to a report issued last week by Standard & Poor's Ratings Services.

The report, "Australian Non-Life Insurance: Tempestuous Waters But Wind Still In Sails," noted that "premiums for all business lines currently exceed claims" and that "healthy margins are evident in most lines of businesses."

The report pointed out, however, that the data does not include the impact of this year's floods.

It also noted that "hard rates in the last few years have been eroded away by competitive pressures, especially in the commercial sector. Most insurers have managed to retain their books reasonably well despite the soft market," the S&P

report said.

"On the whole, we are reasonably comfortable with the state of the market and the quality of the participants, especially with heightened regulatory oversight," according to S&P.

S&P also issued a report last week on neighboring New Zealand's property/casualty market.

"The ongoing soft market conditions in the New Zealand nonlife insurance sector will present greater challenges to generate premium growth in 2008," said S&P in "New Zealand Non-Life Insurance: Pursuit For Topline Growth Will Test Underwriting Discipline in 2008."

S&P said "the impact of lower premium rates has started to flow into the financial performance of insurers, which is evidenced by a growth of less than 1% in gross pre-

miums written over the 12 months that ended September 2006, the lowest since 2000. Most price softening is within the commercial nonlife insurance sector, which is slightly offset by modest premium growth in the domestic building and contents, and motor nonlife insurance sectors."

The rating agency said it "believes that future profitability will depend on insurers' ability to maintain underwriting discipline while maintaining market share."

S&P said its outlook for the New Zealand market "remains stable, reflecting the moderately low industry and economic risks. The softening market conditions had a limited impact on nonlife insurers' profitability to date due to insurers' higher commitment to underwriting discipline relative to previous years."

Leave: Law aids domestic violence victims

CONTINUED FROM PAGE 3

Ms. Willman, a former domestic violence victim herself, said the chances of the legislation becoming law this year "are pretty slim, because we're going into a presidential election year, and the campaign issues are probably going to be higher priority issues than this one."

However, Lisalyn Jacobs, Legal Momentum's vp for government affairs, said one positive sign is 2005 federal legislation that authorizes appropriations to create a workplace resource center to assist employers in learning how to support employees who are domestic violence victims. The measure was enacted, but has not received funding.

Furthermore, "There are, in Capitol Hill land, always other ways to get part of the job done," which includes adding domestic violence crime victims to provisions of an expanded Family and Medical Leave Act, Ms. Jacobs said.

There is also growing awareness of the issue on the state level, said Ms. Jacobs. For instance, more than half of the states already allow companies to consider paying unemployment insurance benefits to workers who have lost or quit their jobs because of domestic violence.

"I think you really do see an evo-

lution in the way legislators are starting to look at this," said Ms. Jacobs.

'Most employers want to protect their employees from domestic violence.'

Patrick M. Muldowney,
Baker & Hostetler L.L.P.

The Florida law applies to employers with 50 or more employees and to employees who have been on the job for three or more months. Before receiving the leave, the employee must exhaust all vacation, personal and sick leave unless the employer waives the requirement, the law states. The leave may be taken with or without pay, at the employer's discretion.

Observers say the law has not had a significant impact on employers in the state, many of whom already go beyond its provisions. Patrick M. Muldowney, an Orlando, Fla.-based attorney with Baker & Hostetler L.L.P., said "We're only talking about three days here."

"I think, obviously, most employers want to protect their employees from domestic violence, and want

their employees to be able to come to work and not have to be worrying about that kind of issue," he said. "Most employers want to be able to do anything they can to help."

Assisting employees

St. Petersburg, Fla.-based Raymond James Inc., which has about 3,670 Florida-based employees, prior to the law was offering employees 30 days of unpaid leave for issues that includes domestic violence, as well as up to eight free counseling visits under its employee assistance program, said Barbara Galloway, director, human resources, partner group, at the financial services company.

This is something the firm offers "as a company that cares about its people," said Ms. Galloway.

Kelly M. Lonsberry, senior associate administrator, human resources, at the 1,400-employee Watson Clinic L.L.P. in Lakeland, Fla., said even before the legislation, "we helped our employees in that situation and would certainly give them time off that they needed, sometimes more than three days," as well as refer them to the clinic's EAP.

"We've done lots more than this legislation is talking about," said Ms. Lonsberry. "To us, it was not much more than a blip on the radar."

Captive owners explore latest market trends

By RUPAL PAREKH

BURLINGTON, Vt.—Captive sponsors are making significant changes to their captives, altering everything from the structure of their boards to the types of risks they cover, market observers and captive owners say.

A flurry of activity is taking place as captives have more domicile choices than ever and many organizations are taking the opportunity to move their captive operations onshore, they say (see story, page 4).

Furthermore, captive owners are exploring new ways to use captives to their full potential—using them to cover out-of-the-box risks and some even turning them into profit centers.

Captive trends

One major trend is the growing number of offshore captives that have redomesticated to the United States amid a proliferation of U.S. domiciles. Jason Flaxbeard, senior managing director and head of captive services in Denver for Beecher Carlson Insurance Services L.L.C., told an audience of about 400 attendees of the Vermont Captive Insurance Assn.'s annual conference held in Burlington earlier this month.

Beecher Carlson manages about 100 captives across nine domiciles.

Additionally, some sponsors are moving their captives to the United States due to the high cost of doing business in a distant location, he said.

Robert Flannery, manager of captive operations for New York-based Verizon Communications Inc. who in his role oversees Verizon's one captive in Bermuda and two in Vermont, said that there is not room for all the domiciles in the domestic captive market. "I don't think that 30 (domiciles) is reasonable," said Mr. Flannery.

Another trend, Mr. Flaxbeard said, is as organizations' captives mature, they are increasingly being used as an integral part of the organization's overall risk management strategy.

Walt Disney Co.'s two captives—Buena Vista Insurance Co. and Alameda Insurance Co.—are

increasingly being used to fund a variety of risks, said Tim East, director of risk management for Burbank, Calif.-based Disney, who also serves as vp for the captives.

For example, the company uses its captives to provide workers compensation to the cast of The Lion King on Broadway; to insure a fleet of mobile news gathering trucks; and to insure movie stunts and special effects, such as explosions.

Furthermore, "something that's really picking up," is the use of captives for third-party business, Mr. Flaxbeard said.

Verizon's cell phone insurance program—under which cell phone owners, by paying a few dollars a month can get a replacement when their phones are damaged, lost, or stolen—is offered through one of the company's captives, Exchange Indemnity Co., and has become a source of third-party business. EIC is the largest Vermont-domiciled captive.

Disney is turning down third-party business, though. According to Mr. East, engaging in third-party business via the captive does not fit into Disney's "corporate culture," and would be seen as a distraction.

In addition, executive leadership at captives' parent companies has begun taking more interest in their captives' operations, the panelists noted.

According to Mr. Flaxbeard, more and more chief financial officers, treasurers and other in senior positions are beginning to sit on the boards of captive insurance companies.

Additionally, most organizations are not seeking ratings for their captive insurance companies.

"It's just not something that people are really catching on to," said Mr. Flaxbeard, noting that of Beecher Carlson's captive client portfolio, only 3% are rated. For a single parent captive ratings are not necessarily helpful, but perhaps for a risk retention group, they are because a good rating could help secure reinsurance.

Stephen Cross, chief executive officer of Aon Global Risk Consulting in Dublin, Ireland, served as moderator for the session.

Domicile: Captive moves require care

CONTINUED FROM PAGE 4

redomestication, he said.

Furthermore, Mr. Smith noted, a growing reason some captives have moved to onshore is access to the federal terrorism backstop, which requires captives to be domiciled in the United States to tap its funds.

But other issues also cause captives to move, said Frank Lagerstedt, executive director in Morgan Stanley's risk and insurance management department in New York and president of Customer Asset Protection Co.

CAPCO is a Vermont-based group captive that provides excess coverage above what is provided by the Securities Investor Protection Corp. to broker/dealers for institutional and individual clients' securities accounts.

CAPCO was domiciled in New York in late 2003 but moved to Ver-

mont less than a year later after the confidentiality of the captive members' operations came into question. A Freedom of Information Act request to New York about the captive's dealings was rejected initially, but state officials said in the future they might release certain information that CAPCO sought to keep confidential, Mr. Lagerstedt said.

He subsequently approached Vermont regulators, who were willing to ensure that confidentiality, and so CAPCO moved.

"You want to have a good relationship with your regulators," Mr. Lagerstedt stressed. In most domiciles, a captive must be legally released by the current domicile to move to a new one, so captives need regulators on their side to expedite the moving process, he said.

CAPCO's move was relatively painless because the captive had frequent, up-front communication

with regulators in both states and it was able to retain the same service providers when it moved to Vermont, Mr. Lagerstedt said.

Panelists agreed when one audience participant—a 20-year veteran of the Bermuda captive industry who recently moved a captive to a U.S. state—noted that captive moves can be far rockier when service provider changes are involved.

Additionally, moving a so-called "alien," or offshore captive, onshore is generally a more complex process than moving within the United States, said P. Bruce Wright, partner at the New York-based law firm of LeBouef, Lamb, Greene & MacRae L.L.P.

Tax implications could be thorny in an offshore-to-onshore move, as earnings abroad may be taxed if the captive was not already compliant with U.S. tax laws, Mr. Wright said.

Vermont: Revises statutes to stay on top

CONTINUED FROM PAGE 4

changing needs of the captive industry, Gov. Douglas said.

Among other changes this year, Vermont last month revised a statute to allow for the formation of special purpose financial captive insurance companies, to facilitate securitization transactions using reinsurance captives and other risk financing structures.

Since its launch as a captive domicile in 1981, the captive sector has become a valuable part of Vermont's economy, producing close to \$23 million in premium tax income for the state in 2006—almost the same amount generated last year through the state lottery.

"It's an important part of our fiscal base," said Gov. Douglas, also noting that the industry provides nearly 1,500 jobs in the state and

fits into a strategy going forward for Vermont to attract "clean" or environmentally friendly businesses.

Of the Fortune 100 largest companies, 42 have Vermont captives and 19 of the 30 companies making up the Dow Jones Industrial Average sponsor captives in the Green Mountain State, state officials say.

In all, state officials estimate that Vermont captives generate about \$11.5 billion in premiums per year.

1,350 attend captive event

BURLINGTON, Vt.—A mix of captive owners, service providers and regulators flocked to Burlington, Vt., for the annual Vermont Captive Insurance Assn. meeting, held Aug. 7-9.

This year's meeting—the largest yet in the conference's 22-year history—drew more than 1,350 attendees and 95 exhibitors. Attendees hailed from 40 states and the District of Columbia, as well as 11 countries. Approximately 26%

of attendees were captive owners, VCIA staff estimated.

The schedule included about 65 speakers with author and psychiatrist Dr. Ned Hallowell featured as the keynote.

Next year, the conference will return Aug. 12-14 to the Sheraton Burlington Hotel and Conference Center. For more information, go to www.vcia.com/annualconference/.

—By Rupal Parekh

Business Insurance PERSPECTIVE

Carbon reduction efforts present liabilities, opportunities

Regulatory changes create complex issues for industrial risks

By Jason Reeves

Any U.S. property or energy insurer that insures or reinsures risks outside the United States that concern the emission of greenhouse gases is already affected—knowingly or unknowingly—by mandatory carbon reduction legislation. The legislation arises in connection with the Kyoto Protocol and the European Union's Emissions Trading Scheme. For insurers and reinsurers, carbon presents new liabilities, opportunities to mitigate loss and business opportunities.

There are 15,000 installations in the European Union and 2,000 installations outside the European Union that are affected by carbon reduction legislation. Additionally, the Regional Greenhouse Gas Initiative is a mandatory carbon reduction plan in the United States, which commences in 2009 in several East Coast states. There are also draft carbon reduction bills currently before Congress that have bipartisan support and the support of big business.

Carbon reduction plans are premised on a mandatory "cap and trade" system. Cap and trade limits the amount of emissions an installation can produce by issuing emission "credits" that permit a specified amount of emissions. Credits are essentially a license to pollute. Emissions are measured and accounted for annually. If an installation exceeds its allocated credits, it must purchase additional credits from installations with excess credits. This creates a financial incentive to operate cleaner installations. Installations are normally given fewer credits than required to encourage reductions. The more scarce the credits, the greater the credit price and incentive to reduce emissions. The wider trading system for credits is similar to traditional commodities.

Installations are generally not required to pay for their credit allocations under Kyoto, RGGI or the draft congressional bills. However, the credits have a financial value upon receipt. Credit value is realized by accounting for production or by the sale/trade of the credit. The plans are silent about the status of allocations during temporary outages. The issue is further complicated by the absence of any suitable accounting standard for credits. Most installations include the notional cost of free allocated credits in their production costs, which directly impact business interrup-

tion claims.

Insurers should ask two main questions when considering the impact of carbon reduction legislation:

1. What opportunities are there to mitigate an insured's loss?
2. What new liabilities does carbon present?

Fundamentally, when an outage leads to a business interruption claim, should insurers or the policyholder benefit from the value realized by the transfer or saving of allocated credits? For example, a cement plant is allocated 5,000 credits per day. A breakdown results in the complete cessation of production for 40 days. The policyholder loses \$10 million profit as a result of the outage. During the outage, credits that were allocated for no cost are valued at \$20 each and the insured has the opportunity to sell 200,000 credits worth \$4 million. Can insurers set this \$4 million off against the \$10 million loss?

Green technology outages

What new liabilities are associated with outages of an insured's green technology at capped installations? A steel plant has an allocation of 5,000 credits per day. It

installs technology that reduces emissions to 4,000 credits per day but then increases output by 25%, staying below its daily allocation. The new technology breaks down and is out of operation for 35 days. The plant must buy 35,000 credits to maintain production at the new level. During the outage, the market price of one credit is \$20. Can the policyholder present a claim to insurers for \$700,000?

Outages at installations with carbon allocations should anticipate these and more complex adjustment scenarios. Carbon is not a theoretical or modeling concern. It is a current issue for all losses at carbon emitting installations in the European Union. The issues will be virtually identical to future losses under RGGI and other anticipated cap and trade carbon reduction plans.

Specifics to keep in mind

Fundamentally, carbon is an underwriting issue/opportunity rather than a claims/adjustment issue. Most of the uncertainty associated with carbon reduction plans can be managed with suitable wording. Many existing commercial policies could incorporate carbon

endorsements. Carbon wording should specify the accounting treatment of credits and whether these are a subject of indemnity. It should also suggest how to allocate and value credits to particular outages, which will require distinguishing free allocated credits from those that have been purchased.

Carbon mitigation opportunities and liabilities result in a range of claim scenarios. The reinsurance of carbon emitting installations, particularly the reinsurance of installations outside the United States, will require careful scrutiny. Ideally, carbon should be a standard issue raised in risk surveys and proposal forms. Wording should be sufficiently flexible to accommodate legislative changes, market fluctuations, the inclusion of new industries in carbon plans and integration with other carbon plans.

The anticipated increased value of credits in the European Union is likely to create a demand for new carbon insurance products. General policies and carbon-specific policies will likely blend traditional property underwriting with a financial lines/credit risk component. The idea of carbon guarantee policies may eventually be more than a

niche growth area for credit insurers. As carbon plans are widened, their impact will grow. Insurers must engage with the financial reality of existing carbon plans and anticipate the impact of developing plans.



Jason Reeves is an attorney at law firm Clausen Miller L.L.P. in London.

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Managed care: First half profits increase despite sluggish growth

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this point."

U.S. health insurers, which reported sluggish first-quarter profits, rebounded with strong earnings during the second quarter.

Minnetonka, Minn.-based UnitedHealth Group Inc., the largest managed care company in revenues, reported first-half net income that was 13.4% higher than the year-earlier period (see chart). In the first quarter of 2007, its profit growth was much smaller at 4%.

Louisville, Ky.-based Humana Inc. posted strong earnings during the first half, reporting a net profit increase of 66.3%, with the second quarter overcoming a nearly 15% drop in first-quarter profits, amid continued growth in its Medicare business and lower medical expenses in both its government and commercial segments.

"Humana had a better Q2, but they're so heavily into Medicare, we'd expect that," said Stephen Zaharuk, vp and senior analyst for Moody's Investors Service Inc. in New York, referring to the cyclical nature of the government business.

Among commercial fully insured groups, Humana's medical cost trends were in the range of 4.5% to 5% with premium yields in line with cost trends. Humana has consistently reported lower cost trends than major competitors, which Humana officials attribute to lower utilization and growth in its consumerism products.

"I feel pretty good about our ability to continue to see improving trends," Jim Murray, chief operating officer, said during the company's second-quarter earnings call.

Kaiser Permanente, meanwhile, experienced what company officials described as a "positive anomaly" during the first half, reporting prof-

its that were more than twice as large as the same period last year—\$1.82 billion through the first half of 2007 vs. \$720 million for the 2006 first half. Officials of the Oakland, Calif.-based insurer credited the gain to a sizeable reduction in reserves for professional liability and workers compensation costs and strong earnings from contract renewals.

'I don't think we're going to see a lot of commercial membership growth.'

Stephen Zaharuk,
Moody's Investor Service Inc.

Philadelphia-based CIGNA Corp. was the only major U.S. health insurer reporting that first-half profits had declined, a 22.1% drop vs. the year-earlier period, related to the runoff of its reinsurance business.

The company's health care segment, though, remains profitable, said Moody's Mr. Zaharuk. "We think it's just a one-time hit," he said.

Competition heats up

Despite the profit rebound, major managed care companies have had sluggish commercial membership growth so far this year.

UnitedHealth, for example, lost 20,000 commercial members compared with the same period last year.

The commercial market is experiencing strong competition that will continue for the next few years, Stephen Hemsley, UnitedHealth's

president and chief executive officer, said during the company's second-quarter earnings call. The company is improving its commercial competitive position by remaining engaged in programs to contain medical costs and driving greater product innovation to stimulate profitable growth and attract quality membership with favorable retention prospects, he said.

As part of that effort, UnitedHealth is launching products aimed at helping smaller employers provide affordable health care coverage to their employees. For example, its Vital Measures program intends to reduce out-of-pocket health care expenses for individuals and families with healthy lifestyles. The program was introduced last month to employers with 100 to 1,000 fully insured employees in Colorado, Ohio, Pennsylvania and Rhode Island. A national launch is slated for 2008.

"I think there has been a lot of fresh thinking about the spectrum of products that are being brought to bear," Mr. Hemsley said.

WellPoint, meanwhile, experienced unusually high declines in its national account segment in the second quarter due to employee reductions in several industries, including automobile, home building and the mortgage sector. The company, though, has seen strong year-over-year growth in the segment, gaining 477,000 members in the past 12 months.

On the other hand, Aetna has seen some growth in its commercial sector, gaining about 45,000 members in the second quarter and about 240,000 members in the past year.

"I don't think we're going to see a lot of commercial membership growth," Moody's Mr. Zaharuk said.

Unlike previous years, none of the large health insurers is having major problems resulting in sizeable membership losses, he said.

For example in recent years, CIGNA raised premiums in response to higher-than-expected medical costs and enabled competitors to siphon major accounts. "Nobody's gaining because a company's in trouble," Mr. Zaharuk said of the current environment.

With sluggish commercial mem-

bership growth, managed care companies are showing more interest in the Medicare/Medicaid business, analysts say.

UnitedHealth and Humana are the major players in the government sector, although Aetna is trying to gain a foothold in the market through its recently completed \$535 million acquisition of Schaller Anderson Inc., a provider of health care management services for Medicaid plans in Phoenix.

Health insurance sector sees further consolidation

Consolidation continues to be a major theme in the health insurance sector in 2007.

While UnitedHealth Group Inc.'s proposed acquisition of Sierra Health Services Inc. is the merger and acquisition "highlight" so far, according to analysts, the majority of deals are smaller transactions involving companies that provide specialty health care products and services or have attractive regional operations.

Minnetonka, Minn.-based UnitedHealth and Sierra officials vow to move forward with UnitedHealth's planned purchase of Las Vegas-based Sierra despite strong opposition by consumer groups, a local union, several Nevada politicians and provider organizations such as the Chicago-based American Medical Assn.

During hearings about the proposed merger held in Nevada in June and July, some physicians expressed concern about reimbursement rates, said Anthony Marlon, Sierra's chairman and chief executive officer, during the company's second-quarter earnings call. "The tenor of the hearings was balanced," he said. "The AMA was its usual self."

UnitedHealth has been involved in several disputes with provider organizations, including the AMA, most recently related to its plan to rank New York doctors based on quality metrics and the implementation of a policy that allows the insurer to fine physicians if their patients have laboratory tests in out-of-network facilities.

The companies are working with the antitrust division of the Department of Justice to comply with its request for additional information about the merger and expect to receive substantive comment from the department during the fourth quarter, Mr. Marlon said.

Despite the political dynamics, the regulators and the companies will likely come to a solution, said Stephen Zaharuk,

vp and senior analyst for Moody's Investors Service Inc. in New York. "It's just how much it's going to cost the company to do it," he said.

Future transactions on the UnitedHealth/Sierra scale are unlikely this year, mainly because the profitability of the health plans make them overvalued from an acquisition standpoint, Mr. Zaharuk said. "I don't think we're going to see (blockbuster deals) for the next year," he said.

Analysts point to deals such as Indianapolis-based WellPoint Inc.'s acquisition of American Imaging Management Inc. and Louisville, Ky.-based Humana Inc.'s planned purchase of CompBenefits Corp. as the future norm for M&A activity in the sector.

WellPoint recently completed its acquisition of American Imaging Management, a radiology benefit management and technology company that serves health plan clients representing more than 20 million consumers. Unnecessary imaging and radiological examinations have been a key driver of cost increases for WellPoint in recent years, but the acquisition will lower the company's cost trends, which it will consider in its pricing, said Wayne DeVeydt, WellPoint's CEO. "So we also have responsibility to pass some of these savings onto our customers, and that's part of growing our membership," he said during the company's second-quarter earnings call.

Humana purchased CompBenefits for \$360 million. The Atlanta-based dental and vision benefits provider serves more than 14,000 employer groups in 22 states.

Bethesda, Md.-based Coventry Health Care Inc. will acquire the parent company of Vista Healthplan Inc., a Sunrise, Fla.-based health plan serving about 295,000 members for \$685 million to expand the company's footprint into one of the nation's fastest growing states.

—By Gloria Gonzalez

OFC: Advocates see hope for reform bill

CONTINUED FROM PAGE 4

ers to create national underwriting pools—and while not over-hyping the potential impact—it's clear that a free pricing regime will inevitably lead to opportunities in coastal areas from insurers who feel they can't play in a particular marketplace because of the restraints of state borders," Mr. Wood said.

The increased congressional attention to natural catastrophe issues could have a small but nonetheless significant impact on efforts to create an OFC, said Eli Lehrer, a senior fellow at the Competitive Enterprise Institute, a free market-oriented Washington think tank. And that would be good news for consumers "if we implement the OFC," he said. Of course, "it's not going to solve the problem—no single action will," he added.

But creating an OFC would encourage competition and "in the long-term is likely to result" in lower prices for policyholders. "Obviously, there will not be below-market prices," he added.

"I think that anything that increases focus on insurance" will increase interest in the OFC, said Mr. Lehrer.

"I would actually predict that OFC will pass the House in the 111th Congress," which will convene in 2009, Mr. Lehrer said. "The Senate is little iffier."

Another OFC advocate said he has not "seen a definite causal link yet established" between the new congressional focus on catastrophe policy and the OFC. But the American Insurance Assn. thinks it is "logical and inescapable" that the OFC would be a reasonable response to the problems of providing adequate coverage in coastal areas, said Marc Racicot, president of Washington-based AIA.

The OFC would bring capacity to the marketplace and remove politics from ratemaking, he said.

"You end up with a regulatory regime we believe that would allow insurers to tailor coverage to actual needs on the ground," Mr. Racicot said. "We think there are a lot of advantages and common sense imperatives for it to be related and

linked" to the issue of catastrophe insurance.

An OFC opponent, however, dismissed any linkage.

"I don't think there's a correlation between the federal government assisting homeowners in disaster-prone areas to eventually leading to federal oversight of the regulatory system," said Justin Roth, senior director-federal affairs in the Washington office of National Assn. of Mutual Insurance Cos.

"There are plenty of examples of where the federal government has stepped in, such as crop insurance, flood insurance and TRIA, and none of them led to a federal takeover of the regulatory system," he said. TRIA—the Terrorism Risk Insurance Act—established the federal terrorism insurance backstop in 2002.

"A lot of the problems that are occurring are happening in several coastal states and I don't think the majority of the members of Congress would view a federal solution as being the answer to a regional problem," said Mr. Roth.

Sarbanes: Risk managers staying on the sidelines

CONTINUED FROM PAGE 1

role in auditing, monitoring or collecting information for Section 404 compliance from other units of the company.

Risk managers who have taken an active role in Section 404 compliance activities, however, report that the impact has been significant both in terms of the influence of the risk management department on the design and implementation of a program and in raising the visibility and influence of the risk management department within the organization, the report said.

David Bradford, the editor-in-chief of Advisen who wrote the report, attributed the lack of risk management involvement to a lack of assertiveness.

"Unless they step up to the plate and say 'Hey, we've got something to contribute here,' the natural inclination (among companies) may not be to even consider risk management as a valuable part of the information collecting and analyzing process" of 404 compliance, Mr. Bradford said.

While there are risk managers who clearly view 404 compliance as an opportunity and "injected" themselves into the process, there are others "who either didn't understand that this represented an opportunity for them or weren't interested in expanding their roles

and responsibilities, so they weren't particularly aggressive about getting themselves involved," he said.

"It's disappointing that more risk managers are not intimately involved, because...it represents an efficient and effective way for risk management to begin implementing an ERM program," said Fred Travis, a principal with Risk Management Consulting in St. Louis.

Up until 2005, Mr. Travis was director of corporate safety and risk management for St. Louis-based Anheuser-Busch Cos. Inc., where he was actively involved in the company's 404 compliance project. "We were seen as a really good team player and contributor and more than just the insurance buyer and workers compensation claims manager," he said. "Whether or not that furthers ERM at the company remains to be seen."

Overall, though, "by showing how SOX 404 compliance can fit into a more useful, less invasive ERM framework, risk managers have the opportunity to enhance the standing of risk management," he said. "Failure to take advantage of this opportunity, I believe, is a sign that risk management is not prepared to fulfill its responsibilities."

Pam Rogers, a Minneapolis-based senior vp with Marsh Risk Consulting, however, said she does not view Section 404 compliance and

ERM as one in the same.

"Taken to its (potential), SOX would become a catalyst for an enterprise risk effort within a corporation. (But) to draw a parallel and say because risk managers are not involved in SOX compliance efforts means they're not taking the opportunity to be involved in ERM is not a fair statement," she said. "They are two separate things."

Section 404 compliance is "really an internal audit and external audit and accounting firm effort," she said. So the fact that most risk managers are not on the 404 compliance committee "does not surprise me."

"I'm not seeing many risk managers involved in 404 and SOX work generally, and quite honestly, I'm pleased with that," said Mark Charron, a principal and national actuarial and insurance solutions leader for Deloitte Consulting L.L.P. in Hartford, Conn., noting the general trend among companies to ratchet back the amount of resources and commitment to 404 compliance.

Section 404 is "very much a strong controls exercise," Mr. Charron said. "My personal belief is that the risk managers, while they certainly need to continue to monitor what's going on with 404 and do need open communications with that part of the operation, they're better focused on their core mission of risk identification, risk mitiga-

tion, risk transfer and risk financing."

Carol Fox, senior director of risk management for Cincinnati-based Covergys Corp., said she monitored her company's Section 404 compliance activities, but did not actively participate in the 404 compliance process.

"We knew it was going on, we were concerned about it and we kept in touch with the folks driving it, which tended to be the accountants," but risk management's concern revolved more around the risks of noncompliance, she said. "So we saw compliance as a risk itself."

Ms. Fox said she doesn't think risk managers are missing out on opportunities by not being actively involved in 404 compliance and isn't surprised that few risk managers are involved.

And while Section 404 compliance may be a springboard for an ERM program, Ms. Fox sees them as two separate initiatives.

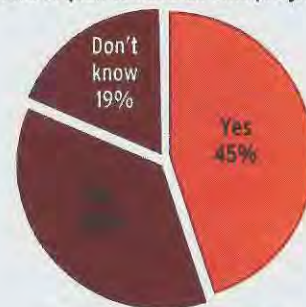
"We are very tightly linked with our internal audit department. We partner with them on ERM," she said. "While we drive the process, the monitoring piece is what internal audit has picked up and we've incorporated our findings for ERM in the audit plan, which has been very well received by our board of directors."

"ERM for most companies,

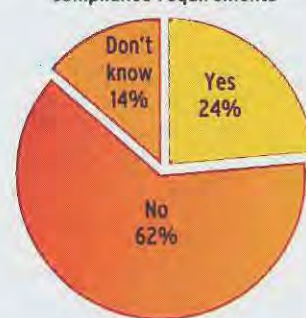
ERM AND SARBANES-OXLEY ACT SECTION 404 COMPLIANCE

Effects of SOX Section 404 compliance on enterprise risk management programs.

Have or plan to have an ERM program



ERM program motivated by Sarbanes-Oxley Act Section 404 compliance requirements



Source: Advisen Ltd.

including ours, it is seen as a separate initiative and a separate program," said Ms. Fox who chairs the Risk & Insurance Management Society Inc.'s ERM committee.

Messaging: Employers must make efforts to control growing exposure

CONTINUED FROM PAGE 1

chatting goes on, said Nancy Flynn, director of the ePolicy Institute, a consulting firm in Columbus, Ohio. Many instant messaging programs create archives of messages sent and received, with users often able to turn that feature on or off.

Many managers are still uninformed about what these legal changes mean and they are unaware of IM exposures in general, Ms. Flynn said, describing some senior managers who have told her they don't have to worry about IM

risks since they don't provide the software. "Just because you're not providing it doesn't mean employees haven't brought it in through the back door" through free programs, such as Yahoo! Messenger and Google Talk, that can easily be downloaded, she said.

Employers can confront IM-related exposures with several risk management strategies, experts say.

The first step for employers is to figure out whether IM programs are being used in the workplace by scanning the company computer systems, Ms. Flynn said.

Secondly, employers should work with legal, records management, auditing and financial departments to create a policy governing use, said Kevin Kalinich, co-national managing director of professional

risk solutions for Aon Financial Services Group in Chicago.

Mr. Kalinich recommended that instead of an explicit IM policy, managers create a flexible "electronic communications policy," applicable to e-mail; IM; so-called "wikis," which are group-edited Web sites; and blogs. "An electronic communications policy can generally address each of the issues inherent in each of the different types of communication," he said.

Ms. Flynn echoed the necessity of written guidelines, but advised creating one that singled out IM from other e-communication. "Make life easy for employees. Make it a separate policy that's easy for them to read and understand and comply with," she said.

Mr. Kalinich said employers needs to consider the following: what IM program should be authorized for use, if one is to be authorized at all; the program's accompanying filters or controls; who will be allowed to use it; proper practice policy; what IM chats constitute a business record to be saved, and the manner and duration of chat archives.

Software is available to automate the process of monitoring, filtering, purging, retaining and archiving IM chats, Ms. Flynn said.

Then comes education, from the intern to the CEO, Ms. Flynn said. Ideally, employees should be certified once trained so employers can demonstrate to a court or regulatory body that training took place, she added.

Ms. Lange of Kroll Ontrack advised managers to tell their employees to treat instant messaging like e-mail. "Assume that your instant message conversations are going to be fully recoverable," she said.

Impose boundaries

Mr. Kalinich encourages employers to embrace instant messaging, but be very clear with workers about its boundaries. Younger workers, especially, who have grown up with instant messaging, should be taught that the practice has a place, but within professional parameters.

Technological controls, such as blocking objectionable language or attachments, and disciplinary action can help enforce the policy, Ms. Flynn said.

The downside is that once employers take on the obligation to educate, monitor or regulate IM use, they have a duty to enforce the policy, Mr. Kalinich said. "They just can't throw up their hands and use ignorance as a defense," should a lawsuit ensue, he said.

Experts agree that workplace IM isn't going anywhere for now.

"I don't recommend companies getting rid of it," said Ms. Lange. "It's almost like technology is one of those necessary evils that is here to stay. It improves productivity in the workplace. I'm all for making our workers more efficient." But management policies and practices have to catch up with that technology, she added.

Cover available for IM risks

When risk management tactics fall short, insurance coverage can help guard against such instant messaging-related liabilities such as viruses, information theft and harassment allegations, said Nancy Flynn, director of The ePolicy Institute in Columbus, Ohio.

She advises insurance brokers to be aware of IM- and e-mail-related risks that face corporate clients "and make sure that you've got them fully covered in case their employees accidentally or intentionally stir up some trouble for the company via IM."

In her book, "The ePolicy Handbook," Ms. Flynn cites a laundry list of policies that give coverage to electronic exposures: media liability coverage, to insure against copyright and trademark infringe-

ment; specialized network security coverage, to guard confidential data; and crime loss insurance, to guard against "e-theft."

Sandy Codding, a managing director at Marsh Inc. in New York, said he has not seen many companies asking particularly about exposures with instant messaging.

"Generally speaking, and I'm talking from a professional liability standpoint only, the policies that provide coverage for electronic content are not specific to how that content is generated."

A policy that provides coverage for electronic coverage could include instant messaging, though that technology might not be explicitly named, he said.

—By Beth Murtagh

ADVERTISER

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News In Brief

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dealers that allegedly sold guns to criminals who used them to commit crimes in the city. U.S. District Court Judge Jack Weinstein rejected the arguments of six out-of-state gun sellers that they could not be sued in New York or federal court because they did not do business in New York. The judge held that New York had demonstrated that the defendants "have been responsible for the funneling into New York of large quantities of handguns used by local criminals to terrorize significant portions of the city's population. The city may seek redress in the Eastern District of New York where many of the New York crimes attributable to defendants' activities take place."

WTC Captive asks court to dismiss lawsuit

WTC Captive Insurance Co. filed a motion to dismiss a multimillion-dollar suit, citing immunity from personal liability for all defendants but the captive itself. That suit—filed last month against WTC Captive, its service providers, New York Mayor Michael Bloomberg and WTC Captive President and Chief Executive Officer Christine La Sala, among others—alleges that the captive has misused its roughly \$1 billion in federal funding by spending millions on legal and other fees to fight injured Ground Zero workers claims rather than compensating them.

Former AIR exec opens consulting firm

Catastrophe modeling pioneer Karen Clark has opened an independent risk management consulting practice to help companies better understand how to use catastrophe models in risk management decision-making. The firm, Karen Clark & Co., is based in Boston. She left her post as president and chief executive officer of AIR Worldwide Corp. in April.

Montpelier buys E&S insurer

Montpelier Re Holdings Ltd. of Bermuda has agreed to buy General Agents Insurance Co. of America Inc., a unit of GAINSCO Inc., for up to \$4.75 million plus the amount of policyholder surplus held by the

insurer at closing. The company, which writes excess and surplus lines insurance in 38 states, will be renamed Montpelier U.S. Insurance Co. and be based in Scottsdale, Ariz., primarily writing excess and surplus lines business in the continental United States.

CNA executive to lead SCIF

Janet Frank, executive vp-North American field operations for CNA Financial Corp., will become president of the State Compensation Insurance Fund in October. Ms. Frank will succeed Lawrence E. Mulryan, who was named interim president shortly after the troubled workers compensation insurer abruptly fired its president, James C. Tudor, and vp, Renee Koren, in March amid results of an internal review, which in part focused on its group insurance program. Following that move, California Insurance Commissioner Steve Poizner, who has regulatory oversight over SCIF, ordered an audit and demanded structural and operational changes at the insurer.

SPARTA Insurance gets A- from Best

Newly launched SPARTA Insurance Co. has been assigned an A- financial strength rating by A.M. Best Co. Inc. SPARTA—an acronym for Specialty Program and Risk Transfer Alternatives—recently purchased Canton, Mass.-based American Employers Insurance Co. It will provide property/casualty insurance and alternative risk transfer products. George L. Estes III serves as SPARTA's chief executive officer.

Noted

The American Assn. of Managing General Agents' AAMGA University has established the Michael Snead Memorial Fund in honor of Michael Snead, former chairman of president of Admiral Insurance Co., who died recently....Jardine Lloyd Thompson Group P.L.C. is pairing with a broker in Saudi Arabia—Arab Commercial Enterprises Ltd. in Riyadh—to expand its distribution network in the Middle East....Final Internal Revenue Service regulations published last week update and clarify expenses that employees can pay through dependent care flexible spending accounts....ACE Overseas General formed an international construction practice to provide insurance products for private and public risks. ACE International Construction will operate in the United Kingdom, Continental Europe, Asia Pacific, the Middle East and Latin America.

Flexible: Benefit plan rules address everyday challenges

CONTINUED FROM PAGE 1

posed earlier this month, "Once you receive the bill and write the check, you can get reimbursed," said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

"It is a recognition of how things work in the real world," said Randy Abbott, a senior consultant with Watson Wyatt Worldwide in Wellesley Hills, Mass.

Making FSAs, which are funded with employees' pretax payroll contributions, more in tune to orthodontia billing practices is one example of how the IRS has shaped the flexible benefit rules to accommodate everyday situations, said Andy Anderson, of counsel with the law firm of Morgan, Lewis & Bockius L.L.P. in Chicago.

For example, the rules would allow employees to tap unused FSA balances to pay for dependent care expenses incurred after they terminate employment rather than forfeit the balances.

Additionally, the rules would allow newly hired employees to make flexible benefit plan selections that would apply from their date of hire—so long as they do so within 30 days of being hired.

For employees who lose group health care coverage, other provisions would allow them to pay premiums for COBRA health care continuation coverage with pretax contributions.

Tax advantages

Such a situation could occur when an employee goes from full-time to a part-time schedule, thus losing eligibility for group coverage and qualifying for COBRA. By enabling employees to pay COBRA premiums with pretax salary contributions, the true cost of coverage can be cut—depending on an employee's tax bracket—by more than one-third, thus making coverage more affordable.

The rules also would allow employees to use pretax dollars to pay for COBRA coverage in certain situations when they move from one employer to another.

For example, an employee may be eligible immediately to make contributions to a flexible spending account offered by his or her new employer but has to wait three months before enrolling in the new employer's health care plan. During that period, under the IRS rules, the

employee could pay premium contributions for COBRA coverage offered by his or her former employer.

In such an arrangement, benefit consultants say, the employee would have his or her salary reduced and the pretax contributions would be used to pay the COBRA premium.

The new rules also would permit employees to make pretax contributions for privately purchased health care coverage—so long as their employer offers a flexible benefit program.

Mutually beneficial

That new flexibility would apply, for example, in situations where an employer offers part-time workers only a flexible benefit program but does not offer them a health plan. Those employees then could purchase coverage on their own, paying for the coverage with pretax dollars.

Mr. Anderson described this last feature of the IRS rules as a "win-win-win situation."

He noted that health insurance premiums will—because of the tax breaks—be more affordable for employees and possibly reduce the number of uninsured.

At the same time, Mr. Anderson said, employers benefit because the payment of health insurance premiums through salary reduction cuts the amount of payroll taxes paid by both employers and employees.

Experts not only praise the new rules for their added flexibility, but also for providing comprehensive guidance in one place.

"It is very welcome to have guidance pulled together in one comprehensive document," said Fran Bruno, an attorney with Mercer Human Resource Consulting in New York.

Still, some hope the IRS shows even more flexibility when it finalizes its rules.

For example, there are other health care-related expenses—such as infertility treatment—for which advance payment sometimes is required and should be eligible for the same favorable FSA reimbursement provided to orthodontia expenses, said Leslye Laderman, a director in Buck Consultants L.L.C.'s St. Louis office.

"Perhaps, there is an opportunity to get some things changed," she said.

Stock Index

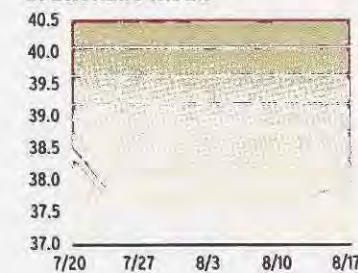
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

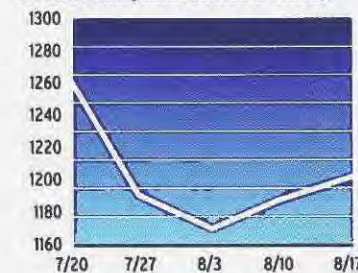
BI STOCK INDEX



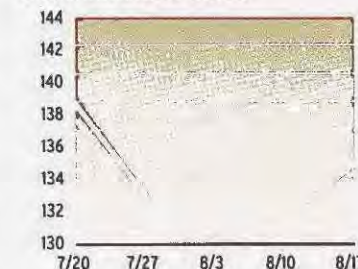
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3230.02	▲ 2.23%
DOW JONES	13079.08	▼ -1.21%
S&P 500	1445.94	▼ -0.53%

LARGEST GAINS

Transatlantic Holdings	13.05%
ProAssurance Corp.	9.27%
CNA Financial Corp.	9.27%
MBIA Inc.	8.72%
Unitrin Inc.	8.54%

LARGEST LOSSES

SCOR S.A.	-9.47%
Gainsco Inc.	-7.17%
Navigators Group Inc.	-4.08%
ING Groep N.V.	-3.78%
UNICO American Corp.	-3.28%

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Ontario snuffs tax to help smokers kick habit

Quitting just got a lot cheaper for smokers living in Ontario, Canada.

The provincial government recently introduced a retail sales tax exemption on smoking-cessation aids such as nicotine patches and gums.

The exemption, which took effect Aug. 13 and will last one year, is the Ontario government's way of encouraging residents to quit smoking while reducing its own health care expenditures.

Smoking kills an average of 16,000 people in Ontario each year, government officials say. Tobacco-related diseases cost the Ontario health care system about \$1.6 billion Canadian (\$1.52 billion) each year and result in more than \$4.4 billion Canadian (\$4.17 billion) in productivity losses.

The tax exemption is expected to save Ontario residents attempting to quit smoking about \$5 million Canadian (\$4.7 million) in the full year.

A spokesman for the Minister of Health Promotion said the government plans to make the tax exemption permanent once the Ontario legislature comes back into session.



Wendy's wife for ever, says Brian Ritchie, right, in 1984, the Violent Femmes, who is son Gordon Gano, center.

Wendy's ad spurs Violent dispute

Fast food can be more than merely harmful to your health; it apparently poses risks to your reputation as well.

Fresh from a recent tour, 1980s band the Violent Femmes is in turmoil after the band's bassist, Brian Ritchie, filed a lawsuit last week in New York federal court against lead singer Gordon Gano.

One of Mr. Ritchie's chief grievances in the suit—which seeks past and present royalties as well as damages—is Mr. Gano's move to allow the band's hit song "Blister in the Sun" to be used by Wendy's International.

The song is featured in a television commercial for the fast-food chain, allegedly to the dismay of longtime fans and the humiliation of other band members, who thought the decision was a sellout.

Judge turns defendant in insurance fraud case

Pennsylvania Superior Court Judge Michael Thomas Joyce may face his own judgment if federal prosecutors prove that he fraudulently obtained \$440,000 from insurers after being involved in a fender bender six years ago.

According to an indictment, the case began when the judge's car was rear-ended at a very low speed by another vehicle in 2001.

Judge Joyce claimed that the accident left him in constant pain and, ultimately, he received \$390,000 from his own insurer—Erie Insurance Group—and \$50,000 from the other driver's insurer, State Farm Insurance, according to court papers.

But federal prosecutors charge that even while the judge was claiming disabling pain, he was playing golf, going scuba diving and even obtained his pilot's license.

A federal grand jury in Erie, Pa., indicted Judge Joyce on mail fraud and money laundering charges last week. He faces up to 120 years in prison and a fine of up to \$2.25 million if convicted on all counts.

The judge, who maintains he's innocent, has no plans to drop his campaign for re-election to another 10-year term on the Superior Court.

These boots aren't made for driving, cop learns

A police officer in a small Florida town hit the gas and blamed the slick soles of his dress-style cowboy boots for crashing his patrol car into a convenience store.

Officer Michael Herko, 62, said his foot slipped off the brake onto the accelerator as he pulled into the Smokers Express convenience store in Trenton, Fla., on Aug. 5.

The 1997 Crown Victoria jumped the curb and smashed the glass and aluminum entrance, causing an estimated \$1,500 in damage, Police Chief Billy Smith said.

The patrol car had nary a scratch, though.

Chief Smith wanted to set the record straight on reports that he had banned cowboy boots

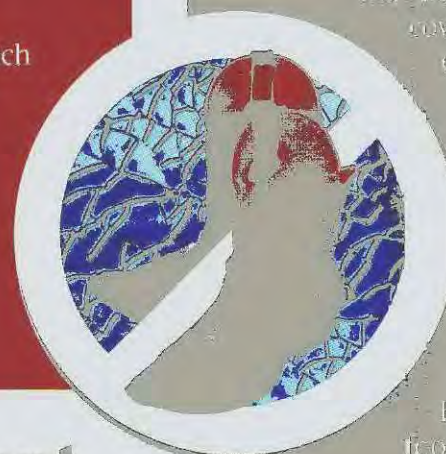
entirely for the two-man police force.

"I never told him he couldn't wear cowboy boots," the chief said.

But an officer's footwear must have some traction or grip on the soles.

Mr. Herko received a \$115.50 fine for careless driving. He also will attend a driver improvement class to lower the fine by 17% and keep points off of his record, the police chief said.

Longtime cowboy boot maker Justin Boot Co., a Fort Worth, Texas, company owned by Berkshire Hathaway Inc., offered to send the Florida town's police complimentary boots with nonskid, nonslick soles, the police chief said.



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