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\$5

Late News

Quanta says controls on reporting ineffective

Quanta Capital Holdings Ltd.'s management has concluded that its internal controls over financial reporting are "not effective," the company said in a filing with the Securities and Exchange Commission. The Hamilton, Bermuda-based insurer and reinsurer, which has been exploring strategic alternatives for its business since a ratings downgrade out of the A range in March, is running off most of its specialty lines insurance and reinsurance. Quanta in the filing also disclosed that New York-based PricewaterhouseCoopers L.L.P. on Aug. 15 resigned as its independent registered public accounting firm.

N.Y. governor vetoes comp law change

New York Gov. George Pataki has vetoed a bill that would have increased from \$500 to \$1,200 the amount at which certain workers compensation medical services require preauthorization. Several

See **LATE NEWS** / page 31



New York emergency responders train for a terrorist attack involving a possible chemical or biological agent. Losses from such acts of terrorism would be covered by the government under a proposal put forward last week by the American Insurance Assn.

Plan seeks federal cover for costliest terror risks

By MARK A. HOFMANN

WASHINGTON—The American Insurance Assn.'s proposed public/private partnership for insuring against terrorism would potentially increase the government's role in guaranteeing coverage at a time when there is little congressional appetite for extending the existing federal backstop.

That's because the proposal, unveiled last week by the Washington-based insurer group, calls for the federal government to assume

financial responsibility for future chemical, nuclear, biological and radiological terrorist attacks, while also allowing the program to recoup some of its losses from policyholders after a covered act of terrorism.

The current backstop—which is a scaled-back version of the coverage program created by the Terrorism Risk Insurance Act of 2002—barely won congressional approval in late 2005 and is slated to end on Dec. 31, 2007. The existing program covers the so-called CNBR

risks only if the underlying insurance policy does, and few if any insurance policies include coverage for such acts of terrorism.

"Because potential insured losses vastly exceed the amount of potential private-sector capital, a public policy solution is still critically needed upon the expiration" of the current federal backstop against future terrorism-related losses, says the AIA document.

The paper holds that, in addi-

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Insurer wins Katrina coverage dispute

Homeowners policy clearly excluded flood cover: Judge

By MARK A. HOFMANN

GULFPORT, Miss.—An insurer's victory in the first major federal ruling on the issue of whether Hurricane Katrina's storm surge is covered under a homeowners poli-

cy could have some ramifications for commercial insurance buyers, though the decision is considered largely a personal lines issue.

U.S. District Court Judge L.T. Senter Jr.'s ruled last week in *Paul Leonard and Julie Leonard vs. Nationwide Mutual Insurance Co.* that the insurer does not have to cover water damage from Hurricane Katrina sustained by a homeowners policyholder who had not purchased flood insurance.

The Leonards, who said that their Pascagoula, Miss., home suffered more than \$130,000 in damage from Hurricane Katrina last year, sued Nationwide for water as well as wind damage even though their homeowners policy excluded water damage. The Leonards claimed they had been misled by their agent into believing they had coverage for water damage caused

See **KATRINA** / page 30

AIA proposal

The American Insurance Assn.'s proposal for terrorism coverage calls for:

- The federal government to assume financial responsibility for all chemical, nuclear, biological and radiological terrorist attacks.
- A mechanism allowing the Treasury Department to recoup CNBR terrorism losses of up to \$10 billion through a policyholder assessment passed through insurers.
- Tax and other incentives, and the pre-emption of state insurance coverage requirements to facilitate private capital entering the market.

Most P/C rates flat or down in 2nd quarter, survey finds

By DAVE LENCKUS

Even as catastrophe property insurance rates soared, the overall cost of property/casualty coverage was flat to slightly lower during the second quarter this year compared with the same period a year ago, a survey shows.

And risk managers should expect more of the same in the rest of 2006, predicts a representative for the analyst that produced the survey.

Property coverage premiums were flat on average, while directors and officers liability insurance premiums fell 3.5%, general liability insurance premiums edged 1.2% lower and workers compensation premiums were unchanged, reports the "RIMS Benchmark Survey."

The survey was produced by New York-based insurance industry analyst Advisen Ltd. based on insurance renewal information submitted to the Risk & Insurance Management Society Inc. of New York. Advisen collected the information throughout the second quarter.

Advisen bases its report on the difference between risk managers' expiring and renewal premiums, though it tosses out information on organizations that have undergone significant changes in their risk exposure. Over the course of a year, about 1,200 risk managers report their renewal information to RIMS.

"The general price level in the marketplace is largely driven by capacity in the market, which just keeps going up," said David Bradford, editor-in-chief at Advisen. Mr. Bradford noted that insurers reported record profits during the first half of 2006, which drove up their surplus and, as a result, their capacity.

Referring to insurance pricing, Mr. Bradford said: "We expect to see this trend continue for the remainder of 2006."

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Inside



SUIT SETTLED

Zurich, policyholder resolve WTC-related claim.

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TAX ADVANTAGE

IRS issues rules on a tax break for HRA transfers.

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SPOTLIGHT

READERS CHOICE

Business Insurance readers make their picks for the best industry companies.

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2006 Readers Choice
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What should you do with your offshore property program?

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control of well, offshore property damage, business interruption, and contingent business interruption. Overall, it is important to balance the components and test several different structures and pricing assumptions to make sure that when you enter the market you are purchasing coverage that is custom designed for your strategic needs. Visit www.aon.com/ask to learn more.

- Bruce Jefferis, *managing director of Aon's Natural Resources Group in the U.S.*

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AON

Inside

Calif. health cover pool to close operations

PacAdvantage was once seen as a model for small-group reforms in other states. **Page 4**

Overseas bias charge rejected by U.S. court

U.S. companies cannot be sued under civil rights law for actions outside the U.S. **Page 4**

Vermont captive starts on pace for a good year

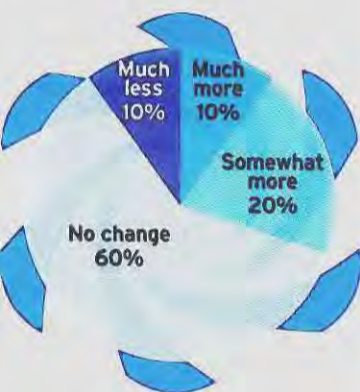
The leading U.S. domicile has licensed 18 captives so far in 2006. **Page 4**

Consensus needed on terror backstop

Supporters of a backstop for terror risks should act now to build a workable proposal, an editorial says. **Page 8**

Online poll [8/14-8/18]

How much more prepared to deal with natural disasters is your organization compared with its level of preparation before Hurricane Katrina?



Participate in BI's online polls at www.businessinsurance.com.

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Reporting on corporate risk and employee benefit management news

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WTC business interruption claim settled

By JUDY GREENWALD

SAN FRANCISCO—ABM Industries Inc. has reached an \$80 million settlement with Schaumburg, Ill.-based Zurich American Insurance Co. in its dispute over business interruption insurance claims in connection with the destruction of the World Trade Center, ABM announced last week.

San Francisco-based ABM provided janitorial, engineering and lighting services to the World Trade Center, where it employed more than 800 people before the WTC was destroyed on Sept. 11, 2001.

ABM said it will receive the payment in September, less legal and other expenses associated with the claim.

Upon receipt of the settlement proceeds, ABM will have received a total of \$95.2 million in claims payments in connection with the business interruption policy, the company said.

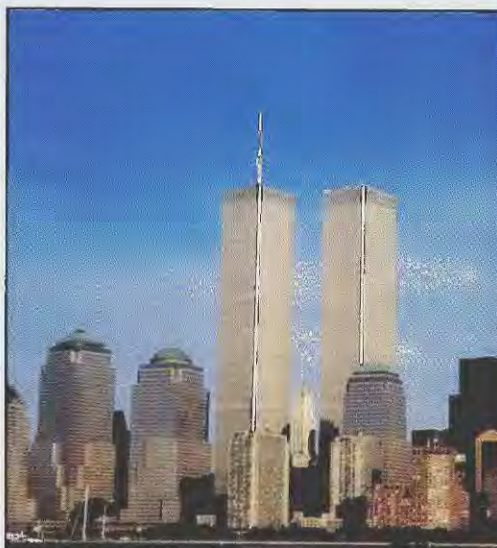
In May, a federal district court ruled that ABM should be compensated for lost income for the "hypothetical length of time" required to rebuild the complex.

ABM's policy had \$127.4 million in blanket limits, and ABM paid \$224,591 in premiums for coverage between Feb. 1, 2001, and Feb. 1, 2002, according to court records.

Zurich American said in a statement that it is fully reserved for the settlement.

The litigation began after ABM sought business interruption coverage for its WTC losses. ABM claimed it lost \$10 million to \$12 million of profit per year.

Zurich sued, seeking a declaratory judgment



ABM Industries Inc. has settled a business interruption dispute related to services it provided at the World Trade Center.

that ABM's losses were subject to a \$10 million limit under the policy's contingent business interruption clause, court records show.

Zurich argued the sublimit should apply because ABM's claim stemmed from destruction to property belonging to ABM's customers.

ABM argued that the contingent business interruption sublimit did not apply because it was entitled to coverage under business interruption, extra expense and civil authority provisions of the policy.

The district court determined in 2003 that ABM was not entitled to the policy's business interruption, civil authority or extra expense provisions because its losses resulted from destruction of property that it did not own, control, use or lease.

The 2nd U.S. Circuit Court of Appeals, however, found that ABM did "use" World Trade Center property within the insurance contract's requirements, it and reversed the lower court's ruling. The appeals court remanded the case to the trial court to determine damages under the business interruption provision and to determine extra expense and civil authority losses.

Zurich then argued before the trial court that ABM's period of recovery for lost income should end when ABM's customers relocated.

The trial court rejected Zurich's position, noting, among other things, that under the policy's business interruption terms, the language "insured property" included the WTC's common areas and not just space occupied by tenants.

The court also noted that under Zurich's theory, if all WTC tenants immediately relocated, ABM's business would still be interrupted, but it would not be able to recover damages.

"The parties could have hardly intended" such an outcome, the court found. It granted ABM's summary judgment request, finding that the appropriate period of recovery is the hypothetical length of time required to rebuild the WTC.

The settlement avoids a jury trial to determine the actual length of recovery time the policyholder is entitled to as well as any extra expense and civil losses.

IRS limits tax break for HRA transfers

Only immediate family eligible

By JERRY GEISEL

WASHINGTON—Employees with health reimbursement arrangements will lose HRA tax breaks if their employers allow enrollees to transfer unused balances to anyone other than a spouse or dependent, the Internal Revenue Service says.

If employers give employees the ability to designate that anyone can receive and use their HRA account balances to pay for medical expenses, the HRA will lose its tax-favored status and all HRA participants will be taxed on funds they receive from the HRA to reimburse them for medical expenses, the IRS said.

"Amounts paid to an employee under a reimbursement plan are not excludable from gross income...if the plan permits amounts to be paid as...medical benefits to a designated beneficiary other than the employee's spouse or dependents of the employee," the IRS said in Revenue Ruling 2006-36, which was released last week.

"Because the benefit is provided in connection with the performance of services by the employee, the benefit is considered provided to the employee and must be included in the employee's gross income," the ruling states.

Benefit experts aren't surprised at the IRS ruling, noting that it draws upon rules the IRS laid down three years ago, in which the IRS explicitly recognized the legitimacy of HRAs as a health care reimbursement vehicle.

"The ruling confirms that the IRS meant what they said in 2002: HRA funds can only flow to employees, spouses and dependents," said Andy Anderson, of counsel to the law firm Morgan, Lewis & Bockius L.L.P. in Chicago.

While HRAs haven't received the level of publicity of a somewhat similar arrangement—health savings accounts—they are, in fact, much more common among large employers. For example, among employers with at least 20,000 employees that offered a consumer-driven health care plan in 2005, 89% provided an HRA, while only 11% provided an HSA, according to a survey by Mercer Health & Benefits.

Like HSAs, HRAs are linked to high-deductible health insurance plans, with the arrangements used to reimburse enrollees for a portion of uncovered health care expenses, such as those that fall under the deductible.

Also like an HSA, unused HRA balances are automatically rolled over to pay for expenses incurred in succeeding years.

But there are important differ-

Major managed care organizations

First-half 2006 results: Ranked by net income in millions.

	Net income	% Chg (decline)	Revenues	% Chg (decline)
UnitedHealth Group Inc.	\$1,873.0	19.2%	\$35,503.0	36.5%
WellPoint Inc.*	1,483.0	26.6	27,971.6	26.6
Aetna Inc.	791.2	0.9	12,480.3	14.4
Kaiser Permanente	720.0	(21.3)	17,100.0	10.0
CIGNA Corp.	625.0	(45.9)	8,205.0	(2.9)
Coventry Health Care Inc.	256.4	5.6	3,883.6	17.1
Humana Inc.	173.2	(7.9)	10,111.5	45.8
Health Net Inc.**	153.6	105	6,452.7	8.8

* Excludes first-half 2005 earnings from WellChoice Inc., which WellPoint acquired in December 2005.

Source: Company reports

Health care rate hikes not expected to jump despite mixed results

By GLORIA GONZALEZ

Despite flat to reduced profits from some of the major managed care companies during the first half of 2006, commercial health care cost and premium increases have settled primarily in a 6% to 8% range, with some insurers reporting further deceleration.

Several managed care companies reported lower earnings in the first half compared with the same period last year (see chart) due to the impact of costs related to implementing the Medicare prescription drug benefit.

Louisville, Ky.-based Humana Inc., for example, reported a 7.9% drop in first-half profits, with the

earnings decline occurring in the first quarter of the year due to high administrative costs for its Medicare programs.

Analysts were unconcerned about CIGNA Corp.'s 45.9% decrease in profits compared with the prior-year period, noting that last year's profits were amplified by several factors, including the sale of its retirement benefit business. First-quarter 2006 earnings were adversely impacted by reduced returns in its health care business and higher-than-expected Medicare Part D losses, but the second quarter produced improvement in its health care unit

Court rules race bias law does not apply outside U.S.

2nd Circuit Court's ruling is first published decision on the issue

By SALLY ROBERTS

NEW YORK—An employer cannot be sued for race discrimination under a provision of the Civil Rights Act if the alleged conduct occurred outside of the United States, the 2nd U.S. Circuit Court of Appeals ruled last week.

In a suit filed against American International Group Inc. in 2005, John Ofori-Tenkorang, a Connecticut-based black executive of the

New York-based insurer, alleged that he was discriminated against before and after he was transferred temporarily to one of AIG's South African offices.

Mr. Ofori-Tenkorang, who is not a U.S. citizen, brought his suit under Section 1981 of the Civil Rights Act of 1866, which provides for "all persons within the jurisdiction of the United States" to assert rights

under the statute. The Civil Rights Act of 1991 modified the section in response to a Supreme Court decision that Section 1981 was limited to making and enforcing contracts. Section 1981 differs from Title VII of the Civil Rights Act of 1964, which protects employees outside the country who are U.S. citizens.

Mr. Ofori-Tenkorang claimed that although the alleged discrimination took place in South Africa, his employment contract placed him within the jurisdiction of the United States, not only because the contract was formed in this country but also because the alleged dis-

crimatory acts were directed by U.S. executives of AIG.

But a three-judge panel of the 2nd Circuit, unanimously affirming a lower court decision, disagreed with Mr. Ofori-Tenkorang and held that "the plain text of Section 1981 unambiguously requires that a person be within the jurisdiction of the United States in order to assert rights under the statute."

"We hold that the actual discriminatory acts that (the plaintiff) allegedly experienced while he was living and working in South Africa took place outside the United States," the court said.

The appeals court, however, reversed the lower court's decision dismissing Mr. Ofori-Tenkorang's claims based on AIG's alleged discriminatory actions while he was in the United States, and it remanded the case for further proceedings.

While lower courts have unanimously ruled that Section 1981 does not apply outside the United States, this is the first published decision by a circuit court on the issue, the 2nd Circuit noted in its opinion. As such, employment lawyers say the decision gives em-

See **DISCRIMINATION** / page 3

Calif. insurance pool for small employers to end operations

Market shift ends need

By JOANNE WOJCIK

SACRAMENTO, Calif.—California's PacAdvantage, the nation's largest small-group health insurance pool that was once considered a model for small-group market reforms in other states, is shutting down after 14 years.

Some say the pool, which was formed by legislation passed in 1992 to give small employers more

health insurance choices, outlived its usefulness, since it was successful in providing the impetus for insurers to offer competitive new products to this previously underserved market.

Others note that PacAdvantage, which will end coverage at the end of 2006 for 6,200 small businesses in California, could no longer offer competitively priced policies, as its voluntary nature made it the victim of adverse selection.

PacAdvantage premiums this year were 5%-6% higher than standard market rates, according to Jon Gabel, a vp at the Center for Studying Health System Change in Washington, which recently analyzed the program.

At its peak in 1994, 20 insurers participated in PacAdvantage—including 10 statewide plans—but that number dropped to just three this year. PacAdvantage officials decided to end the program after it could not reach "a financially viable agreement" with the remaining three insurers: Blue Shield of California, Health Net of California and Kaiser Permanente.

PacAdvantage had three primary goals: To obtain better rates for small businesses by pooling; to reduce the ranks of the uninsured by providing another avenue for small businesses to obtain coverage; and to provide more choice to employees of small businesses.

Under the program, employer groups with as few as two and up to 50 employees could purchase health insurance coverage from a menu of options, thereby providing more choice to small employers than would normally be available in the open market, where they would most likely have to contract with a single plan.

To encourage health plans to participate in the pool, the premiums paid by the participants were risk-adjusted so that carriers that attracted higher-cost individuals would be subsidized for assuming that risk. Ultimately, though, the added cost of making risk adjustments as well as administering the program led to higher premiums compared with policies in the open market.

"Other options in the marketplace have emerged since (PacAdvantage) was originally founded that offer some kind of choice to some employers that they didn't have at the outset," said Marian Mulkey, senior program officer at the California Healthcare Foundation in Oakland, Calif.

But the hope that PacAdvantage would reform the small-group market and make coverage more affordable for small employers was never realized, she acknowledged.

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Vermont captive industry sees steady growth in 2006

By JERRY GEISEL

BURLINGTON, Vt.—Vermont is adding to its lead as the nation's largest captive insurance company domicile.

Through early August, Vermont licensed 18 new captives in 2006, putting it on track to equal last year's formations when the domicile licensed 37 captives. Currently, Vermont has 560 captives, which makes it by far the largest domestic domicile and the third largest in the world.

While captive formations in 2006 are not likely to come close to the record of 77—set in 2003—Vermont captive regulators are nonetheless pleased with this year's formation pace.

"The numbers are great," said Len Crouse, deputy commissioner

of captive insurance in Vermont's Department of Banking, Insurance, Securities & Health Administration.

More coverage of the VCIA annual meeting on page 6

Speaking earlier this month at the annual Vermont Captive Insurance Assn. meeting in Burlington, Vt., Mr. Crouse said the relatively high rate of formations, at a time when commercial insurers are becoming more competitive in many lines of coverage, "has surprised everyone."

Vermont, Mr. Crouse said, sees

new opportunities for growth. For example, Mr. Crouse would like to see more captives sponsored by health care providers make Vermont their home.

Currently, the Cayman Islands dominates the health care industry captive market. Mr. Crouse attributes that dominance, at least in part, to a "herd mentality" in which health care industry brokers instinctively look to the Cayman Islands when their clients consider setting up captives.

Mr. Crouse says Vermont captive regulators intend in the coming months to change that attitude among brokers through meetings and discussions.

"We'd like to get a little more of that business. It is good business,"

See **GROWTH** / page 4



health insurance choices, outlived its usefulness, since it was successful in providing the impetus for insurers to offer competitive new products to this previously underserved market.

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Mr. Brosius



Mr. Davis



Mr. Gorski



Mr. Heidrich

Webinar to discuss TRIA solutions

BI hosts live online panel

The Terrorism Risk & Insurance Act won a last-minute reprieve from Congress in 2005, but only after persistent lobbying by insurers, risk managers and others. Is the industry prepared to repeat this struggle all over again when the TRIA extension

expires, or is there a long-term solution to insuring terrorism risks?

Business Insurance invites readers to register for "A Permanent Solution to TRIA," a free online panel discussion on Aug. 29, 2006, that will explore this important issue.

Several proposals have been floated to create a more permanent solution to financing U.S.

terrorism risk and providing security to insurers that write the coverage, particularly workers compensation. Before the TRIA extension expires at the end of 2007, industry leaders are pushing for new and more lasting solutions.

During this webinar, a panel of experts will explore some of

See **WEBINAR** / page 27

THE AIRBAG IS NOW THE MOST DANGEROUS PART OF THIS CAR.

WAUSAU LOSS PREVENTION AT WORK. One of our customers in the recycling business takes scrap metal, including junked cars, and melts it so it can be cast into ingots and resold to other processors. Lighting in its sorting area wasn't as good as it could have been and occasionally an airbag detonator accidentally made its way into the furnaces.

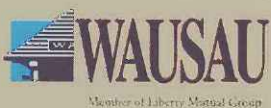
Once heated, a detonator can explode, spraying 1200° molten metal in all directions and potentially endangering nearby employees. These injuries, combined with a high number of slips and falls due to poor housekeeping, were costing the company employee health, productivity and profits. Wausau's loss prevention experts worked with them to improve the lighting in the sorting areas and implement a stringent housekeeping process.

We also worked with them to foster a stronger safety culture. Within a year, the number of claims dropped 43% and the average cost of those claims dropped an astonishing 84%. Lost work days plummeted from 453 to 0. The total savings to the company was more than \$160,000. It's all part of Wausau TotalValueSM and our commitment to **PRICE ≠ COST.**

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RRG executives seek support to fund property risks

By JERRY GEISEL

BURLINGTON, Vt.—Top executives at a trio of risk retention groups are trying to drum up support in Congress for legislation to expand the U.S. Liability Risk Retention Act.

Robert Minto, president and chief executive officer of Montana-domiciled Attorneys Liability Protection Society Inc., a Risk Retention Group, said he and executives from two Vermont-domiciled RRGs—Housing Authority Risk Retention Group and United Educators Insurance, a Risk Retention Group—are working with federal legislators to get an expansion bill introduced early next year.

The measure would expand the LRRRA to allow RRGs to fund property risks for member policyholders.

Speaking earlier this month at the annual Vermont Captive Insurance Assn. conference in Burlington, Vt., Mr. Minto said he is optimistic that an expansion proposal would win congressional approval.

Legislators, he said, will be influenced by the success of the last expansion effort. In 1986, responding to big rate hikes and coverage

shortages for many types of liability insurance, Congress expanded the original Risk Retention Act. The 1981 law authorized RRGs, or multiple-owner captives, to do business in any state after meeting the licensing requirements of one state, but allowed RRGs to fund only product liability risks. The enactment of the LRRRA in 1986 removed that restriction and allowed RRGs to write all casualty coverages, except workers compensation.

That expansion had a big impact on the RRG market. While only a handful of RRGs were formed under the 1981 law, more than 200 RRGs have been established in the nearly 20 years since the law was expanded.

RRGs formed since the enactment of the 1986 legislation have found "good homes," Mr. Minto said. Now, noting the tough conditions buyers face in the commercial property market, is the time to amend the federal law to enable RRGs to write property coverages, Mr. Minto said.

Mr. Minto said the group of RRG executives is working to obtain bipartisan support for the expansion bill. While some political observers

have speculated that Democrats could, in the upcoming November elections, gain control of the House of Representatives and the Senate, Mr. Minto doubts such a change would adversely affect the chances of an expansion bill winning congressional approval.

"It shouldn't matter. This is not a partisan issue," Mr. Minto said. Indeed, the 1986 expansion bill passed the House of Representatives without opposition, while the Senate cleared the measure with just one dissenting vote.

Still, expansion of the law likely would be an uphill battle, as federal legislators have shown little interest in the LRRRA in the past 20 years. Earlier efforts by RRG lobbying groups to expand the law were ignored. More recently, legislators have yet to hold a hearing on a report issued last year by the Government Accountability Office suggesting that federal lawmakers rewrite the LRRRA to limit the special pre-emption RRGs now enjoy from state insurance laws to groups domiciled in states that adopt uniform regulatory RRG standards that the National Assn. of Insurance Commissioners would develop.

Since the original Risk Retention

Act was passed, RRGs have had numerous confrontations with regulators in states in which they do business but are not domiciled. Some of those controversies, such as a move by Hawaii in 2000 to require RRGs to pay a fee to support a state regulation fund, were no more than skirmishes and were quickly and favorably resolved.

On the other hand, some of those controversies were of such a magnitude that RRGs had to go to court to resolve them.

For example, in 2001, the Vermont-domiciled Attorneys Liability Assurance Society Inc., a Risk Retention Group, successfully challenged an attempt by a Michigan state agency to impose a 0.5% fee on ALAS coverage written for Michigan policyholders. The court ruled that LRRRA pre-empted the fee. Michigan argued that the fee was, in fact, a tax and not pre-empted by federal law.

Donald Breakstone, incoming chair of the National Risk Retention Assn. and former senior vp and general counsel for ALAS, said at the session that in some cases RRGs "have to stand" on their rights.

But not every problem with state regulators is worth litigating,

advised Mr. Breakstone, who also is a vp with Lemme Insurance Group Inc. in Rolling Meadows, Ill.

"You have to watch your political capital," Mr. Breakstone said.

In fact, Mr. Minto said his approach in dealing with out-of-state regulators is to give them information filed with the RRG's domicile, even if such filings with out-of-state regulators are not required under the LRRRA.

Such courtesy filings, Mr. Minto said, are paying dividends. "I have never had a bad experience with state regulators," he said.

Speaking on another issue, Pamela Davis, president and CEO of the Alliance of Nonprofits for Insurance Risk Retention Group, which has been operating in Vermont since 2001, said RRGs have to consider carefully whether they want to try to get a rating from A.M. Best Co. Inc.

One risk of getting a rating is that it may be lowered at a later date, making RRG policyholders more vulnerable to pitches from agents and brokers that they should leave the group in favor of the commercial market.

"If you don't need a rating, don't try to get it," Mr. Minto said.

VCIA meeting attracts 1,200 attendees

By JERRY GEISEL

BURLINGTON, Vt.—Just as Vermont has grown to become the world's third-largest captive domicile and the largest domestic domicile, so has the annual meeting of the Vermont Captive Insurance Assn. expanded.

In 1986, following its formation the year before to represent the interests of the Vermont captive insurance community and to serve as a forum for the exchange of ideas among captive sponsors, the VCIA meeting attracted about 20 people—held at a restaurant in Burlington.

This year's meeting—held Aug. 8-10 at the Sheraton Burlington Hotel and Conference Center—drew more than 1,200 people, making it the world's largest meeting of captive sponsors and service providers.

Registrants came from 40 U.S. states and eight foreign countries with a record 93 exhibitors.

Panel sessions dealt with issues such as financial modeling, financial reporting and trends in the reinsurance market.

Next year's VCIA meeting will be held Aug. 7-9 in Burlington. For more information, contact the Vermont Captive Insurance Assn., 1 Lawson Lane, Suite 320, Burlington, Vt. 05401; 802-658-8242.

Securing property coverage becomes a challenge

By JERRY GEISEL

BURLINGTON, Vt.—The tough conditions in the property insurance market led Wal-Mart Stores Inc. to self-fund its wind and rain storm damage risks.

Given the significant property losses incurred as a result of Hurricane Katrina, Julie Long, Wal-Mart's senior director of risk management, knew the 2006 renewal season

would be a difficult one for the Bentonville, Ark.-based retailing giant.

Indeed, Wal-Mart began talking to property insurers six months before its policies were up for renewal. But in the end, the rates and conditions demanded by insurers were unacceptable and Wal-Mart walked away.

"The terms we offered were not of value. It was a painful renewal,"

Ms. Long said at the annual Vermont Captive Insurance Assn. conference in Burlington, Vt.

Even before the market dramatically hardened, Wal-Mart had been considering self-funding wind and rain storm risks. "It was something we had planned to do for some time," with the sudden deterioration in the property market "fast-forwarding" its decision to self-fund, she said.

With no hope of obtaining reasonably priced coverage in the commercial market, Ms. Long and other corporate risk management staff made the case to Wal-Mart's top executives that insuring wind and rainstorm losses was no longer a viable option.

"We told them it does not make financial sense," Ms. Long said.

Given Wal-Mart's size—it racked up more than \$312 billion in revenues last year—the company has the financial resources to self-fund and absorb losses. "We are fortunate to have the option to say no," Ms. Long said.

Wal-Mart isn't the only big company to get rough treatment in the property market. In 2006, the property market "just melted down," recalled Tim East, director of risk management at The Walt Disney Co. in Burbank, Calif., which, as a result, led Disney to take on more risk in its captive insurance company.

One of the biggest continuing challenges risk managers and their advisers face is deciding what level of risk retention is appropriate.

When risk is transferred to an insurer, an employer has to decide whether the premium paid for that

transfer is a good value. "That is the challenge," Ms. Long said.

"We have tried to analyze what is the right amount of risk to retain and how much to transfer," said Christopher Smith, president and chief operating officer for MCIC Vermont Inc., a Risk Retention Group that provides professional liability coverage to several large academic medical centers.

That is an especially big challenge in the medical malpractice market, given what Mr. Smith describes as "schizophrenic" underwriting in the traditional market in which there are, over the course of a number of years, huge rate swings.

In good times, insurers jump in to offer coverage and then in hard times, there are big rate hikes, with some insurers exiting the market. "There is extreme volatility," he said.

While trying to gauge the appropriate level of risk an organization should take on—be it through self-funding or through higher retentions in its captive insurance company—is a big and continuing challenge, it isn't the only one, say risk managers.

MCIC's Mr. Smith, for example, says for a big captive to run successfully, it needs the right people in place—finding them and retaining them. "It is not easy."

Also important, Disney's Mr. East says, is to make sure that risk management and captive service providers really understand an organization's business. "I like it," he said, when a service provider asks a question rather than tries to sell something.

Growth: Vermont's captive industry continues to expand

Continued from page 4

he said, adding that captive sponsors should consider a number of advantages that Vermont enjoys over offshore domiciles, including lower operating costs and a lower turnover rate among captive manager staff.

And the Vermont captive industry commands the support of its top elected official. Gov. Jim Douglas, who also spoke at the VCIA meeting, said he appreciates the "tremendous contribution" the captive industry has made to the state.

"Our economy is indeed strong and the captive industry contributes to that," he said.

For example, 42 of the Fortune 100 companies sponsor captives in Vermont, while 65% of risk retention group premiums are generated through Vermont-licensed RRGs, Gov. Douglas said.

That captive activity generates many high-paying jobs for the

state, Gov. Douglas said. A 2003 study found that the captive industry supported more than 1,400 jobs in the state.

Reflecting on the 25th anniversary of the enactment of the state's captive law, Gov. Douglas said Vermont has become a force in the captive industry thanks to the vision of the pioneers who saw the potential of Vermont as a captive domicile.

"It has been an outstanding quarter of a century," Gov. Douglas said.

And the state, Gov. Douglas said, will continue to make the investments needed to keep its captive leadership position. The state, for example, has been expanding its captive regulatory staff by two positions a year, a growth rate that Gov. Douglas said he expects to continue.

"This governor knows how to look to the future," said VCIA President and Chief Operating Officer Molly Leach.

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Editorial

Terror backstop clock is ticking

DEC. 31, 2007, may seem an incredibly long way away, but for advocates of a federal backstop to help cover the losses of future terrorist attacks, it's already uncomfortably close.

That's one of the reasons we—and we certainly count ourselves among backstop supporters—were glad to see the American Insurance Assn. issue a paper outlining an approach to a long-term solution to the issue of providing terrorism insurance. The current federal terrorism insurance backstop expires on Dec. 31, 2007, and there's no guarantee that even a bare-bones program will replace it.

And it's a matter of national economic security that something is in place to replace the current system when it expires. Without some sort of federal backstop—particularly for truly uninsurable risks such as chemical, nuclear, biological and radiological terrorist attacks—terrorism coverage will be both scarce and expensive for businesses in areas considered to be at high risk for terrorist attack.

About the only thing that is certain about the federal backstop's future is that Congress is extremely unlikely to extend it in its present form. The current program is, of course, a considerably scaled back version of the original backstop created by the Terrorism Risk Insurance Act of 2002. Only those with extremely short or selective memories have forgotten how close Congress came last year to simply letting the program die on its original Dec. 31, 2005, sunset.

But if the current program won't be ex-

tended, and there needs to be something to replace it, backstop supporters have to come up with something to present to Congress and the administration. That's where the AIA paper comes in—it outlines one approach to the long-term problem of terrorism insurance. As we report on page 1, the AIA is calling for the federal government to cover CNBR losses with the right to recoup losses through a policyholder assessment. It also calls for a form of the backstop to remain in place to respond to more conventional terrorist attacks.

The AIA approach is by no means the only approach. The Real Estate Roundtable advocates the creation of a terrorism insurance pool like the United Kingdom's Pool Reinsurance Co. Ltd. The Risk & Insurance Management Society Inc. plans to issue a white paper on the subject, and no doubt other stakeholders will weigh in as well.

Right now, getting realistic proposals out into the marketplace of ideas strikes us as being more important than having every detail of the exact shape of a backstop's replacement spelled out. The sooner proposals become public, the sooner proponents can coalesce around a consensus proposal.

And the sooner that happens, the better. Ideally, a consensus proposal would be ready for the new Congress that convenes early next year. Every day that's lost increases the odds that Dec. 31, 2007, will come and go without a replacement for the current system in place, which would be a most uncomfortable situation for insurers and risk managers alike come Jan. 1, 2008.

Brazil takes small step forward

THE DECISION BY Brazil's monopoly reinsurer to allow insurers in the country to go directly to the international market to purchase reinsurance coverage for directors and officers liability risks is a welcome move for insurers in the country and also should aid risk managers with exposures in Brazil.

As we report on page 25, the move by IRB-Brasil Resseguros S.A. should enable the handful of D&O insurers in Brazil to gain access to the expertise and capacity of experienced D&O reinsurers. That, in turn, should encourage product development and make it easier for multinational companies with operations in Brazil to obtain consistent coverage for their global operations.

While the move is welcome, it also is a reminder that the long-awaited liberalization

of Brazil's reinsurance market is still a ways from being realized, which is disappointing. Legislation to end the IRB's monopoly was passed 10 years ago but has yet to be enacted. The move to open up the D&O insurance market is just a small step toward liberalization.

The protectionist approach to insurance and reinsurance that is evident in Brazil and many other nations creates unnecessary burdens for international companies seeking to build up trade. Ultimately, we believe, that helps stifle the local economies, too.

Political leaders should recognize that and accelerate the removal of protectionist rules and laws. In an increasingly globalized economy, they cannot afford to do otherwise over the long term.

Schillerstrom



Letters

'Next level of brokers' early tech adopters

To the editor: I look forward to reading *Business Insurance* each week. But as you might expect, I do not always agree with the articles and was most disappointed in the article in the July 24 issue on "Brokers expand risk information portals."

I was not quite sure if the intent of the article was to talk about "risk information portals," or was it meant to be an advertisement for the three brokers in their efforts to catch up with what many of the other brokers already have. It certainly came across as an advertisement for the big three brokers, as nowhere was there any mention of the risk information portals being successfully used by many risk managers who don't use one of the big three brokers for all their services.

One situation I am particularly knowledgeable of is the system used by Redwood City, Calif.-based ABD Insurance & Financial Services called Riskclick and then further integrated for ABD in a product called CyberSure. The risk managers using the system already love it. It was this "next level of brokers" that realized a long time ago that the way to level the playing field was through technology and have developed systems and organizations built around that use of technology to

beat the big guys at their own game.

So please, in the future, keep up the great work on *Business Insurance*, but remember on general information articles to look at the larger broker world than just the big three—you will be amazed just as risk managers are that make the move—just how good many of the "next tier" of brokers are.

Henry Good
Bryn Mawr, Pa.

Editor's note: Mr. Good retired as director of risk management at Rohm & Haas Co. and provides risk management consulting services to ABD Insurance & Financial Services.

Write Us

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Risk managers turn to the Web for news, views

Internet offers easy access to wealth of detail

By DAVE LENCKUS

Risk managers typically value Web sites for the breaking risk-related news they deliver on specific industries, and news outlets, industry associations and insurers are a main source of that information.

Regulatory agencies are another popular source of information.

Web sites that offer white papers, particularly those that cover claims issues, are favorites of risk managers, as well.

Other popular Web sites provide news that would be useful to risk managers' bosses, including information pertaining to their organizations' core business, even if those sites do not focus on risk management issues.

One of the more popular Web sites among risk managers is www.rims.org, the official site of the Risk & Insurance Management Society Inc.

James D. Hinton, vp-risk and insurance at HCA Inc. of Nashville, Tenn.; Gary Kilburg, assistant treasurer, risk management at Whirlpool Corp. of Benton Harbor, Mich.; Eric Larson, chief risk officer at the Bonneville Power Administration of Portland, Ore.; and Beaumont Vance, senior enterprise risk manager for Sun Microsystems Inc. of Broomfield, Colo., say they visit the site routinely.

For some, such as Mr. Vance, [rims.org](http://www.rims.org) is "an all-purpose site" that provides news, networking capabilities and information on enterprise risk management on a daily basis.

Mr. Kilburg, though, uses the site only for networking a few times a week.

Messrs. Kilburg and Vance turn to the Web sites of specialty magazines to keep track of news that affects risk management and broader financial concerns, including publications that cover finance-related issues that may be outside the immediate responsibility of risk managers.

Another site that provides valuable finance-related news to Messrs. Vance and Larson, who both have an ERM program, is www.garp.com—the Global Assn. of

Risk Professionals' Web site.

Likewise, hospital risk managers value Web sites that provide breaking industry news and often turn to their trade organization's site, but they also click on a variety of different sites. Both Mr. Hinton and Richard P. Kidwell, associate counsel and director of risk management for the University of Pittsburgh Medical Center in Pittsburgh, often visit the American Society for Healthcare Risk Management's Web site—www.ashrm.org.

Mr. Hinton said he also finds valuable medical malpractice-related information at various insurers' Web sites—including Chicago-based CNA Financial Corp., at www.cna.com; The Doctors Co. of Napa, Calif., at www.thedoctors.com; and San Francisco-based NORCAL Mutual Insurance Co., at www.norcalmutual.com.

In Pennsylvania, the state's Patient Safety Authority issues quarterly reports that identify medical errors in the state and offers recommendations for avoiding such errors.

The agency posts those reports on its Web site, www.psa.state.pa.us, "and I read every one of them," Mr. Kidwell said.

For information on credentialing and patient safety issues as well as the latest updates on medical malpractice cases, Mr. Kidwell turns to the www.hortyspringer.com Web site managed by law firm Horty, Springer & Mattern P.C. of Pittsburgh.

Mr. Kidwell also visits the Web site of the Washington-based American Health Lawyers Assn., at www.healthlawyers.org, for insights on medical malpractice legal problems and solutions across the country.

In addition, Mr. Kidwell routinely clicks on the Web site of the Joint Commission on Accreditation of Healthcare Organizations of Oakbrook Terrace, Ill., at www.jointcommission.org.

Mr. Larson's CRO responsibilities at Bonneville Power include overseeing the internal controls of the



Top picks for online resources

The Internet is now an integral tool for many professionals as they go about their daily business and risk managers and benefit managers are no exceptions to that trend.

Using everything from sites that offer in-depth information on specialty risk transfer mechanisms or employee benefits trends to general financial news sites, risk and benefit managers increasingly rely on the Internet as an information source. But as use of the Internet has grown, so has the number of Web sites, making it challenging to sift through all the information that is available.

In an effort to home in on the sites that are the most useful for risk managers and benefit managers, *Business Insurance* editors have surfed the net in search of sites that serve commercial insurance buyers. The sites chosen were those that were determined to be useful, interesting, informative and innovative. All the sites selected are open to the public.

To view the selected sites and read brief reviews visit:

www.BusinessInsurance.com/bestofweb

Benefit managers see Web as key information source

Online tools crucial for everyday tasks

By JOANNE WOJCIK

Surfing the Internet is part of benefit managers' daily routine these days as the breadth of information available on health and retirement plans continues to grow.

Based on an informal survey of a handful of benefit managers, the most popular sites are: the Society for Human Resource Management, the Kaiser Family Foundation, the Employee Benefits Research Institute, as well as Web sites created by the major benefit consultants.

These benefit managers also typically spend about an hour every day reading and responding to e-mails or doing online research.

"It's replacing direct phone calls," said Barb Zavodny, senior manager-corporate benefits strategy at McCormick & Co. Inc. in Sparks, Md.

"It's where I get most of my information," said Ray Brusca, vp of benefits at Black & Decker Corp. in Towson, Md. "I'm totally electronic."

"The Web gives us the ability to obtain background on macro trends, but we can also use it to find out more about what's happening locally and at the state level," said Paul Hackleman, benefits director for San Mateo County, Calif. "I'm always using Web sites."

Jim Crockett, manager of risk and benefits at Denver Water, said he often visits the SHRM Web site when doing research.

"They also have survey data, (legal) opinions and

provide access to additional links" where more information may be available, he said.

"SHRM is good for the broader HR context," agreed Linda Levesque, vp of benefits at UnumProvident Corp. in Portland, Maine.

But the International Federation of Employee Benefit Plans site has a broader array of information specifically on benefit programs, she said.

On www.ifebp.org, "I can literally do mini-surveys about what other companies are doing," she said.

The Kaiser Family Foundation Web site is also a valuable tool for obtaining contemporary information on employee benefit trends, most of the benefit managers agreed.

Nearly all of the benefit managers surveyed regularly visit the Web sites of the major benefit consultants—regardless of whether they are clients.

"Aon, Segal, Wyatt, Towers are all good for doing benchmarking," said Ms. Zavodny.

Mr. Brusca said he often reads daily releases from Mercer Human Resources Consulting's Web site "because they have a huge Washington resource group."

"The Web sites I use most are those that provide me with information on legislation affecting benefits," said Mike Pikelnny, corporate actuary and employee benefit consultant at Hartmarx Corp. in Chicago. His primary resource is a paid subscriber-only site from Commerce Clearing House.

Mr. Brusca said he uses the American Benefit Council's Web site to "keep track of the changing landscape in employee benefits in Washington because it provides side-by-side comparisons of bills."



See RISK / page 24

See BENEFITS / page 24

2 in a row

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again*

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Spotlight

2006 READERS CHOICE AWARDS

2006 WINNERS

Employee benefit consultant:

Aon Consulting Worldwide
PAGE 12

Surplus lines insurer:

Lexington Insurance Co.
PAGE 14

Property/casualty reinsurer:

ACE Tempest Reinsurance Ltd.
PAGE 16

Managed care organization:

UnitedHealth Group Inc.
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Insurance wholesaler:

Swett & Crawford Group
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Reinsurance intermediary:

Aon Re Global
PAGE 20

Risk management consultant:

RMI Consulting Inc.
PAGE 21

Third-party claims administrator:

Sedgwick Claims Management Services Inc.
PAGE 22

EAP provider:

CIGNA Behavioral Health Inc.
PAGE 22



Readers decide Top industry companies selected for *BI*'s Readers Choice Awards

Business Insurance's annual Readers Choice Awards, now in their second year, began with a simple question: Which companies are the best in the commercial insurance industry?

In this report, the magazine profiles companies that *BI*'s readers selected as leaders in nine categories on the basis of service, value, quality and innovation. These companies were the top vote-getters in the Readers Choice Awards.

Balloting was confidential, and to ensure companies didn't stuff the ballot box themselves, *BI* notified voters that no more than 50% of votes for any company could come from employees of that company or its parent. In other words, companies need a significant number of votes from non-employees in order to win.

A brief analysis of the winners in this year's Readers Choice Awards again shows that biggest and best do not necessarily go together.

For example, Bermuda-based ACE Tempest Reinsurance Ltd. was No. 1 with *BI* readers, but ranks lower on the list of the world's largest property/casualty reinsurance companies. Chicago-based Aon Con-

sulting Worldwide is not the largest employee benefit consulting firm, but it's not the smallest, either. Another Aon Corp. unit, Chicago-based Aon Re Global, was named the best reinsurance intermediary and happens to be the world's largest by revenue.

Several of this year's winners also took home Readers Choice Awards

in 2005: CIGNA Behavioral Health Inc., as best EAP provider; Lexington Insurance Co., as surplus lines insurer; Sedgwick Claims Management Services Inc., as best TPA; Swett & Crawford Group, as best wholesaler; and UnitedHealth Group Inc., as best managed care organization.

Profiles of all the 2006 winners begin on page 12.

2006 Readers Choice
Business Insurance

How the 2006 award winners were chosen

Winners of the 2006 *Business Insurance* Readers Choice Awards were selected through confidential balloting by subscribers of the magazine.

From May through July this year, *BI* invited readers to cast their votes electronically or by submitting a paper ballot printed from www.BusinessInsurance.com.

Readers cast votes for companies in nine insurance industry categories: best employee benefit consulting firm, best managed health care organization, best property/casualty reinsurer, best reinsurance intermediary, best surplus lines insurance company, best insurance wholesaler, best risk management consulting firm, best employee assistance program provider and best third-party claims administrator.

These categories were chosen because they represent key services to many risk managers and employee benefit managers.

Two categories were omitted from the 2006 Readers Choice Awards: best overall retail insurance brokerage and best overall property/casualty insurance company.

These important service providers will be the focus of a competitive market study commissioned by *Business Insurance* and conducted by a professional research firm. Details on this study will be announced later this year.

In the remaining categories, companies receiving the highest number of votes were declared the winners. At least 50% of the votes for any single company had to be made by non-employees of the companies or their affiliates.

Business Insurance provided an alphabetical list of the 10 largest companies in each category. In most cases, these represented the rankings published throughout the past 12 months in the magazine.

A disclaimer on the ballot indicated that the lists did not imply an endorsement by *Business Insurance*, but were included solely for readers' convenience.

The ballots included a write-in option so readers could vote for nonlisted companies.

For more information, please visit www.BusinessInsurance.com/ReadersChoice.



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Andrew M. Appel
CEO

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Aon Consulting Worldwide's long-standing commitment to helping

employers develop strategies to better manage their workforces through benefits, talent management and rewards strategies and solutions has earned it the honor of best employee benefit consulting firm in *Business Insurance's* 2006 Readers Choice Awards competition.

The Chicago-based human capi-

tal consulting organization of Aon Corp. also is known for going above and beyond the call of duty to ensure its clients are getting their money's worth.

"We aspire to be on the leading edge of serving our clients well and delivering value-added solutions that are well in excess of our fees," said Andrew M. Appel, chief executive officer of Aon Consulting. "Our people go the extra mile and we are constantly improving the way we bring value to clients and get client feedback."

2006 Readers Choice
Business Insurance

Best Employee Benefit Consulting Firm

To ensure that clients get the attention they deserve, Aon Consulting has created new account management models that aim to put the client first, he said.

"We...have streamlined our business to reduce focus on internal processes, enabling us to spend more time with clients and potential clients," Mr. Appel said.

In addition to conducting research on global human capital issues, such as consumer-driven health plans and trends in health care spending, Aon Consulting also produces customized studies for its clients. The consultant also is in the process of introducing new services to help employers improve their employees' health and productivity, including global benefit management services and sophisticated data-driven strategies for managing health care.

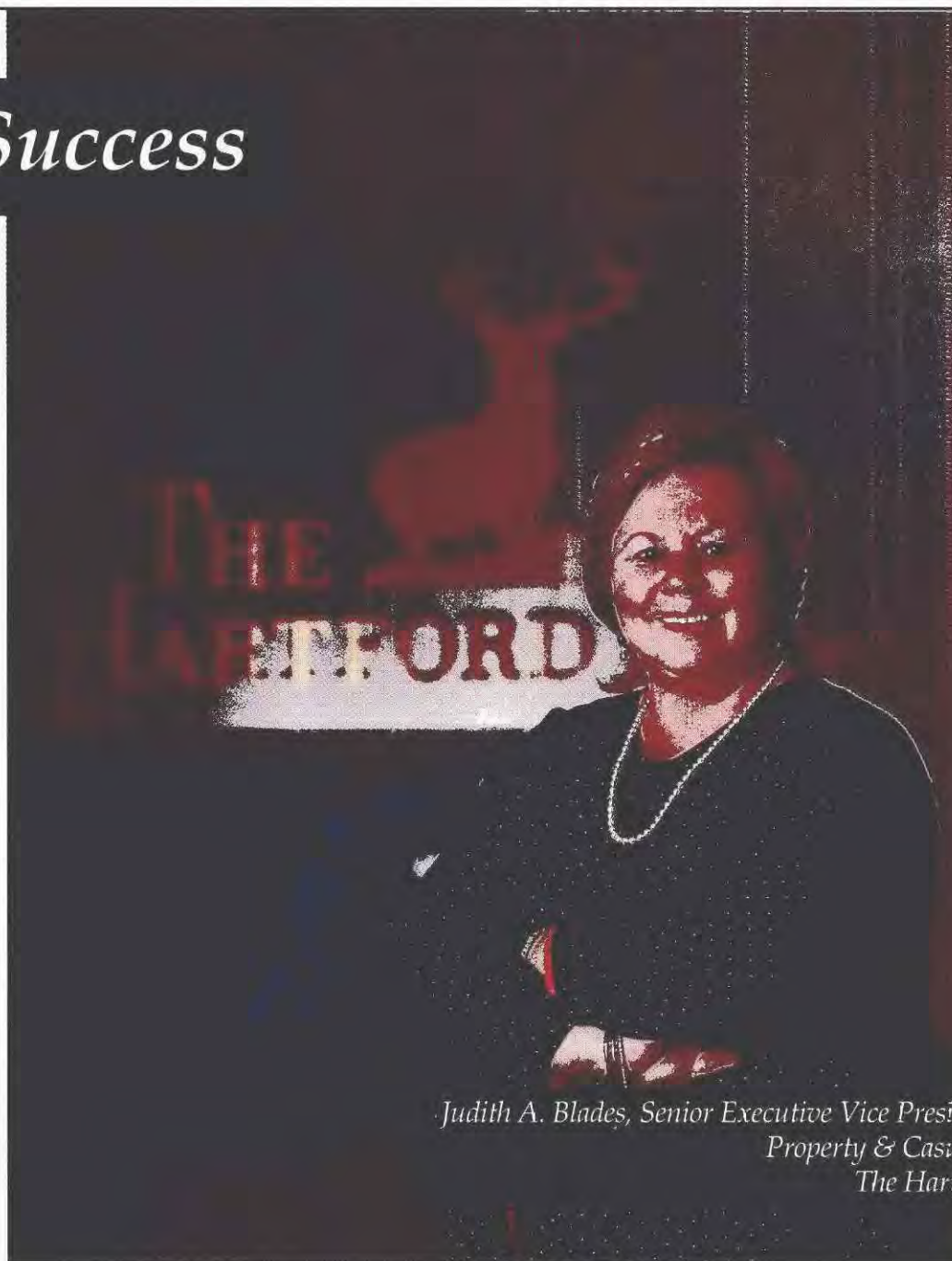
One of its business units, San Jose, Calif.-based Radford Surveys + Consulting, was recently recognized as a leader in providing compensation and benefits surveys as well as consulting services to the high-tech industry when it received the Partner in Innovation award in May 2006 from the Human Resource Symposium sponsored by the San Francisco Chronicle.

Aon Consulting also is reaching out to the middle market by piloting new outsourcing capabilities, Mr. Appel said.

"Our goal for the next 12 months and beyond is to continue to grow as a leader and valued strategic partner to organizations worldwide," Mr. Appel pledged.

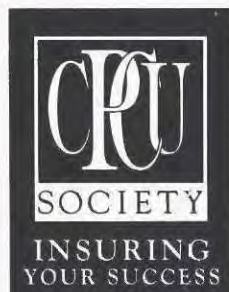
—By Joanne Wojcik

Defining Success



Judith A. Blades, Senior Executive Vice President
Property & Casualty
The Hartford

"As one of the oldest and most trusted names in the insurance industry, our CPCUs represent The Hartford's commitment to the highest ethical standards, and underwriting our way to profitable growth. Our support of the CPCU Society enables us to reinforce these values through continued education and the adherence to ethical behavior consistent with our Corporate Code of Conduct. After all, our success is defined by integrity and the pursuit of excellence."



For more than 60 years, the CPCU Society has been helping its members and their companies insure success by promoting excellence through ethical behavior, continuing education, and leadership opportunities. All of the Society's nearly 28,000 members have earned the prestigious Chartered Property Casualty Underwriter (CPCU) designation. To learn more, visit our web site.

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ACE Tempest Re is honoured to receive the award of Best Overall Property/Casualty Reinsurer for 2006. Our thanks to Business Insurance readers, together with our clients, brokers and employees for ensuring our mutual success.

The history of ACE is the history of progress. Progress in the face of risk. Progress achieved by people with bold ideas and unwavering confidence.

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ACE Tempest Re was established in Bermuda in October 1993 in response to the dislocation of the catastrophe reinsurance market following Hurricane Andrew. We started as a mono-line reinsurer offering property catastrophe coverage and have since grown into a leading global multi-line reinsurance operation with underwriting offices in Bermuda, Stamford, London, and Zurich.

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ace tempest re

SURPLUS LINES INSURER

Innovation seen as core quality at Lexington

Surplus lines insurer offers responsiveness and product diversity

Lexington Insurance Co.

100 Summer St.
Boston, Mass. 02110
617-330-1100; fax: 617-951-0067

Lexington Insurance Co., the largest U.S. surplus lines insurer, is no lumbering giant.

Innovation and quick response to

client needs are qualities that Lexington says it prizes, qualities that have led it for the second year in a row to be voted the best overall surplus lines insurer in *Business Insurance's* 2006 Readers Choice Awards.

"Innovation is a very key component of our organization that we feel differentiates us," said Shaun E. Kelly, president and chief oper-

**2006 Readers Choice
Business Insurance**

Best Surplus Lines Insurer

ating officer of the Boston-based American International Group Inc.

subsidiary.

As an example, Mr. Kelly cited the latest in a line of new products, dubbed Evacuation Protector.

The coverage, aimed at educational institutions and health care facilities, is an add-on to property policies and provides extra business interruption and evacuation expense coverage in case of a hurri-

cane or other natural catastrophe.

The diversity of Lexington's product offerings is among the keys to its success, Mr. Kelly noted. The insurer writes an array of primary and excess property/casualty coverages for industries ranging from construction and real estate to health care. It also provides specialized products such as stand-alone terrorism coverage for property risks and sexual misconduct liability insurance.

Of Lexington's \$6.24 billion in gross written premiums last year,

**Rob Bouvier, President
Bouvier Beckwith
& Lennox, Inc.
West Hartford, Conn.**



"RLI solved my personal umbrella puzzle."

Bouvier doesn't have time for games. His full-service, six-branch agency Bouvier Beckwith & Lennox, Inc., provides coverage for thousands of clients throughout Connecticut and much of the Northeast. His customers can't afford for him to spend much time twisting and turning, mixing and matching, trying to fit primary auto and home policies with the same carriers' umbrella guidelines.

"When it comes to umbrellas," Bouvier says, "our agency pushed the puzzles aside when we found RLI. We wouldn't think of using anyone else. When an account is split between carriers or an underlying company has too-strict underwriting guidelines for their umbrella, RLI works! Their consistent and stable approach to mono-line umbrellas provides an easy solution on admitted paper. RLI has a competitive price and they are the gold standard of stand-alone umbrellas."

RLI



"Innovation is a very key component of our organization that we feel differentiates us."

**Shaun E. Kelly
President and COO**

**LEXINGTON
INSURANCE CO.**

**2005 GROSS PREMIUMS:
\$6.24 BILLION**

EMPLOYEES: 430

\$5.02 billion, or 80%, was written on a nonadmitted basis.

The geographic breadth of the insurer's operations is another advantage, Mr. Kelly said, noting that Lexington has underwriters in 26 locations in the United States and abroad.

It also takes advantage of diverse distribution channels, writing business through retail and wholesale brokers, program administrators and London market brokers, he said.

The year since Hurricane Katrina has shown Lexington's value—particularly in the property marketplace, where the insurer has "been able to step up and meet the needs of our clients" in catastrophe-exposed areas of the country, Mr. Kelly said.

—By Douglas McLeod



"There aren't very many lines of business that we aren't willing to entertain. We want to be known as a quoting market."

Jacques Bonneau
President and CEO

ACE TEMPEST REINSURANCE LTD.

2005 GROSS WRITTEN PREMIUMS: \$1.6 BILLION

EMPLOYEES: 166

PROPERTY/CASUALTY REINSURER

ACE Tempest Re stands out for willingness to take risks

ACE Tempest Reinsurance Ltd.

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441-292-2603
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www.acelimited.com

From its beginnings in 1993 as a focused property catastrophe reinsur-

er, ACE Tempest Reinsurance Ltd. has grown into a multiline reinsurance company that in some ways reflects the growth and expansion of its corporate parent, Bermuda-based ACE Ltd., into a global insurer.

While ACE Tempest Re still considers property cat business a core strength, it has "broad product offerings in different offices," said

President and Chief Executive Officer Jacques Bonneau. "There aren't very many lines of business that we aren't willing to entertain" and "we want to be known as a quoting market," he said.

ACE Tempest Re today writes most standard property/casualty reinsurance lines worldwide as well as reinsuring life and annuity business.

The company's willingness to take risks is drawing notice. ACE Tempest Re was named the best overall property/casualty reinsurer in *Business Insurance's* 2006 Readers Choice Awards. *BI* subscribers chose ACE Tempest Re as a standout in a field of larger professional reinsur-

2006 Readers Choice

Business Insurance

Best Property/Casualty Reinsurer

ers on the basis of service, value, reputation and innovation.

Traits that distinguish ACE Tempest Re from its competitors include financial strength, a consistent approach to underwriting and pricing, ability to offer significant capacity and service, Mr. Bonneau said.

"Financial strength is becoming more and more of an attribute that clients are seeking," he said. ACE Tempest Re is "willing to share with clients how we came up with the pricing" and have a dialogue if ceding insurers believe rates don't reflect their exposures, he said.

When it comes to service, ACE Tempest Re seeks to "be at the forefront of clients' requests" for claims payments, he said. The company also is "a big believer in contract certainty" and tries to achieve that "in a thorough but timely fashion."

In the 10 years that ACE Ltd. has owned ACE Tempest Re, the reinsurer has brought its strength in property catastrophe underwriting to other lines, including workers compensation catastrophe reinsurance and personal accident reinsurance.

"Property cat is the foundation of our operations, but we have a very strong reputation in other lines of business," Mr. Bonneau said. That developed quickly. "In 2000, we were effectively a monoline reinsurer, writing \$217 million of premium. In 2005, we were a multiline reinsurer with four locations and \$1.6 billion in premium," he said.

As part of efforts to improve service to clients, ACE Tempest Re is introducing a self-graded scorecard to provide feedback to ceding companies, Mr. Bonneau said. It also is working to bring consistency and greater product access through its distribution platforms and is initiating discussions with reinsurance intermediaries on ways to streamline the contract process, he said.

"We want to make sure we get the chance to see all those opportunities we want to see," Mr. Bonneau said.

—By Regis Coccia



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CIGNA's focus on employees improves quality of EAP offering

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It is the people that work for CIGNA Behavioral Health Inc. that help it stand out from its competitors as an employee assistance program provider, said President and Chief Executive Officer Keith Dixon.

"I think we've been very good about recruiting the right people and training them effectively," said Mr. Dixon. "We work very hard at trying to create a healthy work climate within our own organization."

"There's lots of people out there with really good clinical credentials

**2006 Readers Choice
Business Insurance**

Best EAP Provider

and experience, but if they are in an environment that doesn't allow them to really listen to people and pay attention to them," a program's quality can deteriorate "pretty quickly," Mr. Dixon said.

"We're doing a lot more management consultation" this year, including offering training seminars on mitigating the effects of stress. Some CIGNA customers have large call centers, and "those environments can be pretty stressful," Mr. Dixon said.

The EAP has also worked with

management on difficult issues such as workplace violence.

CIGNA Behavioral Health rolled out a new smoking cessation program July 1, he said. "We've been pretty thorough about trying to find the world's best experts in changing behavior around smoking," said Mr. Dixon. "Arguably, this is a major factor" in rising corporate medical costs.

He noted that the most successful programs "are not necessarily focused on the smoking behavior," but attack a broad range of lifestyle and personal issues. "You can't just deal with a smoking cessation program" but also must help people with stress, work and family conflicts, and abuse of other substances, Mr. Dixon said.

Meanwhile, with an eye toward the future, the EAP is gearing up



"We work very hard at trying to create a healthy work climate within our own organization."

Keith Dixon
President and CEO

CIGNA BEHAVIORAL HEALTH INC.

**2005 REVENUES: \$500 MILLION
EMPLOYEES: 900**

to address the issues of returning veterans, whether they are employees or family members, said Mr. Dixon. "We're quite concerned as an organization" about this issue, he said.

Many veterans are National Guard members who did not enter

the Guard expecting aggressive combat duty in foreign countries. This has been "particularly nasty from a psychological point of view. We're trying to be prepared now" as to what services the EAP can offer, Mr. Dixon said.

—By Judy Greenwald

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Sedgwick Claims Management Services Inc. may be busy expanding its business through strategic acquisitions, but the company's most valuable asset remains its employees, according to its top executive.

For a second consecutive year, the Memphis, Tenn.-based third-party administrator—which handles mainly workers compensation, general liability and disability claims—was voted the best TPA in *Business Insurance's* Readers Choice Award poll.

Reporting revenues of \$361.6 million from self-insured clients

**2006 Readers Choice
Business Insurance**

Best Third-Party Claims Administrator

last year, Sedgwick CMS already ranked as the largest TPA according to *BI's* 2006 ranking published in March, and it has continued to grow through a series of recent deals.

In late January, Sedgwick CMS Holdings Inc. closed on a \$635 million transaction to be acquired by title insurer Fidelity National Fi-



"Our clients expect a consistent level of service regardless of the type of claim, or the jurisdiction they are in."

David A. North
President and CEO

SEDGWICK CLAIMS MANAGEMENT SERVICES INC.

**2005 REVENUES FROM SELF-INSURED CLIENTS: \$361.6 MILLION
EMPLOYEES: 4,600**

ancial Inc. and private equity firms Thomas H. Lee Partners and Evercore Partners—allowing Sedgwick CMS to explore cross-selling opportunities and benefit from the backing of a public parent company.

In May, Sedgwick CMS announced its purchase of VPA Inc., a Calabasas, Calif.-based claims services firm specializing in absence and disability management programs for large employers. In June, it announced plans to buy Dublin, Ohio-based CompManagement Inc. and its affiliated companies in a deal that valued the TPA at \$191.5 million.

Although the acquisitions helped Sedgwick CMS grow, it is not focused on size alone; it is concerned about providing high-quality service, said David A. North, president and chief executive officer of Sedg-

wick.

"In this business it takes years to build a reputation," Mr. North said. "Our clients expect a consistent level of service regardless of the type of claim, or the jurisdiction they are in."

According to Mr. North, Sedgwick ensures that its employees around the country treat clients "as if they had a personal obligation to do the right thing."

"Our colleagues are our most important asset," Mr. North said.

Whether or not the company is planning on making any more acquisitions this year remains to be seen. Mr. North would say only, "We will continue to look throughout the industry and throughout the world for opportunities to expand our growing footprint."

—By Rupal Parekh



By Dennis Triplett

If your company has not already made the move to a consumer-directed health plan, odds are good you're looking into it. Benefit managers are trading their employer-sponsored health plans for those that are employee-managed. Studies show that CDHP enrollment could reach 12 million consumers by the end of 2007, claiming nearly 7% of the commercial market.

CDHPs combine a high-deductible health plan with a health savings account, a tax-deferred investment account that belongs to the employee. In theory, at least, these plans sharpen the focus on health care responsibility and accountability by getting employees to share the cost burden. For employers, they can bring in lower health insurance premiums as well as reduce income and payroll taxes; for employees, they can serve as an additional source of retirement savings.

But employers that are adopting CDHPs and HSAs are running into two key concerns that make plotting these plans more difficult than they had anticipated.

The first concern is that employers do not own—and therefore can't control—funds. HSAs belong to the employees, and that's part of their appeal. Unlike flexible spending accounts, where employees lose what they don't use, any unspent funds contributed to an HSA can be put toward future medical expenses or retirement.

But that also means money could be spent on nonmedical expenses. And that could translate into a tax penalty for employees.

A possible solution to this is the health care card, which has been tied to HSAs since their inception. These cards are flexible and friendly to consumers, insurers and health practitioners. With one swipe, the cards access eligibility requirements and health accounts, HSAs, health reimbursement arrangements and FSAs. But they also come with features that can help guard health care funds.

With its multipursuing and selective authorization functions, the card can process claims directly from employees' "accounts," consolidating HSAs and FSAs as it sorts transactions by merchant codes into the right pocket, deducting funds from the "child care" or "medical" purse, for example. The card can even reject ineligible purchases and ineligible merchants—an effective fraud tool, which can also prevent employees from squandering their medical funds at the gas station.

Employers can even administer these features for employee-owned HSA accounts to encourage employees to think about how they spend their health dollars.

The second concern is that accounts start at zero and health care expenses don't. Employees can only spend what's actually in their health savings account. And as employees begin to build their HSA balances, they may find they don't have

Health care cards help guard HSA funds

enough stashed away to cover large medical expenses. Employees, then, are faced with a tough choice: either delay the procedure or make up the difference, in addition to deductibles of at least \$1,050 for individuals or \$2,100 for families.

These early and steep out-of-pocket expenses may discourage employees from participating in CDHPs. Some employers have decided to bridge the gap themselves and have found that prefunding each employee's account saves them money over their previous health care costs.

But the first concern resurfaces:

The employee owns the HSA. Any contributions made to their accounts belong to them, regardless of their future employment status.

This can be resolved by attaching a line of credit to the HSA, which shifts the helping hand from employer to bank and helps employees meet the greater financial responsibilities of high-deductible health plans.

The line of credit, limited to medical expenses and often capped at the employee's deductible, is automatically activated when expenses exceed the funds in the employee's HSA. Like credit cards, outstanding

balances accrue interest. Employees can then use their HSA funds, or their personal funds, to pay off the principal on their monthly credit card statements.

Employees apply directly to the financial institutions for their credit lines. In turn, banks—not employers or insurance administrators—determine employees' eligibility and their credit limit based on their health care plan and individual credit histories, regardless of medical need. Employers and insurers are not involved in the application process and because each account is individually

underwritten, employers hold no liability for their employees' ability to pay.

Health care cards and lines of credit are certainly not the silver bullets to resolve all the concerns floating around CDHPs and HSAs, but they are a step to making health care more user-friendly, convenient and efficient for medical practitioners, insurers, employers and employees.

Dennis Triplett is president of UMB Healthcare Services, a division of UMB Financial Corp., in Kansas City, Mo.



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Between the Lines

Compiled by Joanne Wojcik

Granny can't find cover

War protesters in one northwest Indiana county must show proof of insurance if they want to exercise their First Amendment rights.

Porter County officials last week informed Valparaiso resident Martha Seroczynski that she would be required to add the county to her homeowner's insurance policy as an additional insured before they would renew her permit to protest the Iraq war on the courthouse steps.

"I've never done this kind of thing before, so when I wanted to start this, I thought, 'Maybe I need a permit,'" Ms. Seroczynski recounted. "So I called the county and I asked them, 'I want to demonstrate against the war. Do I need a permit?' They said, 'Yes. You have to submit it in writing 30 days ahead of time so it can be presented to the board'. So I did that. I asked for three days a week, twice a day. They granted me three days a week, once a day, for a month."

But when Ms. Seroczynski returned after 30 days to renew her permit, she was told she must be insured against injuries or property damage stemming from her demonstrations, which consisted mainly of the 5-foot-2, 114-pound grandmother holding up various placards containing such inflammatory language as, "Bring home our troops now."

Unfortunately, her insurer, Hartford, Conn.-based Travelers Property Casualty Corp., said it would not issue such an endorsement because the county had no insurable interest in her property.

County Attorney Gwenn Rinkenberger explained that the county has had a policy in place for several years requiring organizations that hold demonstrations on county property to have insurance. But because of Ms. Seroczynski's inability to add the county to her homeowner's policy, Ms. Rinkenberger said the county "may have to rethink our policy as it applies to individuals because we don't want to unduly burden someone's right to free speech. I just want to keep a uniform policy."

"I didn't know if it would be difficult for an individual to do this, and I will talk to our insurance carrier (representative) about the problems she's facing and see what suggestions he has. The truth of the matter is, when you have one person demonstrating, the risks are much lower than when you have an organized group," Ms. Rinkenberger said.

Golden goals

Fans of English soccer team Manchester United will have another reason to cheer every time the world famous team scores a goal this season.



Manchester United striker Louis Saha is mobbed by teammates after scoring a goal.

The team's new sponsor, American International Group Inc., has committed to donate £1,000 to a children's charity for every goal that the club scores in the 2006-2007 season.

Manchester United scored more than 70 goals last season.

Cutting back on snack breaks

While employers battle their employees' bulging girth, they may want to consider their own contribution to America's obesity problem.

Nearly half—46%—of workers surveyed by CareerBuilder.com say they've gained weight since starting their current jobs.

Weight gain is more prevalent among government workers, 57% of which say they've added at least one pants size since joining their current employers. IT professionals were second, with 54% admitting to expanding their girth while on the job.

The survey also found that fewer companies are providing incentives to help their employees stay in shape. Only 20% of workers said their companies offer gym passes, workout facilities or weight loss programs, down from 27% the year before.

Tips and feedback from readers are welcome. Please send information to jwojcik@businessinsurance.com.

Risk: News, trends and data drive execs to the Web

Continued from page 9

facility's electricity wholesale marketing efforts.

A valuable Web site for him is www.nymex.com, where the New York Mercantile Exchange posts closing prices on energy futures and provides information on natural gas prices, which interplay with electricity prices.

The Web sites of trade organization Edison Electric Institute, at www.eei.org, and Electric Utilities Consultants Inc., at www.euci.com,

are helpful as well, according to Mr. Larson.

Risk managers offered a few additional recommendations:

- For public entity risk managers, the Public Risk Management Assn.'s site at www.primacentral.org is valuable, Mr. Larson said

- "An excellent location to find papers addressing almost every traditional risk management topic" is the International Risk Management Institute's Web site, www.irmi.com, Mr. Vance said.

- For risk managers with ERM programs, Mr. Vance recommends the Web site of Palo Alto, Calif.-based management consultant Strategic Decisions Group—www.sdg.com. At the site, risk managers can draw upon the framework and methodology the consultant has developed for use in ERM decision analysis.

"It's worth more in terms of sheer knowledge and solutions than all the other Web sites combined," Mr. Vance said.

Benefits: Managers spending more time online

Continued from page 9

For information on health and medical trends, benefit managers often use WebMD—the site many of their corporate intranets offer to employees.

"It's an excellent, excellent source of health information," said Ms. Levesque, who also uses www.mayoclinic.com and the National Wellness Foundation's site, which focuses on health promotion and disease management.

Chris McSwain, director of compensation and benefits at SCANA Corp. in Columbia, S.C., said that he often uses the Wellness Councils of America and Integrated Benefits Institute's Web sites for wellness and other productivity-related issues.

Bonnie Blackley, benefits director at Blue Ridge Paper Products in Canton, N.C., said she frequents www.kff.org, www.employeebenefits-advisor.com and www.healthleaders-interstudy.com.

Ms. Zavodny has been using

"It's (the Boston College Retirement Research Center Web site) a great source for what other companies are doing, to educate employees about risk and how much they need to retire and to pay for health care."

Linda Levesque
UnumProvident Corp.

www.diabetesatwork.org to learn more about managing diabetes on behalf of McCormick's employees, while Mr. Hackleman said he often goes to the National Committee on

Quality Assurance's Web site, which offers "chart packs" and other details on medical care. Also, diseasebenchmarks.com comes in handy when researching the cost of certain treatment episodes, he added.

When doing retirement research, Ms. Levesque said she uses the Boston College Retirement Research Center Web site.

"It's a great source for what other companies are doing, to educate employees about risk and how much they need to retire and to pay for health care," she said.

Mr. Crockett said he frequently turns to the Chicago Consulting Actuaries' national Web-based newsletter called "Insight" for retirement-related issues relative to the public sector.

"A lot of times they'll do detailed analyses of GASB," he said, referring to the Government Accounting Standards Board, which recently promulgated new rules for how retiree health benefits are accounted.

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Brazil opens door for international D&O reinsurers

More capacity, better coverage expected

By ROBERTO CENICEROS

RIO DE JANEIRO, Brazil—Brazil's monopoly reinsurer has freed up insurers in the country to purchase most of their directors and officers liability reinsurance coverage in international markets.

The move by the government-controlled IRB-Brasil Resseguros S.A. applies to reinsurance treaties negotiated beginning last month and comes as demand for D&O coverage is growing in Brazil, sources say.

The liberalization will likely increase D&O insurance capacity in Brazil and reduce coverage costs, some brokers and risk managers say.

Insurers, however, say they do not foresee a significant impact on their pricing for D&O policies sold in Brazil.

But insurers, risk managers and brokers agree that liberalizing the market for D&O reinsurance will make it easier to customize insurance policies to meet the specific

needs of buyers.

It will, for example, encourage product development and allow the creation of local D&O policies that mirror a multinational company's coverage under their existing global insurance programs, said Marc Poliquin, regional vp of professional and financial lines in Miami for ACE Latin America, a unit of Hamilton, Bermuda-based ACE Ltd.

Multinationals benefit

The move should benefit multinational companies and Brazilian companies, observers say.

Multinational companies with operations in Brazil must purchase local insurance coverage or fronting policies because Brazil, like several other Latin American countries, strictly prohibits nonadmitted insurance issued by foreign insurers, sources say. Those insurers then, if necessary, have to purchase, with the exception of D&O, reinsurance coverage from the IRB.

In addition to multinational companies, local Brazilian companies increasingly are buying D&O coverage for protection against claims filed in Brazil and to protect them against claims filed against their foreign operations in the

Despite 10-year-old legislation, reforms have yet to be enacted

RIO DE JANEIRO, Brazil—Although Brazil's National Congress in 1996 passed a law to end the IRB-Brasil Resseguros S.A.'s monopoly over all reinsurance transactions in the country, the liberalization has yet to happen.

Prior to the IRB's establishment in 1939, foreign-owned private reinsurers accounted for most reinsurance transactions carried out in Brazil. But the government at the time created a monopoly reinsurer citing a need to promote local insurers while retaining business within the national economy.

Today the organization regulates all reinsurance transactions as well as continuing to monopolize the sale of reinsurance. According to the IRB, it is a "mixed-capital corporation" with a majority of its shares held by the Brazilian government, although some shares are privately owned.

After the National Congress moved to end the IRB's monopoly, several international reinsurers opened offices in Brazil in anticipation of capturing new business. But since then, legal maneuvers by left-of-center political parties have blocked the enactment of the legislation and various government officials have said that is not expected anytime soon.

—By Roberto Ceniceros



United States, sources say.

The majority of companies currently purchasing D&O coverage from ACE in Brazil are first-time buyers, Mr. Poliquin said.

The demand for D&O coverage has grown in part because of a change in the country's Civil Code that was implemented in 2003, explained Anthony W. Harvey, net-

work country manager for Willis Corretores de Seguros Ltda., a Sao Paulo, Brazil, unit of Willis Group. The change made directors and officers personally liable, along with their company, for their actions as executives of their company.

If directors and officers are sued,

See BRAZIL / page 27

Stress of firing not covered by workers comp

By GLORIA GONZALEZ

HALIFAX, Nova Scotia—A worker who experienced stress due to an unexpected firing cannot claim workers compensation benefits, a Nova Scotia court has ruled.

In *Joanne Logan vs. Nova Scotia (Workers' Compensation Board)*, the Nova Scotia Court of Appeal last month upheld a decision by the WCB's appellate division to deny workers comp benefits to an employee who claimed she suffered chronic depression and anxiety due to her dismissal in October 2003.

The issue debated by the WCB's appeals tribunal was whether Joanne Logan suffered an accident arising from the course of her employment, which would have entitled her to benefits under the Workers' Compensation Act of Nova Scotia. Under the legislation, the term "accident" includes disability arising out of and in the course of employment, but does not include stress other than an acute reaction to a traumatic event.

The tribunal found that Ms. Logan's injury was excluded because management decisions do not qualify as traumatic events. Ms. Logan appealed the tribunal's decision, arguing that it was an unduly restrictive interpretation of the statute.

While acknowledging that an unexpected firing could be considered a traumatic event in the typical sense of the term, the Court of Appeal found that the tribunal was correct to hold that a wrongful dismissal is not an accident for the purposes of workers comp claims.

Other provinces have legislation, similar to Nova Scotia's statute, that restricts stress claims to acute reactions to a traumatic event, but recent cases and regulatory changes have gradually expanded the scope of coverage for stress conditions for Canadian employees (*BI*, Aug. 29, 2005).

The decision in the Nova Scotia case does not represent a shift in this trend because the WCB simply applied the workers comp rules as they were intended—to compensate injuries, including certain stress claims, caused by the workplace or work conditions, said Michael McAlear, an Ottawa-based senior consultant for benefits consulting firm Morneau Sobeco.

"I don't see a change in philosophy," he said. "They make it obvious that stress is still a compensable condition."



Tokio Marine & Nichido Fire Insurance Co. Ltd. has securitized reinsurance coverage for losses caused by typhoons, such as, Typhoon Nabi which last year caused extensive damage in Japan's Fukui Prefecture.

Typhoon risk covered by securitization deal

TOKYO—Tokio Marine & Nichido Fire Insurance Co. Ltd. has put together a \$200 million securitized reinsurance program to cover claims from Japanese typhoons.

Under the arrangement completed earlier this month, Tokyo-based Tokio Marine purchased reinsurance from Swiss Reinsurance Co. that the Zurich-based reinsurer then transferred to Fhu-Jin Ltd., a special purpose company in the Cayman Islands.

To fund the reinsurance, Fhu-Jin issued securities of \$200 mil-

lion with a five-year maturity to institutional investors in Europe, the United States and Bermuda, Tokio Marine explained in a statement outlining the program.

The coverage is triggered if needed to pay reinsurance claims related to typhoons that record wind speeds in excess of certain thresholds.

The arrangement was designed by Swiss Re Capital Markets in New York, and Risk Management Solutions Inc. in Newark, Calif., performed the typhoon risk analysis for the securitization project.

—By Michael Bradford

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LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
 (IN ENGLAND AND WALES)
 CHANCERY DIVISION
 COMPANIES COURT
 NO 4436 OF 2005

IN THE MATTER OF

LA MUTUELLE DU MANS ASSURANCES
 IARD

IN THE MATTER OF THE COMPANIES ACT
 1985, SECTION 425

NOTICE OF CRYSTALLISATION OF
 ASCERTAINED CLAIMS

NOTICE IS HEREBY GIVEN in the matter of La Mutuelle Du Mans Assurances IARD that, following the sanction of the scheme of arrangement (the "Scheme") which became effective on 31 October 2005 and in accordance with clause 17.3 of the Scheme all Ascertained Claims have been designated as Crystallised Claims.

A copy of the Scheme and details relating to it may be obtained from the website (<http://www.mmakbranchsolventscheme.co.uk/>)

Should you have any questions regarding this Notice, please address them to either Steve Crawley or Richard Bragg at: The Scottish Lion Underwriting Agencies Limited, 5th Floor, Cutlers Exchange, 123 Houndsditch, London EC3A 7PQ, United Kingdom (Tel: +44 (0)20 7626 4266, Email: solventscheme@scottishlion.co.uk)

LEGAL NOTICE

IN THE SUPERIOR COURT OF RICHMOND COUNTY, STATE OF GEORGIA

MELVIN SIMON & ASSOCIATES, INC., et al.,
 Plaintiffs,
 v.
 STANDARD FIRE INSURANCE COMPANY, et al.,
 Defendants.

CIVIL ACTION FILE
 No. 97-RCCV-28

SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT LEGAL NOTICE

The parties have proposed a settlement in a pending class action. If you purchased a Loss-Sensitive Workers' Compensation Policy between January 1, 1985, and December 31, 2003, please read this Notice carefully. Your legal rights may be affected. This notice applies to Settlement Class Members, which are all purchasers of:

- (i) Any "Loss-Sensitive Workers' Compensation Policy," further defined as any retrospectively-rated, retrospectively-adjusted, loss-adjusted, retrospective overall, retrospective rating, large risk alternative rating option ("LRARO"), large deductible, loss sensitive dividend, loss sensitive retention, and/or any other loss sensitive policy, plan, program, contract, package, agreement, certificate, endorsement, transaction, or other document providing or relating to workers' compensation or employers' liability insurance coverage in the voluntary market within the United States, its possessions and/or its territories (including, but not limited to, the District of Columbia) with an effective, renewal, or inception date from January 1, 1985, through and including December 31, 2003;
- (ii) any "Associated Policy," further defined as any general liability, automobile, or other casualty policy, contract, or endorsement (including, but not limited to, foreign voluntary compensation, co-insurance, Longshoremen and Harbor Workers, or Employers' Liability Stopgap Coverage) written with, quoted with, priced with, adjusted with, related to, combined with, or sold pursuant to the same agreement, or as part of the same insurance program, with a Loss-Sensitive Workers' Compensation Policy; and/or
- (iii) any buyout of a Loss-Sensitive Workers' Compensation Policy and/or Associated Policy.

YOU ARE HEREBY NOTIFIED, pursuant to Georgia Civil Practice Act section 9-11-23 and an Order of the Court dated July 12, 2006, that the above-captioned action has been certified as a class action, for settlement purposes only, and that a settlement for up to \$24,780,000 in cash (plus interest) as provided in the Stipulation and Settlement Agreement has been proposed. A hearing will be held before the Honorable J. Carlisle Overstreet in the Richmond County Superior Court, City-County Municipal Building, 530 Greene Street, Room 321, Augusta, Georgia 30911, at 10:00 a.m., on November 6, 2006 to determine whether the proposed settlement should be approved by the Court as fair, reasonable, and adequate, and to consider the application of Class Counsel for attorneys' fees and reimbursement of expenses. The Court also will consider any objections that have been timely postmarked and received. If the Court approves the proposed settlement, it will enter an order binding all Settlement Class Members who have not properly excluded themselves and releasing Settlement Class Members' claims as provided in the Settlement Agreement.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND. If you have not yet received the full printed Notice of Class Settlement and a Proof of Claim and Release Form, you may obtain copies of these documents by contacting the Settlement Administrator:

Loss Sensitive Workers Comp
 Settlement Administrator
 PO Box 3207
 Portland, OR 97208-3207
 1-800-420-2912

www.LossSensitiveWorkersComp.com

Inquiries, other than requests for the forms of Notice and Proof of Claim, may be made to Class Counsel:

John C. Bell, Esq.
 BELL & JAMES
 945 Broad Street
 3rd Floor
 Augusta, GA 30901
 (706) 722-2014

If you are a Settlement Class Member, you may: (1) Remain a Settlement Class Member, (2) Object to the settlement while remaining a Settlement Class Member, or (3) Exclude yourself from the Settlement Class.

If you remain a Settlement Class Member and the Court approves the Settlement Agreement, you will be bound by the Settlement Agreement, will be eligible for certain benefits, and will give up certain claims that are released by the Settlement Agreement. If you submit a valid Proof of Claim and Release Form to the Settlement Administrator (at the above address) that is postmarked on or before January 8, 2007, you will be eligible to receive a cash payment.

If you remain a Settlement Class Member, you may also object to all or any part of the Settlement Agreement before it is approved by sending a written objection to the Clerk of the Court, Class Counsel, and Defense Counsel at the addresses provided in the full printed Notice of Class Settlement that is postmarked on or before October 5, 2006. If the Settlement Agreement is approved after your objection, you will remain a Settlement Class Member. If you submit a valid Proof of Claim and Release Form to the Settlement Administrator (at the above address) that is postmarked on or before January 8, 2007, you will be eligible to receive a cash payment.

If you wish to exclude yourself from the Settlement Class, you must send to the Settlement Administrator (at the above address) a written request to be excluded that is postmarked on or before October 5, 2006. If you exclude yourself from the Settlement Class, you will not receive any cash payment or any other benefits from the settlement, but will retain all of the claims that will be released by Settlement Class Members.

The Court has appointed the law firms of Bell & James, Fred Misko, Jr., PC., Dodge & Associates, PC., Seeger Weiss LLP and Milberg Weiss Bershad & Schulman LLP as Class Counsel to represent you and the other Settlement Class Members. One of these firms, Milberg Weiss Bershad & Schulman LLP was indicted in the United States District Court for the Central District of California for allegedly sharing portions of its fees with plaintiffs in certain actions unrelated to this lawsuit or this settlement. A partner of each law firm named as Class Counsel has filed with the Court an affidavit swearing that no improper payment to a plaintiff out of fees awarded in this case has been or will be made.

Class Counsel will ask the Court to award them up to thirty-three percent (33%) from the Settlement Fund as their fee and to reimburse them for expenses. You will not be individually charged.

Further information may be obtained by contacting the Settlement Administrator.
PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE TO OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR FORMS, OR TO ASK QUESTIONS ABOUT THE SETTLEMENT.
 By Order of The Court

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SENIOR FINANCIAL ANALYST, CONTRACTORS' INSURANCE PROGRAM

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We offer a competitive salary and outstanding benefits package and a professional environment that supports development and recognizes achievement. All interested candidates should e-mail resume and cover letter with salary history. You should clearly indicate Risk Management Position in the subject field of your message to resumes@panynj.gov. Candidates should submit resumes immediately.

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Coverage: Small-group Calif. health insurance pool closes down

Continued from page 4

"In retrospect, I think most of us think it was an unrealistic hope from the start. Whenever you have participation in a pool that's basically voluntary on the part of both the small employers and the health plans, they will continue to do what's in their best interests. Health plans will not offer rates that are cheaper in the pool than they will outside because there is no business reason for them to do so. Similarly, businesses won't participate in the pool if they can find a cheaper option outside the pool," she said.

PacAdvantage also suffered from adverse selection, because A.B. 1672—the legislation that created it—also included several small-group reforms, such as rate bands and guaranteed issue, that enabled many small employers, particularly those with younger, healthier employees, to obtain more affordable coverage in the commercial market, according to John Grgurina, president of PacAdvantage.

"Perhaps the pool for some carriers did have a worse risk mix than they got direct," he said. And while "there was a risk-adjustment model

within the pool, that didn't take care of any problems of, 'Is the risk mix worse in the pool than the outside market?'"

"What that attempts to take care of is the risk mix distribution internally for the carriers in the pool. And we've been using the model for years, but even we would say it's not as powerful as we would like it to be," Mr. Grgurina said.

In fact, San Francisco-based Blue Shield of California, which had participated in the program and currently provides coverage to 32,000 of PacAdvantage's 116,000 mem-

bers, was forced to pull out because "we were running losses that weren't sustainable," a spokesman said.

Because of A.B. 1672's reforms, the employers should be able to find coverage in the standard market for no more than 10% higher than the average rate for similarly sized groups, Mr. Grgurina pointed out.

Individuals who lose coverage will be able to obtain conversion policies from the carriers that had participated in PacAdvantage, he added.

Brazil: Government monopoly opens D&O reinsurance market

Continued from page 25

their personal bank accounts can be frozen until the case is resolved. But a locally issued D&O policy can serve as collateral to prevent freezing the directors and officers' assets.

The Civil Code change increases D&O risk in Brazil, agreed Andres Ricardo Holownia, regional risk manager in Sao Paulo for truck manufacturer Scania Latin America Ltda.

But D&O risk is still not as big an exposure as it is in the United States or Europe, Mr. Holownia added. Claims experience is still minimal although insurers have settled some claims, he said.

In Brazil, just as in the United

States, investors, regulators and employees can bring claims against directors and officers, said James Proferes, deputy underwriting manager for D&O liability for Chubb Group of Insurance Cos. in Warren N.J. But the frequency and severity of claims is lower than in the United States, Mr. Proferes agreed.

That lack of claims data is one reason why the IRB chose to move away from reinsuring the D&O market, Brazilian insurance observers say.

The liberalization mostly will affect the four insurers that write 90% of the D&O contracts in the country, according to an IRB spokeswoman.

They are: Sao Paulo-based Itau Seguros S.A., which has a joint venture with XL Capital Ltd.; Sao Paulo-based ACE Seguradora S.A.; Sao Paulo-based Chubb do Brasil Companhia de Seguros; and American International Group Inc., which has a joint venture with Unibanco Seguros S.A., an IRB spokeswoman said.

Those insurers with foreign ownership are now expected to obtain most of their reinsurance for D&O exposures through their corporate parent's global treaties, Brazilian sources say.

The IRB, though, will still participate in the reinsurance programs and retains the right to dictate the amount of exposure it will assume in the treaties.

Sources familiar with events in Brazil said they expect the IRB will retain about 20% of reinsurance risks for D&O insurance.

The IRB said it relaxed its control of the D&O market as part of an ongoing process of preparing for the eventual "demonopolization" of the country's entire reinsurance sector (see story page 25).

Sensitive information

Several Brazilian insurance observers say that the liberalization also was approved to allay concerns by other insurers in Brazil about a retrocession agreement that the IRB had with AIG.

Other insurers that provide primary D&O coverage in Brazil complained that the retrocession arrangement allowed AIG to gain sensitive information about their accounts. Had the IRB entered a retrocession agreement with any other international reinsurer, then AIG's data likewise would have been exposed to a competitor.

The IRB spokeswoman agreed that the issue played a role in opening up the D&O market. She also said the new arrangement allows primary D&O insurers to better protect their customer data.

The IRB has now terminated its retrocession arrangement with AIG.

According to the IRB spokeswoman, it is too early to tell whether the liberalization of the D&O reinsurance market will put downward pressure on pricing.

But Willis' Mr. Harvey says that there is already some downward pressure on pricing.

Insurers, however, say they don't necessarily foresee that occurring as their focus is not on price competition, but rather delivering a quality product.

Regardless of insurers' current appetite for D&O risks, freeing up the reinsurance markets is ultimately a positive step for insurance buyers, said Jorge Daniel Luzzi, group risk management director in Sao Paulo, Brazil, and Milan, Italy, for tire manufacturer Pirelli S.p.A.



401(k) balances below high of six years ago

Despite strong investment gains during the past three years, employees' 401(k) account balances, on average, are lower than they were six years ago as the accounts have yet to fully recover from the beating they took during the bear market for equities, according to a study.

Last year, the average 401(k) account balance for plan participants was \$62,500, up 3.1% from the \$60,600 average account balance in 2004 and a 13.6% increase from 2003, when account balances averaged \$55,000, according to the study by Fidelity Investments, a Boston-based mutual fund provider and 401(k) plan administrator.

Last year's average, though, was slightly below the \$64,000 average account balance in 1999—the peak of the bull equities market.

The study—which was based

on an analysis of account balances of more than 9 million participants in nearly 12,000 corporate plans serviced by Fidelity—also found that employees who are automatically enrolled by their employers in 401(k) plans are "very likely" to stay in the plans and not opt out.

For example, of the nearly 100,000 employees automatically enrolled in a 401(k) plan last year, 87% remained in the plan throughout the year and 18% increased their deferral rates.

Pension legislation signed last week by President Bush makes it easier for employers to establish such automatic enrollment programs.

A summary of the findings from the study, "Building Futures," is available at www.fidelity.com.

—By Jerry Geisel

Webinar: Experts to examine permanent solutions to TRIA

Continued from page 4

these new proposals for handling terrorism risk in the United States, and take questions from the live online audience. Speakers include:

- J. Eric Brosius, senior vp and manager, reinsurance for Liberty Mutual Insurance Co. in Boston.

- Aaron Davis, director, National Terrorism and Property Resources for Aon Risk Services in New York.

- Al Gorski, manager of risk management for the Orange County Transportation Authority in Orange, Calif.

- Greg Heidrich, senior vp of policy development & research for the

Property Casualty Insurers Assn. of America in Des Plaines, Ill.

Business Insurance Editor Regis Coccia will moderate the webinar.

BI's Online Executive Forum™ webinars, developed by our editorial staff, are highly informative online events where noted speakers and respected business leaders come together with *BI* editors to discuss the most pressing issues in this live interactive format.

For more information, and to register for the free Aug. 29 Online Executive Forum on TRIA, please visit www.BusinessInsurance.com/webinars.

HRA: Ruling clarifies tax implications

Continued from page 3

ences including:

- Employers can require that HRA balances be used only for reimbursement of medical expenses. By contrast, employees can use HSA balances for any reason, though they are taxed on the distribution if used to cover nonhealth care expenses.

- Only employers can fund HRAs. Federal law allows both employers and employees to fund HSAs.

- Federal law lays down specific rules on how much money can be contributed each year to employee HSAs, as well as the design of the high-deductible health insurance plans that are linked to HSAs. No such restrictions are imposed on HRAs.

- Unless set up to pay for health care expenses after retirement, employees typically forfeit HRA balances when they terminate employment. By contrast, HSA balances belong to the employee.

In the ruling, the IRS described an arrangement in which the HRA

"The IRS must have learned of the arrangement and wants to end it before it becomes widespread."

Sharon Cohen
Watson Wyatt Worldwide

is used to reimburse the medical care expenses of employees and retirees, their spouses and dependents. Additionally, the HRA reimburses the medical care expenses of a surviving spouse and dependents of a deceased employee.

Upon the death of the deceased employee's surviving spouse and last dependent, or upon the death of the employee if there is no surviving spouse or dependent, an unused HRA account balance could be used to pay for any medical beneficiary designated by the employee. It's that last feature that causes the arrangement to lose its tax-favored status, according to the IRS ruling.

Benefit experts don't know how widespread such arrangements might be, though typically the IRS issues such rulings when it becomes aware of such a practice and wants to stop it.

"The IRS must have learned of the arrangement and wants to end it before it becomes widespread," said Sharon Cohen, an attorney with Watson Wyatt Worldwide in Arlington, Va.

Such arrangements would appeal, for example, to single employees who would want to give account balances to a close relative, such as a nephew or niece that faced significant medical care expenses.

COMINGS & GOINGS - INDUSTRY



Mr. Pauls



Mr. Anderson



Ms. Duncan



Mr. Backus

Insurers:

Mitsui Sumitomo Insurance Group in Warren, N.J., has named **Gary R. Garcia** president and chief operating officer. Previously, he was executive vp, business and personal insurance at Royal & SunAlliance Insurance Group P.L.C.

ACE Group Holdings Inc. has named **Patricia Henry** as deputy general counsel for government and industry affairs. Previously, she was general counsel and director of litigation for ACE's operations in North America. She will be based in Philadelphia.

Novato, Calif.-based Fireman's

Fund Insurance Co. has named **James Pedersen** senior vp and customer service officer. Before his promotion, Mr. Pedersen was COO for the personal insurance business.

Reinsurance:

Guy Carpenter & Co. Inc. has named **John Carroll** as senior vp and head of broking in the Sydney, Australia, office. Previously, he was head of Swiss Reinsurance Co.'s client management team for Australia and New Zealand.

Charlotte, N.C.-based Transamerica Reinsurance Co. has named **Kenneth L. Conners** as chief underwriting

officer and vp. Previously, he was vp of underwriting for Empire General Life Assurance Corp.

Hamilton, Bermuda-based Scottish Re Group Ltd. has named **Clifford R. Wagner** chief executive officer of the company's North American business, succeeding Seth Vance, who resigned. Previously, Mr. Wagner was executive vp and chief actuary.

Brokers:

Hays Cos. has named **G. Marshall Works** as senior vp in the St. Louis office. Previously, he was a senior vp with Lockton Cos.

Lockton Insurance Brokers Inc. has named **Adam McDonough** as president and CEO of its San Francisco office. Previously, he was executive vp.

Hub International Ltd. has named **Dennis J. Pauls** president and CEO of Hub International Ontario Ltd. He will continue to serve as chief financial officer of Chicago-based Hub until a replacement is named.

Farmington Hills, Mich.-based Burns & Wilcox Ltd. has named **Paul Anderson** as director of branch development. Previously, he was director of commercial risk brokerage for Aon Risk Services.

Other providers:

Nashville, Tenn.-based Alternative Service Concepts L.L.C. has promoted **Sharon Duncan** to chief operations officer. Previously, Ms. Duncan was senior vp and director of sales and marketing. She will be replaced in that role by **Glenn Backus**, who previously was senior vp.

Watson Wyatt Worldwide has named **Weston Tompkins** as leader for investment consulting in the At-

lanta office. Previously, he was a senior investment consultant with Hewitt Associates Inc.

Managed care:

Tampa, Fla.-based PMSI-Tmesys, a specialty managed care company serving the workers compensation and managed catastrophic care markets, has named **Mark Agustin** chief financial officer and vp of finance. Previously, he was COO and CFO for Zavata Inc.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; jwalker@businessinsurance.com.

Photos should be sent to: Kathy Barnes, Business Insurance, 360 N. Michigan Ave., Chicago Ill. 60601-3806; kbarnes@businessinsurance.com

Results: Managed care market turns in a solid first-half 2006 performance

Continued from page 3

earnings and strong results in other segments. "They still have some work to do, but they're in better shape than they have been in the last couple of years," said Bradley Ellis, director at Fitch Ratings in Chicago.

Philadelphia-based CIGNA reported flat enrollment of 9 million, stabilizing its membership base after years of significant declines and helping to moderate revenue losses. "We're still seeing a lot of consistency and stability there," said Joseph Marinucci, credit analyst with New York-based Standard & Poor's Corp.

Hartford, Conn.-based Aetna Inc. reported flat first-half profits due to a ratio of medical costs to other costs that was higher than previous quarters—driven by high-dollar claims in areas such as oncology, neonatal intensive care and cardiology—and an underperforming small-group book of business caused by increased competition in key markets such as the Northeast and Mid-Atlantic.

Aetna said its medical cost trend is projected to average 8.5% for the year with premium yield greater than 7%. "It will be interesting to watch them in the second half to see if they can increase pricing at all," Mr. Ellis said. "The problems they have are something they can fix."

Overall earnings for the managed care sector, though, were solid, driven by substantial double-digit earnings for Minnetonka, Minn.-based UnitedHealth Group Inc. and Indianapolis-based WellPoint Inc. "The sector is doing fairly well on a profitability basis," Mr. Ellis said.

UnitedHealth is still dealing with the ramifications of probes into its stock-option granting practices. The company recently announced it

would delay filing quarterly earnings reports with the U.S. Securities and Exchange Commission due to its ongoing review of these practices. In response, S&P revised its outlook on the company to "negative" from "stable," due to a potential financial restatement arising from misaccounting for its stock-option plan. Even with the revision, though, the company is still the highest-rated health care carrier, Mr. Marinucci noted.

"We remain very disciplined in our underwriting approach and will not sacrifice margin for market share."

David Colby
WellPoint Inc.

"They're going through some challenges, obviously, but the model still seems to be holding up," Mr. Marinucci said of UnitedHealth. "We still have some concerns about accounting and governance. We're concerned about further balance sheet impairment. But the bottom line is the money and earnings are still being generated at a significant clip."

The major managed care companies reported that medical cost trends have hovered in a predictable range. WellPoint, the largest managed care organization in terms of membership, said it continues to expect its 2006 medical costs to increase less than 8%.

Humana, meanwhile, reported that medical cost trends for its fully insured commercial book of busi-

ness were in the 5.5% to 6.5% range, a decline from the 6% to 7% range reported in the first quarter of 2006. "We're seeing some compression in medical inflation," Mr. Marinucci said.

Insurers say they are pricing their products at or slightly above their medical costs. "We remain very disciplined in our underwriting approach and will not sacrifice margin for market share," said David Colby, chief financial officer for WellPoint.

Drugs costs moderate

Moderating pharmacy trends are a key driver of the deceleration of overall medical cost trends, insurers say. Aetna, for example, was projecting pharmacy cost increases in the high single digits, but now expects these cost trends to fall in the mid-single digit range. The insurer expects its pharmacy costs, which account for about 15% of total medical costs, to decline in the second half of the year due to several drugs, including the blockbuster cholesterol-reducing drug Zocor, shifting to generic status.

Pharmacy costs could moderate further than expected in the second half of this year due to discounted pricing offered by Zocor manufacturer Merck & Co. (BI, July 10) and the unexpected introduction of generic Plavix, which is used to prevent heart attacks and strokes, said Sally Rosen, a senior financial analyst with Oldwick, N.J.-based A.M. Best Co. Inc.

The movement toward consumer-driven health plans could have an impact on cost trends going forward, observers say.

Larry Glasscock, WellPoint's president and chief executive officer, said there still is tremendous interest from employers in CDHPs and

nearly every quote the insurer develops includes a detailed review of WellPoint's consumerism capabilities.

New members key

Achieving membership growth, meanwhile, is a key factor for health insurers, analysts say. Certain companies are seeking to increase enrollment by focusing on the government segment of the market rather than the commercial business because of opportunities presented by the revamped Medicare program and states turning to managed Medicaid programs to control rising health care costs. A.M. Best, though, remains ambivalent about government-funded programs because of potential

changes in reimbursement rates, Ms. Rosen said.

Managed care companies have been increasing membership primarily through acquisitions or by taking accounts from other insurers, primarily CIGNA, analysts note. Consolidation in the industry, though, is expected to continue on a smaller scale than it has in recent years because of emerging antitrust concerns, they say.

UnitedHealth, for example, had to sell PacificCare Health Systems Inc.'s commercial health insurance businesses in Tucson, Ariz., and Boulder, Colo., to secure regulatory approval for its acquisition of the Cypress, Calif.-based insurer.

"As some of these companies get bigger, that's going to become an issue," Ms. Rosen said.

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- ◆ Charmain Benton, Copy Editor – less than 1 year
- ◆ Craig Bowman, Circulation Coordinator – 5 years
- ◆ Roberto Cenicerros, Senior Editor, Bureau Chief, Los Angeles – 12 years
- ◆ Regis Coccia, Editor – 13 years
- ◆ Amy Curtis, Online Producer – 9 years
- ◆ Katherine Downing, Online Editor – 1 year
- ◆ Ronnie Drachman, Director of Communications – 34 years
- ◆ Kevin Edison, Directory Editor – 8 years
- ◆ Meg Fletcher, Senior Editor – 21 years
- ◆ Elizabeth Fry, Correspondent (Australia) – 2 years
- ◆ Jerry Geisel, Editor-at-Large – 29 years
- ◆ Pat Ghazvini, Assistant to the Publisher – 12 years
- ◆ Gloria Gonzalez, Associate Editor – 3 years
- ◆ Judy Greenwald, Senior Editor – 22 years
- ◆ Mark Hofmann, Senior Editor – 18 years
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- ◆ Dave Lenckus, Senior Editor – 21 years
- ◆ Ken Luker, Advertising Director – 5 years
- ◆ Bill McGuire, District Manager – 3 years
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- ◆ Bill Murphy, Deputy Graphics Editor – 2 years
- ◆ Bob Murray, District Manager – 7 years
- ◆ Monique Murray, Advertising Traffic Coordinator – 2 years
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- ◆ Matt Scroggins, News Editor – 10 years
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- ◆ Paul Winston, Associate Publisher/Editorial Director – 21 years
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Terrorism: Industry looks for coverage solutions once federal backstop ends

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tion to the CNBR exposures, "there are some conventional attack scenarios—such as so-called 'swarm' or other multiple-venue attacks—that would overwhelm private sector ability to fund the resulting loss. A high-level federal backstop should remain in place and should be designed to encourage more private sector capacity to fill this space, potentially reducing the role of the federal government over time. Here too, a post-event policyholder surcharge could provide recoupment to the Treasury and minimize any fiscal risk to taxpayers."

It also calls for the creation of a "rigorous and objective procedural mechanism" that would require the Treasury Department to periodically review the state of the private market. Treasury would determine whether there had been an increase or decrease in the amount of private capacity available for terrorism, and it would be required to adjust per company retentions in the high-level backstop accordingly.

The document also calls for tax incentives, the pre-emption of state insurance coverage requirements and regulatory oversight, the possible creation of strictly voluntary terrorism insurance pools and other changes.

AIA's aim has always been to advocate solutions that create capacity, and creating capacity is a valid role for government, said Leigh

Ann Pusey, AIA's senior vp-government affairs. "Terrorism risk is not just an insurance problem—it's a societal problem," she said.

"We're trying to sell" the concept that chemical, nuclear, biological and radiological threats should be treated differently and that conventional terrorism can still pose a real challenge, Ms. Pusey said.

The CNBR provision would allow the federal government to recoup losses of up to \$10 billion through assessments on policyholders.

The payback provision for CNBR related-losses could help the proposals "politically" and also make it more palatable for policyholders by having them pay an assessment after an event, rather than before, said Ms. Pusey.

Bradley R. Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md., called the assessment provision a reflection of "political reality."

"It's clear that Congress has no appetite for simple extension of TRIA and has long looked for the insurance industry to provide viable solutions to build capacity," said Mr. Wood. "One can only applaud the long-term alternatives that are beginning to emerge such as the recent long-term framework proposed by AIA and others."

Regarding the policyholder assessment provision, "everyone recognizes the political reality is that any extension of the federal back-



"It's clear that Congress has no appetite for simple extension of TRIA and has long looked for the insurance industry to provide viable solutions to build capacity."

Bradley R. Wood
Marriott International Inc.

stop won't look like the current program," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in

Washington. "I think the AIA proposal is mindful of that, and it tilts toward the area where the market failure is most clear," namely CNBR, he said.

The CIAB's Mr. Wood said that the assessment would "certainly" be critical to moving any terrorism bill through the House of Representatives. "I would be astonished if that weren't a central part of any program that would emerge next year."

"We appreciate the leadership that the AIA is giving to the issue," said Franklin W. Nutter, president of the Reinsurance Assn. of America in Washington. "Our industry needs to be creative in solving its customer needs and finding the right balance in a government program. We look forward to working with them to advance this proposal and to work with others who may also have creative ideas to address the problem," he said.

"We need to be working on ideas and find out what the common ground is," Mr. Nutter said.

The New York-based Risk & Insurance Management Society Inc. is analyzing the AIA proposal as well as others that have been discussed, said Terry Fleming, a RIMS director with responsibility for external affairs.

"There are a number of proposals that are out there," said Mr. Fleming, who is also director-division of risk management for Montgomery

County in Rockville, Md. "We think all of the proposals should coalesce into one position" that stakeholders can present to Congress, he said, adding that RIMS plans to issue a white paper on terrorism insurance, probably by the end of the year.

Marriott's Mr. Wood pointed out that various proposals—including the Real Estate Roundtable's call for creating a terrorism insurance pool modeled on the United Kingdom's Pool Reinsurance Ltd.—share common features. These include the need for public-private partnership and preloss reserving.

"For this to come together, its important that policyholders and brokers come together to bring a unified solution to Congress," he said.

Getting proposals out sooner rather than later is welcome, said the CIAB's Mr. Wood.

"I'd rather have all these ideas on the table in 2006 than in the summer of 2007," he said. "That was one of the big reasons we struggled so much last year in the TRIA extension—there was no single harmonious industry proposal." He warned, though, that "no one should labor under the illusion that because there is a marketplace problem Congress will respond in a positive way. We still have some very powerful and influential voices that wouldn't mind at all taking away the backstop and seeing what happens."

Katrina: Ruling not expected to have major impact on commercial policyholders

Continued from page 1

by storm surge. Mr. Leonard claimed the agent had recommended that they not purchase flood insurance made available under the National Flood Insurance Program, court records show.

According to Judge Senter, Mr. Leonard "inferred, according to my understanding of his testimony, that both wind damage and water damage would be covered under his Nationwide Homeowner's policy if the wind and water damage occurred during a hurricane." That inference was "erroneous," wrote the judge.

Judge Senter wrote that, under applicable Mississippi law, "to the

extent property is damaged by wind, and is thereafter also damaged by water, the insured can recover that portion of the loss which he can prove to have been caused by wind, but the insurer is not responsible for any additional loss it can prove to have been later caused by water."

Judge Senter held that provisions of the policy that "exclude coverage for damages caused by water are valid and enforceable terms of the insurance contract." He said that the Leonards were entitled only to an additional \$1,228.16 for window damage and the expense of cleaning and repairing exterior walls above the water line where

wind-driven debris had caused damage. They had already received a payment of \$1,661.17 from Nationwide.

The judge, however, did hand policyholders a partial victory, holding that the "provisions of the Nationwide policy that purport to exclude coverage entirely for damages caused by a combination of the effects of water (an excluded loss) and damage caused by the effects of wind (a covered loss) are ambiguous." After discussing the provisions, he wrote that a literal reading of the policy "would mean that an insured whose dwelling lost its roof in high winds and at the same time suffered an incursion of even an inch of water would recover nothing" under the policy. "I do not believe this is a reasonable interpretation of the policy."

Policyholder and insurer attorneys both say that Judge Senter's decision will not have a major impact on commercial policyholders.

"By and large, it's basically a decision that is limited to the personal lines side," said Gary Thompson, a partner in the Washington office of Pittsburgh-based law firm Reed Smith L.L.P.

"Commercial insurance policies in the private market do cover flood and water damage, so usually there's not an issue with respect to the allocation of damage between wind and water, but in some policies there are sublimits for damage from flood," said Mr. Thompson, who represents policyholders. "For example, a com-

mercial building might be insured for \$100 million but with a \$15 million sublimit for flood. So Judge Senter's ruling might impact the rate at which the damages are allocated to the flood bucket for the purposes of allocating to the sublimit," he said.

"The policyholders' take is that storm surge is a wind-driven event even though it obviously involves water," said John Ellison, managing shareholder in the Philadelphia office of New York-based Anderson Kill & Olick P.C.

"I think that issue is going to be addressed again by possibly other Mississippi courts and hopefully by the 5th Circuit (Court of Appeals) if the Leonards decide to appeal," said Mr. Ellison, who represents policyholders. "That storm surge issue is an across-the-board issue for all policyholders who have been impacted by the hurricanes. He is the first judge, no pun intended, to put his toe in the water."

"Beyond that, the decision is fairly narrowly limited to the facts of the Leonards' claim," Mr. Ellison said.

"The real area of ultimate controversy and dispute is going to be in the commercial area where you have a combination of nuanced manuscript language together with the kind of big-ticket exposures that you simply don't have in personal lines—like business interruption, contingent business interruption and extra expense," said Stephen Cozen, founder and chairman of

Philadelphia-based Cozen O'Connor, which represents insurers. "The Nationwide decision isn't going to have an impact on that except in that it's a validation of the notion that clear and unambiguous policy language is going to be valid and enforceable under each state law."

Another attorney who represents insurers said the decision could impact commercial buyers "to the extent that its basic proposition is that insurance contracts should be enforced according to their terms."

"The big thing, obviously, is the upholding of the flood and water exclusion," said Vince Vitkowsky, a partner in the New York law firm of Edwards Angell Palmer & Dodge L.L.P.



Paul Leonard (right) and his attorney, Richard Scruggs (left), stand outside the federal courthouse in Gulfport, Miss. Last week, Mr. Leonard lost a battle with his insurer when a judge ruled that Hurricane Katrina's storm surge is not covered under a homeowners policy.

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Discrimination: Court ruling clarifies the limits of employers' civil rights liability

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employers more clarity with regard to lawsuits based on discriminatory conduct occurring out of the country.

"It makes it, at least in the 2nd Circuit, really clear for employers that have people overseas to know under Section 1981 where their liability ends," said Leslie Lajewski, a partner in the New York office of Grotta, Glassman & Hoffman P.C. With so many employees today transferring overseas and back, it is welcome to have a clear ruling that conduct outside of the United States can't be the basis for a dis-

crimination claim under Section 1981 of the U.S. Civil Rights law, she said.

Bradford K. Newman, a partner in the employment department of Paul, Hastings, Janofsky & Walker L.L.P. in Palo Alto, Calif., noted, however, that the ruling does not entirely insulate employers from discrimination claims abroad.

"The court clarified that (Section 1981)...does not apply extraterritorially to employees of U.S. corporations stationed overseas. While this holding is certainly relevant in today's day and age of multinational corporations, offshoring and

international employee mobility, employers should remember that Title VII, perhaps the broadest law prohibiting discrimination in the workplace, applies to U.S. citizens regardless of where in the world they work," Mr. Newman said in an e-mail. "So employers should not misconstrue this case as insulating them from all charges of discrimination brought by employees working abroad."

In 2003, Mr. Ofori-Tenkorang, who worked in AIG's Financial Services Division in Connecticut, was reassigned temporarily to one of AIG's offices in South Africa. Mr.

Ofori-Tenkorang alleged that before and after his arrival in South Africa, he was singled out for discriminatory treatment because of his race. His allegations include that he was situated in an office with a white colleague of "questionable ethics," was subject to greater scrutiny than his white colleagues, was blamed for poor business performance unrelated to his work, was threatened with termination after one poor performance review, was given a smaller bonus than similarly situated colleagues and was improperly suspended from work.

In March 2005, Mr. Ofori-Tenko-

rang sued AIG and its subsidiaries AIG Financial Products Corp., AIG International Inc. and AIG Trading Corp. in the U.S. District Court for the Southern District of New York. The district court last September dismissed Mr. Ofori-Tenkorang's claims.

Attempts to seek comment from Mr. Ofori-Tenkorang's and AIG's attorneys were unsuccessful.

John Ofori-Tenkorang vs. American International Group Inc. et al.; 2nd United States Circuit Court of Appeals; Docket No. 05-5272

Benchmark: P/C coverage flat to slightly lower

Continued from page 1

The exception, though, is for property coverage.

"Forecasting services are predicting another active hurricane season," said Joseph Restoule, a member of the RIMS board of directors. "Risk managers are generally benefiting from softer rates, but companies in natural catastrophe-exposed regions aren't likely to see property insurance pricing conditions improve anytime soon."

The flat property premiums reported by survey respondents were somewhat misleading, because those results included the much higher premiums that companies in wind-prone areas paid, Advisen noted.

In the Southeast, property premiums jumped 30% on average, Mr. Bradford noted. But that average included risks that were not located in coastal areas, he pointed out. Many coastal risks paid five to 10 times as much for the same coverage they purchased a year ago, he said.

Meanwhile, companies in the Midwest paid 15% less for coverage, and even West Coast-based companies—which face earthquake risks—paid 10% less for coverage, Mr. Bradford noted.

The 3.5% drop in D&O premiums was the largest among all liability lines, according to the survey.

The smaller decrease in general liability insurance pricing followed a 3% increase during the first quar-

ter, according to Mr. Bradford.

At that time, Advisen analysts predicted the increase would be a temporary response by insurers to ballooning property catastrophe premiums. General liability insurers—which often also write property coverage for their policyholders—had hoped that the entire insurance market would harden as well, Mr. Bradford explained.

But after the rest of the market continued to soften, the general liability insurers also backed off their price increases, he said.

More information about the survey is available at www.RIMS.org/benchmark.

Late News

Continued from page 1

insurance organizations opposed Assembly Bill 8713, contending it would have increased system costs. The American Insurance Assn., for example, said that "the preauthorization process is one of the few ways unnecessary and sometimes fraudulent treatments can be prevented."

Bush signs sweeping pension reform bill

President Bush last week signed into law the Pension Protection Act, which received final congressional approval this month. The law will accelerate pension funding schedules, put into place a new methodology—based on the age of plan participants—for valuing plan liabilities, and prevent employers with underfunded plans from boosting benefits and using credit balances to offset future required contributions. The legislation, among other changes, also will protect new cash balance plans—those established since June 29, 2005—from age discrimination suits, while making permanent retirement plan-related provisions included in a 2001 tax law.

N.Y. laws expand aid for 9/11 workers

New York Gov. George E. Pataki last Monday signed three laws created to help Sept. 11, 2001, rescue and recovery workers—or their families—tap workers compensation, accident and death benefits. One of the laws enables those who became ill after the expiration of a two-year cutoff for filing workers comp claims to

resubmit their previously rejected requests for reconsideration. The second permits the families of firefighters, police and other uniformed personnel to apply for accidental death benefits. The third law signed by Gov. Pataki eliminates a statute of limitations so that retired rescue and recovery workers can have their retirement status reclassified as accidental disability if they suffered injury while working at the World Trade Center site.

Gen Re details SEC finite probe

Federal securities regulators investigating General Reinsurance Corp.'s use of finite reinsurance are examining transactions with Prudential Financial Inc., a predecessor company of St. Paul Travelers Cos. Inc., and units and affiliates of American International Group Inc., according to a Gen Re regulatory filing. The Securities and Exchange Commission has been "reviewing the role of the corporation and its subsidiaries, as well as that of their counterparties, in certain finite transactions, including whether the corporation or its subsidiaries conspired with others to misstate counterparty financial statements or aided and abetted such misstatements by counterparties," according to General Re's quarterly financial filing with the Connecticut Insurance Department, made last week. The SEC continues to examine transactions with Prudential and The St. Paul Cos. in addition to "municipal bond-covered calls involving General Re Financial Products and certain insurance and affiliated companies of AIG," the Gen Re filing said.

BI Stock Index [08/14 - 08/21]

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Percentage change of BI Stock Index vs. key indicators

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Dow Jones	
11,381.47	2.65
S&P 500	
1,302.30	2.81

Largest gains

Meadowbrook Insurance Group Inc.	11.71%
Endurance Specialty Holdings Ltd	6.90%
UNUMProvident Corp.	6.69%
Navigators Group Inc.	6.60%
SCOR S.A.	6.47%

Largest losses

UNICO American Corp.	-5.17%
PXRE Group Ltd.	-2.78%
American Safety Insurance Holdings Ltd.	-1.34%
Gainsco, Inc.	-1.25%
Markel Corp.	-0.58%

Weekly change by market segment

Brokers	2.37%
Insurers/Reinsurers	2.92%
Managed Care Organizations	2.59%

Source: FinancialContent Inc. (<http://financialcontent.com>)

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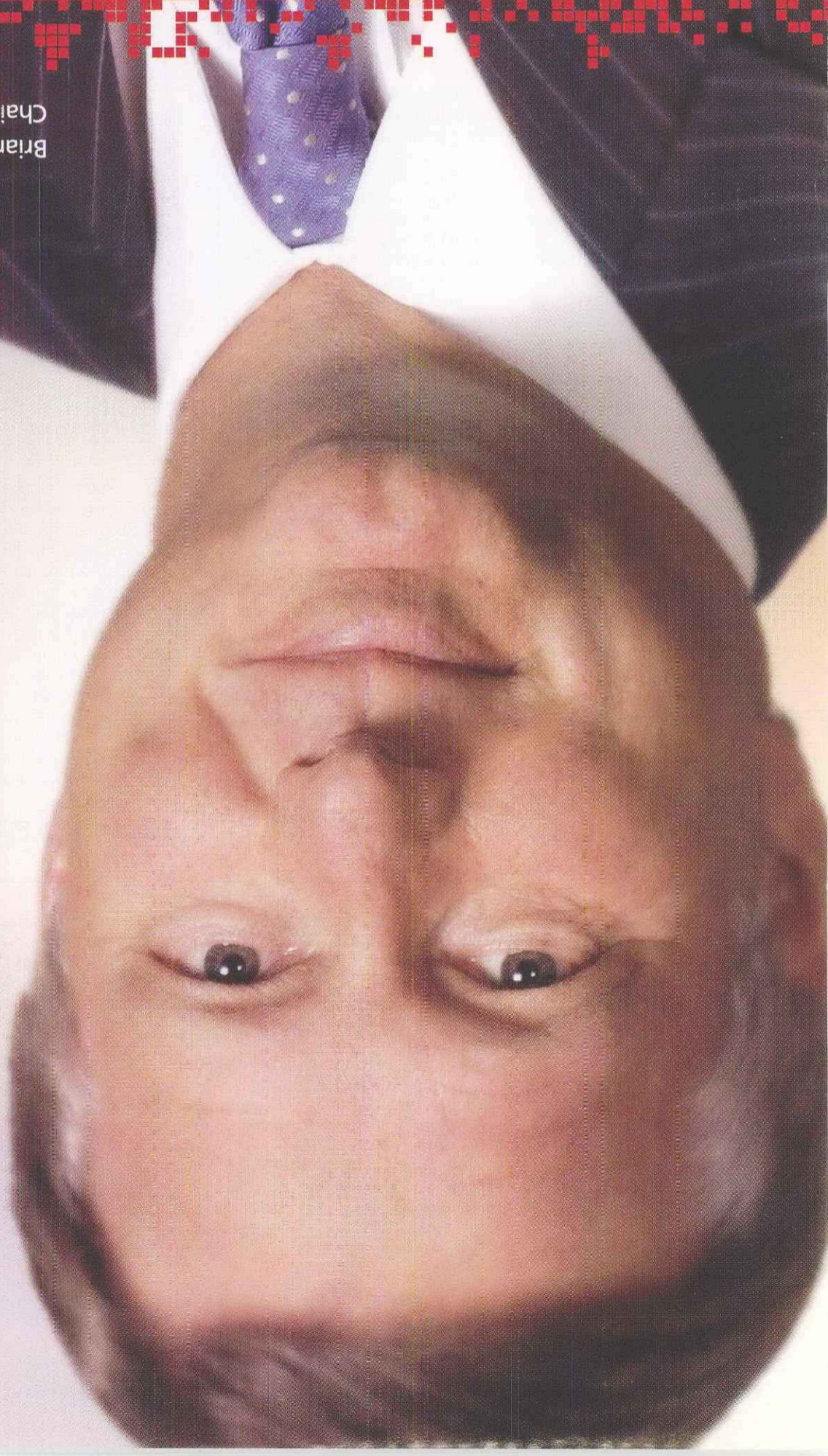
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New Online Poll: Should the federal government pay for losses stemming from chemical, nuclear, biological and radiological terrorist attacks?

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