

# Business Insurance

December 11, 2006

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**ZURICH FINALIZES SETTLEMENT OVER BID-RIGGING, FINITE ABUSE ALLEGATIONS / PAGE 3**

**GLAXO SEEKS COVER TO FIGHT CHARGES BY RIVALS / PAGE 3**



**FLOOD OF RESPONSES EXPECTED AS DOL REQUESTS COMMENTS ON FMLA / PAGE 3**

## In Brief

**Storm team predicts active 2007 season**

The follow-up to this year's mild storm season will be an active 2007 season, with 14 named storms expected to form, the forecasting team from the Colorado State University said. The team predicted "above-average probability of United States major hurricane landfall," with the likelihood of a major hurricane hitting the U.S. coastline set at 64%, compared with an average for the last century of 52%. Of the 14 named storms seven will strengthen into hurricanes.

**Brown & Brown settles for \$5.8 million**

Brown & Brown Inc. will pay \$5.8 million to resolve investigations by Florida officials over its acceptance of undisclosed

See **IN BRIEF** page 30

## BENEFITS MANAGEMENT BENEFIT CONSULTING & OUTSOURCING

Transparency concerns expand to benefits consultants; centralized planning makes a comeback; insurers, employers scrutinize medical tourism.

**RANKING OF LARGEST EMPLOYEE BENEFIT CONSULTANTS / PAGE 14**



## Implant OK doesn't sway wary insurers

By **LOUISE ESOLA**

Massive past losses seen as deterrent to liability coverage

What once caused major waves in the insurance industry barely made a splash last month after the Food and Drug Administration lifted its 14-year ban on silicone breast implants.

Despite the FDA's re-approval of the controversial implants, most insurers and reinsurers still exclude silicone implants from product liability policies, experts say. "The insurance industry's standpoint (on the FDA's approval) is they don't have a dog in the fight," said Tom Coughlin, CEO of Willis Risk Solutions in New York. "Insurance companies paid a lot of money in (silicone) breast implant claims in the past and there is very little interest, if any, on the parts of insurance companies to get back in the business of insuring (silicone)

breast implants."

Silicone implants were introduced in the 1960s and were widely used until a flood of health concerns, lawsuits and publicity prompted the FDA in 1992 to issue a moratorium on the implants, only allowing the devices to be used for breast reconstructive surgery following breast cancer. Since, doctors have resorted to using saline implants, which were deemed safer in the event of a rupture since their contents, salt water, is a substance that is natural in the body.

**INSIDE: Most follow-up care likely not covered by health insurers; decades of controversy over silicone implants. Page 28**

Meanwhile, throughout the 1990s, thousands of plaintiffs filed and won billions of dollars in lawsuits claiming that their silicone implants ruptured, causing numerous health problems, including a variety of autoimmune disorders

See **SILICONE** page 28

## Congressional leaders pledge quick action on terrorism backstop

*TRIA extension likely, but permanent fix still faces opposition*

By **JERRY GEISEL** and **MARK A. HOFMANN**

WASHINGTON—Key lawmakers from both chambers of Congress last week pledged to make extension of the federal terrorism coverage backstop—perhaps on a permanent basis—a high priority next year.

Speaking at a news briefing last week in Washington, Sen. Christopher Dodd, D-Conn., described the Terrorism Risk Insurance Act as "critically important" and added that his goal is to enact a permanent backstop program and not a temporary fix. Sen. Dodd in January will become chairman of the Senate Banking, Housing and Urban Affairs Committee, which has jurisdiction over TRIA.

In the House, Rep. Barney Frank, D-Mass., who will become chairman of the Financial Services Com-

mittee, said at a news briefing that extending TRIA was "absolutely" a priority for the committee, but he stopped short of endorsing a permanent extension. The federal coverage backstop program, he said, should be extended five or perhaps eight years and then re-examined.

TRIA, first enacted following the Sept. 11, 2001, terrorist attacks, is scheduled to expire on Dec. 31, 2007.

Rep. Frank said that extending TRIA is vital to the economic health of the nation's big cities. Without guaranteed terrorism insurance, "you will not get any big buildings built," because lenders will not provide financing, he said.

Indeed, the Risk & Insurance Management Society Inc. said in a position paper released last week that "time is of the essence to develop a long-term solution. Without a solution in place by Dec. 31, 2007, the country faces a catastrophic exposure to the economy."

Sen. Dodd acknowledged that the Bush administration is opposed—at

See **TRIA** page 30

## Employer group to fund health record sharing effort

*Project seen as tool for reducing costs, eliminating errors*

By **JOANNE WOJCIK**

A group of five large employers is providing millions of dollars in seed money to develop a common technological framework to facilitate the sharing of personal health records over the Internet.

Dubbed "Dossia," the project being funded by Applied Materials, BP America Inc., Intel Corp., Pitney Bowes Inc. and Wal-Mart Stores Inc., is intended to make the health

care system less costly and more efficient by reducing administrative costs and medical errors, and by putting more information in the hands of consumers so they can manage their own care.

Such a system is necessary because even though there are hundreds of Internet applications available for creating personal health records, there is no single platform on which they all can all co-exist and communicate with one another, according to J.D. Kleinke, chairman and chief executive officer of Omnimedix Institute, the Portland, Ore.-based nonprofit that will build

See **RECORDS** page 29

### INDEX

Advertiser Index .....	29
Business Resources .....	24
Comings & Goings .....	24
End Page .....	31
International .....	25
Opinions .....	8
Perspective .....	22
Professional MarketPlace .....	24
Stocks .....	30

# How can you reduce medical costs in workers' compensation?

Ask Aon.

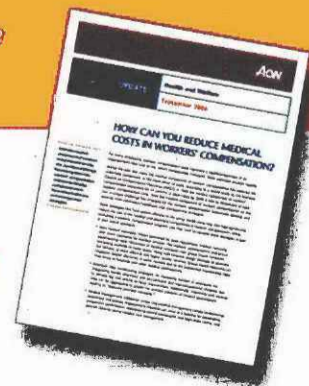


With the medical component of workers' compensation soaring, many organizations see no end in sight. However, there are strategies that have proven effective in the group health arena that could also

have a dramatic effect on the medical and pharmacy components of workers' comp. Visit [www.aon.com/ask](http://www.aon.com/ask) to learn more about cost-containment strategies that can help your workers' comp program.

- Heidi Mader, assistant vice president in Aon Consulting's health and welfare practice

Download our full perspective at [www.aon.com/ask](http://www.aon.com/ask)



# AON

## On the Web

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This is the last week to submit nominations for *Business Insurance's* 2007 Risk Manager of the Year® award and the Risk Manager Honor Roll®, both of which recognize the achievements of risk managers in various industry sectors. The process has been made easier this year than ever before. For a nomination form, go to [www.BusinessInsurance.com/rmoy](http://www.BusinessInsurance.com/rmoy).

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#### Take two and join us Tuesday for Rx relief

Join *Business Insurance* Editor Regis Coccia and a panel of expert prescription drug benefit managers at 11 a.m. EST on Dec. 12 to discuss strategies that can be implemented to reduce this

fastest-growing component of health care costs. Register for "Hard to Swallow: Why Prescription Benefit Costs Are So High," a free *Business Insurance* Online Executive Forum™, at [www.BusinessInsurance.com/webinars](http://www.BusinessInsurance.com/webinars).



### BI DIRECTORIES

#### Benefits consultants directory updated

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# Glaxo, insurer dispute coverage for Paxil suits

## Complaints allege drugmaker tried to curb competition

By DOUGLAS McLEOD

**PHILADELPHIA**—GlaxoSmithKline P.L.C. is suing one of its liability insurers for denying coverage for a series of disputes in which the pharmaceutical giant has been charged with trying to restrain generic competitors of its antidepressant drug Paxil.

GSK unit SmithKline Beecham Corp. filed its complaint last week in federal court in Philadelphia against Lumbermens Mutual Casualty Co. Lumbermens, a Kemper Insurance Cos. subsidiary now in runoff, wrote general liability coverage with a \$5 million per occurrence and annual aggregate limit for GSK from 1992 until 2001.

The complaint charges that Lumbermens wrongly denied defense and indemnity obligations for numerous lawsuits in which GSK is accused of filing frivolous patent infringement actions to block cheaper generic alternatives to Pax-

il. Generic drug makers brought several of these suits, while "end payers"—including the City of New York, and Blue Cross Blue Shield of Minnesota—sued separately to recover the increased cost of antidepressant medication caused by Glaxo's alleged anticompetitive behavior.

Representatives for both Long Grove, Ill.-based Lumbermens and Brentford, England-based GSK declined to comment on the litigation.

Large pharmaceutical companies have routinely filed patent infringement lawsuits when rival drug makers have sought federal regulatory approval to market generic alternatives by claiming that existing patents are unenforceable. Such lawsuits stay regulatory approval for up to 30 months or until patent litigation is resolved, whichever comes first. Some generic drug makers have gone ahead with marketing after the stay period but while litigation is still pending, taking the risk that they might lose and become liable to the original patent holder for lost profits.

GSK, though, is one of the few—if not the only—major drug compa-



BLOOMBERG NEWS/LANDOV

**GlaxoSmithKline has faced lawsuits charging it filed frivolous patent infringement actions over Paxil.**

ny to sue an insurer in federal court for coverage in patent-related litigation, court records indicate.

GSK, which generated 2005 sales of £21.66 billion (\$37.28 billion), has seen its Paxil revenues plummet

in recent years as generic competitors have come on the market. Paxil sales last year fell 42% to £615 million (\$1.06 billion) in large part because of generic competition, according to the company's annual report.

As competition increased, GSK filed a barrage of patent infringement lawsuits starting in 1999 against several rival drug manufacturers, according to its suit against Lumbermens.

The rival drug companies responded with counterclaims charging, among other things, that Glaxo's patent lawsuits were shams intended only to restrain generic competitors and maintain a Paxil monopoly.

Half a dozen other parties that paid for Paxil, meanwhile, filed their own suits. New York City, for example, sued to recover its share of Medicaid payments for the drug, charging that GSK fraudulently manipulated Paxil's patents to extend its monopoly and that it filed groundless patent infringement suits to hinder competitors.

GSK has settled two of these suits,

See **DRUGS** page 26

## Zurich unit, states finalize settlements to resolve probes

### Insurer pledges to pay at least \$141.8 million, change practices

By RUPAL PAREKH

**SCHAUMBURG, Ill.**—Zurich American Insurance Co. has finalized settlements with 11 states and the District of Columbia, agreeing to pay at least \$141.8 million to resolve allegations of bid rigging, price fixing and misuse of finite risk products.

The settlements reached this week formalize an earlier multistate agreement that the U.S. arm of Swiss insurer Zurich Financial Services Group signed earlier this year with California, Florida, Hawaii, Maryland, Massachusetts, Oregon, Pennsylvania, Texas, Virginia and West Virginia (*BI*, March 27). That agreement was this week also adopted by Michigan and the District of Columbia.

In a statement, Schaumburg, Ill.-based Zurich noted that the latest settlements "do not impose any new payments, penalties, reforms or prohibitions on Zurich beyond

that which has already been agreed to in the multistate agreement."

Under the finalized settlements, Zurich will be required to distribute at least \$121.8 million in refunds to commercial policyholders nationwide as part of a pending class action suit in a New Jersey District Court, in which plaintiffs allege that Zurich and numerous other insurers and brokers violated federal and state antitrust laws by conspiring together to increase premiums for insurers and commissions for brokers.

Zurich is also required to pay \$20 million to the states for past and future attorney fees and investigation costs, along with the possibility of an additional \$29.9 million that Zurich could be required to fund clients, depending upon policyholders' participation in other settlement funds.

The settlements bar Zurich from engaging in any of the abusive practices alleged by the states for a period of 10 years, and the company is now required to fully disclose all compensation to agents and brokers.

Zurich in a separate statement

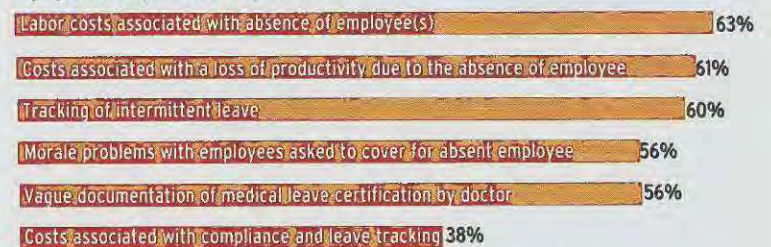
### THE BIG PAYBACK

**Under the finalized settlements, Zurich will be required to distribute at least \$121.8 MILLION IN RESTITUTION to commercial policyholders nationwide.**

See **ZURICH** page 30

### FMLA CHALLENGES

Human resource professionals were polled on specific challenges that their organizations have faced due to employees taking FMLA leave as a result of a serious accident, serious injury and/or life-threatening disease.



Percentages do not total 100%, as multiple responses were allowed.  
Source: Society for Human Resource Management

## Employers hope input will fix flaws in leave law

### Request for feedback gives companies chance to air concerns

By JUDY GREENWALD

The U.S. Department of Labor is likely to get plenty of input from employers and their representatives in response to its request for public comment on the Family and Medical Leave Act and its regulations.

Observers say employers have long complained that the current regulations are unclear, particularly those involving serious medical conditions; unscheduled, intermittent leave; and medical certification procedures.

Conflicting federal court decisions have further exacerbated the situation, they say. But many observers say they remain pessimistic about the likelihood of any

substantive changes in the regulations (see story, page 6).

Noting that it has been more than a decade since the DOL first published regulations to help employers comply with the FMLA, the DOL said it is seeking comments on numerous technical as well as general issues related to the FMLA.

Under the FMLA, an employee at an organization with at least 50 workers can take up to 12 weeks of unpaid job-protected leave annually to care for a newborn, a newly adopted child or a seriously ill family member, or to recover from a medical condition. Employers are required to maintain group health benefits during the leave, and, once the leave ends, to restore the employee to the same or an equivalent job.

According to the DOL, an

See **FMLA** page 6

# Insurers can boost port security: Consultant

*Financial incentives needed to help stop terrorist attacks*

By MARK A. HOFMANN

**WASHINGTON**—The private sector has a key role to play in enhancing port security against terrorism, according to a terrorism and security expert.

But "security is seen as a cost, not as a benefit," J. Michael Barrett told an audience of policymakers and others during a discussion of port security at the American Enterprise Institute in Washington last week. "I think that's got to change," said

Mr. Barrett, who is president of Counterpoint Associates, an Annapolis, Md.-based security and disaster preparedness consultant.

Mr. Barrett said one way to change that perception would be to reward companies that invest in port security. For example, shippers that stress security should receive better rates from their insurers than those that do not, he said. Even a small reduction in rates could mean significant savings over several years during which terrorism is a major concern, he said.

Mr. Barrett pointed out that between 85% and 90% of U.S. port facilities are privately owned, which gives private companies a consider-

able stake in assuring that terrorists do not use ports as targets and gateways. In dealing with terrorism, businesses have to look at what they care about deeply, issues such as protecting assets and what he called "brand equity," according to Mr. Barrett.

"Nobody wants to be the shipping company that let a ship carrying a terrorist-controlled nuclear weapon arrive, he said.

"Where does a company derive benefit and value" from taking adequate security measures? Mr. Barrett asked.

In addition to receiving lower insurance rates, companies that pursue security should be rewarded

by investors, he said. Taking security seriously may mean that a company will be able to maintain operations while its less security-conscious competitors struggle to get up and running after an attack.

In addition, companies should establish a relationship with business partners that requires security consciousness on the partners' part as well, he said. That will help protect against disruptions.

Mr. Barrett was one of four speakers at the symposium, each of whom took a different approach to the issue of port security, although he was the only one who focused on the private rather than public sector role in dealing with the issue.



Insurers could encourage port security efforts by lowering premiums for better risks, experts say.

## FACTS ABOUT SMOKING

- Men who smoke use four more sick days a year than those who don't smoke; women who smoke use two more sick days than nonsmokers.
- 444,000 adults die each year from tobacco-related illnesses. For every smoker who dies, 20 more are ill.
- Despite the loss of 14 years of life on average, smokers have 1-2 more years of disability.
- Annual cost of smoking: \$75 billion a year in direct medical costs; \$92 billion in lost productivity; and \$10 billion from exposure to second-hand smoke.

Source: U.S. Centers for Disease Control and Prevention; Society of Actuaries

## Few employers adopt stop-smoking programs

*Sizable cost benefits passed up as smoker absences remains high*

By JOANNE WOJCIK

**WASHINGTON**—Although smoking is one of employers' priority employee health issues, ranked third behind high blood pressure and obesity according to a National Business Group on Health survey, just 24% of employers offer any coverage for smoking cessation programs and only 4% provide truly comprehensive coverage.

But smoking cessation programs are one of the most cost-effective benefits employers can offer, tying with aspirin therapy for heart disease prevention and childhood immunizations, according to research conducted by the U.S. Centers for Disease Control and Partnership for Prevention, a Washington-based organization that, among other things, promotes the use of evidence-based disease prevention and health promotion policies.

Helping employees to quit smoking will also increase productivity when smokers no longer take cigarette breaks, according to a sur-

vey conducted by the NBGH that was released at the Joint Forum on Health, Productivity and Absence Management cosponsored by the NBGH and the San Francisco-based Integrated Benefits Institute that was held Nov. 28-30 in Washington.

The survey, which included responses from 500 employers and 500 employees who smoke, found that nearly half of employees reported taking between three and six smoking breaks a day, and more than two-thirds of those reported breaks lasting between five and 15 minutes.

That means "employees can be out on smoke breaks up to nine weeks" a year, said Ron Finch, vp of the NBGH. "That's 16% of the work year, or one day a week."

But Mr. Finch suggested that, based on his personal experience as a former smoker, the employees responding to the survey may have underestimated the duration of their cigarette breaks, leading to even more lost time.

The NBGH survey, conducted between Oct. 24 and Nov. 12, also found that employers are not doing enough in other ways to encourage

See **SMOKING** page 26

## Captive owners urged to draw up response plans for flu outbreak

*Pandemic may cause big liability exposures for employers*

By GLORIA GONZALEZ

**GRAND CAYMAN, Cayman Islands**—Captive owners need to prepare for the eventuality of an influenza pandemic, carefully examining the scope of their insurance coverage, developing a pandemic response plan and briefing their boards and employees on their risk management efforts.

Risk managers should not view the possibility of a pandemic as a Y2K-type of event that cost a lot of money to prepare for and had virtually no impact on their operations, several speakers cautioned during a panel discussion on preparing busi-



Hospitals are encouraged to have a plan in place to respond to flu risks.

nesses for an influenza pandemic at the 2006 Cayman Captive Forum in Grand Cayman Nov. 28-30.

Health care organizations, in particular, have had to prepare for several possible health-related events such as an anthrax attack, the outbreak of severe acute respiratory syndrome, and a smallpox outbreak, and their staffers may be suffering from "crisis fatigue," said Barbara McCarthy, associate vp for risk management for Northeast Health Systems in Beverly, Mass.

"With all the things we've prepared for, (a pandemic) is probably the most likely to happen and we do need to pay attention," she said.

A flu pandemic could instigate a host of professional liability and other tort-related exposures, the

See **PANDEMIC** page 27

Complete coverage of the 2006 Cayman Captive Forum is at [www.BusinessInsurance.com/ConferenceExtra](http://www.BusinessInsurance.com/ConferenceExtra)

## Nomination deadline approaching for Risk Manager of the Year

*Business Insurance* is accepting nominations of top risk managers for the magazine's annual Risk Manager of the Year® award and Risk Management Honor Roll®.

Anyone involved in risk management for a corporation, financial institution, nonprofit organization or government entity is eligible to be nominated. A candidate need not practice risk management full time but must be a full-time employee of the organization for which he or she manages risk.

This year, a simplified, two-part process for nominating candidates has been implemented.

Part I requires a summary, not more than 600 words in length, of a candidate's most recent accomplishments and factors that make him or her worthy of the award.

An independent panel of former award winners and risk management professionals will screen the Part I nominations. The deadline for Part I nominations is **Dec. 15, 2006**.

If selected, the more detailed Part II nomination form will be required. Part II nominations will be reviewed and scored by a panel of independent judges, including executives from leading insurance companies, brokerage

firms, risk management consultants, risk management educators as well as past winners of the awards.

The top-scoring candidate will be declared the Risk Manager of the Year.

The winners will be announced and profiled in the April 30, 2007, issue of *Business Insurance*, and the 2007 Risk Manager of the Year will be the 30th person so honored.

For more information and to download the nomination forms, please visit [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY).

All Part I nominations must be received no later than Dec. 15.

For complete coverage of the NBGH conference, visit [www.BusinessInsurance.com/ConferenceExtra](http://www.BusinessInsurance.com/ConferenceExtra)

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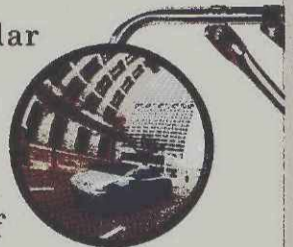


**WAUSAU COMMERCIAL AUTO AT WORK.** While looking at the claim history of a food distributor we insure, we noticed a number of issues with its fleet safety. During the previous two years there had been 15 accidents, including a few sideswipes, that accounted for almost \$62,000 (nearly 50% of total costs).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

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mounted elliptical mirrors on all of the trucks. Another problem was finding the right drivers.

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



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# FMLA: Employers seek clarity on administering employee time off

CONTINUED FROM PAGE 3

estimated 6.1 million workers took FMLA leave in 2005.

"I think the original intent of it is something that we as employers all agree with," said Debbie Robbins, human resources director for the city of Gillette, Wyo. "But there's always that 5% of your employee base that wants to push the limits."

Employers have few concerns about the "family" part of the FMLA, which lets workers take time to care for a newborn or adopted child, say observers. Their problems instead lie with the ambiguity—and abuse—of provisions involving medical leave.

"A lot of employees work the system," and in instances where there are absenteeism issues, they "wave the FMLA flag," rather than risk disciplinary action or termination, said David S. Mohl, an Atlanta-based senior consultant with Willis National Employee Benefits Practice.

"We've had people go out on extended (FMLA) leave" when they are working unsuccessfully under performance plans to correct problems with their work, said Linda Lul-

li, associate vice for human resources at Bryant University in Smithfield, R.I. "We're starting to see that happen more frequently," she said.

Clarity for those administering the leave would be useful, she said.

A particular sore point with employers is the use of unscheduled and frequent intermittent leave. Observers note that under current regulations, employers must permit employees to take intermittent FMLA leave in increments that are as small as the smallest time period their employer's payroll system uses to account for absences, which in some cases can be as small as six minutes.

Permitting employees to take time off in such small increments "creates an incredible burden from an administrative standpoint as well as just from a business operational standpoint," said Shelly Wolff, Stamford, Conn.-based North American practice leader for health and productivity at Watson Wyatt Worldwide.

"It takes quite a bit of effort" on the part of supervisors to make sure intermittent leave is not being abused, said Gary Blushman, assistant human resources director for the city

of Provo, Utah, where employees can take intermittent leave in 15-minute increments.

"I think our biggest issue with the FMLA is that it doesn't allow us to get our arms around employees who abuse it"—particularly intermittent FMLA, where it can be easily granted—"and then we can't control it," said Ms. Robbins. "I'd like to see the ability to tighten it up a little bit more," she said.

Business groups would like the DOL to allow employers "to charge a minimum of a few hours for each instance of intermittent leave," as well as instituting a requirement that employees give advance notice, unless there is an emergency, said Geoffrey Manville, a principal in Mercer Human Resource Consulting's Washington office.

Another problem is the definition of a "serious" medical condition. Observers say the regulations, which indicate that employees are eligible for leave if they are incapacitated for more than three days and are under continuing medical care, has been abused to cover minor conditions such as coughs, colds and headaches.

Contributing to the confusion is that federal courts have differed on the issue of whether a particular condition should be considered serious, said Arthur Silbergeld, a partner with Proskauer Rose L.L.P. in Los Angeles.

The procedures in certifying an employee's eligibility for FMLA leave have been an issue as well.

"An employer can require medical certification for an employee or a family member's serious health condition, but the rules prohibit direct contact between an employer and the employee's or family members' health care provider without the employee's consent. So when a certification is incomplete...the employer has to send the employee back to the provider," said Mr. Manville.

"You'd be shocked at the forms that employers get" from physicians, said Victoria J. Schweitzer, senior vp in Aon Consulting's health and productivity practice in San Francisco. She said she has seen certification forms that say that an employee gets tired and should be allowed "as much FMLA as she needs. How can an employer plan or schedule with that? It's impossible."

"Business groups would like the DOL to allow employers to contact the provider to confirm the authenticity of certification and legitimacy of the employee's claims," said Mr. Manville.

Observers say if the employee decides to dispute the request, it must obtain an opinion from its own doctor. And if there is a disagreement between the employee and the employer's physician, a third, neutral doctor must be agreed upon to issue an opinion as well—with both the employer's doctor and the neutral physician compensated by the employer, say observers.

This "can be too costly...and not worth the effort," said Jason Straczewski, director, human resources policy at the National Assn. of Manufacturers in Washington.

In fact, "many times when you get to the third opinion, the employee's already back at work," said Matt Morris, an employment law consultant with Lincolnshire, Ill.-based Hewitt Associates Inc.

E-mail comments may be sent to the DOL at [whdcomments@dol.gov](mailto:whdcomments@dol.gov) no later than Feb. 2, 2007.

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## Dept. of Labor not expected to make FMLA alterations

By JUDY GREENWALD

While the U.S. Department of Labor is asking for public comment on possible changes to the Family and Medical Leave Act and its regulations, many observers are pessimistic that the department is likely to take action, given the DOL's failure to do anything so far.

For instance, the department was expected to issue new regulations following the U.S. Supreme Court's 2002 decision in *Ragsdale vs. Wolverine World Wide Inc.*, but never did.

That opinion struck down a DOL regulation that if an employee takes leave and the employer does not designate the leave as FMLA, the leave cannot be counted against an employee's entitlement to 12 weeks of FMLA leave.

"I'm not really confident they're going to do that much, but who knows? I could be wrong," said Joan E. Gale, an attorney with Seyfarth Shaw L.L.P. in Chicago.

Arthur F. Silbergeld, an attorney with Proskauer Rose L.L.P. in Los Angeles, said the DOL's head may be a Republican appointee, "but there are a lot of people in the department who are career employees who have a different view, so I think a tug of war between the administration and the career employees is likely to result in very little action," unless Congress moves to act on the issue. Right now, that is not a top priority, according to Mr.

Silbergeld.

The chances of any action are "slim to none," said Michael W. Fox, an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas.

"There's not enough time left, I would think, in the Bush administration" for anything to get through Congress, Mr. Fox said.

He pointed out that after the request for information, the Labor Department would issue proposed rules, and then it would wait for public comment on those.

"If they had anything that was deemed to be taking away some rights, I think they would meet a firestorm of resistance, at least until after the presidential election," Mr. Fox said.

Dorian Smith, a Valhalla, N.Y.-based technical consultant with Towers Perrin, explained, "We are under a Bush DOL, and to the extent this DOL wants to get something out while they still have power, we would think they should hope to have something issued before the elections in 2008."

Some observers say that if the Department of Labor takes any action at all, it is likely to be in response to the *Wolverine* decision.

That decision "left a gaping hole" in the regulations, said Matt Morris, an employment law consultant with Lincolnshire, Ill.-based Hewitt Associates Inc.

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# Business Insurance OPINIONS

## Lifted ban doesn't give green light to insurers

IT MAY BE TRUE that everything is insurable if you are prepared to pay the right price, but the limit to that assertion is becoming more apparent.

In some cases, the potential devastation that would be caused by certain actions, such as nuclear terrorist attacks, is too great to be borne by the insurance industry alone. In other cases, it is a case of once bitten, twice shy.

The latter would seem to be the very understandable reason that insurers are not expected to rush back into the market for insuring the risks of offering silicone breast implants.

As we report on page 1, even though the Food and Drug Administration has determined recently that silicone implants are safe, insurers are still unlikely to offer coverage for manufacturers of the implants under their liability policies.

That's hardly surprising, given that despite the failure of researchers to prove a link between certain illnesses and silicone implants, manufacturers and their insurers have paid out billions to settle lawsuits alleging the connections.

While we continue to believe in the insurance industry's ability to develop innovative solutions to what at first glance might seem intractable problems, the threat of having to pay for undocumented and unproved damages should be enough to deter even the most optimistic underwriters.

*The threat of having to pay for undocumented and unproved damages should be enough to deter even the most optimistic underwriters.*

## Longer work week may increase proficiency

NORMALLY, IT WOULDN'T be news when the top leaders of an organization announce that it will be imposing a five-day work week.

But when the organization happens to be the U.S. House of Representatives and the change is such a departure from current practice, then perhaps it is indeed news.

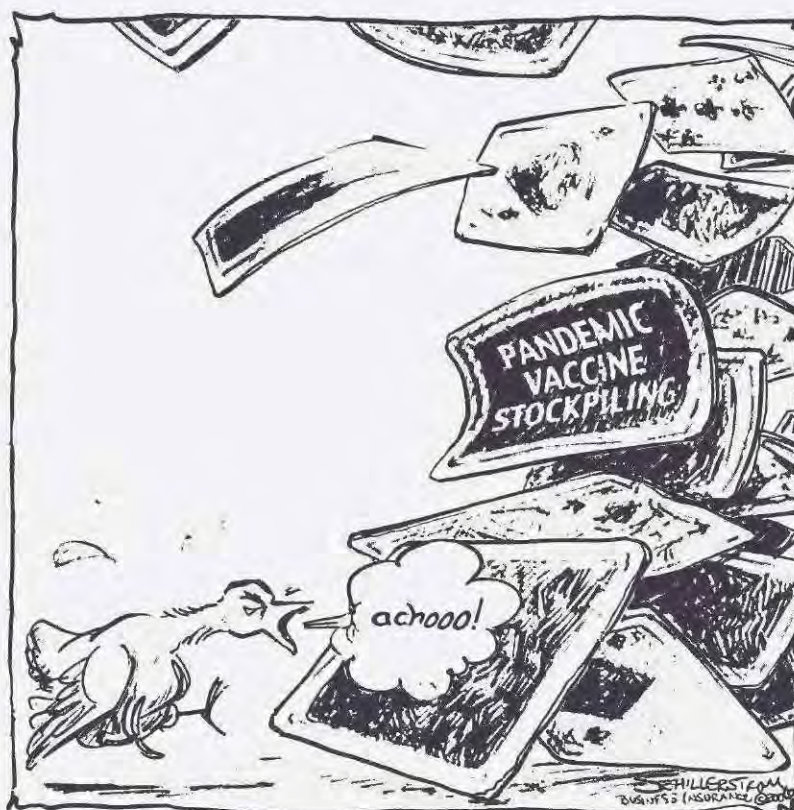
Rep. Steny Hoyer, D-Md., who will become House Majority Leader when the new congressional session begins next month, said last week that members of the House should expect to work Monday through Friday beginning Jan. 4.

To be sure that this won't be a work week that will be overly taxing, members will be expected to come in by late Monday, with business concluded early Friday afternoon. Still, that will be a big change for members whose Washington work week for much of this year began late Tuesday and concluded late Thursday. And that was when Congress was in session and not on one of its frequent recesses.

Why is this change—a modest one in our view—important for risk and employee benefit managers? It could mean, we hope, that with more time spent in Washington, lawmakers will not have to rush to complete action on bills but instead be able to give important issues—extension of the Terrorism Risk Insurance Act comes to mind—the careful attention they deserve.

So often the "crowded congressional calendar" is used as an excuse from legislators on why they couldn't act on a worthy piece of legislation. Well, perhaps the calendar wouldn't be so crowded if there were more days on it to consider proposals.

We hope Rep. Hoyer's commitment to a longer House work week is not just rhetoric and that members—who were elected, at least in part, to draft and enact needed legislation—embrace it.



## Community Forums

A new feature allows risk and benefits management professionals to connect and exchange information at [www.BusinessInsurance.com](http://www.BusinessInsurance.com). The BI Community Forums is an easy-to-use discussion board that enables readers to ask questions, exchange ideas and voice opinions. Topic-focused categories include:

- **Risk Managers Forum** on various risk management issues.
- **Benefits Managers Forum** on general benefits management issues.
- **In the News** to express opinions and comments.

- **Industry Focus Forum** on issues from probes, to quality improvement.

- **The Lighter Side.** Share stories of success as well as blunders.

- **General Forum.** Discuss general insurance market issues and conditions, trends and other topics.

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*Does contingent compensation to agents and brokers benefit insurance buyers?*



**NEXT WEEK'S POLL:** *Does your company provide the same coverage for mental health care expenses as it does for other medical conditions?*

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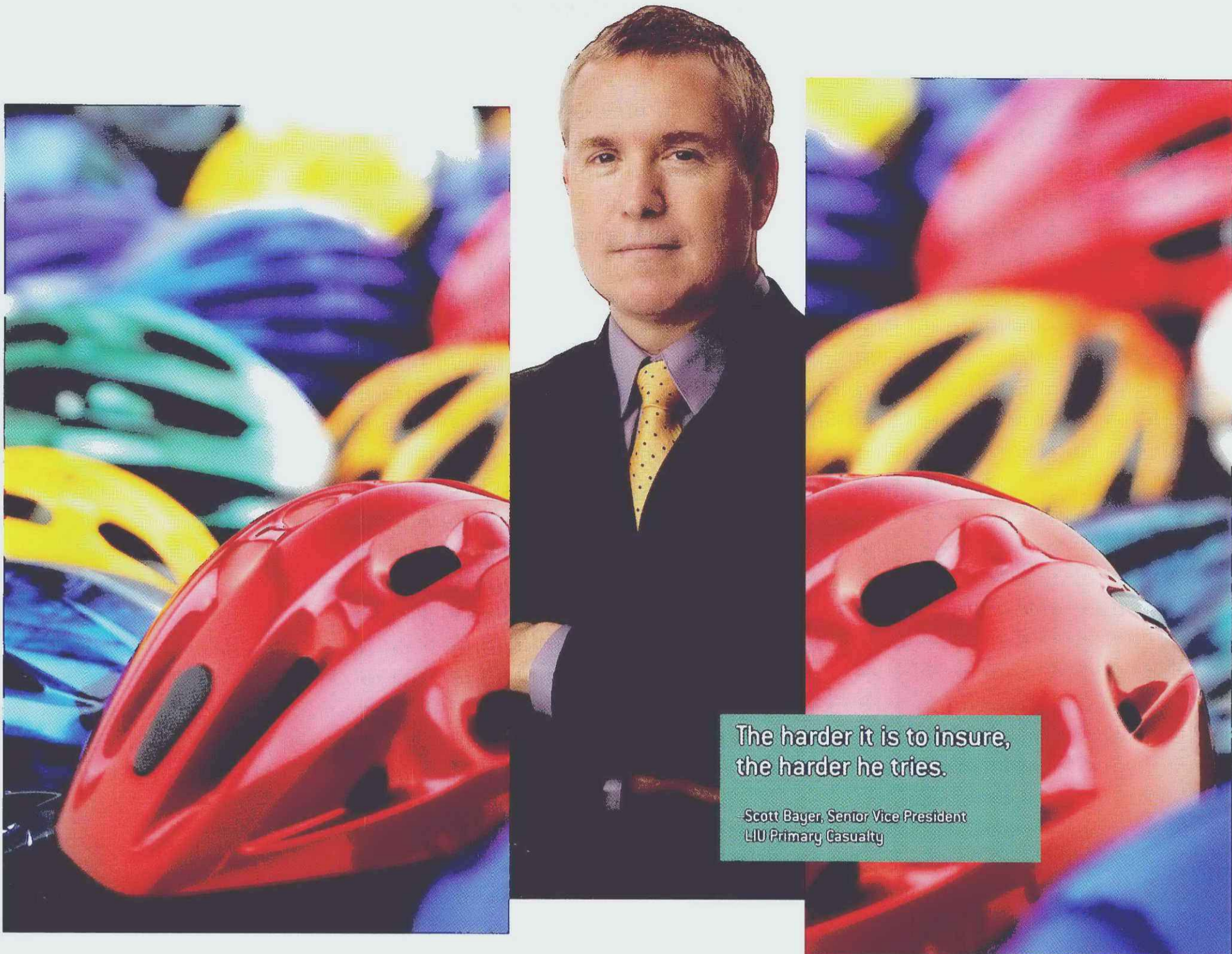
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**BENEFIT CONSULTING & OUTSOURCING**

Pendulum swings back to centralized planning / **Page 16**

Self-insured plans and insurers scrutinize medical tourism / **Page 17**

Some employers rethink outsourced benefits for workers/ **Page 20**

**BENEFITS MANAGEMENT**

# Transparency inquiries expand to benefits advisers

## Disclosure push expected to open door on how brokers and consultants get paid

By JOANNE WOJCIK

Government investigations into intermediary compensation practices, which focused initially on property/casualty placements, have expanded into the employee benefits arena and resulted in divergent industry expectations.

Some industry insiders say the result will be greater transparency from benefit brokers and consultants going forward. Others say the transparency push will only open a new Pandora's Box of potentially unethical behavior as brokers and consultants look for fresh

sources of hidden compensation to replace that exposed by new disclosure requirements.

While most small and midsize employers use insurance brokers to place their employee benefits business generally on a commission basis, most

large employers rely on consultants that often work for negotiated fees.

Regardless of the upfront payment arrangements, as recent investigations have brought to light, brokers and consultants often receive additional back-end payments, called overrides, which are generally based on the volume of business they place with an individual insurer.

While most of the investigations into contingent commissions in the placement of employee benefits business

See **COMPENSATION** next page

# Compensation: Benefit managers 'should ask more questions' of advisers

CONTINUED FROM PREVIOUS PAGE

involved mainly group life and disability lines—such as those that led to settlements by New York and California with Chattanooga, Tenn.-based UnumProvident Corp.—allegations also involved placing insured health and welfare programs as well as some of the stop-loss coverage purchased by self-insured employers.

For example, a 2005 lawsuit filed by New York Attorney General Eliot Spitzer against Aon Consulting, a unit of Chicago-based Aon Corp., charged the broker received a 15% “pay to play” commission from insurers in placing stop-loss coverage for the Herkimer County, N.Y., self-insured employee health plan.

Brokers and consultants began seeking such payments from insurers about 10 years ago when employee benefit costs started to climb and employers sought relief in the form of lower fees and commissions from their vendors, said Terry Havens, the chief executive of Havensure L.L.C., a Cincinnati benefits consulting firm.

In many instances, overrides help offset fees that employers pay for the broker's services, said Ted Reese, president of Des Plaines, Ill.-based Corporate Benefit Consultants Inc. “A lot of people are asking upfront what our commission is. We say we may be eligible for the bonus, but won't know until year-end. In those cases a lot of clients are asking that the override be applied toward their fees.”

If it did not receive overrides, “we would probably raise our fees slightly,” Mr. Reese said. “Overrides rep-

resent about 2% to 3% of total revenue.”

Since the probes by New York and other states started examining employee benefit placements, the Labor Department in July added a section to its Form 5500 Annual Return/Report to include broker compensation in excess of \$1,000 from parties other than the plan itself or the plan sponsor. This change is likely to raise the awareness among employers of these

**Employers 'truly need to look at the details and be much more demanding. They need to press everybody involved in the plan—not just the intermediaries.'**

Terry Havens, Havensure L.L.C.

additional compensation arrangements, sources say.

Some employers, such as Marsh Supermarkets Inc. in Indianapolis, restructured their broker contracts to ensure greater transparency. Mark Kitchen, the grocer's benefits manager, said Marsh Supermarkets put its broker on a retainer and “began doing everything net of commissions” in 2005.

Dennis Passovoy, president of Resource Financial Group Inc., a

benefit broker in Austin, Texas, predicts the additional scrutiny of contingent commissions and overrides will result in their eventual phase-out. “That would make us happy. We've always had a policy of transparency,” he said.

Even prior to settling with governmental parties in March 2005, Aon terminated its contingent commissions worldwide, a company spokesman said. Like many benefit brokers and consultants, Aon Consulting now provides “comprehensive disclosure of its compensation to clients, both before binding coverage and at the end of each year,” the spokesman said.

The Form 5500 change should cement this movement toward greater transparency, many benefit experts believe.

Benefit managers will “definitely be looking more aggressively at rate quotes and fees,” said Helen Darling, president of the National Business Group on Health, a Washington consortium of the largest U.S. employers.

But Mr. Havens remains concerned that many employers will remain in the dark even with greater disclosure requirements.

“These developments are all positive improvements, but the major weaknesses remain,” Mr. Havens said. “Employers haven't been diligent. They truly need to look at the details and be much more demanding. They need to press everybody involved in the plan—not just the intermediaries.”

“Benefit managers should ask more questions,” said Larry Boress, president of the Midwest Business

Group on Health, a Chicago-based employer coalition.

Questions should include: “What are the services that will be provided? What money will you be obtaining and from what sources? Is any of that coming from the payment I'm making?” Mr. Boress suggests. “Employers almost always end up paying for what was ostensibly a ‘free service.’”

Mr. Havens advises that employers ask about additional fees that may be charged to a benefit plan because “these fees are where the money is coming from to pay overrides to the brokers.” While insurers may be more concerned about compensation issues, Mr. Havens said he worries that will lead to brokers

becoming “much more creative.”

“There are almost as many ways for brokers to be compensated by insurers as there are for PBMs to get money from big pharma,” said Darrell E. Wells, director of risk management for Odessa, Texas, who also manages the city's benefits program. “Don't assume that by specifying a commission-free, fee-only relationship that somebody's not still getting something. Remember it's not so much what the broker says that's important. It's what they don't say.”

“Transparency is the word of the decade. Everybody's transparent. However, if you weren't looking before, you're not going to be looking at all of the additional data,” Mr. Wells said.

## Multicountry benefits require delicate touch

*Understanding local differences is critical*

By JUDY GREENWALD

Daunting complexities that are associated with developing any employee benefits program multiply as companies continue to globalize.

Different countries' cultures, laws, regulations and health care structures as well as firms' desire to compete for top talent while keeping an eye on costs are just a few of the factors that must be taken into account.

Other factors that must be considered in determining multinationals' global benefits strategy include whether the internationally based employees are local or expatriates, if the business is new to the country or is well-established, whether the local operation is a startup or an acquisition, the size of its presence in a particular country or region, and the local employees' benefits expertise, according to experts.

Meanwhile, the Sarbanes-Oxley Act's financial reporting requirements in the United States are leading many companies to centralize their benefit operations after many years of decentralization. But many are finding the crucial first step of data gathering—to determine what they already offer—a difficult task to accomplish, experts say (see story, page 16).

“The first hurdle to get over is to understand that the world doesn't operate like the U.S. operates,” said Richard Polak, president and chief executive officer of Los Angeles-based IBIS Advisors, an international HR consultancy.

Anthony Amato, vp of benefits and corporate travel for Silver Spring, Md.-based Discovery Communications Inc., which has 900 employees in 30 countries outside the United States, agreed.

“I think the biggest challenge is shaking off your U.S.-centric, or your U.S. thinking, your U.S. mentality” in developing programs in other countries. Sensitivity to the local culture and business practices

is a must, Mr. Amato said.

Mark Wood, vp, human resources for Novato, Calif.-based BioMarin Pharmaceutical Inc., said, “There's a practical challenge of integrating the different ways of doing business in different countries with our kind of standard way of doing business here in the U.S.,” whether that involves logistical, operational or compliance requirements. The firm produces biopharmaceuticals for rare diseases and medical conditions.

“We need to constantly remind ourselves of the international requirements of what we do and remind our international folks of the international implications of what they do,” said Mr. Wood, whose firm has 20 international employees in seven nations.

Ford Motor Co. has developed five “books” that outline its strategy and procedures for its compensation and benefit programs, said Michael Bush, Ford's Dearborn, Mich.-based director, income security programs, U.S. and global operations.

“We've tried to set up a system that is almost like a cookbook for the field,” Mr. Bush explained. “It's all online now, and the HR people can pull this information up and see it.”

### *Interacting locally*

Firms must determine how their benefits programs intersect with the local national health system, said Bill Maloney, Phoenix-based worldwide partner with Mercer Health & Benefits, a unit of Mercer Human Resource Consulting.

There are differences even among countries with national health systems, “so consequently the benefits that an employer's going to purchase are going to reflect how that health system is set up,” said Mr. Maloney.

For instance, while Canada and the United Kingdom both have national health care, in the United Kingdom, employers can buy supplementary policies that give employees better access to the national health system and reduce

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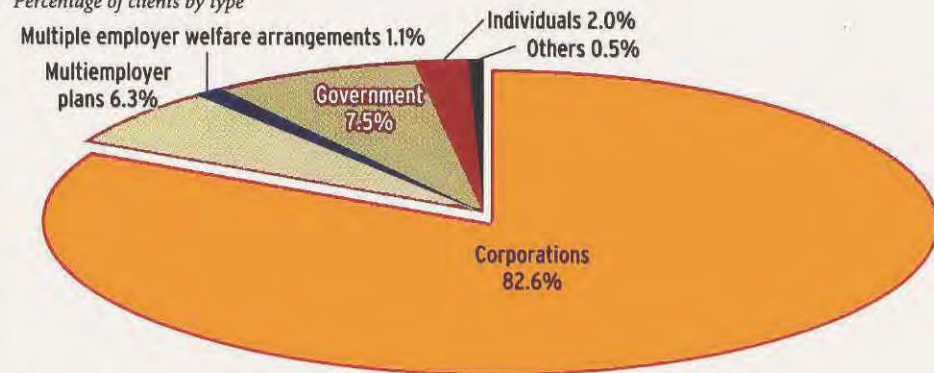


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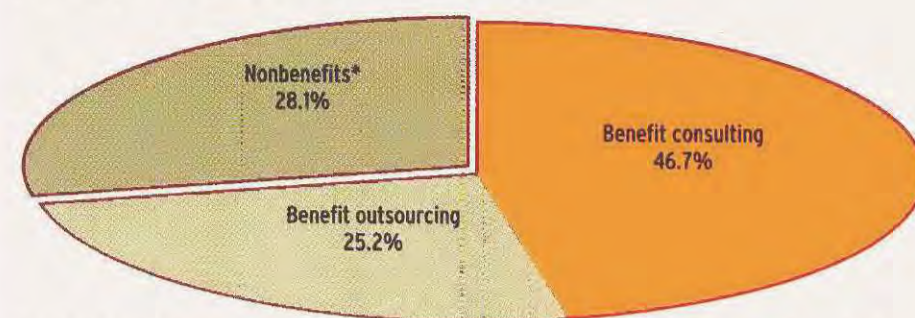
Percentage of clients by type



Source: BI survey

## BENEFIT SERVICES

Percentage of services offered by all companies listed

\*Includes claims administration, compensation consulting, insurance commissions and other nonbenefit consulting.  
Source: BI survey

## Ranking

## World's largest employee benefit consultants

Ranked by worldwide benefit consulting revenues\*

Rank	Company/Address	Phone/Fax/Web site	2006 benefit consulting revenues <sup>1</sup>	2005 benefit consulting revenues	% change	% of total gross revenues from benefit consulting	2006 gross revenues from benefit outsourcing services <sup>1</sup>	Principal officer
1	Mercer Human Resource Consulting 1166 Ave. of the Americas, New York, N.Y. 10036	212-345-7000 Fax: 212-345-7414 <a href="http://www.mercerhr.com">www.mercerhr.com</a> , <a href="http://www.merceric.com">www.merceric.com</a>	\$1,814,041,000 <sup>2</sup>	\$1,757,120,000 <sup>2</sup>	3.2%	67%	\$637,287,000 <sup>2</sup>	M. Michele Burns, chairwoman/CEO
2	Watson Wyatt Worldwide 901 N. Glebe Road, Arlington, Va. 22203	703-258-8000 Fax: 703-258-8585 <a href="http://www.watsonwyatt.com">www.watsonwyatt.com</a>	\$1,124,000,000 <sup>3</sup>	\$1,014,000,000 <sup>3</sup>	10.8%	84.5%	—	John Haley, president/CEO
3	Aon Consulting Worldwide 200 E. Randolph St., Suite 1000, Chicago, Ill. 60601	312-381-4800 Fax: 312-381-0240 <a href="http://www.aon.com">www.aon.com</a>	\$913,342,000 <sup>2</sup>	\$896,369,000 <sup>2</sup>	1.9%	71%	\$253,830,000 <sup>2</sup>	Andrew Appel, CEO
4	Hewitt Associates Inc. 100 Half Day Road, Lincolnshire, Ill. 60069	847-295-5000 Fax: 847-883-9019 <a href="http://www.hewitt.com">www.hewitt.com</a>	\$842,600,000 <sup>4</sup>	\$802,800,000 <sup>4</sup>	5.0%	30%	\$1,980,000,000 <sup>4</sup>	Russ Fradin, chairman/CEO
5	Towers Perrin 1 Stamford Plaza, 263 Tresser Blvd., Stamford, Conn. 06901	203-326-5400 Fax: 203-326-5499 <a href="http://www.towersperrin.com">www.towersperrin.com</a>	\$790,600,000	\$731,200,000	8.1%	51.8%	—	Mark V. Mactas, chairman/CEO
6	PricewaterhouseCoopers Human Resource Services 300 Madison Ave., New York, N.Y. 10017	646-471-3000 Fax: 813-286-6000 <a href="http://www.pwc.com/us/hrs">www.pwc.com/us/hrs</a>	\$685,000,000	\$630,000,000	8.7%	70%	—	Michael Rendell, global leader- human resource services
7	Deloitte & Touche L.L.P. 1633 Broadway, New York, N.Y. 10019	510-273-2371 Fax: 213-688-3358 <a href="http://www.deloitte.com">www.deloitte.com</a>	\$630,773,000 <sup>5</sup>	\$621,410,000 <sup>5</sup>	1.5%	40%	—	Ainar Aijala, vice chairman -Deloitte Consulting L.L.P./global service area leader-Human Capital
8	The Segal Co. 1 Park Ave., New York, N.Y. 10016-5895	212-251-5000 Fax: 212-251-5490 <a href="http://www.segalco.com">www.segalco.com</a>	\$166,000,000	\$159,900,000	3.8%	90%	—	Howard Fluhr, president/CEO
9	Ernst & Young L.L.P. - Performance Reward & Human Capital 1225 Connecticut Ave. N.W., Washington, D.C. 20036	202-327-6000 Fax: 202-327-6714 <a href="http://www.ey.com">www.ey.com</a>	\$160,000,000 <sup>3</sup>	190,000,000 <sup>2</sup>	-15.8%	N/A	—	James Bosserman, director-Americas Performance & Reward
10	Gallagher Benefit Services Inc. 2 Pierce Place, Itasca, Ill. 60143	630-773-3800 Fax: 630-285-4000 <a href="http://www.gallagherbenefits.com">www.gallagherbenefits.com</a>	\$131,400,000 <sup>2</sup>	\$130,500,000	0.7%	75%	\$3,504,000 <sup>2</sup>	James W. Durkin Jr., president

\*Excludes revenues from claims administration, compensation consulting, insurance commissions and other nonbenefit consulting. 1 Estimated. 2 BI estimate. 3 Fiscal year ending 6/30. 4 Fiscal year ending 9/30. 5 Fiscal year ending 5/31. N/A Not available.  
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# U.S. regulations driving centralization of worldwide benefits planning

By JUDY GREENWALD

Benefit managers are scrambling to get a better handle on their international benefit plans in light of the Sarbanes-Oxley Act's financial reporting rules in the United States.

To better comply, many companies now are seeking to centralize their benefits operations.

Because of acquisitions, "many of our clients have as many as 10 to 15 businesses in a common country" with different types of benefit plans, said Tom Dolan, Somerset, N.J.-based senior vp, global benefits for Aon Consulting Worldwide.

Yet many may have little knowl-

edge of their international units' benefits packages. In addition, gathering this data often proves difficult because of factors that include M&A activity, language barriers and local officials' protection of their "turf," industry experts say.

Sarbanes-Oxley requires firms to report on their pension plans' impact on financials and accounting worldwide, which means "headquarters needs to understand the procedures related to every single benefit program around the world" and monitor them effectively, said Yungchai Kim, Secaucus, N.J.-based principal and head of global consulting for Buck Consultants Inc.

"We're seeing a major trend towards a more coordinated or centralized thinking around global benefit planning that's being driven largely among U.S. multinationals by Sarbanes-Oxley," said Mr. Dolan.

Companies "don't want to be caught off guard not knowing what their current practices are. They're frightened by the fact that the liability surrounding benefit plans can be potentially huge...so there's a whole kind of governance paradigm" that's driving companies, he said. "More and more, we're being asked by multinational companies, 'How can we get our arms around what we're doing?'"

The task is not easy.

"Data collection is heavy lifting," said Robert Wesselkamper, Chicago-based international practice director for Watson Wyatt Worldwide. "It is not elegant, it is not attractive; it's hard work and it's a universal struggle that all companies share," he said.

The challenge is to convince local staff "why they should take their time to give you that information," said Jayne Lux, director of the Global Health Benefits Institute, an initiative of the Washington-based National Business Group on Health. "They're busy like all of us."

Ms. Lux said, "If you do it com-

pellingly, I think (local staff) may come along, although I'm not so delusional to think it may happen in just one conversation."

Turf wars can be a factor as well, say observers.

Donald E. Wiening, vp at Mountain Lakes, N.J.-based consulting firm Globex International Group, said if the human resources manager has had "a lot of autonomy in the past, it's very difficult" to get that person to give up any authority.

In one successful strategy, Mr. Wiening said, a company obtained the information it needed by having local consultants interview the local staff.

## Global: Benefit challenges abound

CONTINUED FROM PAGE 12

waiting times. In Canada, regulations "prevent that kind of private insurance," Mr. Maloney said.

Meanwhile, particularly in Latin America and Asia, "there's a great shift away" from having the government provide benefits, said Greg Arms, New York-based chairman and executive vp of Willis Group Holdings Ltd.'s employee benefits practice.

Jayne Lux, director of the Global Health Benefits Institute, an initiative of the Washington-based National Business Group on Health, said a U.S. wellness program could be extended to and successfully rolled out in Canada or Australia. "Can you then roll it out to Africa or Bangladesh, or one of the many countries that have what many would argue to have greater cultural and certainly greater language differences?" she asked. "I think the feeling now is, you can't."

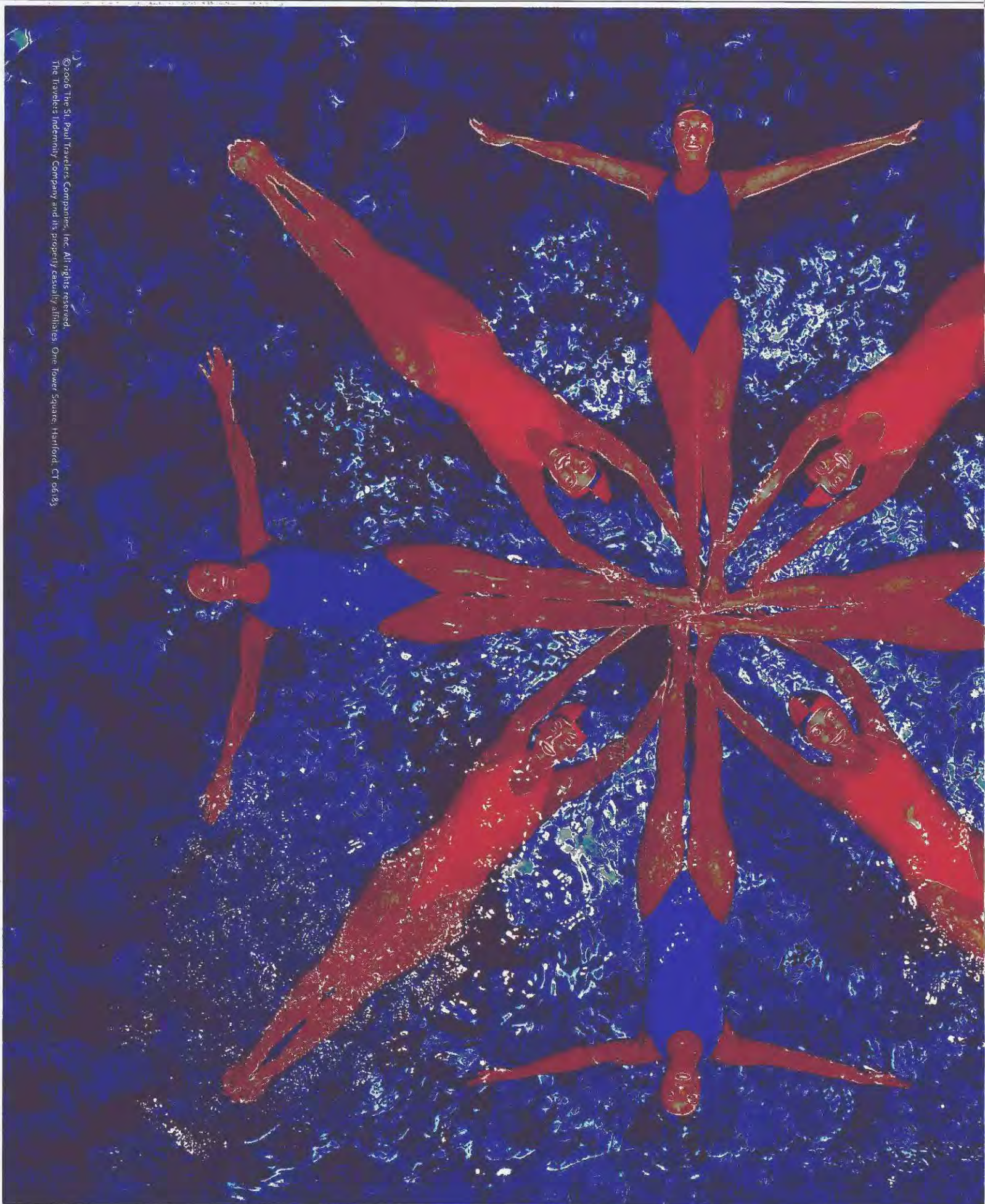
In that case, the next step is whether to change the existing program or collaborate with local colleagues to develop something new, said Ms. Lux.

### Competitive considerations

Competition for talent is a factor as well.

Suzanne Wamba, director, worldwide health and welfare benefits for New York-based White & Case L.L.P., which employs about 4,400 in 25 countries, said the law firm sees benefits "not only as part of remuneration, but as a very core component to attracting good talent."

In the United Kingdom, for instance, there is a "very established practice" of providing company vehicles to managers, "so to be competitive, any U.S. company operating in that marketplace has to offer a similarly competitive package of benefits," said Steve Rimmer, New York-based principal with PricewaterhouseCoopers International Ltd.



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# Insurers investigate medical tourism to save money on care

*Questions remain about quality of care in overseas facilities*

By **KAREN PALLARITO**

Intrigued by the promise of up to 80% savings, many U.S. health insurers are at least investigating the possibility of allowing patients to travel overseas for certain major surgeries such as hip and knee replacements and heart bypass, insurers, consultants and travel arrangers say.

CIGNA HealthCare and Aetna Inc. are among major U.S. insurers exploring the concept of outsourcing some procedures to health care facilities outside the United States.

"At this point, we're really assessing (the option) so we can be in a better position to educate and consult with our employer groups," said Jackie Aube, vp of product at CIGNA HealthCare in Bloomfield, Conn. Although, she added, it's too soon to say how the company will proceed.

Meanwhile, Aetna is "starting to explore putting an offering together for our plan sponsors or individual

members at their request," said Martha Temple, a vp and head of Aetna Global Benefits in Hartford, Conn.

Some insurers already allow members to seek care abroad as an out-of-network benefit, but few offer products that leverage international cost savings for their domestic clients. Whether insurers will forge ahead with new offerings or wait while self-insured employers test the waters is unclear.

"I think the health plans are still doing their homework," trying to understand the market and gauge demand, said Joseph Marlowe,

senior vp and national health care practice leader for Aon Consulting in Radnor, Pa.

### *Testing the water*

Still, there appears to be plenty of behind-the-scenes activity. One of the early adopters is McKee Benefits Service Corp., a unit of McKee Heritage Holding Co. Within weeks, McKee plans to roll out an overseas option to selected employers who receive group health insurance through one of its two insurance companies—Benicorp Insurance Co. in Indianapolis and Municipal Insurance Co. of America in Arlington Heights, Ill.

ton Heights, Ill.

McKee Benefits was formed to partner with GlobalChoice Healthcare, an Albuquerque, N.M.-based medical travel arranger that has a hospital network including U.S. and international facilities that agree to McKee's global pricing structure. Gordon Larson, managing director of that McKee unit, said the global health alternative is a plus for the company's clients, mainly small to midsize employers.

"This is a way to hold down the loss expenses being incurred within the plan, and that absolutely translates into holding down premiums in subsequent years," Mr. Larson said.

Employees, too, would see some savings. Because of the cost differential, McKee intends to waive the deductible and coinsurance for individuals who opt to travel overseas or to another U.S. market for their surgery. All travel-related expenses would be covered and the company is "looking at the possibility" of providing participants with a cash stipend to cover lost wages, Mr. Larson added.

Although medical tourism has recently surfaced as a topic of discussion among medical directors, the insurance industry has not taken a formal position. "There are still too many unanswered questions," a spokesman for America's Health Insurance Plans in Washington.

### *Quality assessment*

A key concern is the quality of care that people would receive overseas. Accrediting bodies, such as the Joint Commission International based in Oak Brook, Ill., are beginning to ease those worries by putting their stamp of approval on facilities that meet various standards for patient safety.

But the quality assessment process is still in its infancy.

The JCI, an affiliate of the Joint Commission on Accreditation of Healthcare organizations, began accrediting non-U.S. hospitals in 1999. It currently accredits some 100 hospitals in 22 countries, including Bumrungrad International in Bangkok, Thailand, a facility that has carved out a niche in medical tourism.

"Certainly some of the leading hospitals are differentiating themselves through accreditation," said Karen H. Timmons, JCI's president and chief executive officer, "but I would not say that the 100 that we have accredited was due to (medical tourism)."

It's also unclear how such a benefit would be incorporated into benefit packages provided by an employer. For example, under many plan structures, there are no financial incentives to encourage patients to select overseas hospitals, said David Frazzini, a principal with Mercer Health & Benefits in San Francisco. "If I've got a hospital copayment of \$250, there's no reason for me to think about going to India to do this (surgery), unless I've got family there."

Union tensions over global out-

See **MEDICAL TOURISM** next page



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# Medical tourism: Questions remain about quality of overseas care

CONTINUED FROM PREVIOUS PAGE

sourcing also threaten to derail medical tourism programs, some experts said. For example, union pressure stymied attempts by Blue Ridge Paper Products in Canton, N.C., to roll out an overseas surgical program with IndUShealth, a Raleigh, N.C., company that arranges for health care at hospitals in India. The program unraveled when union leaders bristled at the notion of overseas health care.

In retrospect, IndUShealth President Thomas H. Keesling insisted that the union's objection is not necessarily indicative of broader

organized labor opposition. "We think that was just an isolated instance, certainly not representative of the discussions we've been having going forward," he said.

Despite potential hurdles, proponents of medical tourism say the cost advantages are too large to ignore.

"Sending people overseas for surgery is actually what I consider the magic bullet for health care because it's the only thing today that an employer can put his finger on and actually guarantee hard dollar savings," said Jonathan S. Edelheit, vp of United Group Programs, a third-party employee benefit pro-

## COST SAVINGS

Cost estimates for major surgeries

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U.S. price: \$29,000  
International price: **\$8,000\***

\*Includes air travel and hotel allowance.  
Source: PlanetHospital

gram administrator in Boca Raton, Fla. The company's plan, called OptiMed Health Plan, includes an overseas surgery benefit.

UGP is partnering with PlanetHospital, a Malibu, Calif.-based medical tourism company on the offering, Mr. Edelheit said. The TPA also is developing proprietary products on PlanetHospital's behalf, and is working with self-insured employers ranging in size from 200 to 90,000 lives that are interested in exploring an overseas option.

PlanetHospital President Rudy Rupak said his company is in talks with a major unnamed insurance company to try to understand how

to best use medical tourism. "I think they've already figured out that it makes sense for them to cover (overseas medical procedures), and what they want to do is understand just how much cost savings they could achieve as well as their employers could achieve," Mr. Rupak said.

## Utilization

Meanwhile, IndUShealth's Mr. Keesling said he expects to finalize an agreement with an insurance company sometime this month. The undisclosed insurer is setting up a corporation to partner with the global health care service and offer the option to its customers.

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**'Sending people overseas for surgery is actually what I consider the magic bullet for health care because it's the only thing today that an employer can put his finger on and actually guarantee hard dollar savings.'**

Jonathan S. Edelheit,  
United Group Programs

Roger L. Ehrman, an Arvada, Colo., insurance broker with Ehrman & Associates Inc., suspects medical tourism will have particular appeal among employers in rural U.S. areas, where there is sparse competition among providers and little incentive to negotiate prices.

On a per-unit basis, the potential savings—the result of lower overseas labor and supply costs—are quite stunning. It might cost \$10,000, including travel to have coronary bypass surgery in India vs. \$70,000 to \$80,000 in the United States, Mr. Marlowe said.

But how frequently does the situation present itself in a given company and how many people would choose the overseas option? "When all is said and done," Mr. Marlowe said, "it's not going to be as much as people might think. We're talking something considerably less than 5% in net savings, and it could very well be less than 2% or 3%."

He said the overall savings would be less, in part, because only a small percentage of patients would use the overseas treatment option.

Still, growing interest in medical tourism is a good development, he said.

"If it does get traction, I think it's going to serve as a wake-up call to the U.S. medical industry, particularly the larger hospitals that are doing complicated surgeries—that they have to be very serious about examining their methods, improving their efficiency and quality," Mr. Marlowe said.

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# Outsourcing of benefits extends beyond administration

## Relationships and expertise combine in external partnerships

By RUPAL PAREKH

More employers are moving away from one-stop, total outsourcing of employee benefits and opting instead to selectively farm out key functions to specialized vendors, experts say.

"Benefits administration is a relatively easy thing to outsource—it's been going on for years, and I don't think that's going to change," said Helen Darling, president of the Washington-based National Business Group on Health. Where the "complex decisionmaking" for employers comes in is not with choosing what functions to outsource, but rather "deciding how to outsource," Ms. Darling said.

Companies increasingly are using a "best-in-class approach" to benefits outsourcing, noted Bill Crowley, vp, employee benefits outsourcing for Aon Consulting in Milwaukee. "Clients are gravitating toward service providers that have demonstrated a particular expertise in that space," Mr. Crowley said.

Rather than picking one outsourcer for all functions, a number

of companies are opting to partner with various service providers, depending on factors such as "the experience of the provider, quality of the technology and the history of high-quality service," said Rick Hubbard, practice director for technology and administration solutions for Watson Wyatt. Worldwide in Cleveland.

For example, vendors "that have very strong 401(k) administration may not have all the experience in the defined benefit and pensions arena," Mr. Hubbard said.

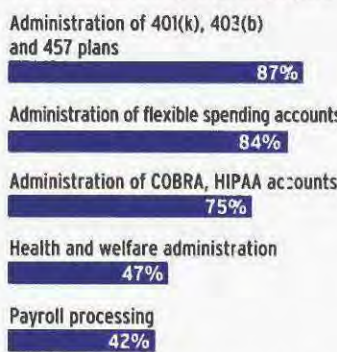
"Focusing on specialty service tends to be more of how we are utilizing outsourcing," said Paul Hackleman, benefits manager for San Mateo County, Calif.

Mr. Hackleman said he "tends not to use general service organizations" and prefers to work with several different human resources and employee benefits vendors that have "administrative skill sets that complement what we do internally."

San Mateo County currently uses separate outside vendors to administer flexible savings accounts and COBRA coverage; next year, it plans to outsource administration of retirement savings accounts and its dependent care assistance plan. "We don't outsource major things like eligibility or communication responsibilities; those we retain,"

### OUTSIDE HELP

Company benefits most likely to be outsourced by U.S. employers



Source: Aon Consulting, in a 2006 survey of more than 1,000 U.S. employers

Mr. Hackleman noted.

Commonly outsourced functions are administration of 401(k), 403(b) and 457 plans; FSAs; and COBRA and health insurance portability accounts (see chart).

"We don't want to have all of our eggs in one basket; that could be risky if the company should fail," said Mike Pikelnny, corporate actuary and employee benefit consultant at Hartmarx Corp. in Chicago, which outsources medical claims processing and 401(k) plan administration for its 4,100 employees through

separate vendors.

Additionally, "we'd be relying on that one company to be fair, which means they are their own scorekeeper," said Mr. Pikelnny. "Because we are a relatively large employer, we like to establish relationships with as many providers as possible."

Despite the draw toward using vendors with specialized experience, the best-in-class model of benefits outsourcing is not without its challenges, experts note.

"As an employer, you have to weigh the pluses and minuses of getting specialty services...and really need to do careful assessments and due diligence," the NBGH's Ms. Darling said.

In terms of vendor management, "it is generally very hard to deal with multiple vendors" compared with "more of a general contractor model, where the specialties are within one organization," Ms. Darling said.

A piecemeal strategy to outsourcing employee benefits also could lead to spikes in cost of service, Ms. Darling added.

At many large companies—particularly those with 40,000 employees and up—there remains a push to simplify things from a vendor management perspective, said Mary Tinebra, head of sales for Mercer HR Services in the Americas, who is

based in New York.

"A lot of the organizations in the large-space market are exploring the benefits in bundling services" for benefits outsourcing, Ms. Tinebra said.

"It's a mature market, so there are a lot of solutions available to people," said Diane Youden, senior manager in the human resources division of New York-based PricewaterhouseCoopers L.L.P.

"Cost is always part of the discussions and everybody is still cost-conscious, but I also think that the buyers...are a little more sophisticated," Ms. Youden said.

"In general, people need to be prepared to outsource—meaning that they work collaboratively with a partner and understand the expectations on both sides," said Mercer's Ms. Tinebra. "It can be an impediment to success if people don't go in understanding that it's a team effort."

"I think companies will continue to outsource, but some companies that have outsourced will actually bring parts back in house," said Watson Wyatt's Mr. Hubbard.

"People will continue to focus on what is the right combination of outsourcing for our company, rather than assuming that there is one model of outsourcing that fits all companies," Mr. Hubbard said.

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## In Brief

ING unit settles  
kickback charge

A unit of Dutch financial services firm ING Group last week agreed to pay \$33 million to settle litigation in New York and New Hampshire for allegedly accepting kickbacks to promote certain funds as part of retirement plans. Under the settlement, New York teachers and former teachers are eligible for \$30 million in restitution, while New Hampshire state employees are eligible to receive a total of \$3 million. ING did not admit or deny any wrongdoing.

UnitedHealth loses  
bid to block probe

Minnesota Attorney General Mike Hatch has the right to investigate UnitedHealth Group Inc.'s executive compensation

See IN BRIEF page 30

## Benefits Management Technology & Online Solutions

Benefits managers turn to the Internet to speed up processes; personal health

## IRS rules create problems for firms launching HSAs

By JERRY GEISEL

WASHINGTON—Employees who start health savings accounts next year could be shortchanged if their employers offer flexible spending accounts with grace periods.

In such situations, the maximum tax-free contribution made to an employee's HSA could be cut by as much as 25% during the first year of HSA enrollment, reducing funds available to pay for current year's health care expenses.

"If you have adopted a grace-period FSA, it can be very damaging for those who want to make maximum contributions to their HSAs," said Jay Savan, health and group welfare leader in the St. Louis office of consultant Towers Perrin.

The problem arises from Internal Revenue Service rules governing HSAs and grace-period FSAs. Those FSAs are so named because, unlike traditional FSAs in which employees forfeit unused account balances at the end of year, employees in

grace-period FSAs can tap balances that remain at the end of a year to pay for uncovered health care expenses incurred during the first 10 weeks of the next year.

The IRS, under pressure from Congress, in 2005 authorized grace periods for FSAs to reduce the impact of the end-of-year FSA forfeiture requirement, which has come to be known as "use it or lose it."

IRS rules, though, say that, with

See HSAs page 6

## Drug pricing system nixed by pact

Class settlement may  
lead to reduced  
prescription costs

By JOANNE WOJCIK

A proposed settlement of a class action lawsuit against the nation's No. 1 provider of average wholesale prices for pharmaceuticals likely will result in pharmacy benefit managers attempting to renegotiate their contracts to preserve their profit margins, experts say.

Employers, organizations and other PBM users should not pin their hopes on lowering their drug



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# Business Insurance PERSPECTIVE

## From 'ticking time bomb' to 'manageable challenge'

By Samuel H. Fleet



Samuel H. Fleet is president and chief executive officer of National Employee Benefit Cos. in Warwick, R.I.

Los Angeles Unified School District, the second-largest school district in the United States, estimates that its unfunded liability for retiree health care is \$5 billion—a figure that is roughly 80% of its entire annual budget.

The city of Duluth, Minn., population 90,000, calculates that the cost of its pledge to provide free lifetime health benefits to its retirees is \$178 million—more than double the city's current budget.

Maryland computes its unfunded retiree health care liabilities at \$23 billion. To cover the costs, the state would have to cut into current programs and services to increase its annual payments for retiree health care from \$300 million to \$1.9 billion.

The ticking time bomb of promises made to retirees is close to detonating.

Beginning in December, the Governmental Accounting Standards Board Statement No. 45 requires most large public employers to reflect the future cost of health care for retirees on their current balance sheets.

### Factors converge

A convergence of factors—the huge baby boomer population closing in on retirement age, retirees living longer and end-of-life health care becoming more expensive—is driving up those costs even as state and local governments are being forced to bring them out into the light of day. One expert, quoted in the "2006 Rockefeller Institute Reports on State and Local Government Finances," estimates that the total tab for public employers' retiree health care could approach \$1 trillion.

As state and local governments struggle to cope with the new reality, their decisionmaking is complicated

by the quagmire of solutions that appear attractive on the surface but carry hidden dangers. The best example: the decision on how to handle Medicare Part D.

Under Medicare Part D, one of the largest rising health care costs—prescription drugs—is subsidized by the federal government. But to encourage employers already offering this benefit to retirees to continue their coverage, the federal government provides a 28% retiree drug subsidy. In the corporate world, many businesses quickly took the subsidy in the first year of the program. But now they are finding that the subsidy comes with expensive strings attached, including the cost of annual actuarial studies, administrative burdens and federal audit compliance.

State and local governments face not only the drawbacks that corporations are discovering, but two others as well.

First, recently issued GASB rules require the subsidy to be reflected as current income rather than an offset for future liability. That means that while the huge cost of meeting retiree health care commitments is compounded into the future, the federal government funding that would cover more than one-quarter of the costs for prescription drug coverage won't be reflected.

Second, part of the value of the subsidy to corporations is that it is tax-free. For a business paying 35% in taxes, that increases the value of a \$600 subsidy to more than \$900. State and local governments receive no similar bump up in value because they don't pay taxes.

As a result, what looks like a simple decision—taking the 28% subsidy—is not always the best answer. In order to make the best decision, state and local government risk managers should familiarize themselves with all possible courses of action. In addition

to applying for the federal subsidy, public sector employers may decide to do nothing. By choosing this path, organizations do not disrupt current benefits to retirees and avoid the cost of applying for the federal subsidy. On the other hand, doing nothing fully exposes the employer to the GASB problem of future costs reported as current liabilities.

Government entities can also apply for a federal waiver that allows them to become a Medicare D prescription drug plan themselves. While this decision enables employers to design their own benefit packages and share the risk with the federal government, it also carries several additional burdens. These include a complicated filing process, exposure to federal audits and the administrative burden of tracking employees who sign up for Medicare Part D independently.

Lastly, states, counties and municipalities can contract with a prescription drug plan to outsource the administration of Medicare Part D. While this makes them ineligible for the federal subsidy and requires that they educate their retiree population about the plan they are sponsoring, the advantages include shifting the risk to the prescription drug plan and the federal government, and avoiding GASB 45 implications—thereby protecting credit ratings and the ability to sell bonds.

GASB 45 is having a dramatic impact on how public employers look at retiree health benefits. Medicare Part D adds a layer of complexity to the decisions that must be made about meeting the unfunded liability that threatens to overwhelm state and local government budgets. By understanding the nuances of GASB 45 and the Medicare Part D subsidy, public employers can make a smart decision that will turn a looming crisis into a manageable challenge.

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## Call for Nominations

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All articles are to be accompanied by a photograph of the author with

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We will notify you of any questions we have about your article and any substantial editing we think is necessary.

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**Rx**

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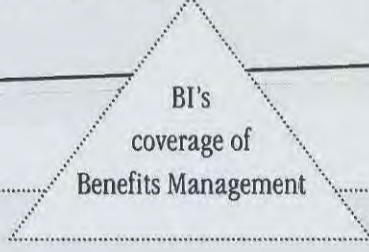
Court puts brakes on UPS ban

**Benefits Management Technology & Online Solutions**

Benefits managers turn to the Internet to speed up processes; personal health records gain traction; employees plan for the future with Web-based calculators. PAGE 9

**RANKING OF LEADING EMPLOYEE BENEFIT INFORMATION SYSTEMS**  
PAGE 10

DISPENSE AS WRITTEN



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## Comings & Goings

### BROKERS:

Willis Group Holdings Ltd. has named Dennis Miceli senior vp and employee benefits practice leader in the Denver office. Previously, he was senior vp for Van Guilder Insurance Corp.

Also in the Denver office of Willis, Brian Janek has been appointed senior vp. Previously, he was sales vp at Van Guilder.

In its offices in Novi and Grand Rapids,

Mich., Willis has named William J. McCarthy as managing partner. Previously, he was sales leader of the Michigan market for Aon Corp.

In its energy practice, Willis has named Loyd Esler as practice leader in North America in Houston. Before his promotion,

he was a managing partner.

Dallas-based McQueary Henry Bowles Troy L.L.P. has named Rick Jarrell as senior vp in the property and casualty



Mr. Jarrell

group. Previously, he was a senior vp and technology specialist for Marsh USA Inc.

Integro (Canada) Ltd. has named Brian Cameron principal and executive broker in the firm's client service area of the Toronto office. Previously, he was a senior vp with Marsh Canada.

Boston-based William Gallagher Associates has promoted Amy Sinclair to senior vp of the property and casualty group. Previously, she was a vp.



Ms. Sinclair

### INSURERS:

New York-based OBE the Americas has appointed Tom Leonardo as senior vp and health manager. Previously, he was a vp at ACE Ltd.

Beazley Group P.L.C. has named Neil Brown as the senior underwriter for its central region in Chicago. Previously, he was underwriting director, for Midwest broker operations, at Liberty Mutual Property.

### MANAGED CARE:

Dr. Mark S. Cukierman has joined Piscataway, N.J.-based QualCare Inc. as a medical director. He will serve alongside the current medical director, Dr. Bruce Fisher. Before joining QualCare, Dr. Cukierman was the senior medical director at HIP

Health Plan of New York.

### REINSURANCE:

New York-based Guy Carpenter & Co. Inc. has named David P. Tenhoo as managing director based in Minneapolis. He joins Guy Carpenter from Willis Re Inc., where he was an executive vp and manager.

### TO SUBMIT ITEMS

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.

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To place your ad, contact **Tina Vasilakis** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: [tvasilakis@BusinessInsurance.com](mailto:tvasilakis@BusinessInsurance.com)  
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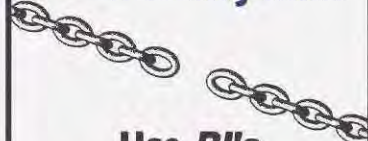
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### LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
**NRC REINSURANCE COMPANY LTD**  
and IN THE MATTER OF THE  
COMPANIES ACT 1981, SECTION 99  
NOTICE OF TERMINATION OF  
SOLVENT SCHEME OF ARRANGEMENT

NOTICE IS HEREBY GIVEN that the scheme of arrangement between NRC Reinsurance Company Ltd (the "Company") and its Scheme Creditors, which became effective on 31 March 2006 (the "Scheme"), has been fully implemented in accordance with its terms. In accordance with the provisions of Clause 8 of the Scheme, the Scheme is terminated upon all Scheme Liabilities having been paid in full. The date of Scheme termination is 24 November 2006. No further payments shall be made to Scheme Creditors by the Company in respect of Scheme Claims. Should you have any questions regarding this notice, please address them to:

Rene Lapiere & Associates, 700 de la Gauchetière Street West, Suite 1810, Montreal, QC H3B 0A6, Canada (telephone: +1 514 982 4852, facsimile: +1 514 284 1914)  
Dated this 24th November 2006

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### LEGAL NOTICE

IN THE MATTER OF  
**COMPAGNIE EUROPÉENNE  
D'ASSURANCES  
INDUSTRIELLES S.A.**  
AND THE COMPANIES ACT 1985  
PROPOSED SCHEME OF ARRANGEMENT

NOTICE IS HEREBY GIVEN that Compagnie Européenne d'Assurances Industrielles S.A. (the "Company") is proposing a solvent scheme of arrangement under Section 425 of the Companies Act 1985 (the "Arrangement") to certain of its insurance and reinsurance creditors.

The primary objective of the proposed Arrangement is to conclude the run-off of the business included within the scope of the Arrangement earlier than would be the case if claims were left to mature in the ordinary course of business.

The Arrangement (as) with the Company's existing and potential future liabilities under the following categories of insurance and reinsurance contracts only:

- All policies underwritten on the Company's behalf by H. S. Weavers (Underwriting) Agencies Limited ("Weavers Business"); and
- All policies underwritten on the Company's behalf by UIC Insurance Company Limited, all reinsurance policies underwritten by the Company in Brussels, and all direct non-proportional contracts of insurance that were underwritten by the Company in Brussels and placed with the Company by the Belgian brokers, Henriksen & Cie s.a., Thilly & Essel s.a. and Charles Bris s.a., all of which now form part of Guy Carpenter & Company, s.a. ("Non-Weavers Business").

Business excluded from the scope of the Arrangement will continue to be run off in the ordinary course, unaffected by the Arrangement. The Company will continue to pay claims arising out of Weavers Business and Non-Weavers Business which have been advised to and agreed by the Company as due and payable notwithstanding the Arrangement.

Under the Arrangement, Creditors will have a period of 150 days to submit claims. Creditors' claims will be paid in full at the value agreed or, in default of agreement, determined by an independent expert. There will be two independent experts, one based in the United States and dealing with claims arising out of Weavers Business and the other based in the United Kingdom and dealing with claims arising out of Non-Weavers Business. The independent experts will each have expertise in valuing the relevant type of risks. Claims will be discounted for the time value of money although the discount rate to be applied is lower than that which would be applied in a commercial commutation.

The Company intends to convene two meetings of Creditors for the purposes of considering and voting on the Arrangement, one meeting for Creditors with Notified Outstanding Claims and one Meeting for Creditors with IBNR Claims (each as defined in the proposed Arrangement). A copy of the letter sent to Creditors on 7 December 2006 detailing the Company's proposals in respect of the constitution of class meetings and a copy of the draft Arrangement are available from the Company's website at: [www.ceai.co.uk](http://www.ceai.co.uk) or from the Company at the address and reference given below.

The Company's application for leave to convene a meeting of creditors to vote on the Arrangement (the "Application") is scheduled to take place on 20 February 2007 at the Royal Courts of Justice, Strand, London WC2, United Kingdom. Creditors who wish to raise any issues as to the constitution of the meetings of creditors or otherwise relating to the conduct of those meetings are requested to contact the Company as soon as possible at the address and reference given below, so that these issues may be drawn to the attention of the Court at the hearing of the Application.

Any questions or concerns should be referred to the Company as soon as possible at the following address: c/o KMS Insurance Services Limited, 2nd Floor, America House, 2 America Square, London, EC3N 2LL, United Kingdom (ref: Paul Corver) or by telephone to +44 (0) 20 7488 5460, or by email to [ceaihelpdesk@kmsinc.com](mailto:ceaihelpdesk@kmsinc.com)

### LEGAL NOTICE

Advert of Creditors' Meetings  
IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT

Nos. 9391 and 9392 of 2006  
IN THE MATTER OF

**OSLO REINSURANCE COMPANY  
(UK) LIMITED**  
and IN THE MATTER OF  
**OSLO REINSURANCE COMPANY  
ASA LIMITED**

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that by an Order dated 29 November 2006 the High Court of Justice of England and Wales has directed that meetings ("Creditors' Meetings") of certain creditors ("Scheme Creditors") (as defined in the schemes of arrangement referred to below) of Oslo Reinsurance Company (UK) Limited and Oslo Reinsurance Company ASA ("the Scheme Companies") be convened for the purpose of considering and, if thought fit, approving (with or without modification) schemes of arrangement ("the Scheme") proposed to be made between the Scheme Companies and the Scheme Creditors.

Such Creditors' Meetings will be held at the offices of KPMG LLP, 1-2 Dorset Rise, London EC4Y 8EN, United Kingdom on 12 February 2007 commencing at 11am UK time at which place and time all such Scheme Creditors are requested to attend. Registration will begin at 10am UK time.

The Court has ordered that Oslo Reinsurance Company ASA should convene a single meeting of its Scheme Creditors to vote on its Scheme.

The Court has ordered that Oslo Reinsurance Company (UK) Limited should convene two meetings of Scheme Creditors to vote on its Scheme as follows:

- for Scheme Creditors in relation to their Scheme Claims other than IBNR claims; and
- for Scheme Creditors in relation to their IBNR claims.

Scheme Creditors which have Scheme Claims falling into both of these classes will be able to vote in each meeting. The proposed Scheme and the explanatory statement required to be provided pursuant to Section 426 of the Companies Act 1985 (together comprising the "Scheme Document"), the notice convening the Creditors' Meetings and the Form of Proxy and Voting Form for use at the Creditors' Meetings have been circulated to known potential Scheme Creditors and to those existing London Market brokers believed to have placed business with or on behalf of the Scheme Companies.

The Scheme includes business written under the former names of the Scheme Companies and business which has been transferred into the Scheme Companies. Broadly, the business included in the Scheme was written by various companies within the Storebrand, Polaris and Norden groups (both UK and Norwegian). A full description of the business included in the Scheme and the names of the companies which wrote the business can be found in the Scheme Document and on the website at [www.oslo.no](http://www.oslo.no).

Copies of the Scheme Document, Forms of Proxy and Voting Forms and other relevant documents are available on the website at [www.oslo.no](http://www.oslo.no) or from the proposed Scheme Manager who may be contacted by one of the following methods:

By Phone: Jan C H Endresen +47 22 31 59 86  
Bjorn Morten Skordal +47 22 31 28 91

By email: [scheme.enquiries@oslo.no](mailto:scheme.enquiries@oslo.no)

By fax: +47 22 31 29 74 / 22 31 29 00

By post: Oslo Reinsurance Company ASA, P.O. Box 1753

Vika, N-0122 Oslo, Norway

Contact: Jan C H Endresen/Bjorn Morten Skordal  
Scheme Creditors may vote in person (or, if a corporation, by a duly authorised representative) at the Creditors' Meetings or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Completed Forms of Proxy and Voting Forms should be returned as soon as possible, and in any event, so that they are received by 5pm UK time on 5 February 2007 by the Scheme Manager, c/o KPMG LLP, 8 Salisbury Square, London EC4Y 8BB, United Kingdom, marked for the attention of James Bolton. Scheme Creditors may also send their forms by facsimile transmission to +44 (0)20 7694 3126 by 5pm UK time on 5 February 2007 provided that they are legible. Forms of Proxy and Voting Forms may also be handed in at the registration desk prior to the commencement of the Creditors' Meeting.

Each Scheme Creditor or his proxy will be required to register his attendance at the meeting prior to its commencement. By the said Order, the Court has directed that Stephen Adamson or failing him, such person as the Scheme Companies shall nominate, be appointed to act as Chairman at the said Creditors' Meeting and has directed the Court to report the result of the Creditors' Meeting to the Court.

If approved by the requisite majorities of Scheme Creditors, the Scheme will be subject to the subsequent sanction of the Court. Dated this 29th day of November 2006.

Sidley Austin, Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA, United Kingdom

This is an important announcement concerning Oslo Reinsurance Company (UK) Limited and Oslo Reinsurance Company ASA. For further information in this regard, please e-mail [scheme.enquiries@oslo.no](mailto:scheme.enquiries@oslo.no)

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For Details

# International NEWS

## U.K. issues consultation on E.U. liability directive

Report reviews options for implementing environmental order

By **STUART COLLINS**

**LONDON**—The United Kingdom's Department for Environment, Food and Rural Affairs has issued its consultation paper on the implementation of the European Environmental Liability Directive (2004/35/CE) in England, Wales and Northern Ireland.

The directive "strengthens the polluter-pays principle" for environmental damage, according to the DEFRA in a statement. Under the directive, companies that threaten or cause environmental damage will be held strictly liable for the prevention and cleanup of damage at their own expense, the government department added.

Minister for Climate Change and Environment Ian Pearson said: "We have always supported the principle

that the polluter should pay for their environmental damage, but we must ensure this is done in a responsible and proportionate way. The consultation looks at how we can encourage businesses to better consider the risks of environmental damage their operations might pose, and to take steps to minimize those risks."

Mr. Pearson added: "It will be important to secure these changes in a way that avoids imposing unnecessary costs on business and which takes into account the overall environmental protection regulatory framework."

DEFRA expects that less than 1% of the 30,000 incidents each year of environmental damage in the United Kingdom will fall within the scope of the directive.

The legislation will apply to damage occurring from April 30, 2007.

More information on the consultation paper is available at [www.defra.gov.uk/corporate/consult/env-liability/index.htm](http://www.defra.gov.uk/corporate/consult/env-liability/index.htm).

The deadline for comments is Feb. 16, 2007.

## Exclusive pan-Asia focused reinsurer to open in Singapore

Reinsurer obtained \$620 million in capital funding

By **JUDY GREENWALD**

**SINGAPORE**—The first exclusively pan-Asia focused independent reinsurer has obtained \$620 million in capital funding and it will open in Singapore, according to its investors.

London-based 3i, a private equity and venture capital firm, and Khazanah Nasional Berhad, the investment arm of the government of Malaysia, last week said they had completed raising the capital on behalf of Asia Capital Holding.

Its wholly owned subsidiary, Asia Capital Reinsurance Group, has been granted registration as a reinsurer by the Monetary Authority of Singapore, according to 3i and Khazanah.

Asia Capital Re will focus on specialty lines of reinsurance in the large-risks segment such as aviation, marine, energy, large infrastructure and engineering projects across Asia, according to 3i and Khazanah.

Asia Capital Re co-founders John Tan and Heini Buergi are the reinsurer's chief executive officer and chief operating officer, respectively.



BLOOMBERG NEWS /LANDOV

Asia Capital Re has been granted registration as a reinsurer by the Monetary Authority of Singapore. It will focus on specialty lines such as aviation, marine and energy.

The reinsurer has an A- financial strength rating from Oldwick, N.J.-based A.M. Best Co. Inc.

In a statement, Best said that "the ratings reflect ACR's solid capitalization, experienced management team and sound business plan. The rating agency also noted that it expects Asia Capital Re to be "challenged by increased competition from the established reinsurance companies in Asia, as they have

strengthened their capitalization in recent years.

"The additional capacity brought to the market with no recent major reinsurance losses in Asia could dampen expected returns if pricing of reinsurance coverage fails to meet anticipated levels. Furthermore, the ability of ACR to effectively build and retain market acceptance will only be proven over time," Best said.

## European insurers and reinsurers prepare for Solvency II

Study reveals firms expect to improve risk management

By **MICHAEL BRADFORD**

**LONDON**—European insurers and reinsurers expect to make significant improvements to their risk management capabilities as they prepare for the coming Solvency II directive, according to a study.

They are most concerned with improving skills that help quantify risks under the new risk-based capital framework that is expected to appear in draft form next summer and be implemented in 2010, according to "The 2006 Tillinghast ERM Study," released earlier this

month.

The survey, conducted in June and July of this year by the Tillinghast division of Towers Perrin, involved more than 200 insurers and reinsurers. It was aimed at determining how widespread enterprise risk management has become among those companies and also uncovered several global trends affecting them. A section of the survey specifically for European companies focused on the Solvency II issue.

Enhancing risk quantification capabilities was cited by 63% of European insurers and reinsurers as the action they felt was most important to take as the new requirements loom.

"The more sophisticated companies are already several years into

### MAKING IMPROVEMENTS

Top frequently cited actions European companies feel a need to take as a result of Solvency II

- 63%** Enhance risk quantification capabilities
- 59%** Enhance actuarial/accounting tools
- 52%** Embed risk management within the whole organization
- 49%** Clearly define risk appetite
- 47%** Upgrade risk management governance and organization structure

Source: Tillinghast ERM Survey

the process of building internal models to manage risks and calcu-

late capital requirements," Ian Farr, London-based Towers Perrin principal, said in the study. "Others had been hoping to use a standard approach, but there is an increasing concern that this might require excessive capital."

The Solvency II directive is expected to urge insurers and reinsurers to use internal models to calculate their capital needs, but also contemplates a standard model for those who choose not to.

European insurers and reinsurers also indicated that they are concerned with enhancing actuarial and accounting tools and embedding risk management throughout their entire organizations as they prepare for the implementation of Solvency II.

The survey results showed some

differences in concern among insurers and reinsurers in the United Kingdom and those in Continental Europe. Those in the United Kingdom felt Solvency II would have fewer implications on their operations.

"U.K. insurers clearly feel better placed as a result of the regulatory changes introduced by the FSA in advance of Solvency II," Mr. Farr noted. "Their focus has moved away from the core risk governance and risk identification capabilities, with attention now directed more towards embedding risk management in the business and developing actuarial/accounting tools to suit the new environment."

The survey is available online at [www.towersperrin.com/tillinghast](http://www.towersperrin.com/tillinghast).

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## Commentary

# Little Bat of Bethlehem a tale of crisis response

In the spirit of the holidays, I bring you a story combining the trappings of the season with a lesson about the importance of adequate crisis response in protecting investments. With—sadly, as the story is from my experience—perhaps a side examination of reputation risk.

As with many holiday tales, this one starts with tradition—in our case, an annual December trip from Chicago out to the hinterlands to chop down a Christmas tree. This particular year, as every year, the tree was brought home, lovingly decorated and, as Christmas trees are meant to be, prominently displayed in our living room.

The following Saturday brought extreme cold, and our car's battery gave up the ghost. My wife, Kathy, was sure a mechanic was required, but with a manly flourish I assured her I could take care of this problem myself.

It was simple. I pulled the old battery, took a cab to the nearest auto parts shop, got a replacement and put it in place. But, with Kathy's limited experience with cars, my obvious automotive expertise earned me considerable guy points.

That evening I was reading in the living room while Kathy wrapped gifts at the dining room table, when from the Christmas tree there arose such a clatter, I sprang out of my chair to see what was the matter. As I looked for an ornament I thought had fallen, with my face about a foot from the tree, a brown missile shot out of the fir, zipped over my head and headed out of the living room and on down the hall.

I recall my immediate response being perfectly natural, probably involving a little shriek. Not surprisingly, my outburst prompted a query from Kathy. I replied, coolly as I could, "THERE'S A BAT IN THE HOUSE!"

(Bats, I've since learned, hibernate, and evidently this rascal, after choosing our Fraser fir for his long winter's nap, dozed straight through the tree chopping, the dragging to the car, the drive back to Chicago, the trip upstairs to our place and the tree-trimming, only to awaken after a week in our nice warm condo.)

At this point, I remembered my brother talking about his bat experiences in Minnesota, even recalling the takeaway: Bats will use their echolocation to find open doors and windows.

I opened the door to the balcony, then pondered how to drive the airborne rodent, now circling the master bedroom, back toward the living room and



**RODD  
ZOLKOS**

Senior Editor Rodd Zolkos  
can be reached at:  
rzolkos@businessinsurance.com

the open balcony door. Arming Kathy with a broom, I made my way toward the guest bedroom to find my tennis racquet—the bat wrangler's obvious tool of choice.

Racquet in hand, I'd just stepped back into the hall when the intruder exited the bedroom, buzzed past my face and flew back up the hall. Bleating an alert to Kathy, I crept back toward the living room.

By the time I met Kathy in the living room, there was no sign of the bat. We assumed he'd flown

**I'm not particularly frightened of bats. Rabies, however, does get my attention.**

out the door, though uncomfortable uncertainty remained.

Ultimately, this holiday crisis caused little damage, other than to my reputation, leaving Kathy quick to tell others of my fear of bats. In truth, I'm not particularly frightened of bats. Rabies, however, does get my attention. And, of course, the entire experience made pretty quick work of all the guy points I'd stockpiled that morning with the car battery thing.

We haven't chopped down our own tree for a couple of years now, though abandoning that tradition had nothing to do with the bat. Rather, suffering from colds a couple of Decembers back, Kathy and I learned that we could get a perfectly nice tree at a garden center a mile or so from home. We do have some new holiday traditions, though. Each year, a toy bat has a prominent spot in our Christmas tree, while nearby sits a beribboned tennis racquet.

So, there it is, the tale of The Bat Who Came for Christmas. All that's left, I suppose, is to offer you season's greetings. And suggest you be ready for anything.

## Smoking: Few employers adopt programs

CONTINUED FROM PAGE 4

their employees to kick the habit.

For example, even though most employers—67%—have smoke-free workplace policies, they are not perceived by employees as effective deterrents to smoking.

Mr. Finch cited the survey findings that around three out of four employees—78%—whose employers have taken steps to establish a smoke-free workplace said that such a policy was not effective in motivating them to quit.

To encourage more of its employees to quit, Marriott International Inc., whose properties became smoke-free on Oct. 16, introduced a smoking cessation program last month that is available at no charge to all of its employees and dependents who are at least 18

years old and who are enrolled in its health plans, according to Karen Graham, manager of health plans for the Washington-based hotel chain.

The Seattle-based Group Health Cooperative also announced during the forum that it is introducing a tobacco-free policy beginning Jan. 1 that will include offering a comprehensive smoking cessation program for employees and dependents.

Both employers, who addressed their new nonsmoking policies and benefit programs during separate sessions held during the NBGH/IBI's Joint Forum, have chosen to adopt the benefit structure recommended by the CDC, which includes at least four counseling sessions of at least 30 minutes each; both prescription and over-the-

counter medications; coverage for at least two quit attempts each year; and limited or no copayments.

Because tobacco dependence is an addiction, it should be treated like any other chronic disease, said Corinne Husten, chief of the epidemiology branch of the Office on Smoking and Health at the CDC. That is why the CDC recommends that employees be allowed to re-enroll in smoking cessation programs if they don't succeed at quitting the first time, she said.

The CDC also recommends no or low copayments because "cost-sharing is a huge barrier to quitting," Ms. Husten added.

Ms. Husten said that according to a study by the Journal of Health Promotion, only 24% of employers offer any type of smoking cessation benefits to employees, and, of those, just 4% offer benefits at the level that the CDC prescribes.

"If you're looking at maximizing your health care investment as an employer, this is where you should put your investment," said Garry Lindsay, senior fellow and director of business partnerships at the Partnership for Prevention.

He said that the Partnership has developed a scoring system that has determined smoking cessation programs tie with daily aspirin use and childhood vaccinations in cost-effectiveness.

To demonstrate the cost-effectiveness of providing such benefits, the CDC and other organizations have developed a return on investment calculator that employers can use online at [www.businesscaseroi.org](http://www.businesscaseroi.org), she said.

The NBGH also is advocating the CDC's smoking cessation program recommendations in its new employer Purchasers Guide for health benefits, according to Mr. Finch. The guide is available online at [www.businessgrouphealth.org](http://www.businessgrouphealth.org).

## More than 800 attend forum on health, productivity

**WASHINGTON**—More than 800 members of the employer, employee benefits and disability management vendor communities attended the Joint Forum on Health, Productivity and Absence Management in Washington from Nov. 28-30.

The annual meeting is co-sponsored by the Washington-based National Business Group on Health and the San Francisco-based Integrated Benefits Institute.

This year's event, whose theme was "Making Health-related Productivity Your Business Focus," included pre-conference employer-only work-

shops on such topical issues as management of obesity in the workplace, health risk management and building a return-to-work culture.

In addition, numerous other conference sessions delved into such topics as pharmacy benefit plan design, consumer-driven health care, the impact of health-related lost time and the value of smoking cessation programs.

Next year's NBGH/IBI Joint Forum is scheduled for Oct. 22-24 and will also be held in Washington. For more information, visit the IBI's Web site at [www.ibiweb.org](http://www.ibiweb.org).

—By Joanne Wojcik

## Drugs: Insurer sued for denying coverage

CONTINUED FROM PAGE 3

including New York City's, earlier this year, court records show. The amount of the New York settlement was not disclosed, but GSK settled a second consolidated "end payer" case—*Nichols vs. SmithKline Beecham Corp.*—for an amount "substantially in excess" of Lumbermens' policy limit, Glaxo's coverage complaint says.

GSK notified Lumbermens of the *Nichols* case in December 2002, asserting that it was entitled to defense and indemnity coverage under its liability policies' personal and advertising injury section. That section defines personal injury to include damages arising from "malicious prosecution"; because the *Nichols* suit alleges that GSK pursued baseless patent litigation to keep generic versions of Paxil off the market, the policies' personal injury coverage is triggered, GSK argued.

Barely five weeks after receiving notice, though, Lumbermens de-

nied liability in the *Nichols* case. The insurer maintained, among other things, that the personal injury section does not cover the *Nichols* allegations and that Glaxo's conduct was intentional and therefore not insurable, court filings show.

More than three years later, in April 2006, lawyers for GSK reiterated the demand for coverage of the *Nichols* case and notified Lumbermens of the numerous other generic drug maker and "end payer" lawsuits over Paxil.

Lumbermens again denied coverage for all of the Paxil litigation claims in June. Lawyers for the insurer argued that under Pennsylvania and other state laws, GSK would first have to lose its underlying patent infringement suits against the generic drug makers before the rival drug companies could pursue malicious prosecution charges. None of the underlying patent cases has been resolved, the lawyers said in a letter that GSK filed with its complaint.

In addition, malicious prosecu-

tion is a specific tort under state statutes, and the suits against GSK do not actually charge malicious prosecution, Lumbermens' lawyers argued. The *Nichols* case, for example, levels charges related only to abuse of monopoly power and unjust enrichment.

In its coverage complaint, filed Dec. 4 in U.S. District Court in Philadelphia, GSK asserts that Lumbermens' coverage positions are wrong. The complaint notes that Apotex won one of the patent infringement suits GSK filed against it and that the judgment has already been upheld on appeal.

Charging Lumbermens with breach of contract and bad faith, GSK is demanding \$10 million in damages for defense costs and \$15 million for indemnity costs, along with unspecified punitive damages.

*SmithKline Beecham Corp. vs. Lumbermens Mutual Casualty Co., U.S. District Court for the Eastern District of Pennsylvania, No. 2:06-cv-05300.*

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# Pandemic: Failure to prepare will have harmful impact

CONTINUED FROM PAGE 4

panelists said. For example, a pandemic could lead to class action lawsuits by hospital staff claiming the government or their employers failed to adequately prepare, said Edward Christiansen, vp and general counsel for Boston Medical Center.

In addition, plaintiff lawyers already have begun querying avian flu sufferers for a possible class action lawsuit, he said. "Although the pandemic is only an idea at the moment, the battle lines are being drawn and the plaintiff lawyers are thinking long and hard about how to benefit from the situation," Mr. Christiansen said.

One theory of liability could be the allegation that the employer or organization negligently failed to prepare for the pandemic, which would be a difficult allegation to defend against because of the onslaught of media coverage of the avian flu outbreak, Mr. Christiansen said. "We certainly can't say we didn't have notice of this issue," he said. "If you don't have a plan or haven't taken reasonable steps to prepare for this, you could be liable for negligent failure to prepare."

Captive owners have to consider several major coverage issues that

could arise due to a pandemic. If their captive insures workers compensation risks, for example, the owners need to consider increasing their reserves because there will be more claims arising from a pandemic, Mr. Christiansen said. Captive owners also need to anticipate reinsurance exclusions for a pandemic, he said.

Risk managers with captives need to be able to answer specific questions from their board members—who have fiduciary responsibilities—such as whether their workers comp policies exclude influenza and what the scope of their business interruption coverage is if their facilities are closed, said Bill McDonough, managing partner of Integro's health care practice in Boston and moderator of the discussion.

If there is an influenza pandemic, risk managers should notify their carriers immediately and preserve evidence of the cause of and the losses related to the incident, Mr. McDonough said.

In terms of risk management, health care companies need to develop a flexible response plan because they will be on the front lines in combating a pandemic, the panelists noted.

For example, risk managers work-

ing for health care organizations need to ensure that their health care facilities have the proper equipment to protect their employees and patients and have sufficient food, medicines and other supplies necessary to sustain themselves for long periods of time due to possible supply chain disruptions, Northeast Health Systems' Ms. McCarthy said.

Risk managers also need to ensure that their employees are aware of the possibility of a pandemic and can quickly diagnose influenza, Ms. McCarthy said, noting that the potential for a delayed or missed diagnosis is a key area of potential liability for health care professionals and organizations.

Having a plan to deal with the staffing issues that will likely arise during a pandemic event is a key risk management step for health care organizations, according to Susan Wood O'Leary, associate vp of risk management and associate general counsel for Rush University Medical Center in Chicago. For example, if a flu pandemic occurs, schools will likely be closed, so employers should have plans to help provide child care for health care professionals who will be required to report to work.

## Event draws nearly 800 captive attendees

**GRAND CAYMAN, Cayman Islands**—A total of 787 captive owners and service providers attended the 2006 Cayman Captive Forum in Grand Cayman on Nov. 28-30.

The conference featured sessions on the state of the captive insurance industry in the Cayman Islands, the risk management efforts of health care organizations with captives, the need for captive owners to prepare for a possible pandemic and the difficulty captive owners faced securing adequate property coverage this year due to the hardening of the market following the 2005 hurricane season.

Next year's conference will be held Nov. 27-29 in Grand Cayman.

—By Gloria Gonzalez

For more coverage of the 2006 Cayman Captive Forum, visit [www.BusinessInsurance.com/ConferenceExtra](http://www.BusinessInsurance.com/ConferenceExtra)

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## TIMELINE: SILICONE IMPLANTS

## 1960s

● After years in the making, gel-filled silicone implants are developed in 1961 and introduced to the market, first by Dow Corning Corp. in 1962. Other companies follow.

## 1970s

● Silicone implants are among the most popular form of breast implants next to saline-filled ones, as hundreds of thousands of women elect to have implant surgery.

● In 1977, a Cleveland woman is the first to sue and win a \$170,000 suit against Dow Corning, claiming her ruptured silicone implants caused her pain and suffering.

## 1980s

● More lawsuits trickle into courts, as the Washington-based Public Citizen Health Research Group warns that silicone breast implants cause cancer. Federal Drug Administration begins monitoring silicone implants. Increased reports of women's health issues attribute their cause to silicone implants.

## 1990s

● Lawsuits continue to mount against such manufacturers as Dow Corning, 3M, and Bristol-Myers Squibb. In 1991, one woman in San Francisco is awarded \$7.3 million—the largest to date—in a case against Dow Corning after claiming silicone implants caused her connective tissue disease.

● In 1992, FDA issues moratorium on silicone implants but lets companies sell products to women undergoing reconstructive surgery following cancer who are monitored by the companies following surgery. Dow Corning, the largest manufacturer, stops making silicone implants.

● By 1994, an estimated 19,000 suits are filed against Dow Corning. A class action against all manufacturers is filed and settled for \$4.25 billion. More than 400,000 women signed up to benefit from lawsuit, most of them claiming their silicone implants created health problems.

● In 1995 Dow Corning files for bankruptcy.

● Throughout the late 1990s numerous studies—including those out of Harvard University and the American College of Rheumatology—find no disease-link to silicone implants. The FDA and other organizations continue to study silicone implants.

● By 1996, in several suits, courts begin ruling that silicone implants are not related to plaintiffs' health issues. Various state appellate courts divide on the issue.

## 2000s

● By 2000, FDA allows two companies—Allergan Inc. and Mentor Corp.—to study silicone implants in a limited number of patients. FDA monitors studies.

● Both companies by 2003 apply to the FDA to begin widely marketing their silicone implants.

● FDA approves both products in preliminary decision in 2005.

● On Nov. 17, 2006, FDA issues final approval for both companies to market products on the condition that they continue to study the implants in 40,000 patients over 10 years.

Source: FDA and news reports

## Health insurers may not cover implant-related screenings

It's unclear whether health insurance companies will cover medical complications and monitoring of silicone breast implants after the Food and Drug Administration lifted its 14-year ban on silicone implants last month.

The FDA is warning women who choose to have breast enhancement surgery that health insurers may not pay for such follow-up magnetic resonance imaging screenings to look for implant ruptures and leaks or the resurgencies that are often required years after the initial procedure.

Silicone implants, like less controversial saline implants, come with a list of warnings that include rupture and capsular contracture—the painful formation of scar tissue around the implants. Unlike saline implants, researchers say silicone implants can rupture “silently” and that a woman may not know that her implant is not intact. Saline implants typically deflate once ruptured, making the incident more noticeable.

Because of the unique risks associated with silicone implants, the FDA requires that women be urged by the companies selling the implants to have MRI screenings every two years, beginning three years after their surgery.

The cost for MRIs—about \$2,000—will likely not be covered by insurers, the FDA warns, and that women could spend more money on their silicone implants throughout their lifetime than the cost for their initial operation.

The two companies now selling silicone implants with the FDA's new approval are offering to help women with some of the follow-up costs.

The Santa Barbara, Calif.-based Mentor Corp. will replace implants for women who experience ruptures and will provide \$1,200 to help offset resurgery costs within five years of their initial surgery. In addition, women who purchase an enhanced warranty will receive up to \$2,400 to offset reoperation costs within 10 years. The Irvine, Calif.-based Allergan Inc. will also

replace ruptured implants and will pay \$1,200 of the resurgery costs within 10 years, or with an enhanced warranty, cover \$2,400 of the costs.

Initial surgeries for silicone implants typically cost \$10,000 or more, depending on the location and status of the clinic. Resurgencies can cost slightly more, depending on the complication.

Most, if not all, major insurance companies do not cover cosmetic breast surgery, but are required by law to pay for reconstructive surgery for women who have undergone a mastectomy following cancer.

Since the FDA's ban on silicone implants in 1992, only women who have had breast cancer were able to still opt for silicone. Women who did not have a mastectomy and who wanted to replace their older silicone implants could only do so using saline implants.

A spokeswoman for Hartford, Conn.-based Aetna Inc. said the health insurer's current policies

will cover MRIs for women with silicone implants and surgeries to remove them, but that their policies will likely be revised given the FDA's latest decision. She did not elaborate on the possible changes.

Meanwhile, a Washington-based spokesman for the Blue Cross Blue Shield Assn. said it was too soon for individual Blues plans to comment on whether they will need help to pay for silicone implant-related complications and testing, but that most insurance providers will not cover plastic surgery-related issues.

The National Research Center for Women and Families, a Washington-based nonprofit advocacy group that opposed the FDA's decision, issued a statement urging women to check with their insurance providers before electing to have surgery and that some providers may eventually deny coverage to women with silicone implants because of the complications.

—By Louise Esola

## Silicone: Despite FDA approval, implant stigma remains

CONTINUED FROM PAGE 1

such as lupus and rheumatoid arthritis. Although no exact figure has been tallied, the amount of money paid in silicone lawsuits had law experts at the time calling silicone the “asbestos of the 1990s.”

In 1991, one San Francisco woman alone walked away with more than \$7 million after suing Dow Corning Corp., claiming her implants caused a disease in her connective tissue. Midland, Mich.-based Dow Corning, the largest manufacturer of silicone breast implants at the time, faced more than 19,000 lawsuits, and paid more than \$2 billion in settlements, which forced the company to file for bankruptcy in 1995.

Since then, numerous research studies into the subject have failed to prove that silicone implants caused the reported health problems. For example, according to the FDA's approval statement released last month, the Washington-based Institute of Medicine, a nonprofit scientific research organization that advises the government, concluded that there is no convincing evidence that silicone breast implants are associated with diseases.

The FDA said it has reviewed an extensive amount of clinical trials for the silicone implants and that “the extensive body of scientific evidence provides reasonable assurance of the benefits and risks of these devices.”

The FDA is allowing two companies specifically to sell and market silicone implants on condition that they conduct a post-approval study following 40,000 women for 10 years and that patients are informed that the implants are not permanent and can rupture, requiring resurgery. Patients must also be informed that many ruptures are

silent and that they should undergo regular magnetic resonance imaging screenings starting three years after implants are placed. Labels must also inform women that insurers may not cover MRI screenings and that women may spend more money on regular MRI screenings and resurgencies than their initial surgery (see related story).

Both companies, Irvine, Calif.-based Allergan Inc. and Santa Barbara, Calif.-based Mentor Corp., which declined interviews for this article, report that the new and improved implants come in a multi-layer shell with a barrier layer to prevent leakage and that the gel is thicker than what was available in the past, which, they say, should prevent the gel from seeping to other parts of the body.

Doctors in reports nationwide, including members of the American Society of Plastic Surgeons, have lauded the FDA for lifting a ban on the products they say are preferred over saline implants because silicone implants look and feel more natural.

Despite the FDA's approval, the widespread acceptance in the medical field, the new and improved products, and the studies that found no disease-link to the implants, the silicone stigma will likely remain among insurance companies, said Bill Sullivan, Chicago-based managing principal at Integro Insurance Brokers.

“I can't imagine anybody will insure it,” he said. “The industry has already decided they paid enough on that.”

Mr. Coughlin of Willis said this is typical of any product that has an expensive claims history and that an FDA approval isn't always a green light for insurance companies. “There are a lot of FDA products that you can't get liability insurance for,” he said. For example, Accutane, an

acne drug known to have many serious side effects, is one drug that is excluded from most policies, he added.

As for medical malpractice insurers, experts say premiums will likely not increase because of the approval of silicone breast implants.

Debra McBride, Minneapolis-based vp with Aon Healthcare, said implants, whether they are filled with silicone or saline, will always be a hotplate for plastic surgery medical malpractice.

Dr. Richard Anderson, chairman and CEO of The Doctors Co. in Napa, Calif., a physician-owned medical malpractice insurance provider, said breast augmentation lawsuits are the most common suits in the plastic surgery arena and that a majority of claims are successfully denied thanks to informed consent practices.

Meaning, doctors spent much time providing their patients with information, risks and complications of breast augmentation to avoid lawsuits. But that doesn't keep claims from mounting, he said. “This is an issue overlaid with emotions,” he said.

Ms. McBride said such risk management has been a focus for sometime in regards to breast implants. Patient screenings for body dysmorphic disorder, a psychological disorder where one does not see their body as it really is, are commonplace, according to Ms. McBride.

“The danger for doctors in regards to malpractice is that these patients are already unhappy with their bodies and may have unrealistic expectations,” she said. “Doctors know this and know what red flags to look for.”

Often, if a patient is deemed not psychologically fit for breast augmentation during a consultation, doctors will turn them away, she

said. Such consultations typically include a very detailed description of the risks involved and what a patient can expect, she added.

The reintroduction of silicone likely won't have any effect on medical claims, according to Dr. Anderson. “I hope that we have learned from the hysteria of the past,” he said.

In the 1990s, like manufacturers and their insurers, doctors faced their own flood of lawsuits filed by patients claiming the doctors used dangerous implants in surgeries. Dr. Anderson said although most of those claims failed in court, medical mal insurers were still hit with the defense costs.

“There was tens of millions of legal fees for the defense and that certainly had an impact on rates for the country,” he said.

Could it happen again? “There could be lawsuits, but not to the extent as before,” Dr. Anderson said.

## ADVERTISER

## INDEX

## Issue of December 11

ADVERTISER	PAGE #
Ace	7
Aetna Corporate	13
American Express	19
Aon Corporation	2
Blue Cross Blue Shield of Massachusetts	23R
Burnham System	24
Business Insurance	21, 22, 23, 29
Carvill	30
Covington & Burling, LLP	20
Fidelity Investments	10
Halland Companies	12
Havensure	27
Insurance Overload Staffing	6
Inwald Consulting Services	24
Liberty International Underwriters	9
Marsh, Inc.	32
Travelers	16
Wausau Insurance Companies	5
Workscape, Inc.	18
Zurich North America	15

# Records: Project to facilitate sharing of personal health information

CONTINUED FROM PAGE 1

Dossia.

Dossia will be designed to enable individuals to gather all of their electronic personal health information—including medical histories, insurance claims, pharmacy claims and any other pertinent data—into a single, secure location on the Internet, and it will be portable, so users can continue to access it whether they change jobs, change insurers or retire. But it will not create personal health records, according to Mr. Kleinke.

"We're not building a PHR. We're building an infrastructure to support all PHRs," Mr. Kleinke said. "Our goal is to build the Internet" for personal health records, he said, likening creators of PHRs such as WebMD to Internet storefronts such as "Match.com and e-Bay and Amazon."

"There are 300 WebMDs and WebMD wannabes out there, but all of them have no network of data to connect to. This has not been explained well because people don't

**"We're not building a PHR. We're building an infrastructure to support all PHRs. Our goal is to build the Internet" for personal health records.**

J.D. Kleinke, Omnimedix Institute

understand infrastructure. It's like somebody had a press conference 20 years ago and said, 'We're going to build the Internet so a lot of computers can share files.' No one would know what that was," Mr. Kleinke said. "The goal of this is to be the infrastructure to support, catalyze and proliferate other people's PHRs."

And to ensure the security of personal health records when they are stored in Internet applications, Dossia access will be strictly controlled by individuals who can decide who can have access, he added.

Michael Critelli, chairman and CEO of Stamford, Conn.-based Pitney Bowes, said his company is supporting the creation of Dossia because it could ultimately improve the quality and lower the cost of health care by "reducing the cost of duplicate collection of information, eliminating redundant testing and all of the costs associated with obtaining records from somewhere else."

"I also think there will be linkages," he said. For example, "those employees who opt in and have chronic diseases will receive prompts and reminders to stay up to date on their medication," he said.

According to a spokesman for Bentonville, Ark.-based Wal-Mart: "Currently there are many different groups and entities offer-

ing personal health records to consumers. Most provide only a snapshot of information, your claims information for the time you are insured with one health plan, or your pharmacy information from one drugstore, for instance. Once created, Dossia will provide individuals access to all this information from multiple sources in a secure database. At the user's request, Dossia updates the lifelong record automatically. Users always have access to the information regardless of their health plan, employer or physician."

The employers would not disclose the total amount of money to be committed to the project, though each is expected to make a seven-figure contribution.

Though not among the financiers of Dossia, EMC Corp.'s benefits director applauded the effort.

"It's wonderful to see companies such as these...create demand for adoption of PHRs," said Delia Vetter.

"The financial services sector has built the infrastructure" so that "today, anywhere across the globe, we can access our bank accounts with our ATM cards," she said. "The

only sector where we have not done that yet is in the health care sector. It's imperative for us as a society to have that information at our fingertips."

The Hopkinton, Mass.-based technology company has been providing PHRs through WebMD to its employees since 2004 and will begin offering them to employees' dependents in early 2007, according to Ms. Vetter.

Craig Froude, executive vp of WebMD's health care services based in Portland, Ore., also was supportive of the Dossia project.

"We want to have the one place

that consumers can go to view that aggregated information and take action based on that. If this consortium could help to provide information to that, that could be very useful to us," Mr. Froude said. "We're absolutely supportive to freer information exchange, especially as it relates to medical information."

Dossia will initially be available to the U.S. employees, dependents and retirees of the five companies providing the initial financing and will be made available later to other employers and developers of personal health record applications.

## Controlling Prescription Drug Benefit Costs A Business Insurance Online Executive Forum



Join Business Insurance Editor Regis Coccia on December 12, 2006, along with our expert panel, for a webinar devoted to exploring **Controlling Prescription Drug Benefit Costs**.

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- **Michael Jacobs**, Principal, Buck Consultants L.L.C., An ACS Company, Atlanta
- **Lisa Zeitel**, Principal, Health & Benefits Consulting Practice Leader, Mercer Health & Benefits L.L.C., Norwalk

#### QUESTIONS TO BE ADDRESSED:

- What makes prescription drugs so costly?
- What strategies for drug benefits should employers consider now for active employees and retirees?
- How can employers design their benefit plans to provide access to appropriate drugs in an affordable way?
- What should employers be doing to educate members about drug cost and utilization?

#### SAVE THE DATE:

**Tuesday, December 12, 2006**

#### TIME:

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# News In Brief

CONTINUED FROM PAGE 1

"excess" contingent commissions, officials said. Under terms of the settlement, Brown & Brown agreed to reimburse approximately \$4.8 million to up to 400 cities and counties in Florida. The brokerage also must pay \$1 million to the agencies for investigative costs, and it agreed to adhere to stricter compensation disclosure requirements. The settlement does not require Brown & Brown to cease collecting contingent commissions.

## AIG, Starr settle MGA disputes

Feuding insurers American International Group Inc. and C.V. Starr & Co. announced Tuesday that they had reached a settlement of certain disputes stemming from the termination of managing general agency relationships between the companies' subsidiaries. Terms of the settlement were not disclosed. Under the agreement, AIG will cease conducting business under "Starr" and related names, while C.V. Starr will refrain from conducting business under "American International" and related names, according to a joint statement from the companies.

## CIGNA settles shareholder suit

CIGNA Corp. has reached a \$93 million settlement in connection with a 2002 class action shareholder lawsuit. CIGNA will take a nonrecurring, after-tax charge in this year's fourth quarter of about \$25 million in connection with the agreement, the health insurer said. CIGNA said the charge is net of expected insurance recoveries. Among other things, CIGNA and several of its officers were charged with misleading CIGNA shareholders about the company's performance from May 2, 2001, to Oct. 24, 2002.

## House passes HSA changes

The House of Representatives passed a tax package that would enhance the appeal of health savings accounts by boosting contribution amounts, open-

ing the door for employers to replace first-generation consumer-driven health care plans with HSA-based plans, and remove certain administrative problems associated with HSAs. The Senate was expected to consider the measure over the weekend.

## Tenn. commissioner to leave post

Tennessee Insurance Commissioner Paula Flowers plans to leave her job in January and return to the private sector. Ms. Flowers, an attorney, has served as state insurance commissioner for nearly four years. She was appointed in January 2003 by Tennessee Gov. Phil Bredesen, who was recently re-elected.

## P/C rates fall 9% in November: Survey

The average rate of all lines of commercial property/casualty insurance fell 9% in November compared to the composite rate of a year earlier, Dallas-based MarketScan reported. Workers compensation and general liability represented the largest segment of the market and were down 9% and 10%, respectively. Umbrella/excess coverages fell 8%. Commercial property, business interruption and inland marine continued to soften, with rate decreases of 4%. Professional liability was down 5%, and directors and officers liability dropped 3%, as did employment practices liability.

## Commercial lines outlook stable: S&P

Standard & Poor's Corp. is maintaining its stable outlook on the U.S. commercial lines sector, but price decreases across most lines could steadily erode profit margins next year, the rating agency said in a special report. The impact of that erosion, though, will not be fully reflected in earnings until 2008, S&P said in the report "U.S. Commercial Lines 2007 Outlook: Insurers Heading for a Soft Landing."

## Endurance gets S&P upgrade to A

Standard & Poor's Corp. has raised its financial strength ratings on the operating companies of Endurance Specialty Holdings Ltd to A from A-. S&P cited Pembroke, Bermuda-based Endurance's strong competitive position and diversified insurance and reinsurance business.

# TRIA: Lawmakers pledge to make backstop a priority

CONTINUED FROM PAGE 1

least on ideological grounds—to a permanent TRIA extension, but added that he intends to work closely with the administration to try to develop a consensus.

Additionally, Sen. Dodd said he would like to begin work on TRIA legislation soon after the new congressional session begins in January and not in the fall "crunch time," when enacting legislation becomes more difficult.

For now, Sen. Dodd said he is asking insurers and policyholders to work together to develop common ground on a lasting solution.

Insurers and others say they are encouraged by the support of two key members of Congress to extend TRIA and their commitment to begin work on drafting legislation as soon as possible.

"We are encouraged by the comments of Sen. Dodd and Rep. Frank, and we will work together with them and other congressional leaders to ensure a workable long-term national terrorism insurance program," said a spokesman for the American Insurance Assn. in Washington.

Washington observers say it is virtually certain that Congress and the administration will agree on a

TRIA extension, though an agreement will come only after much discussion.

"No one will get everything they want," said Joel Wood, senior vp with the Council of Insurance Agents & Brokers in Washington.

While the Bush administration currently may be opposed to a long-term TRIA extension, observers doubt that such opposition would lead to a veto of a legislative package passed by Congress.

"I just can't imagine a presidential veto," Mr. Wood said, adding that it is very unlikely that the administration would block responsible legislation to protect against the financial consequences of terrorism.

Others say there is overwhelming support in Congress for extending TRIA permanently, though it is too soon to say what a final TRIA bill would look like.

"A majority of members believe in a public-private partnership. The challenge is to come up with a proposal that everyone can agree on," said a spokesman in Washington for the Coalition to Insure Against Terrorism, which represents a wide range of businesses and organizations in the transportation, real estate, construction, entertainment and other industries.

# Zurich: Insurer finalizes settlements with 11 states

CONTINUED FROM PAGE 3

noted that class action settlement eligibility notices will be mailed to 3.5 million current and former Zurich policyholders between Dec. 5 and Dec. 12.

Members of the proposed class include all Zurich policyholders who between Aug. 24, 1994, and Sep. 1, 2005, used any independent agent or broker for the purchase or renewal of commercial insurance or reinsurance, with the exception of life insurance policies, Zurich said. Policyholders will obtain relief in connection with the multistate agreement unless they opt out before Jan. 11, 2007.

Approximately 173,000 policyholders in Pennsylvania will be eligible for a portion of the \$121.8 million settlement, the state's attorney general, Tom Cor-

bett, said in a statement.

Texas policyholders are expected to receive a total of \$9 million, while \$3.2 million is anticipated to go to Michigan policyholders, the states' attorneys general—Greg Abbott and Mike Cox, respectively—said in statements.

Zurich's promised restitution and fees of at least \$141.8 million are in addition to funds already pledged as part of settlements with other states.

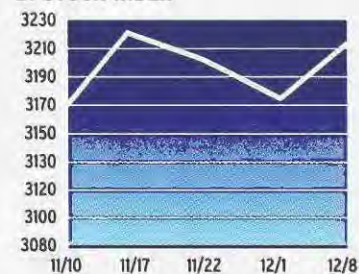
In April, Zurich agreed to pay \$153 million in fines and restitution to Connecticut, Illinois and New York (*BI*, April 3), and the insurer in October agreed to \$7 million in fees to resolve similar charges of noncompetitive business practices and improper use of finite insurance products leveled by Ohio insurance regulators (*BI*, Oct. 30).

## Stock Index

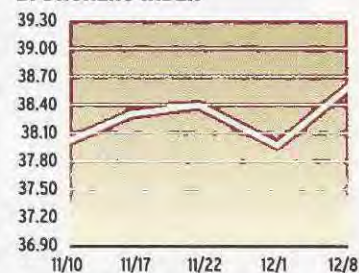
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

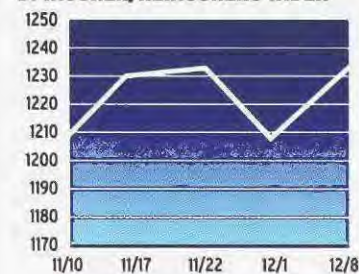
### BI STOCK INDEX



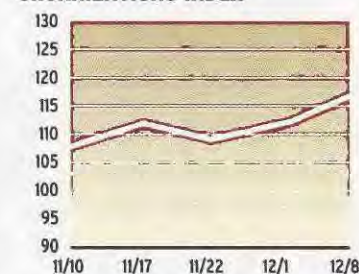
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	3211.30	▲ 1.13
DOW JONES	12307.49	▲ 0.93
S&P 500	1409.84	▲ 0.94

### LARGEST GAINS

Fairfax Financial	13.98%
UNICO American Corp.	11.76%
NYMAGIC Inc.	6.09%
Humana Inc.	5.73%
Citigroup Inc.	5.00%

### LARGEST LOSSES

Sierra Health Services	-3.55%
Odyssey Re Holdings	-3.53%
ING Groep	-0.86%
RLI Corp.	-0.84%
PXRE Group Ltd.	-0.83%

Source: Financial Content Inc. <http://financialcontent.com>



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# Business Insurance END PAGE

Contributing: Sally Roberts, Judy Greenwald, Rupal Parekh

## How not to succeed in business without really trying

Companies beware. These days, corporate scandals can do more than tarnish a company's image and hurt the bottom line.

They can get immortalized on stage. "Enron—The Musical," a two-act play directed by Mark Fraser, opened this month in a Houston theater.

The play comedically traces the demise of the energy giant, using the perspective of a former employee to tell stories about Enron Corp. and its late founder and chairman, Kenneth Lay, as well as former Chief Executive Jeffrey Skilling and former Chief Financial Officer Andrew Fastow.

The performance features Mr. Fraser's satirical takes on familiar Broadway showtunes including, "Seventy-Six Indictments" (instead of "Seventy-Six Trombones") and "Thank Heaven for Off-Book Deals" (instead of "Thank Heaven for Little Girls").

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## Maine claims beer label naughty, not nice

If state authorities have their way, Santa Claus won't be seen drinking beer in Maine this Christmas.

The state's Bureau of Liquor Enforcement in September denied a Massachusetts specialty beer importer permission to sell its Christmas-themed "Santa's Butt Winter Porter" because the label, which features the ample backside of a beer-drinking Santa Claus sitting on a barrel, is "undignified or improper."

Belchertown, Mass.-based Shelton Brothers, via the Maine Civil Liberties Union, sued the bureau late last month in federal district court in Portland arguing the state's denial violates the First Amendment by censoring artistic expression.

"There is no good reason for the state to censor art, even art found on a beer label. Artistic expression is entitled to the highest level of protection under the First Amendment," said Zachary Heiden, MCLU staff attorney and lead counsel for Shelton Brothers.

In addition to Santa's Butt Winter Porter, Maine authorities also denied Shelton Brothers label applications for its Les Sans Culottes, a French ale, and Cantillon Rose de Gambrius, a Belgian fruit beer, both of which feature topless women.

An official with the Maine Bureau of Liquor Enforcement declined to comment citing the pending litigation, but Maine State Police Lt. Patrick Fleming said in an earlier press report that the state took

issue with the Santa label because it might appeal to children and the other two labels are considered inappropriate because they show bare-breasted women.

"We stand by our decision and at some point, it'll go through the court system and somebody will make the decision on whether we are right or wrong," he said.

Maine is not the only state giving the beer importer trouble over its labels. Shelton Brothers filed a lawsuit against the New York State Liquor Authority last month after the state denied applications for six of its holiday-themed beer labels, including Santa's Butt Winter Porter, citing their appeal to under-aged drinkers.

Although the state has since backed down and allowed the sale of the beers, the lawsuit continues to challenge the validity of the regulation and is seeking damages and attorneys' fees, according to Shelton Brothers attorney George Carpinello, of Boies, Schiller & Flexner L.L.C. in Albany, N.Y.

Last year, Shelton Brothers squabbled with Connecticut authorities over the label for its Seriously Bad Elf English double ale beer, which depicts an elf taking aim at Santa and his sleigh with a slingshot, because it was deemed too appealing for children. Connecticut later approved the sale of the beer.

Beer bottle labels constitute art and are protected under the First Amendment, according to one brewer.



## Untucked shirt not deemed a blessing of liberty

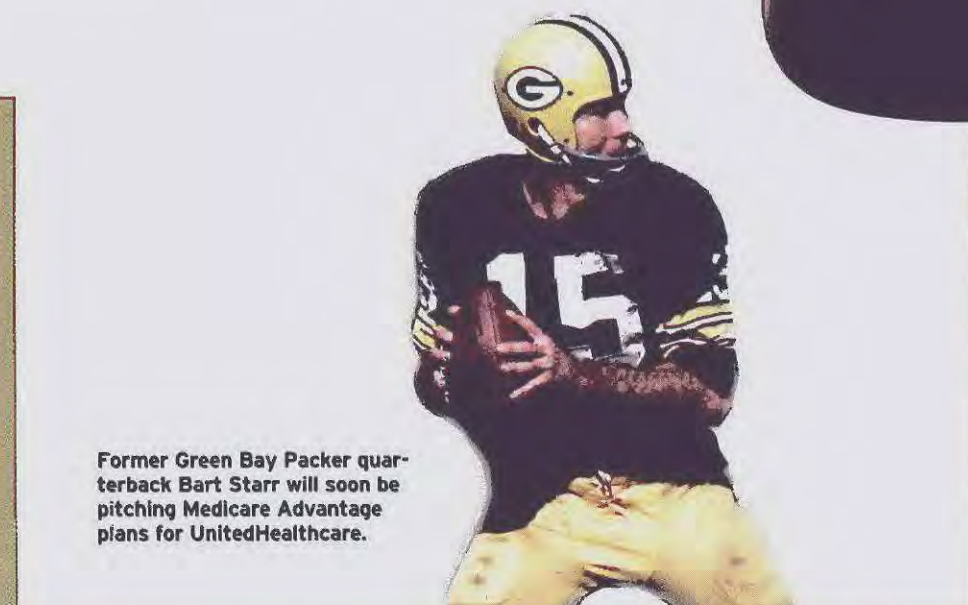
Park employees do not have a First Amendment right to keep their shirttails untucked, says a Cincinnati federal appellate court that upheld a lower court's dismissal of the suit.

The three plaintiffs in *Roberts et al. vs. Ward et al.*, who were Kentucky Parks Department employees, were discharged in 2004 for failing to tuck in their shirts in violation of a department policy. The workers said their firing violated their First Amendment rights, among other charges, but a panel of the 6th U.S. Circuit Court of Appeals disagreed in its recent decision.

A governmental employee's speech must involve a matter of public concern to be protected under the First Amendment, the appellate court said.

But, "the plaintiffs provide little argument to rebut the determination that untucked shirts do not amount to speech on a matter of public concern," the court wrote.

"There is no suggestion, for example, that they were untucking their shirts to express their opinion on some political question. Rather... they kept their shirts untucked because they were uncomfortable when they tucked them in," the appeals court ruled. "The state, on the other hand, justifies the policy as a regulation of their employees' appearance."



Former Green Bay Packer quarterback Bart Starr will soon be pitching Medicare Advantage plans for UnitedHealthcare.

## QB legend joins new team

National Football League Hall of Fame quarterback Bart Starr has a new job—educating seniors about UnitedHealthcare's Medicare Advantage health plans.

The Minneapolis-based health insurer announced last week that the 72-year-old Mr. Starr and his wife of 52 years, Cherry, are the official spokespeople for its SecureHorizons Medicare Advantage plan. Both Mr. and Mrs. Starr are members.

"We can't think of anyone better to

represent the brand to America's seniors," said SecureHorizons' Chief Executive Officer Rick Jarrett, who described Mr. Starr in a statement as "a natural leader and a well-respected decision maker."

Mr. Starr led the Green Bay Packers to five National Football League titles, including two Super Bowl Championships, under legendary coach Vince Lombardi.

Mr. Starr will be featured in a SecureHorizons commercial starting this month.

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