

Business Insurance

December 3, 2007

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BUT SOFTENING RATES
MAY SLOW GROWTH / PAGE 3**

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IN RARE JURY TRIAL OVER
SECURITIES CLAIMS / PAGE 3**

In Brief

Florida mulls change in reinsurer collateral

The Florida Office of Insurance Regulation has issued a draft rule that gives the insurance commissioner discretion to allow some financially sound non-U.S. reinsurers to post less than 100% collateral—a collateral level other states typically require. The Florida Legislature gave Insurance Commissioner Kevin McCarty that authority in the catastrophe insurance reform law it passed earlier this year. New York also has proposed a reduction in reinsurer collateral, and the National Assn. of Insurance Commissioners is examining a possible relaxation of the requirements as well.

Asbestos funding improves: Best

The U.S. property/casualty insurance industry is

See **IN BRIEF** page 30



Weighing wellness

Programs redesigned to broaden appeal

By JOANNE WOJCIK

While they still may include the concepts of holistic health, wellness programs are being reinvented and repackaged to appeal to the masses.

For starters, employers are using more down-to-earth terminology like "health risk management" or "health improvement" to better reflect the many activities now incorporated into wellness programs, including health screenings and disease, safety and productivity management.

But it's about more than just giving wellness a new spin. Employers today are making sizable investments in establishing entire wellness infrastructures. Those may still include fitness centers, but also onsite clinics, health coaches for employees, incentives to employees who adopt healthier lifestyles and data warehouses that will tell employers whether their investment is paying dividends.

Some employers are even redesigning their benefit plans to provide more generous coverage for health screenings and preventive services that medical research has found to be beneficial or to penalize employees who refuse to shape up (see related story).

"Today's wellness movement is getting more traction because it's hooked to broader concepts," said Shelly Wolff, national leader for

health and productivity at Watson Wyatt Worldwide in Stamford, Conn. "It's not only about exercise; it's diet, it's how you live your day, it's about safety issues, it's a much broader view of what's in it for me as a person. Health is cumulative. If I take good care of myself in my 20s and 30s, I'll actually be able to enjoy myself in my 60s."

"It's not called wellness anymore," said Andrew Webber, presi-

WEIGHING WELLNESS, PART TWO

The three-part series concludes Dec. 10. It can be read online along with special features, including podcast interviews and links to archived webinars. Visit www.businessinsurance.com/wellness

dent and chief executive officer of the National Business Coalition on Health, a coalition of employer-led coalitions based in Washington. "Health and productivity management is a better name for it."

Whereas early wellness programs were mostly anchored in fitness centers that attracted the already healthy, today's wellness programs are designed to appeal to everyone, regardless of their health status.

Comprehensive health promotion programs mostly start with health risk assessments, sometimes coupled with biometric screenings, which measure cholesterol, blood pressure and glucose, among other things. They also can include virtu-

See **WELLNESS** page 28

Gen Re finite trial gets under way

Ex-execs face charges over deal with AIG

By DOUGLAS McLEOD

uled for Jan. 7.

HARTFORD, Conn.—Nearly two years after their indictment, five former executives of General Re Corp. and American International Group Inc. are about to stand trial on charges that they conspired to inflate AIG's loss reserves by \$500 million with a pair of bogus reinsurance transactions.

Jury selection is scheduled to start today in the trial of Ronald E. Ferguson, Gen Re's former chief executive officer, three other Gen Re officers and an AIG reinsurance official on conspiracy, securities fraud and mail fraud charges. Opening arguments in the trial are sched-

The reinsurance deal was launched by an Oct. 31, 2000, phone call during which Maurice R. Greenberg, then AIG's CEO, asked Mr. Ferguson if Gen Re would cede \$500 million of its business to AIG by year-end, prosecutors contend.



Mr. Ferguson

Mr. Greenberg, identified as an indicted co-conspirator in court filings, has not been charged in the case.

The resulting loss portfolio deal was a sham, though, transferring no risk and including business that Gen Re had already reinsured elsewhere, prosecutors charge.

See **TRIAL** page 27

Backstop uncertainty not roiling renewals

Most optimistic that program will be extended

By MARK A. HOFMANN

sion would look like.

The federal terrorism insurance backstop may be slated to expire in less than a month, but panic has yet to hit the terrorism insurance marketplace.

In fact, observers remain reasonably optimistic that lawmakers will present the president with a bill that will extend the backstop for at least seven years well before the program's Dec. 31 sunset date. This is in marked contrast to the atmosphere that existed two years ago, when Congress struggled to renew the program.

"In 2005, the discussion was whether there would be an extension," said Jason Schupp, senior vp for Zurich North America in Schaumburg Ill. "This time, the discussion began with what the exten-

"The general consensus is that it will be extended for at least seven years under the same terms and conditions," said Alexandra Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services in Glendale, Calif. "The domestic carriers are carrying on as if there will be no interruption."

"Most of the markets to date have been taking a sort of wait-and-see approach," said Aaron Davis, director of Aon Corp.'s national terrorism and property resources unit in New York.

The House passed a bill that would significantly expand the program and extend it for 15 years. The Senate bill calls for a seven-year extension but makes few changes

See **BACKSTOP** page 30

SPOTLIGHT

ENVIRONMENTAL RISK MANAGEMENT

Greenhouse gas emissions

inflate exposure potential; risk managers get a seat at the table on issues related to

the environment; nanotechnology poses potential risks to environment, health.

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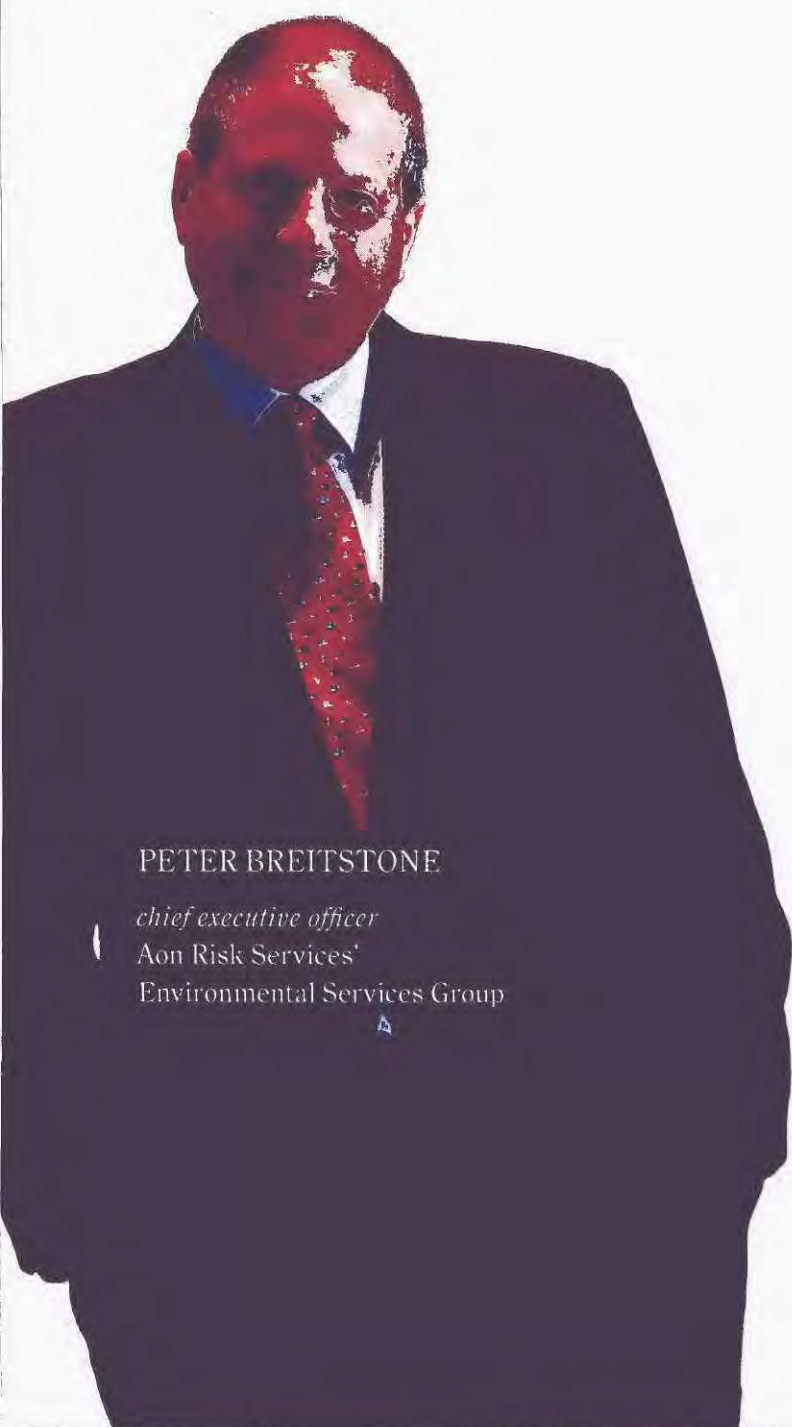
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On the Web



SPECIAL SERIES

'Weighing wellness' series has extras online

A special three-part series written by *Business Insurance* Senior Editor Joanne Wojcik traces the history of the wellness movement from its initial inception through legal compliance hurdles and on to its slow adoption by companies trying to balance worker incentives with penalties. Read about these issues and check out related resources, at www.BusinessInsurance.com/wellness.

QUESTIONS & ANSWERS

Hear podcast interview with climate expert

Business Insurance's interview of climate expert Evan Mills, staff scientist at the U.S. Department of Energy's Lawrence Berkeley National Laboratory, is offered in its entirety online at www.BusinessInsurance.com/QandA.

ONLINE EXECUTIVE FORUM™

Terrorism comp risk webinar archived online

An archive of *Business Insurance's* Nov. 14 Online Executive Forum "Workers Compensation: Protecting People in the Age of Terrorism" is available online. To view this webinar on demand, along with other archived forums, go to www.BusinessInsurance.com/webinars.

BI DIRECTORIES

Risk management consultants updated

Business Insurance has updated its Risk Management Consultants directory for 2007, which is now available online at www.BusinessInsurance.com/directories.

JDS found not liable for securities fraud

Verdict may push future defendants to take their cases to trial

By DAVE LENCKUS

OAKLAND, Calif.—To the attorneys who litigated one of the rare securities fraud class action lawsuits to go to trial, the jury verdict in favor of defendants JDS Uniphase Corp. and four former officials last week came down to two factors: hindsight and simplicity.

Defense attorney Jordan Eth said jurors did not believe that the defendants foresaw the 2001 telecommunications industry meltdown that led to the plaintiffs' losses, and so the panel refused to award damages to investors for hav-

ing that hindsight now.

But plaintiffs' attorney Barbara J. Hart said the case's "complexity may have worked against us."

Ms. Hart, a partner with Labaton Sucharow L.L.P. in New York, represents the lead plaintiff, the Connecticut Retirement Plans and Trust Funds. The pension fund claimed it alone lost tens of millions of dollars.

If the jury had ruled for the plaintiffs and accepted their method for calculating total losses for all plaintiffs, the defendants would have faced an \$18 billion damages award, she said.

The fund is considering its legal options, said Catherine LaMarr, general counsel for the Connecticut State Treasurer.

The Nov. 27 verdict came after less than two days of deliberations following a 19-day trial.

Investors at Milpitas, Calif.-based JDS, a manufacturer of fiber-optic network components for telecommunications providers, charged that the defendants provided positive outlooks for the company in 2000 even though they knew that two of the company's major customers faced dramatic downturns in their own business over the next year and therefore would dramatically cut their orders from JDS.

Meanwhile, the defendants and other company insiders sold more than \$850 million of their own JDS stock in the months before the company posted a \$50.6 billion loss for its 2001 fiscal year, which ended June 30, 2001. The loss sent the company's share price plummeting about 99%.

None of the 24 questions the jury was asked to consider related specif-

ically to the defendants' knowledge of their customers' business prospects, according to the attorneys. But in answer to more generally worded questions about the defendants' stated positive outlook for JDS months before the company reported its massive loss, the jury found that the defendants did not mislead the plaintiffs.

In answer to other questions, the jurors determined that the defendants did not engage in insider trading.

The jurors' findings indicate they believed the defendants had no inkling in 2000 that the telecom industry would begin to suffer a financial meltdown in February 2001, said Mr. Eth, a partner with Morrison & Foerster L.L.P. of San

See **SECURITIES** page 30

CIGNA BLAZES TRAIL TO GROWTH

Acquisition of Great-West Healthcare sparks expansion into small-group market



REVENUES **\$16.5 BILLION**
MEDICAL MEMBERS **9.4 MILLION**

Data as of 12/31/06
Source: Company reports



REVENUES **\$1.8 BILLION**
MEDICAL MEMBERS **1.5 MILLION**

CIGNA's Great-West buy boosts reach, members

\$1.9 billion purchase increases presence in Northwest region

By KRISTIN GUNDERSON HUNT

PHILADELPHIA—Hoping to better penetrate the small-group business market as well as expand its geographical reach, CIGNA Corp. has agreed to acquire Great-West Healthcare, a division of Great-West Life & Annuity Insurance Co., for \$1.9 billion.

Philadelphia-based CIGNA Corp. announced the acquisition last week under which it is to pay \$1.5 billion in cash to Great-West, which will help Great-West pay down debt associated with its acquisition of Putnam Investments earlier this year. Under terms of the agreement, CIGNA will also invest approximately \$400 million to support the acquired Greenwood Village, Colo.-based benefits provider during the first year following the acquisition.

Carl McDonald, a managed care analyst for CIBC World Markets in New York, said the acquisition is ideal for CIGNA as the health insurer tries to go beyond serving the middle market as well as go beyond the Southeast and, to an extent, the

Midwest, where it has traditionally had a presence.

"It will create some new opportunities for (CIGNA) because it is an area of the market where it hasn't paid much attention in the past," Mr. McDonald said.

Great-West Healthcare predominantly serves the Pacific Northwest. It covers about 2.2 million lives, including approximately 1.5 million medical members in its employer network.

Mr. McDonald said employers using Great-West are likely to benefit from the acquisition. Because CIGNA is so much larger, it has more negotiating leverage, he said, which might impact these typically small-size employers.

CIGNA, which said the acquisition is subject to regulatory approval, is expected to close during the first half of 2008.

By 2010, CIGNA said it expects the purchased business to generate between \$200 million and \$250 million in after-tax income.

"From a financial perspective, it makes some sense in terms of the earnings accretion they'll be able to generate over the next few years," Mr. McDonald said.

The advantage for Great-West is

P/C insurer profits rise for first nine months

But softer rates likely to dampen results in '08

By JUDY GREENWALD

A light catastrophe year and the impact of past rate hikes means the U.S. commercial property/casualty insurance industry is likely to report strong 2007 results, observers say.

But continuing rate declines are expected to lead to more modest albeit still profitable results next year, barring major catastrophes, they say.

"Although pricing continues to soften, rates are still adequate and we're expecting results through year-end 2007 to be very good," said Andrew Colannino, vp in the P/C division for Oldwick, N.J.-based A.M. Best Co. Inc.

But next year, "we do think results will deteriorate somewhat," said John Iten, a director at rating agency Standard & Poor's Corp. in New York. "We still think it'll be a good year, but it won't be as good as 2007 because pricing has been coming down."

And observers predict the industry's strong capital position will encourage further merger and acquisition activity.

In addition, the subprime mortgage crisis is expected to have relatively little direct impact on property/casualty insurers, observers say.

The 13 major property/casualty insurers surveyed by *Business Insurance* reported net income of \$25.29 billion for the nine months that ended Sept. 30, an 8.3% increase.

Among other survey results:

- Net premiums written increased 2.9%, to \$106.96 billion.
- Insurers posted a 90.1% combined ratio, the same as for the comparable period a year ago.
- Policyholder surplus for the 11 insurers reporting this data increased 11.1%, to \$95.02 billion.

The nine-month results were "more of the same," said Mark

Lane, an analyst with William Blair & Co. in Chicago. "It was a light quarter for catastrophe losses, so that obviously helped quite a bit." There was "quite a bit of pressure on premium growth, given the underlying pricing pressure, and underlying margins continue to come under some modest pressure," he said.

But "claims inflation continues to be quite benign, which is mitigating some of the pressure on underlying margins," said Mr. Lane. "Companies continue to recognize favorable loss reserve development on prior accident years, which is boosting results modestly in the near term."

Within the overall softening market there are significant differences between the rates on new and renewal business, observers say.

"The rate decreases aren't as dramatic on renewal business as they are on new business. New business is way off," Mr. Colannino said.

Some renewal business, he said, may be written at rates that are lower by mid-single digits, whereas for new business, "if someone's going to take that away" from another insurer, it could be at rates that are 20% or 30% lower, "and maybe even higher in some cases."

"We think the full year is going to be darn close to 2006 in terms of underwriting performance," said Mr. Iten. Last year's combined ratio was 92.4%, according to S&P, and "we're looking at 93%-94%" for this year, he said.

But observers say next year's outlook is less promising, with soft market conditions expected to continue.

"I don't think results are going to be that poor for the overall industry," barring any major catastrophes, said Mr. Colannino. However,

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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See **CIGNA** page 6

Judge calls for review of asbestos case filings in Delaware

By DAVE LENCKUS

DOVER, Del.—Delaware's top judge has asked a committee of attorneys to investigate concerns by the state's business community that asbestos personal injury attorneys are jamming the state's court system with claims by out-of-state plaintiffs in an effort to force quick settlements.

Delaware Superior Court President Judge James T. Vaughn Jr. on Nov. 19 appointed five Wilmington, Del.-based attorneys—a mix of corporate and plaintiffs' counsel with no asbestos litigation experience—to study the issue and report their recommendations.

Plaintiffs' attorneys complain that the Delaware business community only wants to deny plaintiffs their rights and that just a small fraction of

asbestos cases have been filed in Delaware.

Judge Vaughn appointed the committee in response to a letter from a Delaware Chamber of Commerce official, who wrote that most of a growing number of asbestos claims filed by out-of-state plaintiffs "have no meaningful connection to Delaware."

James A. Wolfe, the state Chamber's president and chief executive officer, noted there were 62 cases—nearly all alleging exposure in Delaware—on the court's docket in 2004. But between May 2005 and Sept. 30 of this year, 577 more cases were filed—445 by nonresidents who largely allege they were exposed to asbestos in another state.

Because the court bundles numerous cases filed by different plaintiffs'

attorneys and schedules them for trial on the same date, a defendant has difficulty preparing its defense, Mr. Wolfe said.

For example, defendants cannot find enough experienced local counsel to handle so many cases at one time, said a spokesman for the Washington-based American Tort Reform Assn., which supports the Chamber's efforts.

Plaintiffs' attorneys are leveraging those circumstances to negotiate quick settlements, said the Chamber's Richard Heffron, senior vp of government affairs. The cases should be filed either where plaintiffs reside or where they were exposed, he said.

But, there should be no changes that limit the ability of Delaware-incorporated companies to sue one another in the state, both Chamber

officials asserted.

Plaintiffs' attorneys scoffed at the assertion that the lawsuits have "no meaningful connection to Delaware."

Attorney Steven Kazan has opted to file most of his asbestos cases in his home state of California but said, "It's fair game to sue somebody where he lives."

More than half of all U.S. publicly traded companies are incorporated in Delaware, according to the state's Division of Corporations.

Suing in Delaware is fair, as opposed to forum shopping and filing in a jurisdiction such as Madison County, Ill., where "things were very favorable for plaintiffs and things kind of got out of control" before reforms began to level the judicial playing field there, said Mr. Kazan, a

partner at Kazan, McClain, Abrams, Lyons & Greenwood P.C. of Oakland, Calif.

A partner with one law firm that has filed dozens of asbestos liability lawsuits for nonresidents in Delaware called the Chamber's complaints "hypocritical."

"How is 600 cases a crisis" for the state's Superior Court when the Chancery Court deals with "thousands and thousands" of cases? asked Michael Angelides, a partner with SimmonsCooper L.L.C. of East Alton, Ill.

The Chancery Court disposes of up to 1,100 cases annually, according to court statistics.

Mr. Angelides noted that Delaware courts have a reputation for being fair. He said plaintiffs are willing to take their chances there.



A key oil pipeline in Clearbrook, Minn., exploded last week, killing two workers, but is not expected to interrupt oil supply.

GRAND FORKS HERALD/ERIC HYLDEN

Oil pipeline explosion won't halt flow of fuel

By DAVE LENCKUS

CLEARBROOK, Minn.—A fatal explosion on the biggest oil pipeline that supplies Canadian crude to refineries in the Midwest is not expected to result in significant delivery delays or an insured property loss.

The explosion Wednesday afternoon killed two Enbridge Inc. pipe maintenance workers during what company officials described as a scheduled maintenance operation on an 11-foot section of a 34-inch-diameter pipe about three miles southeast of the company's terminal in Clearbrook, Minn.

The blast initially caused the Calgary, Ontario-based company to shut down four of its pipelines, but two were reopened within 13 hours of the incident, and a third reopened around midday Thursday.

Company officials said last week that they expected the fourth pipeline—which the maintenance workers were servicing when the blast occurred—to reopen by today.

Because of the company's oil reserves, tanker delivery capabilities and increased flow through its oth-

er three pipelines, Enbridge did not anticipate falling behind in its scheduled deliveries to customers, said J. Richard Bird, executive vp-liquid pipelines.

Damage to the still-closed pipeline had not been fully determined, but it wasn't expected to exceed the company's insurance deductible, Mr. Bird said.

Enbridge first detected a pinhole leak in the pipeline three weeks ago and temporarily fixed it with a sleeve until a permanent repair could be scheduled. That repair, replacing the 11-foot section of the pipe, was nearing completion yesterday when a leak in a coupling of the new pipe section was discovered.

The explosion occurred when the maintenance workers, who were in a vehicle about 20 feet from the pipe, were attending to the new problem, company officials explained.

The explosion caused minimal soil contamination, which the officials said does not pose an environmental hazard and should be cleaned up within a few days.

Errors & Omissions

A story in the Nov. 26 issue, "403(b) Sponsors Face Tougher Rules," misspelled the name of Glenn Poehler, a principal in the Richmond, Va., office of Mercer L.L.C.

Casualty cost of risk drops: Marsh

Softening market, other factors lead to decline, study finds

By JUDY GREENWALD

Companies tend to focus too much on the fixed costs of insurance, including premiums, and not enough on the much higher variable costs, such as ultimate retained losses and related claims and handling expenses, says an official at Marsh Inc., which is issuing a report on the topic.

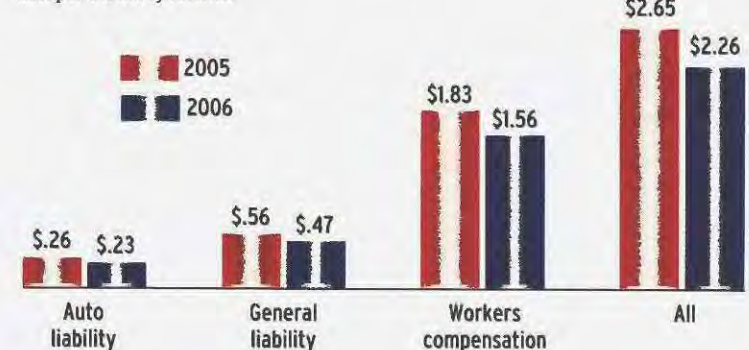
"Companies constantly seek the optimal mix of risk transfer (fixed costs) and retention (variable costs) in their efforts to control the cost of risk," the report says.

"We often find when meeting with clients and prospects, they tend to focus on fixed costs," when these expenses in a loss-sensitive program might account for just 10-15% of overall costs, said George Pallis, a Morristown, N.J.-based Marsh managing director and the report's publisher.

This is easier for companies

COST OF RISK TAKES A FALL

Cost per \$1,000 of revenue



Source: Marsh Inc.

because the fixed costs are "what you can really negotiate with the insurance company," said Mr. Pallis. "We try to get them to focus on the variable cost," which accumulates over a "number of years until

all costs are paid out."

Meanwhile, the casualty cost of risk reflects the softening market, the report says. An analysis of firms

See **COST OF RISK** page 6

Opting to play in Massachusetts

Most employers decide they'll offer health benefits under 2006 law

By JERRY GEISEL

BOSTON—Most employers with at least 11 employees in Massachusetts will offer health insurance coverage that meets state requirements rather than pay an assessment mandated under the state's health care reform law, according to state officials.

Under a provision in Massachusetts' 2006 health care reform law, companies with at least 11 full-time employees in the state are subject to an annual assessment up to \$295 per employee if they do not provide a "fair and reasonable" health insurance premium contribution.

Regulations issued last year by

the state's Division of Health Care Finance and Policy stipulated if employers pass one of two tests, they will be considered to have made a fair and reasonable health insurance contribution and thus are exempt from the assessment.

Under one test, if at least 25% of full-time employees are enrolled in an employer's group health insurance plans, the employer is deemed to have made a fair and reasonable contribution.

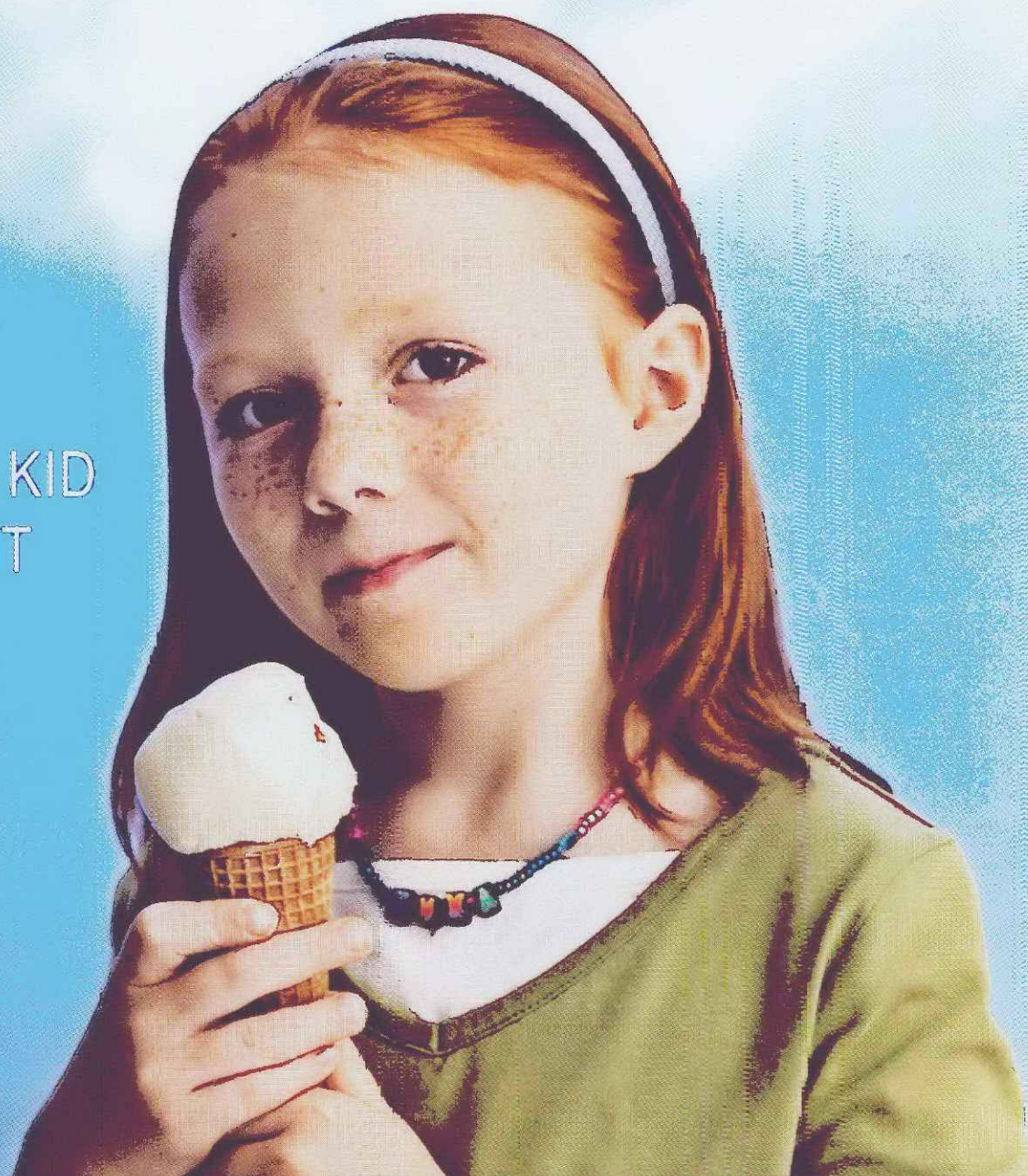
If that test is not met, employers offering to pay at least 33% of the premium for individual coverage also would pass the fair and reasonable test.

Of 19,056 employers with at least

11 employees that submitted the filing that was due by mid-November, just 518 failed to pass the tests and owe the state a combined \$5.1 million, according to the Division of Health Care Finance and Policy and the Division of Unemployment Assistance.

The Division of Unemployment Assistance said it is sending notices this week to employers that have not yet filed to remind them of the requirement.

In all, about 44,000 employers have submitted the filing, including nearly 25,000 employers that have fewer than 11 employees and are exempt from the fair share contribution.



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CIGNA: Acquisition boosts presence in Northwest

CONTINUED FROM PAGE 3

escaping flat enrollment and earnings it has been experiencing the past several years, Mr. McDonald said.

The acquisition includes Great-West Healthcare's full portfolio of health and group insurance offerings and its supporting information technology infrastructure.

Great-West products include traditional managed care preferred provider organizations, point-of-service care, health maintenance organizations and open access plans, along with consumer-driven health care products.

"CIGNA's acquisition of Great-West Healthcare combines complementary strengths in products and expertise, and will build on the strong provider relationships that are important to both organizations," Rick Rivers, executive vp of Great-West Healthcare, said in a statement. "Our customers and members will gain access to additional CIGNA resources and value-added services and

programs."

In a research note related to the acquisition, Charles Boorady, New York-based managing director with Citigroup Investment Research, said the move is entirely strategic on CIGNA's part.

"It needs to increase its local market share to gain leverage over providers," Mr. Boorady wrote. "Also, we think the Great-West success in making self-insuring feasible for small employers can be leveraged by (CIGNA's) stronger distribution."

Edward Hanway, CIGNA chairman and chief executive officer, said the Great-West acquisition met the company's criteria for strategically acquiring business.

"Our criteria is that any deal must align with our strategic objectives, it must provide meaningful value to our shareholders—meaning it makes sense economically—and it must not disrupt our momentum," Mr. Hanway said during a conference call for analysts and investors. "We believe Great-West meets all three criteria."

Cost of risk: Down in 2006

CONTINUED FROM PAGE 4

for which Marsh had data for both 2005 and 2006 shows the cost of risk per \$1,000 of revenue dropped 16% to \$2.26 in 2006 compared with 2005, according to the report.

The report says workers compensation continues to dominate the overall primary casualty program expense, representing 70% of the combined cost in 2006, up from 67% in 2005.

It notes that workers comp costs "are primarily driven by the cost of

"keep a careful eye on the medical component of claims through such strategies as bill review, medical case management and pharmacy-benefit management." Medical costs account for 60% of workers comp costs, according to the report.

Avoiding claims entirely can have a more dramatic effect on a company's revenues, said Mr. Pallis. For instance, a firm with a 5% profit margin and an \$8,000 workers comp claim can, in effect, add many times that amount to its revenues by eliminating that claim and reinvesting the savings into its business.

Mr. Pallis said that companies with guaranteed-cost programs need to realize that this "doesn't mean they're insulated for these types of loss costs on the claim side, because while premiums may be guaranteed for this year," future costs "are based on their loss experience as well." As a result, "they shouldn't ignore pre- and post-loss measures as a means of helping out their programs in the future."

Mr. Pallis said he recommends that "companies should look on a continuing basis" at their retentions. "If they've had, say, a \$500,000 deductible, it doesn't necessarily mean they should just let that ride over the course of market cycles."

As the market softens, for instance, they may be able to halve their retention to \$250,000 but "at the same fixed cost so that while your fixed cost remains stable, you're really minimizing the risk to your company."

Copies of the free report, called "Casualty Cost of Risk 2007, The Cost of Doing Business," will be available this week, and can be obtained by contacting a local Marsh office or by calling Marsh's Ginny Butera at 212-345-5339.

'We often find when meeting with clients and prospects, they tend to focus on fixed costs.'

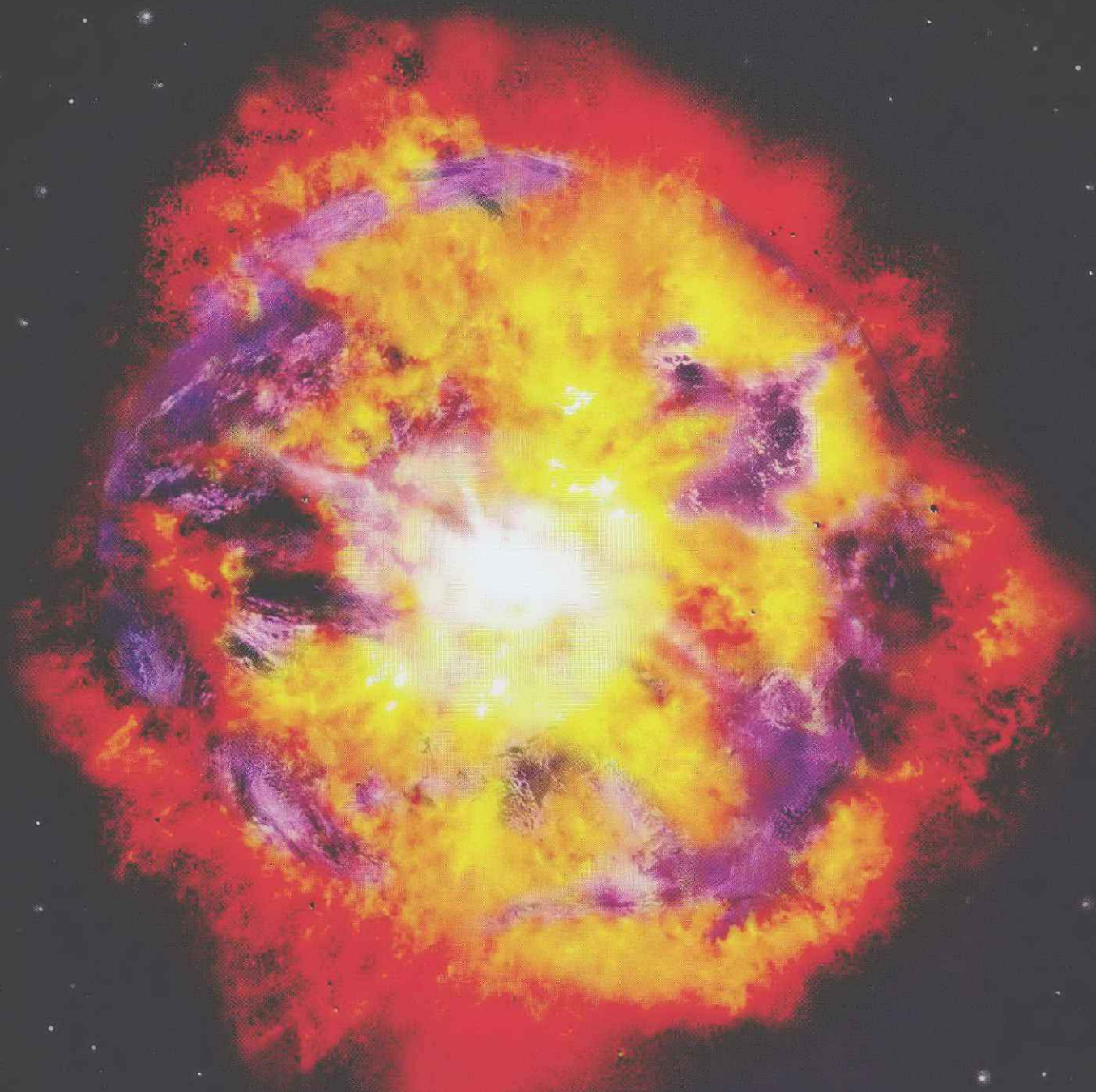
George Pallis, Marsh Inc.

claims, with the cost of claims and related administration charges representing 92% of the workers comp dollar."

The report recommends businesses "attack the problems in an organized fashion. Start by having a solid pre-loss program in place," which lets companies make decisions that can help reduce the risk of injuries.

Then when accidents do occur, "manage the claims wisely," says the report. "This means ensuring that each claim meets compensability guidelines, is properly investigated," and that there is a "solid plan in place" for the employee to return to work as soon as practicable.

The report also recommends that when accidents do occur, employers



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Business Insurance OPINIONS

Déjà vu all over again with TRIA extension

SO CLOSE, YET so far away. That's the place in which proponents of a continued federal terrorism insurance backstop find themselves less than a month before the program is slated to expire. It's similar—but fortunately not identical—to the place they were this time in 2005 only weeks before the original backstop was supposed to sunset.

We say "similar" rather than "the same" because this time around, there's every reason to believe the backstop will be extended beyond Dec. 31, and for at least seven years as called for in the Senate's extension legislation. While we'd prefer a permanent extension or the 15-year extension sought by the House bill, seven years beats the two years granted in 2005 by any measure. It's a definite improvement over the approach of just two years ago.

Any compromise that emerges from House and Senate discussions appears certain to be an improvement over the current program in at least one other aspect as well.

Both bills would eliminate the unnecessary distinction between terrorist acts stemming from foreign and domestic sources. The current program cannot cover losses from a catastrophic act of domestic terrorism.

No compromise is perfect, but then little in life—particularly political life—is. The backstop program likely to receive congressional approval this month would be better than the one now in place. It should help guarantee needed stability in the insurance marketplace in a time of economic uncertainty.

Policyholders—both as individuals and as members of organizations such as the Risk & Insurance Management Society Inc. and the Coalition to Insure Against Terrorism—played a key role in moving the issue as far as it has gone. It's up to Congress to finish the matter as soon as possible by approving an extension bill that the president can sign.

It's a definite improvement over the approach of just two years ago.

Trial of Gen Re execs may shed light on deal

JURY SELECTION is slated to begin today in what may be the insurance industry's trial of the century: former executives facing criminal fraud charges over a finite reinsurance deal between American International Group Inc. and General Re Corp.

The Connecticut trial itself is rare—most of the investigations of industry practices and charges of wrongdoing since 2004 have been settled or dismissed. Largely due to such scrutiny, finite reinsurance is all but dead in the United States as a risk financing option. And it has high-profile players. Ronald Ferguson, ex-chief executive officer of Gen Re and a legendary actuary who co-developed a widely used method of calculating loss reserves, is among five defendants accused of conspiring to artificially boost AIG's reserves through a \$500 million transaction that prosecutors say involved no risk transfer.

The finite deal was a factor in the exit from AIG of CEO Maurice R. Greenberg, CFO Howard Smith and reinsurance officer Christian Milton, who also is a defendant in the Connecticut trial. No criminal charges have been filed against Messrs. Greenberg and Smith, who face pending civil fraud charges.

Prosecutors will have to convince a jury that the defendants caused substantial harm. But to whom? The \$500 million deal, a big amount, to be sure, was immaterial to AIG's financial results. While a dip in AIG's share price in October 2000 allegedly precipitated the deal, the stock recovered quickly and there were no significant swings after the deal was completed. Furthermore, regulation of such complex deals is at best vague.

Insurance industry observers will want to watch this case closely.



BI beats list

In an effort to ensure continuing timely coverage of risk management, insurance and benefit-related news, Business Insurance has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to BI readers. BI welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

Agents/brokers:
Sal Roberts.

Benefits—health care and ancillary benefits:
Joanne Wojcik.

Benefits—retirement savings/pensions:
Jerry Geisel.

Canada—risk management and benefits:
Gloria Gonzalez.

Employment practices:
Judy Greenwald.

Environmental risk management: Sally Roberts.

Federal regulation/legislation—benefits:
Jerry Geisel.

Federal regulation/

legislation—risk management:
Mark A. Hofmann.

Health care industry operations: Gloria Gonzalez.

Industry Focus: Rodd Zolkos, Meg Fletcher.

Insurance coverage litigation: Douglas McLeod.

Insurance fraud:
Douglas McLeod.

Latin American markets:
Roberto Cenicerros.

Property/casualty industry operations: Judy Greenwald.

Professional liability:
Dave Lenckus.

Property loss control/cat risks: Mark A. Hofmann.

Regulation of insurance:
Meg Fletcher.

Reinsurance:
Judy Greenwald.

Risk management profession: Dave Lenckus.

Runoffs/receiverships:
Douglas McLeod.

Safety/ergonomics: Meg Fletcher.

Surplus lines/wholesalers:
Roberto Cenicerros.

Tort reform: Mark A. Hofmann.

Work/life benefits and EAPs: Sally Roberts.

Workers compensation:
Roberto Cenicerros.

Online Poll at www.businessinsurance.com

How much do wellness programs reduce corporate health care costs?



NEXT WEEK'S POLL: Will Congress manage to extend the terrorism insurance backstop before its Dec. 31 expiration?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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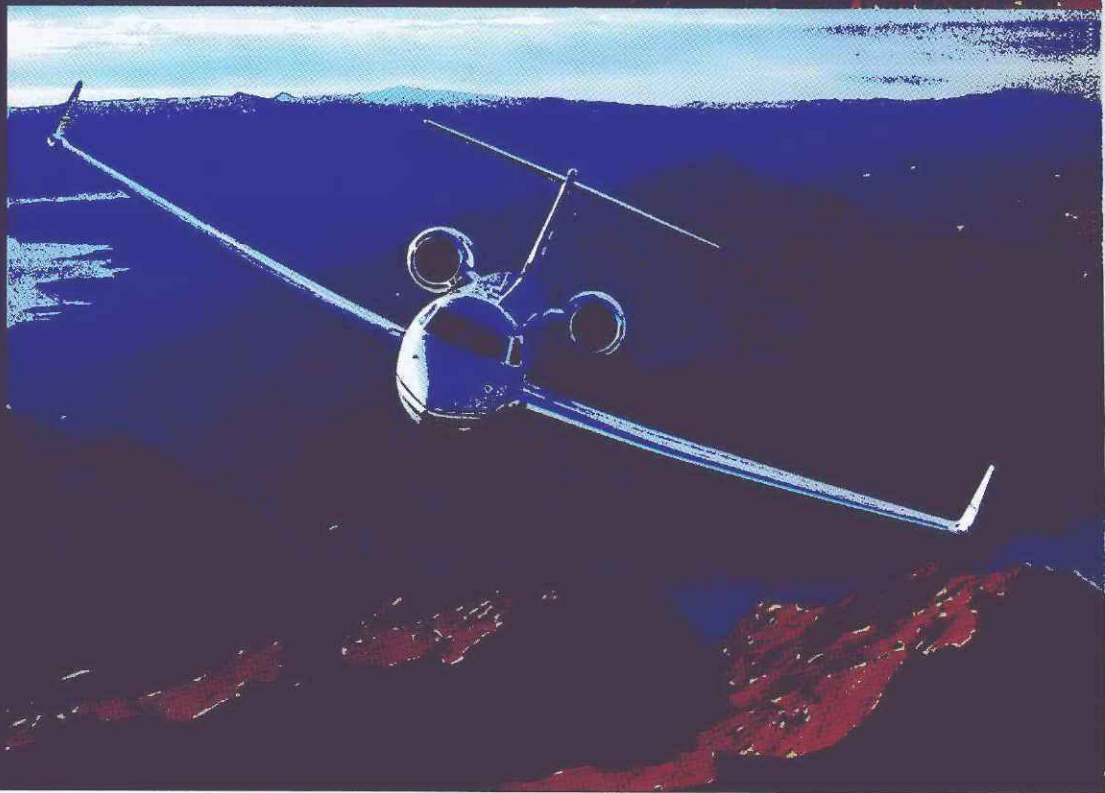
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Greenhouse gases inflate exposure potential

Analyzing and disclosing impact of emissions is a rapidly moving, sometimes fuzzy target

By **SALLY ROBERTS**

Corporate America faces a myriad of potential perils associated with climate change and risk managers need to educate themselves about the possibilities and what they can do to manage them, experts say.

Climate change has gotten the attention of U.S. businesses as more research comes out linking greenhouse gas emissions to the warming of earth's atmosphere.

Not surprisingly, various green business practices and conservation efforts have become increasingly popular among businesses that want to be seen as part of the solution rather than part of the problem.

But there remain a number of risks associated with climate change that risk managers need to assess, not the least of which is how changing weather patterns could impact their corporate operations (see story, page 14), experts say.

At the same time, though, investors and shareholders increasingly are pressuring public compa-

nies to disclose their climate change risks and how they are addressing them, which pose risks for directors and officers should those disclosures prove inadequate or incomplete down the line, they say.

In addition to reputational risks, greenhouse gas emitters also face potential liability for contributing to global warming as a number of lawsuits have been filed. While not successful so far, such suits could be in the future, experts say (*BI*, Nov. 5, Feb. 12).

Overall, risk managers need to evaluate and understand all of their exposures associated with climate change and, where possible, prepare and manage for them, experts say. That includes looking at current insurance programs and determining whether there are gaps relating to climate change, they note.

"I think the issue is at an inflection point, where previously companies could afford to sit back and

wait and see how it unfolded," said Gary Guzy, global practice leader for climate risks and sustainability at Marsh Inc. in Washington. "From a regulatory perspective and public opinion perspective, there is a significant risk in doing that now."

Indeed, a growing consensus of scientists, including those comprising the U.N. Intergovernmental Panel on Climate Change, agree that the earth's surface is warming due to a buildup of carbon dioxide and other greenhouse gases in the atmosphere. That warming, they say, is causing rising sea levels, more intense windstorms, drought, torrential rains, wildfires and heat waves.

Although it has not been proven conclusively that global warming is caused by burning fossil fuels, the IPCC earlier this year said that it was very likely to have been caused by such human activity (*BI*, Feb. 12).

Experts agree that it's only a matter of time before the U.S. government imposes restrictions on greenhouse gas emissions.

"The pace of change is pretty phenomenal and the fact is climate change presents many different threats, which obviously have huge significance to our clients and to the insurance industry at large," said Michael Balmer, environmental practice leader for Willis Group Holdings Ltd. in Boston.

From a risk management perspective, "it comes down to analysis and ultimately disclosure of what those risks might be and are," he said. But it's also looking at what impact climate change might have on current insurance programs and whether the policies will respond as climate change trends develop, Mr. Balmer said.

"The most immediate area as a risk manager I'd want to look at would be my D&O program to make sure if there is a risk—that we are a major emitter of greenhouse

CLIMATE CONCERNS:
Cheese maker, shipper share weather worries. **Page 14**
Canadian city learns fires often lead to floods. **Page 16**

Environmental
Risk Management

SPOTLIGHT

**LARGEST INDEPENDENT
U.S. RISK MANAGEMENT
CONSULTANTS**

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**RISK MANAGERS GET
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**URBAN SQUEEZE FUELS
BROWNFIELD USAGE**

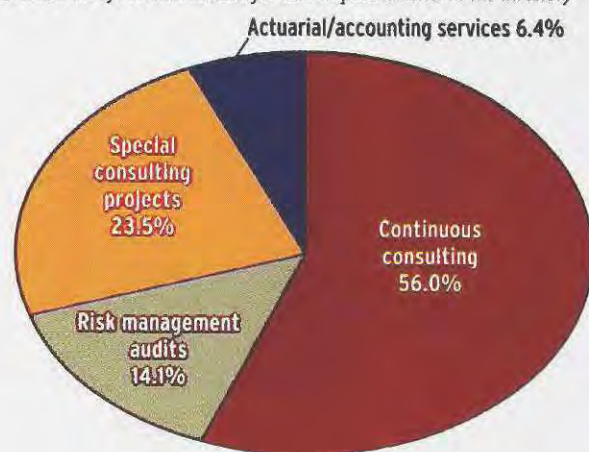
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REVENUE SOURCES

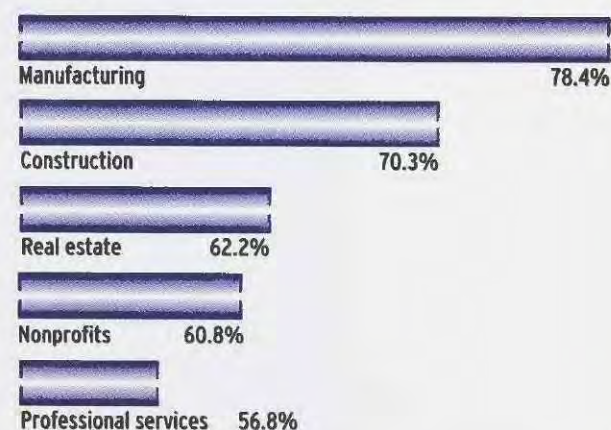
Breakdown of revenue sources for all companies listed in the directory



Source: BI survey

MOST COMMON INDUSTRIES SERVED

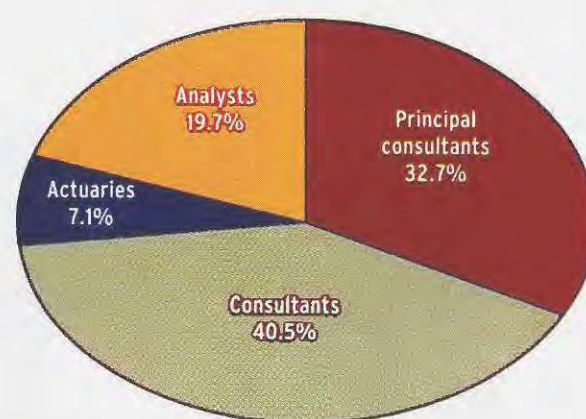
Percentage of all companies in the directory that provide services to these industries.



Source: BI survey

BREAKDOWN OF PROFESSIONAL STAFF

Risk management professionals for all companies listed in the directory



Source: BI survey

Largest independent U.S. risk management consultants

Companies deriving a majority of their gross revenues from unbundled risk management consulting ¹

Rank	Company/Address	Telephone/Web site	2007 unbundled revenue from risk management consulting ²	Unbundled clients ³	Professional staff ³	Principal officer
1	RMI Consulting Inc. 20 Soundview Marketplace, Port Washington, N.Y. 11050	516-767-7373 www.rmiconsulting.com	\$12,200,000	550	33	MaryAnn Sackman, president
2	J.H. Albert International Insurance Advisors Inc. dba Albert Risk Management Consultants 72 River Park, Needham Heights, Mass. 02494-2631	781-449-2866 www.albertrisk.com	\$8,600,000	600	34	Alfred H. Nagelberg, Stuart T. Cowart, presidents
3	Sigma Consulting Corp. 201 St. Charles Ave., Suite 2401, New Orleans, La. 70170	504-598-0100 www.sigmacorp.net	\$5,027,508	50	12	Bret A. Clesi, president
4	RCS Services 5506 Mitchelldale, Houston, Texas 77092	800-807-7475 www.rcsservicesinc.com	\$4,846,514	483	13	Trish McCall, president
5	Risk International Services Inc. 4199 Kinross Lakes Parkway, Suite 220, Richfield, Ohio 44286-9394	216-255-3400 www.riskinternational.com	\$4,810,000	48	24	Douglas L. Talley, chairman/CEO
6	Alpha Risk Management Inc. 60 Cutter Mill Road, Great Neck, N.Y. 11021	516-829-3500 www.alphariskmanagement.com	\$4,150,000	77	19	Herbert H. Feldman, president/CEO
7	Robert Hughes Associates Inc. 508 Twilight Trail, Suite 200, Richardson, Texas 75080	972-980-0088 www.roberthughes.com	\$2,600,000	240	15	John R. Oakley, president
8	Kevin F. Donoghue & Associates 190 High St., Boston, Mass. 02110	617-482-7015 www.kfda.com	\$2,400,000	150	6	Kevin F. Donoghue, president
9	Risk Navigation Group L.L.C. 37 Dumont Road, Suite 100, Far Hills, N.J. 07931	973-470-1010 www.risknavigation.com	\$2,300,000	60	8	Richard M. Sabetta, managing principal
10	Taylor Risk Consulting 16415 Addison Road, Suite 800, Addison, Texas 75001-3267	972-447-2055 www.charlestaylorconsulting.com	\$1,702,993	147	14	Gabriel Lugo, senior vp

¹ Business Insurance defines independent consulting operations as those that are not owned by insurers or brokers. In addition, companies deriving 50% or more of their revenues from actuarial, captive, environmental, property loss or safety consulting are not ranked. ² Estimated. ³ As of 6/30/2007.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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INSURING PROGRESS



Cheese maker, heating oil shipper share same concern: unexpected weather

More extreme weather as a result of global warming tops the list of concerns for risk managers of two disparate businesses located in entirely different parts of the United States.

"What keeps me awake at night" is the potential impact global warming could have on the food supply system, said Steven Levine, risk and insurance manager for Denver-based cheese manufacturer Leprino Foods Co.

"Changes in temperature and weather patterns may

impact...amounts of water for vegetation to flourish," Mr. Levine said. "Our company requires a lot of milk, and a reduction in food supply will affect the business through less food being available to feed the cows or increase in food pricing. Increased prices will impact demand for the product."

But it's not just drought that concerns Mr. Levine. Last year, an estimated 50,000 cows died from exposure due to two feet of snow that dropped over a 24-hour period in Colorado. That was a poten-

tial loss of about 350,000 gallons of milk per day in that small area alone, he said.

"Even good business contingency planning has its limits and certain assumptions may be miscalculated during any planning," Mr. Levin said.

Climate change is "absolutely" a concern for Stamford, Conn.-based Lexa International Corp., especially as it relates to its New Hampshire-based Sprague Energy Corp. unit—a supplier of energy and materials handling services,

said Risk Manager David S. Hershey.

More mild winters mean less fuel is used to heat homes, which translates to less revenue for Lexa, Mr. Hershey said. "That has a huge impact on us because we get paid upon volume, not sales price," he said.

To mitigate those risks, Lexa is looking to diversify Sprague's operations to focus on importing and exporting products such as cement, coal, gypsum and lumber, which are not as temperature-

sensitive as petroleum, he said.

"If you have a barge coming in with petroleum, the mechanism for unloading that is essentially the same as if you have a tanker coming in or a barge coming in with dry goods," he said.

"You'll find more and more people in the handling business of petroleum products facing the same concern. People that have the larger risk are those that don't have the capacity to diversify," Mr. Hershey said.

—By Sally Roberts

Climate: Few ask enough questions

CONTINUED FROM PAGE 11

gases and the potential for shareholders to take some action because we were not as prepared as we thought we were—that our D&O program was going to cover those types of claims," Mr. Balmer said.

However, Joe Boren, chairman and chief executive officer of AIG Environmental, a unit of American International Group Inc. in New York, said the risk managers he deals with are not asking questions about climate change risks and whether their companies would be protected.

"You'd think we'd be having those conversations, but I'm not having them," Mr. Boren said.

"I think the thing risk managers should be thinking about is how are they protecting their company if their company is an emitter of greenhouse gases, and that goes to how is the company actually disclosing what those risks are," Mr. Boren said.

In general, D&O policies contain pollution exclusions, but it is not certain that greenhouse gases would be considered a pollutant, experts say. Pollution liability policies, which generally do not contain exclusions for greenhouse gases, extend to directors and officers, brokers say.

From a property perspective, risk managers also should analyze what impact changing weather patterns could have on their business and plan accordingly, experts say.

While "no one can say for sure scientifically whether the (wildfires) that occurred in San Diego County recently or the hurricane season are directly related to climate change, you have to put it on your checklist of items to consider because the accumulative statistical effect of all these things may point to global warming and climate change," said David Orleans, a vp in Willis' environmental practice in San Francisco.

From a short-term perspective, "We need to improve our under-

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Canadian city finds wildfires tilt odds heavily in favor of flooding in the future

By GLORIA GONZALEZ

The largest wildfire loss in Canada's history—a devastating 2003 event that some observers attributed to climate change—convinced Kelowna, British Columbia, to explore ways to manage the aftermath.

City officials determined that the wildfire damage created another significant environmental risk: flooding.

The wildfires had burned thousands of acres of watershed—land that drains into a river, stream or other body of water—and damaged soil, decreasing natural absorption of precipitation and increasing the risk

of flooding. As a result, the city determined, there was a 78% probability of a major flood in the next three to five years. So it spent \$2.3 million Canadian (\$1.8 million) to upgrade its drainage infrastructure to handle additional runoff, said Lance Kayfish, the city's risk manager.

"We've never had the catastrophic event, but we did have significant rainstorms that the infrastructure coped with quite successfully," Mr. Kayfish said.

Currently, the city is developing a flood plan bylaw to serve as a development guideline that is "based on science to best protect the city's infrastructure and private property

in case there's a major flood event," Mr. Kayfish said. The bylaw, which will likely be completed next year, will focus on factors such as the construction standards needed to protect the city's infrastructure.

Quickly evolving research

Kelowna officials have looked at weather trend data from the past 50 years to create a flood plan analysis, but developing a usable data set is complicated by conflicting weather patterns, insufficient historical data for worst-case scenarios and continually evolving research concerning climate change.

"How relevant is our data set now

because our environment has changed?" Mr. Kayfish asked.

Extreme weather events have caused substantial insurance losses in Canada. Winter storms earlier this year in British Columbia resulted in more than \$135 million Canadian (\$116.4 million) in insurance losses, the largest in the province since the 2003 wildfires caused about \$200 million Canadian (\$155 million) in insured losses, according to the Insurance Bureau of Canada, the trade association of property/casualty insurers.

Although some of these extreme weather events are related to natural weather cycles, weather risks

related to climate change are increasing, said Matthias Jakob, senior geoscientist with BGC Engineering Inc. in Vancouver, an engineering consulting firm that helps clients manage climate change issues.

Coastal communities in Canada, for example, may become more vulnerable to flooding and erosion as a result of changes in temperatures and precipitation levels, he said. "Rising sea levels will cause more catastrophic coastal events," Mr. Jakob said.

Zurich Canada is sponsoring a project conducted by Simon Fraser University in Burnaby, British Columbia, to explore options to adapt to climate change, specifically to extreme weather events. The idea is to approach climate change proactively and generate information that will enable its customers to avoid some of the financial losses that will occur because of weather events, said Heather Loughery, senior vp at Zurich Canada in Toronto.

"What we're hoping for is a better insight, a greater understanding of what our customers face and what the industry faces," Ms. Loughery said.

Climate: Ups pressure on pricing

CONTINUED FROM PAGE 14

standing of the risk itself and have to put more effort in modeling the risks," said Mark Way, head of sustainability issue management and reporting for Swiss Reinsurance Co. in Armonk, N.Y. Companies also can make their buildings more resilient to severe weather via various retrofits and building code updates, he said.

Short of relocating operations outside catastrophe-prone areas, risk managers should anticipate even higher premiums and self-insured retentions in the future, experts say.

"I think the biggest risk and most immediate risk (associated with climate change) is going to be availability and affordability of insurance in areas that are prone to weather-related disasters," said Rod Taylor, managing director with Aon Environmental Services based in Orlando, Fla. Companies "are going to have to spend a lot more money" on insurance and will have to retain more of the risk, and they need to plan for that, he said.

No matter what the United States does in terms of reducing greenhouse gas emissions, "that's not going to make next year's hurricane season less or the one after that or one after that," Mr. Boren said.

"The fact of the matter is we've changed weather patterns and over a longer period of time there will be a change," Mr. Boren said. "Risk managers need to be thinking about that."

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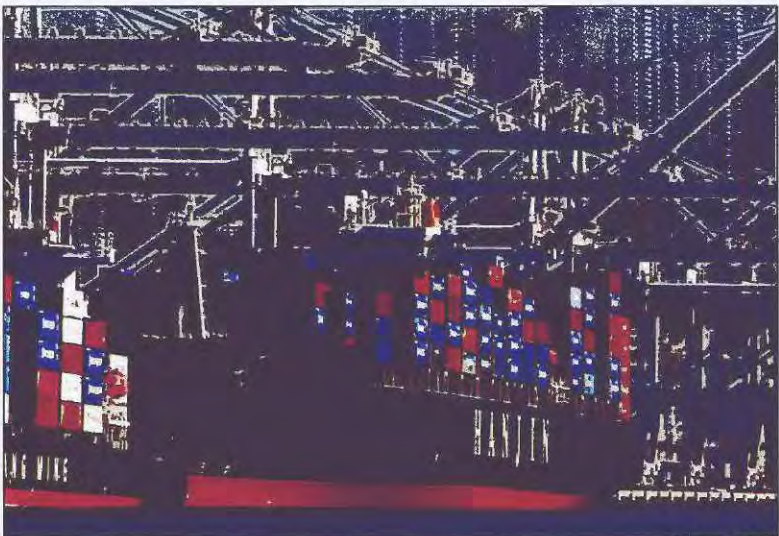
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GETTY IMAGES

Jane A. Keegan, enterprise risk manager for the Port of Oakland in California, said environmental-related risk reviews can take "months, if not years."

Team weighing environmental impact more often includes risk managers

Growing options, falling pricing benefit insurance buyers

By ROBERTO CENICEROS

Risk managers increasingly are in the loop when companies address their environmental liabilities, but that isn't always the case, say brokers, insurers and risk managers.

During the more than 25 years

that insurers have offered environmental liability coverage, risk managers often have been absent from corporate efforts to address pollution risks. Corporate silos that separate departments such as legal and environmental from risk management still hamper a team approach, the experts say.

But today, more risk managers are part of the process of finding solutions for potential issues, and the risk manager's involvement is among factors increasing sales of

third-party pollution coverage, observers say.

"I wouldn't go so far as to say that risk managers are beating...a path to our door," said Chris Smy, global environmental practice leader in Atlanta for Marsh Inc. "But there certainly is a lot more effort and a lot more discussions going on with risk managers, and more risk managers are choosing to buy these products."

Brokers and insurers looking to increase revenue are placing more focus on the sale of environmental policies, observers say.

The increased availability of pollution liability policies, decreasing prices and a maturing of the coverage are other factors generating more risk manager involvement.

"Environmental insurance isn't as much of a mystery as it was in the past," said Jeff Bray, vp of risk management for AMB Property Corp., a San Francisco-based industrial real estate developer and owner in North America, Europe and Asia.

'It's a different type of transaction than any of my other insurance buys.'

Jane A. Keegan, Port of Oakland

"More risk managers are getting involved, at least in coordinating with their environmental counterparts (such as attorneys and engineers) in environmental due diligence," Mr. Bray said.

But risk managers do not necessarily want to be part of all aspects of purchasing the coverage.

"It's the only insurance purchase I make here that is not totally controlled by me," said Jane A. Keegan, enterprise risk manager for the Port of Oakland in California that oversees Oakland's seaport, airport and 19 miles of shoreline. "It's a different type of transaction than any of my other insurance buys."

Ms. Keegan, an early purchaser of pollution liability policies, said the scientific and legal considerations in evaluating environmental exposures are too time-consuming for her involvement. That is handled by a group made up of attorneys and engineers specializing in environmental issues. Ms. Keegan said she steps in to select the insurer and negotiate the final price and conditions once that evaluation is complete.

"I personally do not want to get involved until it actually gets into the insurance buying portion because it is such a lengthy, lengthy underwriting (process) and it can involve months, if not years sometimes, of reviewing environmental documents," Ms. Keegan said.

Rick Craig, national environmental practice leader for Beecher Carl-

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See ENVIRONMENTAL page 20

A photograph of four men in business suits, positioned in a starting crouch on a red running track. They are leaning forward with their hands on the ground, ready to start a race. The background shows a clear blue sky and a chain-link fence.

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Environmental: Understanding, uptake rise, but 'disconnect' remains

CONTINUED FROM PAGE 18

son in San Francisco, said the best approach to address environmental issues involves a corporation's legal, environmental and risk management departments.

Today's risk managers are more aware of environmental risk products, and often are part of a team when purchasing coverage. That is especially true at heavy manufacturing companies that have experienced claims, Mr. Craig said. Even so, he said the lack of connection between the legal and environmental departments and risk management at many companies has been

a drag on purchasing environmental coverage.

Environmental insurance is better understood than in years past, agreed Dave Dybdahl, president of the American Risk Management Resource Network L.L.C., a Madison, Wis.-based environmental wholesale brokerage.

However, pollution liability remains a peripheral coverage for many risk managers because of its complexity and the "disconnect" between risk managers, engineers and attorneys, Mr. Dybdahl said.

Others see the barriers that kept risk managers out of pollution liability discussions fading away.

"With increasing frequency, we are starting to see that dysfunctionality that was certainly there 10 years ago...going away," said Kenneth E. Anderson, central team leader for Aon Corp.'s environmental practice in Chicago.

Environmental liability policies have been around more than 25 years and have become a mainstream product, Mr. Anderson said. It would be a lapse in judgment for risk managers not to review the available coverage, he said.

More insurers are offering environmental coverage, observers say. Ms. Keegan said that several insurers that recently began providing

the coverage appear to be dedicated to offering it over the long haul.

Why prices are softening

Prices for the coverage are falling. Ms. Keegan said she currently is renewing a pollution liability policy purchased five years ago and said the 20% price decrease is not entirely due to the overall softening in the insurance market. Increased insurer competition along with a scientific approach to underwriting has led to lower losses, she said.

Environmental policies have been and continue to be popular with companies seeking to address outstanding environmental issues

before completing a merger or acquisition, said Michael Balmer, environmental practice leader for Willis North America in Boston.

Attorneys often handle those one-time insurance deals, usually without a risk manager's involvement, observers say.

But sales of renewable policies purchased to address ongoing corporate operational risks also are gaining momentum, Mr. Balmer said. Overall softening insurance prices have freed funds in risk managers' budgets to purchase the coverage, he said.

Meanwhile, insurers increasingly are marketing the sale of renewable policies, Mr. Balmer said.

And brokers say they have stepped up their efforts to sell environmental coverage addressing operational risks.

There also are many risk managers working today that experienced the era when policyholders regularly litigated over pollution coverage under commercial general liability policies, said William Hazelton, senior vp. in New York for ACE Environmental Risk, a unit of ACE Ltd.

Because of that experience, risk managers are more sophisticated about environmental liability coverage and that sophistication is correlating with increased sales of environmental liability insurance, Mr. Hazelton said.

"Our business has been impacted positively because of that fact," Mr. Hazelton said.



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Nanotechnology poses potential risks to environment, health

By GLORIA GONZALEZ

Nanotechnology holds great promise for developing new products, but it is viewed by the insurance industry as an emerging risk because of its possibly harmful impact on human health and the environment.

With nanotechnology use expected to grow exponentially in the next decade and uncertainty about the environmental impact of nanomaterials, companies are taking essential risk management precautions, experts say.

Nanotechnology involves manipulating matter at nanometer length—one billionth of a meter—to produce new materials, structures and devices.

As a science-based products and services company, E.I. du Pont de Nemours & Co. was enthusiastic about the potential of nanotechnology to improve a broad range of

products, but it also wanted to address potential risks involved with the developing science.

In 2005, DuPont partnered with Washington-based Environmental Defense—which works with businesses, governments and communities to develop environmental solutions—to create a framework to identify and address potential

environmental, health and safety risks of nanoscale materials. The framework, released in June of this year, provides a guide to evaluate the risks of nanomaterials and develop internal policies and procedures to minimize risk (see box).

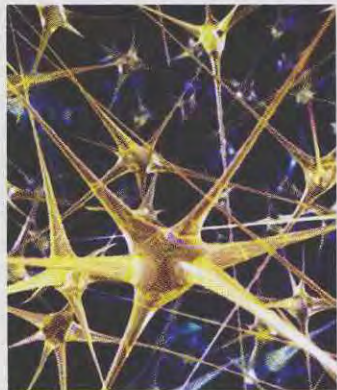
"It's a six-step process which follows pretty classic risk management

paradigms," said Terry Medley, global director for corporate regulatory affairs for Wilmington, Del.-based DuPont. "Are there unique risks presented and how does one adequately address those?"

Nanomaterials could have negative impacts on the environment. For example, nanoparticles could be released into the water or the air

and ultimately contaminate soil and groundwater, according to a Swiss Reinsurance Co. report on nanotechnology. In addition, some artificially manufactured nanoparticles could create a new class of biodegradable pollutants, the report said.

See **NANOTECHNOLOGY** next page



RISK CONSIDERATIONS

E.I. du Pont de Nemours & Co. and Environmental Defense released the Nano Risk Framework this summer to help organizations evaluate and address the potential risks of nanoscale materials. The framework offers guidance on key questions an organization should consider in developing nanomaterial applications and critical information needed to make risk management decisions.

STEP 1: Develop a general description of the nanomaterial and its intended uses.

STEP 2: Develop profiles of the material's properties, inherent hazards and associated exposures.

STEP 3: Review profiles to identify and characterize the nature, magnitude and probability of risks presented by the nanomaterial and its anticipated application.

STEP 4: Evaluate available options for managing the risks and recommend a course of action.

STEP 5: Consult with the appropriate review team and decide whether and how to continue development and production. Document any decisions and rationale and share information with relevant stakeholders.

STEP 6: Update and reexecute the risk evaluation, ensure risk management systems are working as expected and adapt those systems in the face of new information.

Source: www.nanoriskframework.com

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Brownfields: Cover options fuel interest in site development

CONTINUED FROM PREVIOUS PAGE

But even those two products are changing, experts say.

Rick Craig, a national environmental practice leader in San Francisco with Beecher Carlson, an Atlanta-based insurance brokerage and risk management consulting firm, said cost cap coverage is becoming more difficult to place.

He said insurers often end up paying out substantial sums because predicting the exact amount of contamination and cost of cleaning it up is difficult. He estimated three to four companies currently offer the coverage.

"The carriers have lost a lot of money because it is so difficult to get an environmental engineer's cost estimate and agree upon it," Mr. Craig said. "For most—if not

all—carriers, at least over time, this has been a losing proposition."

XL still offers cost cap or stop-loss coverage, but now offers it in conjunction with its guaranteed, fixed-price remediation program in which the property owner passes along some of its risk to the contractor cleaning up a given site and the contractor takes insurance for the remainder of the risk, thus spreading the risk between the owner and contractor.

"Before, we would write the policy to the owner, and the insurance company didn't have any control over the contractor," Mr. Oldow said. "Now, we have a direct relationship to their work."

Steve Manz, a Detroit-based vp in the Marsh Inc.'s environmental practice, said environmental firms and contractors are increasingly

going a step beyond guaranteed, fixed-price remediation programs and assuming full financial and legal responsibilities for known and unknown liabilities attached to remediation. They do this by using their assets or corporate balance sheet to back the guarantee should their insurance products be exhausted.

Policy terms, limits shrinking

Experts also said policy terms for brownfield redevelopment are shrinking.

Mr. Craig said it's difficult to get policy terms for longer than 10 years. A so-called blended finite-risk policy incorporating both pollution liability and cost cap insurance elements is the most likely way to extend a policy beyond 10 years, according to Mr. Manz.

Blended finite-risk policies transfer a property owner's financial risks stemming from environmental liabilities to an insurer. The policyholder pays the insurer the entire current value of the projected cleanup costs upon obtaining the insurance, along with a risk premium for timing, excess costs and liability coverage. The policies average 15 to 20 years maximum, although they used to be available for 30 years, Mr. Manz said.

Just as policy terms are shrinking, so are available limits, Mr. Craig said. Ten years ago, insurers were willing to offer \$200 million in limits, but today they're offering \$50 million in limits, he said.

Joe Boren, chairman and chief executive officer of AIG Environmental in New York, said the maximum limits his company will write

for cost cap insurance is \$25 million. For pollution legal liability, it will write \$50 million, he said. He said AIG also will build a cost cap policy by writing the primary coverage and then having another company add on additional coverage.

Even so, experts say with the exception of cost cap coverage, plenty of insurers are willing to provide some coverage and tailor their products to meet customers' specific needs. They said as both insurers and developers continue to get comfortable with process of insuring brownfield development, the market will continue to grow and evolve.

"We're seeing wider acceptance of environmental insurance to better facilitate the transfer of these assets and address the environmental stigma," Aon's Mr. Bennink said.

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As of October 31, 2007, the Captive had received over 300,000 insurance claims (open and closed) tendered by nearly 100 of its policyholders under actions commenced by over 8,000 claimants. The role of the data and document manager/TPA provider will be to accept claims tendered by the Captive's policyholders; to record their receipt and relevant information in physical or electronic (preferred) files and/or an electronic database; to establish whether the claim is covered under the Captive's policy by working with the Captive and its coverage counsel; to issue routine correspondence regarding same to the Captive's policyholders; and to manage relevant data on the claims on an ongoing basis. At some point, the data and document manager/TPA may take on a more significant role in claims resolution, depending on the course and content of the related judicial proceedings. The Captive will look to the TPA for assistance in reviewing loss adjustment expense invoices from attorneys and others for payment recommendations.

The intent is to contract with one or more firms to provide these services for an initial three-year period with options to extend the agreement for three additional one-year periods. If the Captive identifies a New York State licensed TPA that can effectively provide all services, it may select one firm to do so. If the company finds it advantageous to select a data and document management firm to manage high volume routine administrative claims information and a second firm to provide New York State licensed TPA services, it may select two firms to provide the combined services. The Captive is open to service providers submitting a joint response under a partnering arrangement.

In addition to other prerequisite qualifications for consideration, each candidate must affirm that it presently satisfies all licensing and certification requirements necessary to conduct business in the State of New York with regard to the scope of service required. Please contact clasala@wtccaptive.com or jschoenbeck@wtccaptive.com to request a copy of the Request for Proposal. Proposals are due by Friday, December 21, at 12 noon.

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International NEWS

IRB to lose monopoly status

SÃO PAULO, Brazil—Brazil's monopoly reinsurer, IRB-Brasil Resseguros S.A., will be reduced to the status of "local reinsurer" under the country's ongoing efforts to liberalize its reinsurance market.

No longer will the IRB regulate all reinsurance transactions in Brazil. In addition, the reinsurer, which is 50% owned by the government and 50% owned by local insurers, will not hold the monopoly position it has maintained since 1939.

Instead, Brazil's superintendent of private insurance, Superintendência de Seguros Privados—or SUSEP—will regulate reinsurance. Under implementation of Complementary Law 126, passed in January, SUSEP says IRB will compete as a local reinsurer.

A local reinsurer is one of three categories of reinsurers that will be allowed to operate in the country.

According to SUSEP, the three categories are:

- A "local reinsurer" maintaining a registered office in Brazil. Local reinsurers will have preferential access to 60% of Brazil's property/casualty reinsurance business for three years. That will decrease to 40% the following three years, with the

potential of a future law entirely eliminating the preferential treatment.

- An "admitted reinsurer" that is located abroad but maintains a representative office in Brazil.

- An "occasional reinsurer" that operates in Brazil without a local office.

Brazilian insurance observers are awaiting release of underlying rules for the three types of reinsurers, including the capital and reserve requirements they will be expected to meet. They say the rules are expected to be released by Dec. 15.

SUSEP along with Brazil's National Board of Private Insurers is drafting the rules after receiving public comment on draft regulations.

The rules will help determine how competitive Brazil's reinsurance industry becomes, observers say. If, for example, reserve and capital requirements are too high, then the IRB could remain the only reinsurer in the country by default.

But SUSEP said that following the release of its regulations, it expects to see global reinsurers take on more of Brazil's risks and more reinsurance capacity entering the South American nation.

—By Roberto Cenicerós

Buyers in Brazil expected to benefit from privatization of reinsurance

Changes in regulation could encourage formation of captives

By ROBERTO CENICEROS

SÃO PAULO, Brazil—The long-awaited opening of Brazil's reinsurance market to private reinsurers is expected to benefit insurance buyers and could give a boost to alternative risk transfer mechanisms, experts say.

Reinsurer Instituto de Resseguros do Brasil S.A. has had a monopoly in Brazil since its creation in 1939. But the country is finalizing rules for a recently adopted law that will phase in private reinsurers' direct participation in Brazilian risks (see related story). The rules are expected to be completed and available by Dec. 15.

The "sea change" about to take place in Brazil would allow both insurers and insurance buyers in Brazil to directly tap reinsurers worldwide, said Warren Cabral, a managing partner in the London office of law firm Appleby.

And while insurance prices could decrease for some Brazilian risks, they may increase for other exposures if the new participants price their reinsurance to make up for losses occurring beyond Brazil's borders, said Jorge Luzzi, director of corporate risk management in São Paulo for tire manufacturer Pirelli S.A.

One key area of change for risk managers will be in the area of captives.

While a few Brazilian companies previously formed captive insurers, a prohibition against Brazilian businesses contracting with reinsurers other than the IRB has hampered the formation of more captives, Mr.



The VII Seminário Internacional conference, sponsored by the risk management associations of Brazil and Latin America, was held last month in São Paulo, Brazil.

CONFERENCE EXTRA: More coverage of the VII Seminário Internacional conference held last month in Brazil is available at www.businessinsurance.com/conferenceextra.



Cabral said.

Once Brazil's risk managers can directly transact with reinsurance companies, more captive formations are likely to follow, Mr. Cabral added.

"Given the freedom, the flexibility, who wouldn't use a captive structure for exactly all the reasons the United States and other coun-

tries have had captives for years?" Mr. Cabral said.

The changes also open the door to capital market capacity, he said.

While the new law's intent is to allow foreign reinsurers to compete in Brazil, uncertainties remain over implementation. Until the final rules are released, it remains difficult to gauge the law's ultimate impact, said speakers and attendees at the Nov. 19-21 conference in São Paulo, sponsored by Brazil's risk management association, the Associação Brasileira de Gerência de Risco.

"The law has been passed, and its intent is understood. But the devil is

See **BRAZIL** next page



SCOR's new catastrophe bond covers Japanese earthquakes through Dec. 2010. In July, a nuclear power plant in Tokyo was damaged by a quake.

SCOR arranges \$237 million catastrophe bond

By JUDY GREENWALD

PARIS—Continuing an active year for securitization deals, SCOR S.E. last week said it has arranged a catastrophe bond that will provide it and its affiliates with an additional €160 million (\$237.4 million) of reinsurance coverage for European windstorm and Japanese earthquakes.

Paris-based SCOR said it entered into a multiyear property catastrophe retrocession agreement with Atlas Reinsurance IV Ltd., a special-

purpose vehicle incorporated under Irish law. The agreement is fully funded by proceeds received by Atlas IV from the issuance of the cat bond, which has already been fully placed with institutional investors, said SCOR in a statement.

The bond, whose losses are determined through modeling, covers first and subsequent Europe windstorm or Japan earthquake events for the risk period from Nov. 30, 2007, to Dec. 31, 2010, according to SCOR.

The company said the bond "provides additional protection for the group's peak natural catastrophe exposures and further strengthens its capital shield. This cat bond also enhances the diversification of the group's sources of retrocession and increases the visibility of the retrocession program over the next three years."

Total cat bond volume for 2007 will likely reach \$6 billion, estimates Oldwick, N.J.-based A.M. Best Co. Inc. Travelers Cos. Inc., Chubb

Corp., Liberty Mutual Insurance Co. and Allstate Insurance Co. all have sponsored bond issues this year.

Among recent deals, last month Munich, Germany-based Allianz S.E. closed its first cat bond transaction related to windstorm risks in seven European countries. The cat bond has two tranches, with an aggregate volume of €200 million (\$296.7 million), and represents the first series under a program with an initial maximum size of €1 billion (\$1.48 billion), according to Allianz.

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Commentary

Telling the truth is good business

Pretending to be a lawyer doesn't seem like a very good career choice, but some people apparently think so.

There was, for example, the recent case of Brian Valery, a former paralegal who convinced his bosses at Anderson Kill & Olick that he'd graduated from law school, passed the bar exam and been admitted to practice in New York. It turned out he'd made it all up, but Anderson Kill didn't find out until he'd been working as a lawyer at the firm for two years. Mr. Valery is awaiting sentencing on grand larceny charges.

Then there's the much weirder case of Jack H. Land.

Until a few years ago, Mr. Land, now about 60, worked at Rovner, Allen, Rovner, Zimmerman & Nash, a small firm in Feasterville, Pa. In 2003, Renee Mulholland hired him to do legal work for an estate she oversaw as executor. A year later, Ms. Mulholland died, and lawyers handling her estate reviewed some of Mr. Land's work for her and found "serious errors" in it, according to court records.

Mr. Land dodged the lawyers' efforts to get more information and, suspicious, they checked his credentials. He was a lawyer, they found, with an emphasis on "was": He'd been disbarred in 1981 and was actually working at Rovner as a paralegal.

An investigation found that Mr. Land had masqueraded as a lawyer with several Rovner clients, telling them that he'd won them settlements that either didn't exist or were larger than actual settlements in their cases. He then embezzled money from other Rovner client accounts to make the payments, court records say.

And that was only the latest chapter in his career. Around the time Rovner hired him in late 2002, Mr. Land was already facing federal fraud charges for embezzling \$288,075 from another Philadelphia law firm where he'd worked as a paralegal for 15 years. About \$88,000 of that money went to a client who'd lost his house and whom Mr. Land wanted to help, court filings say.

Mr. Land pleaded guilty to state and federal charges for the embezzlements at Rovner and his previous firm, and is currently serving a 30-month sentence in federal prison. In court filings before the sentencing last year, Mr. Land's lawyer sought leniency on grounds that he suffers from an obsessive-compulsive personality disorder and a "Santa Claus/Robin Hood" complex that drives him to try to help people he believes need it.



DOUGLAS McLEOD

Senior Editor Douglas McLeod can be reached at: dmcLeod@businessinsurance.com

The estate formerly administered by Ms. Mulholland, meanwhile, is suing Rovner to recover \$110,289 in "inappropriate disbursements" by Mr. Land, including money he paid himself.

The law firm asserts that it never knew Mr. Land was posing as a lawyer and that it has no responsibility for his actions, which were "outside the scope of his employment."

Evanston Insurance Co., Rovner's professional liability insurer,

You'd like to think that the lawyer you hire actually has a license and is largely free of psychiatric illness.

weighed in earlier this month, suing for a ruling that it has no obligation to defend or indemnify the law firm. Evanston argues, for one thing, that Rovner should have known it faced claims related to Mr. Land before the policy inception in March 2006.

That's some mess.

You'd like to think that most things are pretty much as they seem: that the lawyer you hire actually has a license and is largely free of psychiatric illness; that your insurance broker is actually trying to get you the best deal and isn't trying to rig bids on your program; that the company your pension plan invests in is reporting its financials accurately and isn't hiding liabilities in offshore affiliates.

You'd like to know that your local firefighter is really only interested in putting out fires, not starting them to look like a hero putting them out.

Things often aren't as they seem, though; sometimes far from it.

A Russian proverb, "trust but verify," became a refrain in Reagan-era U.S.-Soviet relations. It's not a bad idea in business, either.

Products & Services

AAIS revises compliance guide

WHEATON, Ill.—The American Assn. of Insurance Services has revised and expanded its guide to state compliance requirements related to policy forms and rating information.

In addition to updated information in existing sections, the compliance guide includes the following additions:

- A new section with tables listing requirements regarding the use of "SERFF," the System for Electronic Rate and Form Filing developed under the auspices of the National Assn. of Insurance Commissioners. The tables indicate which jurisdictions have adopted the SERFF policy coding matrix, which accept electronic fund transfers via SERFF and other requirements the jurisdictions may have.

- A new section with information on filing requirements for umbrella policy forms, endorsements, rules and rates. This includes a table with citations from state laws governing umbrella policy filings, plus state-by-state information about how to adopt and modify AAIS personal, commercial and farm umbrella products.

- New company action sections

within existing sections with instructions for companies seeking to implement an AAIS form, rule or rating information filing, whether it be in a new line or state, or for an existing line and state affiliation.

The guide is available electronically at no additional charge to all companies that use at least one AAIS program. Companies not affiliated with AAIS can purchase an electronic copy of the guide for \$400 by contacting Rick Maka, AAIS director of marketing, at rickm@aaionline.com, or by calling 800-564-2247.

AIR Worldwide releases China typhoon model

BOSTON—AIR Worldwide Corp. has released a typhoon model for China. The new probabilistic model will help insurers, reinsurers and brokers better manage the typhoon risk intrinsic to one of the world's fastest growing insurance markets.

Leveraging AIR's collaboration with the Shanghai Typhoon Institute, the model incorporates the most up-to-date information regarding the evolution of typhoons and their associated precipitation.

To estimate the resulting flood hazard, the model incorporates an advanced flood component that generates total precipitation for each simulated storm and then redistributes the resulting runoff using high-resolution soil type, land use/land cover and topographical data.

In addition to residential, commercial and industrial risks, the model covers construction all

risks/erection all risks.

For more information, please visit www.air-worldwide.com.

TAPCO introduces contractors program

HOUSTON—Burlington, N.C.-based TAPCO Underwriters Inc. has introduced a specialty contractors program, offering monoline general liability coverages to agents in Texas.

The program's target market is specialty contractors, including artisans and general contractors, which includes remodelers and small custom homebuilders.

Quotes are provided over the phone and are e-mailed to the agent immediately. Policies provide coverage limits of up to \$1 million per occurrence with a \$2 million aggregate. Minimum premiums begin at \$600.

Policies are usually issued in 24 hours or less through TAPCO's automated delivery system.

For more information about the contractors program or to receive a quote, call 877-827-2689 or visit www.gotapco.com.

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Brazil: Open market to benefit buyers

CONTINUED FROM PAGE 25

in the details, and the mechanics are going to define how it works for (insurance) customers," said Bruce S. Abrams, senior vp and director of the risk management major accounts practice at American International Underwriters, a unit of American International Group Inc. in New York.

But despite the uncertainty, Mr. Abrams said he expects that having access to worldwide reinsurance markets will help Brazilian risk managers improve their companies' competitive position.

That will happen as buyers move away from a system that set rates, terms and conditions for them. They likely will be able to find new methods to reduce their cost of risk, Mr. Abrams said.

Opening the market to competition could help reduce the cost of excess coverage that many Brazilian corporations buy from the IRB, said Mr. Luzzi, who also is president of the ABGR.

At the same time, Brazil faces few natural catastrophes, such as earthquakes or hurricanes. By obtaining coverage from the IRB, Brazilians have been spared paying for reinsurers' worldwide catastrophe losses, Mr. Luzzi noted.

If Brazilian risks are eventually transferred to worldwide reinsurers, that would change and could increase pricing for them, said Mr. Luzzi, who stressed that he does not

advocate remaining under a monopoly system.

The changes, however, would force Brazilian risk managers to improve their expertise, he said. Those who are inefficient no longer could blame monopolistic market conditions for their own shortcomings.

The change also is expected to boost the types of coverage available.

Currently, when the IRB declines to support certain coverages, Brazilian insurers generally follow the

IRB's lead, said Eduardo Lucena, chief executive for broker Colemont Brasil Corretores de Seguro Ltda., a unit of Dallas-based Colemont Insurance Group Inc.

Many coverages available in other countries therefore are not available in Brazil, Mr. Lucena said, citing the example of coverage for retail jewelers.

But with new reinsurers bringing capacity to Brazil, such coverages are more likely to become available, Mr. Lucena said.

Brazilian risk management conference draws 300

SÃO PAULO, Brazil—More than 300 risk managers and other insurance professionals registered for the VII Seminário Internacional conference, sponsored by Brazil's risk management organization, the Associação Brasileira de Gerência de Risco.

Held Nov. 19-21 in São Paulo, the conference also was sponsored by the Latin American risk management association, the Asociación Latinoamericana de Administradores de Riesgos y Seguros.

Seminar topics included environmental liability and corporate responsibility, directors and officers liability, and developing an effective risk management strategy. The impact of globalization and Brazil's booming economy on insurance arrangements and the ending of the country's monopoly reinsurance structure also were discussed.

Neither the ABGR nor ALARYS has set a date and location for the next conference.

—By Roberto Cenicerros

Trial: Jury selection begins in trial of former Gen Re, AIG execs

CONTINUED FROM PAGE 1

The only aim of the transaction, the indictment alleges, was to prop up AIG's share price by allowing it to report an increase in its loss reserves at year-end, calming stock analysts who had expressed worries about an earlier drop in AIG's reserves.

Along with Mr. Ferguson, Gen Re officials named in the indictment are Christopher P. Garand, former senior vp in charge of U.S. finite underwriting; Robert D. Graham, former senior vp and legal counsel; and Elizabeth A. Monrad, former chief financial officer. Also named is Christian M. Milton, AIG's former vp for reinsurance.

One unanswered question is whether Warren Buffett, chairman of Gen Re parent company Berkshire Hathaway Inc., will testify. Mr. Buffett's name was on a list of potential prosecution witnesses filed earlier this year.

The defendants have sought to use evidence that Mr. Ferguson discussed the AIG deal with Mr. Buffett and told others that Mr. Buffett supported it.

"The evidence is beyond dispute that (Mr. Buffett) knew about the transaction," Ms. Monrad's lawyer, Reid Weingarten, said at a pretrial hearing in October, court records show. "He certainly didn't stop it. Our evidence is that he actually set

the fee" that Gen Re charged AIG for the deal.

"It is incredibly important to our defense that Elizabeth Monrad believed Buffett was on board on this transaction," said Mr. Weingarten, who is with Steptoe & Johnson in Washington.

A spokeswoman for Mr. Buffett said in statement that claims of the defendants are "factually incorrect in all material respects." In a 2005 statement, Berkshire Hathaway reported that Mr. Buffett "was not briefed on how the transactions were to be structured or on any improper use or purpose of the transactions."

The charges against the five defendants grew out of an unrelated federal inquiry into the 2003 collapse of Glen Allen, Va.-based Reciprocal of America, for which Gen Re was a principal reinsurer. One focus of the investigation was whether ROA used its relationship with Gen Re to conceal its deteriorating financial condition, and in 2005 Gen Re—seeking to cooperate with federal officials—alerted them to the loss portfolio deal with AIG, according to a court filing by Mr. Graham.

Gen Re was never charged criminally in the ROA case. Federal prosecutors in Virginia indicted Mr. Ferguson and others for the AIG deal in 2006, and the case was later

transferred to U.S. District Court in Hartford, Conn.

The loss portfolio deal itself was complex: Gen Re's Cologne Re Dublin unit agreed to cede \$500 million in premiums under two separate contracts to an AIG subsidiary for a purported \$600 million in coverage on six blocks of business, prosecutors say. Cologne Re Dublin was to withhold \$490 million of the

'The evidence is beyond dispute that (Warren Buffett) knew about the transaction. He certainly didn't stop it.'

Reid Weingarten, Steptoe & Johnson

premium and pay AIG only \$10 million.

In fact, though, AIG and Cologne Re Dublin officials had an unwritten side agreement that the contracts would transfer no risk, and AIG "pre-funded" Cologne Re Dublin's \$10 million premium payment and paid Gen Re a \$5 million fee for the deal using a web of unrelated transactions to disguise the

payments' connection to the loss portfolio transfer, the indictment alleges.

The defendants also created a fake paper trail to make it appear that Gen Re had approached AIG on the deal rather than the other way around, according to the indictment.

AIG accounted for the deal as a reinsurance transaction—boosting its reserves—while Gen Re reported it as a deposit.

One indication that the portfolio transfer was fraudulent was the fact that Cologne Re Dublin had already reinsured two of the six blocks of business it was purportedly ceding to AIG, prosecutors charge.

One of these was a contract under which Cologne Re Dublin had reinsured Coral Reinsurance Co. Ltd., a thinly capitalized Barbados reinsurer that AIG created in 1987 to assume overdue or uncollectible reinsurance balances of other AIG units, court filings say. Cologne Re Dublin didn't retain the AIG risks it assumed from Coral Re but retroceded them again to yet another AIG unit, Astral Reinsurance Co. Ltd. of Bermuda, court filings say.

The Coral Re business was thus fraudulently included in Cologne Re Dublin's loss portfolio deal with AIG because it had already been ceded to Astral, prosecutors allege.

Prosecutors also plan to use

audiotapes of conversations among the defendants to show that they knew AIG planned to create a false picture of its reserves with the portfolio deal. Nearly all of these tapes were made at Cologne Re Dublin of phone calls between the defendants and John Houldsworth, the unit's former CEO. Mr. Houldsworth and Richard Napier, a former Gen Re senior vp, both pleaded guilty to conspiracy charges in 2005 and are expected to be key prosecution witnesses.

In one of the conversations, for example, Mr. Graham told Mr. Houldsworth that AIG's "organizational approach to compliance issues has always been 'pay the speeding ticket'...which is different from our organizational approach to compliance issues."

"So I'm pretty comfortable that our own skirts are clean, but that they...have issues," Mr. Graham said.

The fact that Mr. Ferguson approved the deal also overcame concerns expressed by Mr. Houldsworth and other Gen Re executives about the "reputational risk" involved, prosecutors allege.

Mr. Houldsworth raised the question in a conversation with Franklin Montross IV, Gen Re's chief underwriting officer, and Mr. Montross noted that "Ron signed off on this since it's his deal," court filings say.

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Financial incentives boost wellness program participation

Employers must assess rewards vs. punishments and legal compliance when building wellness initiatives

By JOANNE WOJCIC

Whether through a discount on premium contributions or cold hard cash, employers increasingly are using financial incentives to encourage employees to adopt healthier lifestyles.

Such incentives are governed by the Health Insurance Portability and Accountability Act and other federal and state anti-discrimination laws, which determine how generous offerings may be, among other factors.

Approximately two-thirds of the employers currently offering wellness programs are using financial incentives to encourage participation, according to a recent survey of members of the ERISA Industry Council and the National Assn. of Manufacturers.

The most common incentive is health insurance premium reductions, which are offered by 40% of employers that responded to the survey. Cash or bonuses were a strong second, offered by 29% of the companies surveyed.

"We think money is definitely going to encourage better participation," said Mark Cauthen, benefits manager for the city of Colorado Springs, Colo. Under the city's wellness program, dubbed "Reach Your Peak," partici-

pants earn credits for engaging in certain activities, such as health screenings, stopping tobacco use or losing weight. The credits are then redeemed for cash.

"Originally we had quarterly prizes," such as T-shirts and journals, Mr. Cauthen said. "But administratively, it was a nightmare. Now, instead, they get a \$250 taxable check."

Rewards and punishments

Because company officials were disappointed in some of the participation rates, Marysville, Ohio-based Scotts Miracle Gro decided to get more aggressive with its incentive program.

In 2004, the company offered \$120 in cash to employees who completed a health risk appraisal, but there was only a 70% participation rate.

The next year, those who didn't take a health risk appraisal upon enrolling in the health plan were required to pay an additional \$40 per month in premium contributions. That change resulted in 90% participation.

Then, in 2006, employees identified as moderate- to high-risk in the appraisal were assigned health coaches, and if they didn't use them, they were required to pay an additional \$67 per month the next calendar year. This

resulted in 88% participation in the first year.

"It's kind of a tough love program, but we've eliminated all of the barriers and we've made upfront investments (in wellness programs), so we don't want to make it difficult for people to seek care from a financial perspective," said Pam Kuryla, vp of global total rewards for Scotts.

While such a punitive approach may seem harsh, it's legal, according to Alison Earls, chief executive officer of Atlanta-based ACE Ideas L.L.C. Ms. Earls is a benefit consultant and attorney who recently conducted an analysis of federal and state laws affecting health promotion programs for the Washington-based National Business Group on Health.

"Although there's still lack of clarity about the (Americans with Disabilities Act) and there are some things that the (Equal Employment

See **INCENTIVES** next page

WELLNESS PROGRAM RULES

Nondiscrimination rules governing wellness program incentives stemming the Health Insurance Portability and Accountability Act:

- The incentive or penalty cannot exceed 20% of the cost of employee-only health care coverage.
- The program must be reasonably designed to promote health and prevent disease.
- The program must give eligible individuals the opportunity to qualify at least once a year.
- There must be a reasonable alternative standard to obtain the reward for any individual for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to satisfy the standard.
- The plan must disclose program terms and conditions in all printed or online materials.

Wellness: Programs offer more

CONTINUED FROM PAGE 1

ally anything designed to promote better health and well-being, services that were once associated with employee assistance programs combined with traditional wellness, disease management and sometimes even safety and occupational medicine.

The objective is to keep those who are already healthy healthy, and to move those in the higher risk categories into the lower risk categories, Ms. Wolff said.

"Depending on where you are on the continuum, you've got to have programs to make sure those who are low risk don't shift into the medium and high-risk categories," she said. "The way you do that is you have certain programs focused on the low risk; for the medium risk people, you've got lifestyle programs and absenteeism programs, work/life balance programs, etc., to help them; and for those who have illness and are seriously ill, that's where you get into disease management."

"Some of it goes back to the old California mind-body connection that we all rolled our eyes at," said Helen Darling, president of the National Business Group on Health. "There is a focus on mental health to make workers happy and engaged and interested. We want them to come to work ready and eager to work. If you want to keep knowledge workers productive, you've got to keep them healthy and not depressed. We know a lot more than we did back then. There's more science, more studies."

Scotts Miracle Gro Co.'s LiveTotal Health program is a good example. It is rooted in three principles: physical, financial and personal wellness.

"When we said LiveTotal Health, it's not just about physical health and well-being," said Pam Kuryla, vp global total rewards at the Marysville, Ohio-based fertilizer maker. "That's the major component of our plan, but it isn't encompassing all of the different components of which we feel someone needs to be aware of in order to be the best they can be."

Because more than half of employer health care costs are attributable to dependents, many of today's corporate wellness programs also

include spouses and sometimes even children.

Molson Coors Brewing Co.'s wellness center in Golden, Colo., for example, is open to employees, spouses, retirees, and any of their dependents over the age of 13. The center is a 23,000-square-foot facility located near the main brewery complex that has an indoor track, basketball court, exercise equipment and space for fitness classes. It also offers fitness testing, massage therapy, physical therapy and locker rooms with showers and saunas.

"If the dependents are feeling well, then the employee is going to be more productive and focused at work," said Mark Cauthen, benefit manager for the city of Colorado Springs, whose wellness program also is open to both employees and dependents.

Today's wellness programs also provide more long-term assistance, unlike in the past, when completing a smoking cessation program meant the benefit would end. In fact, some employers such as Santa Clara, Calif.-based Intel Corp., cover multiple attempts at quitting, which is recommended by the U.S. Centers for Disease Control and Prevention. And a growing number of employers are providing annual nonsmoking discounts on employee premium contributions to encourage them to stay smoke-free.

In a way, value-based plan design, which removes financial barriers to encourage employees who already have a health condition to access beneficial medical treatments, is a component of the new wellness movement, said Marianne Fazen, executive director of the Dallas-Fort Worth Business Group on Health.

"Consumerism is also a part of it, giving more responsibility to the employee to become more proactively engaged in their own health," she added. "These are different words and different phrases, but they're all talking about the same thing, no longer just providing benefits but setting up a structure, an integrated benefits design, that keeps you out of the health care system through wellness and prevention, and then aligns incentives so that if you do have to go in, then to use the high-quality providers and take your medicine, be compliant, and so on."

Employer data quantifies value of wellness programs

Perhaps the most significant difference between yesterday's and today's wellness movement is the science behind it.

Employers that are just now embarking on the wellness path are doing so methodically, collecting data from all relevant sources to better gauge the impact their programs are having, not only on health but also on productivity.

"For the last six years or so, we've been looking at the Journal of Occupational and Environmental Medicine to see what other employers have been getting in terms of return on investment," said Patti Clavier, a Colorado Springs, Colo.-based member of group health and well-being strategy and operations for Santa Clara, Calif.-based Intel Corp.

Dr. Joyce Young, well-being director for

WEIGHING WELLNESS, A THREE-PART SERIES,
can be found at www.businessinsurance.com/wellness

Armonk, N.Y.-based IBM Corp., has had several studies on the impact of wellness programs published in the JOEM, including one on an Internet-based worksite smoking cessation intervention and another on an incentive-based online physical activity intervention on employee health status.

"There is also some good data showing how much more smokers' health care costs are," said Dr. Young. "We also found that people who were physically active more than twice a week had costs \$500 to \$600 less than those who were not physically active. You have to do sophisticated analysis to understand all the reasons for that. But the patterns are there."

A review of 56 published studies of worksite health promotion programs by the Washington-based Partnership for Prevention found they produced an average \$5.81-to-\$1 savings-to-cost ratio. The programs also reduced annual health costs by an average of 26%, reduced absenteeism by 27%, and reduced workers compensation and disability claim costs by 32%.

"What you find is a very comprehensive holistic approach to health and productivity management will usually be cost-neutral in year one," said Shelly Wolff, national

leader for health and productivity at Watson Wyatt Worldwide in Stamford, Conn. "Year two is when you start seeing return on investment, and by the time you get to three years, things really start kicking in and you really do see ROI," she said, adding longer-term studies have found the gains continue at least seven years.

Many employers also are starting to measure the impact of wellness programs on productivity in addition to health care costs by combining claims data with data on absenteeism, occupational injuries and disability claims, Ms. Wolff said.

Stamford, Conn.-based Pitney Bowes Corp., for example, won the C. Everett Koop National Health Award twice, in 1995 and in 1997, for its work measuring wellness program ROI, which produced "good hard metrics showing that by investing in health improvement programs you actually saw reductions in absenteeism costs," said Dr. Jack Mahoney, director of health strategies at the office equipment manufacturer.

The collective impact of ill health on the workplace is what is called the "burden of illness," said Andrew Webber, president and chief executive officer of the National Business Coalition on Health in Washington. "You put the whole picture together in terms of what the illness burden is costing you," he said.

"It's not just health care costs. It's the time away from work. That's a big part of where the return comes from," said Ms. Wolff. "If a company is only looking at health care cost trend as their marker of success, they're missing the other real, important costs that are impacting the health and effectiveness of your employees and the organization."

We do know that people with health risks, people who are overweight, people who smoke are off work more. That means someone else is doing their job, so you've got higher replacement costs, you've got overtime, and that has a cascading effect on stress, which is another part of what we saw in our research. You kind of get this domino effect."

—By Joanne Wojcik

Incentives: Employers weigh wellness initiatives in light of HIPAA

CONTINUED FROM PREVIOUS PAGE

Opportunity Commission) has not clarified, I think there's a lot of good and fair guidance" from the HIPAA nondiscrimination rule, she said.

"You can really design incentives in conjunction with your health plan for healthy behavior and even health improvement, and if you follow the five-part exception to the HIPAA nondiscrimination rule, you can provide incentives for not only education and learning about health, but actually for changing your blood pressure, your weight, your cholesterol, getting certain kinds of treatment," Ms. Earls said.

The lingering uncertainty, though, has caused some employers, such as Indianapolis-based Clarian Health, to back off from imposing more stringent penalties on their employees.

After it received negative publicity and flak from employees, Clarian Health abandoned its plan to fine workers for unhealthy behavior, a company spokesman said.

Clarian Health announced in August that it wasn't going to charge employees an extra \$5 per paycheck fee on employees who did not meet minimum standards for nonuse of tobacco, body mass index, cholesterol, blood glucose and blood pressure.

"Although much of the plan had been presented as final, we have maintained in our communications that the final details of the plan were not fully developed," the company said in an Aug. 31 statement.

Rather than assessing penalties, "we will now offer employees incentives on their health insurance premiums for meeting parameters for known health risks including smoking, high body mass index, elevated

blood pressure, and other factors," the company statement said.

Pitney Bowes Corp. a few years ago implemented a non-smoking incentive program but later rescinded it, according to Dr. Jack

To view the entire Weighing Wellness series and court filings related to Scotts Co. L.L.C.'s wellness plan, visit www.businessinsurance.com/wellness.

Mahoney, director of strategic health initiatives at the Stamford, Conn.-based office equipment manufacturer.

"We used to have a nonsmoking discount (on premiums), but it was eliminated after the Department of Labor" ruling, he said. Under the Department of Labor's clarification of the nondiscrimination rules under HIPAA, tobacco use is considered a health status rather than a behavior, making any wellness plan incentives or penalties

subject to the five-part exception to the rules, Ms. Earls said (see box, page 28).

Although most employers cite "legal compliance" as the reasoning behind their various wellness program incentive or penalty decisions, the real motive is that "employers don't want to make employees mad," which could cause their efforts to backfire, according to Marianne Fazen, executive director of the Dallas-Fort Worth Business Group on Health.

That's precisely what happened to Scotts when it banned smoking by employees both at work and on their own time as part of the company's wellness initiatives.

A Scotts employee, Scott Rodrigues, filed a lawsuit in U.S. District Court in Massachusetts in January claiming that the company's anti-smoking policy "violates the Employee Retirement Income Secu-

rity Act because it discriminates against participants in the corporation's health benefits plans for the purpose of interfering with their receipt of medical benefits."

Scotts' executives declined to comment because the litigation is pending. The company's lawyers have filed a motion to dismiss on which the court has yet to rule.

However, Howard Weyers, former president of Lansing, Mich.-based Weyco Inc., which was sold to Meitain Health in August, said his former company will continue to enforce its policy banning tobacco use. Weyco in 2005 made tobacco use grounds for termination and instituted mandatory testing.

"I think there should be a consequence. If employees are doing something that has a negative effect on the company and the other employees, the company should do something about it," he said.

PROPERTY/CASUALTY INSURERS' NINE-MONTH 2007 RESULTS

Major U.S. P/C insurers ranked by net income. All amounts are in thousands of dollars.

	Net income	Corporate Percent Increase (decrease) 2007-2006	Consolidated revenues 2007	Combined ratio 2007 ¹	Combined ratio 2006 ¹	Property/casualty operations Net premiums written 2007	Percent Increase (decrease) 2007-2006	Policyholder surplus 2007	Percent increase (decrease) 2007-2006
American International Group Inc.	\$11,492,000	8.3%	\$91,631,000	88.3%	88.2%	\$36,068,000	5.7%	N/A	N/A
Travelers Cos. Inc.	3,538,000	17.2	19,526,000	87.1	88.6	16,252,000	3.4	\$22,221,000	11.3%
Hartford Financial Services Group Inc.	2,354,000	20.0	20,242,000	90.7	89.5	7,924,000 ²	(1.4)	8,400,000	2.4
Chubb Corp.	2,157,000	15.1	10,589,000	82.6	84.5	8,863,000	(1.5)	12,750,000	22.0
ACE Ltd.	2,006,000	22.3	10,659,000	87.8	88.1	8,882,000	(1.0)	16,035,000	18.7
Liberty Mutual Insurance Co.	1,013,000	(13.5)	19,040,000	104.8 ²	101.8 ²	12,332,000 ²	4.7	13,646,000	18.6
CNA Financial Corp.	687,000	(11.8)	7,470,000	93.8	95.5	5,143,000	(3.7)	8,436,000	7.8
Cincinnati Financial Corp.	669,000	(16.4)	3,283,000	91.8	94.2	2,392,000	-1.3	4,782,000	3.6
SAFECO Corp.	563,300	(15.1)	4,684,400	90.7	87.4	4,303,000	-	3,140,500	(20.2)
American Financial Group Inc.	293,300	(7.7)	3,366,300	86.5	88.4	2,134,600	3.4	2,284,400	(8.9)
Old Republic International Corp.	252,189	(30.0)	3,036,096	91.0	90.3	1,600,580	9.5	2,502,891	9.3
RLI Corp.	143,909	82.3	491,490	68.0 ²	88.7 ²	417,207 ²	(3.0)	820,176	15.9
Argo Group International Holdings Ltd.	120,300	61.3	734,600	100.9	94.3	644,000	6.5	N/A	N/A
Cumulative	\$25,288,998	8.3%	\$194,752,886	90.1%	90.1%	\$106,955,387	2.9%	\$95,017,967	11.1%

1. Includes dividends. 2. Statutory
Source: BI survey, company reports

Results: P/C overcapitalization may fuel M&A activity

CONTINUED FROM PAGE 3

"I would say there will be some further deterioration in 2008 as compared to 2007."

The pressure on pricing is "going to be what I would describe as a slow grind," said Mr. Lane. "There needs to be some pain felt before underwriters start to pass on higher prices, and we're nowhere near" that point now.

"Underwriting results are really going to be under the gun for the next 24 months," said John D. Gwynn, managing director at Memphis, Tenn.-based investment firm Morgan Keegan & Co. Inc.

The soft market "will continue for at least several years," said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an insurance industry consulting firm. Furthermore,

insurers' investment income is likely to decline slightly, he said.

However, "We're still seeing meaningful discipline," said Jeff

'Underwriting results are really going to be under the gun for the next 24 months.'

John D. Gwynn,
Morgan Keegan & Co. Inc.

Berg, senior vp with New York-based rating agency Moody's Investors Service.

The industry is overcapitalized, though, observers say, with many insurers initiating share buyback

programs, including American International Group Inc., Hartford Financial Services Group Inc., Travelers Cos. Inc. and Chubb Corp.

Another possible response to the overcapitalization is increased M&A activity, say observers, who anticipate more deals such as Liberty Mutual Group Inc.'s recent acquisition of Ohio Casualty Corp. and Munich Re Group's plans to acquire Midland Co.

One indication is that the industry is close to a 1:1 premium to surplus ratio, which in the 1990s led to increased M&A activity, said Skip Hagerty, managing director at the Stamford, Conn.-based investment banking firm Philo Smith & Co.

Foreign entities, in particular, are likely acquirers because of the weak dollar, say some observers.

"You're seeing more foreign entities looking to buy more U.S. insur-

ers," and these buyers would include Bermudian as well as European companies, said James B. Auden, senior director at Chicago-based Fitch Ratings.

"They're benefiting from the weakening of the dollar (and) they've had strong earnings and capital formation...and are looking for opportunities to deploy capital as well," he said.

Meanwhile, the subprime mortgage crisis is likely to have little overall impact on the industry. "Most of the P/C insurers in our universe don't have a lot of exposure," said Mr. Auden.

He said that the \$900 million after-tax write-down announced by Swiss Re last month, which stemmed from its exposure to credit default swaps related to mortgage-backed securities, "wasn't in their core P/C business."

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News In Brief

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approaching full funding for its asbestos losses, but a "significant gap" remains in funding for its environmental losses, according to a new report by A.M. Best Co. Inc. Best estimates that ultimate incurred asbestos losses total \$65 billion. The report on the industry's asbestos and environmental liabilities said there is a \$2.8 billion funding gap for asbestos liabilities, with nearly 96% of ultimate asbestos loss estimates funded through year-end 2006. Meanwhile, the rating agency estimated ultimate losses for environmental exposures at \$56 billion with a funding shortfall of \$22.3 billion.

California commissioner says no comp rate hike

California Insurance Commissioner Steve Poizner last week said workers compensation insurers are seeing "extraordinary profitability" and recommended keeping rates at their current level for 2008 policies. The Workers' Compensation Insurance Rating Bureau of California had called for a 5.2% pure premium rate increase for policies incepting on or after Jan. 1, 2008.

Nebraska names top regulator

Nebraska Gov. Dave Heineman has promoted Ann Frohman to director of the Nebraska Insurance Department, effective immediately. Ms. Frohman had been acting director since Director Tim Wagner died Oct. 9. Ms. Frohman, an attorney, has worked at the insurance department for more than 15 years. She also worked as the state's risk manager within the Nebraska Department of Administrative Services from 1997 until January 2000.

Max Capital forms MGA

Max Capital Group Ltd. has formed Max Managers USA Ltd., a managing general underwriter that will write policies for Max Capital's U.S.-based excess and surplus lines platform. The New York-based operation, which initially will focus on underwriting casualty insurance policies for the health care industry, will be led by President Bernard Anckner, who joined Max Capital in 2003.

Montpelier launches U.S. facultative unit

Montpelier Re Holdings Ltd. has launched Montpelier Underwriting Inc.'s new direct property facultative division in Kansas City, Mo. The division is the latest in a series of new U.S. segments that will allow the Bermuda-based global reinsurer to write business on behalf of the

Montpelier syndicate 5151 at Lloyd's of London. The new division will underwrite mainly noncatastrophe and property business. In August, Montpelier launched its brokered property facultative and property treaty divisions based in Hartford, Conn.

Highmark, doctor group settle payments dispute

Highmark Inc. will pay a group of doctors \$10 million under a settlement, which has received preliminary approval from the United States District Court for the Southern District of Florida. The doctors group claimed the Pittsburgh-based health insurer violated the Racketeer Influenced and Corrupt Organizations Act by denying and delaying payments to physicians. Formal approval of the settlement will be determined after a follow-up hearing in January 2008.

N.Y. doc ranking model may become state law

A doctor ranking model created as part of an agreement reached between CIGNA Healthcare and the New York attorney general will serve as the template for legislation to be introduced by state lawmakers. New York Attorney General Andrew M. Cuomo, New York Senate Majority Leader Joseph L. Bruno and New York Assembly Speaker Sheldon Silver said they will introduce the legislation, which will be the first in the nation to codify how insurers rank doctors within their provider networks. The announcement comes after several of the state's major health insurers agreed to adopt the model. That model requires the companies to ensure that their doctor ranking programs include established national standards to measure quality in addition to cost, and to disclose to consumers and physicians how the rankings are determined, breaking them down by cost, quality and, when a combined score is given, what proportion is based on cost vs. quality. The insurers also must submit to outside oversight by a ratings examiner.

Briefs

Zurich Financial Services Group Inc. has named Paul Horgan as chief underwriting officer of its Zurich Global Corporate in North America unit in New York. Prior to joining the Swiss property/casualty insurer, Mr. Horgan served as chief underwriting officer for Liberty Mutual's specialty operations unit....Peter Raymond, the long-time director of financial examinations with the Vermont Department of Banking, Insurance, Securities and Health Care Administration's **Captive Insurance Division**, has been promoted to director of captive insurance, succeeding Derick White. Mr. Raymond, who will assume his new position early next year, has been an examiner with the department for 16 years and is responsible for organizing and directing the operations of the department's 23-person examination staff.

Backstop: Most optimistic

CONTINUED FROM PAGE 1

other than to extend its protections to losses stemming from acts of domestic as well as foreign terrorism. The administration supports the Senate approach and said it would veto the House bill.

Congress' delay in extending the backstop is, however, beginning to cause some concern, according to some observers.

"The uncertainty over TRIA is very much a concern," said Howard Mills, chief advisor-insurance industry group at Deloitte & Touche USA L.L.P. and former New York insurance superintendent. "People expect that the House will act and there will be a bill. Until it's a done deal, they know things can fall apart.... Renewal season is here; they're very, very concerned about long-term complex products like builders risk," he said.

Mr. Mills said that the worst possible scenario other than no extension at all would be a two-year extension, as happened in 2005. Observers hope the program will be continued for a "significant duration" to provide stability in the market, he said.

"In recent weeks, we have certainly noticed an increasing concern on the part of a number of large property/casualty insurers regarding (the backstop's) future and their own contingency plans in the remote event" that the program is not extended, said Mr. Davis.

Still, "for the most part, clients have not experienced difficulty in securing the coverage," he said.

Insurers are approaching the issue on a case-by-case basis, said Jill Dalton, managing director of Marsh Inc.'s property practice in New York.

"It depends on the risk," she said. "The markets are a very inconsistent. What they will do for one client, they will not do for another client, depending on the exposures." Insurers' willingness to write the risk also depends on their own accumulations in a given area, she said.

Also, "we are seeing pop-up exclusions" that would exclude ter-

rorism coverage if the backstop ends, Ms. Dalton said.

"Some carriers are looking for the old sunset clauses, but we've been able to push back that in a number of cases," said Steve Quintero, executive vp and property marketing manager for Willis Group Holdings Ltd.'s New York region.

Zurich's Mr. Schupp said that conditional exclusions have been on policies for almost a year. "Exclusions are the exception, not the rule," he said, and tend to be applied to larger, more exposed accounts. Many insurers already have taken steps to ensure that if the backstop is not extended, their exposures will not rise dramatically, he said.

"At large diversified companies like Zurich, you would expect that the deductibles are so large that individual underwriting decisions on accounts aren't driven by the existence of a backstop," he said.

"The balance of the marketplace is looking to hold on to business," said Mr. Davis. "There is a willingness on the part of most of the markets to essentially roll the dice and offer full term terrorism coverage with the assumption" the backstop will be extended, reflecting general property conditions in a highly competitive marketplace.

Pricing in the standalone terrorism insurance market has not softened as much as it has in the all risk market, Willis' Mr. Quintero said. "Prices haven't gone down as much as the all-risk side, but the prices have not gone up looking at the uncertainty" over the backstop's future.

Ms. Glickman said that some foreign markets are saying they won't extend coverage beyond Dec. 31 "so, they're trying to sell standalone coverage." Gallagher is telling its clients to accept coverage through the end of the year and "if for some bizarre reason" the program isn't extended, "then we'll go back to the standalone terrorism market," she said.

"It's too premature to start spending unnecessary money for standalone terrorism" coverage, she said.

Securities: JDS verdict may encourage trials

CONTINUED FROM PAGE 3

Francisco.

"What happened to that company happened to every company" in the industry, he said. "The market turned on them and took them by surprise."

Mr. Eth likened the situation to the heated real estate market's quick cooling in mid-2005.

The telecom market's downturn and the resulting drop in telecom company share prices led to most of the loss that JDS reported, Mr. Eth said. Under accounting rules at that time, JDS had to write off huge amounts of goodwill related to acquired businesses when their stock values dropped below their

net asset values, he said.

In her discussions with jurors after the case ended, Ms. Hart said, "I did hear them remark that it was long and it was complicated," she said. "Complexity is the defendant's place to live; simplicity is where the plaintiffs need to be."

Legal and insurance experts last week said that a verdict in favor of JDS might encourage some future defendants to take their chances at trial rather than settle but that most litigants would continue to settle securities fraud claims (*BI*, Nov. 26).

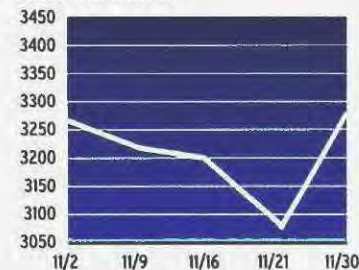
While all cases are unique in some respect, Mr. Eth said, "to defense lawyers who think these cases are not triable, this case says that's not true."

Stock Index

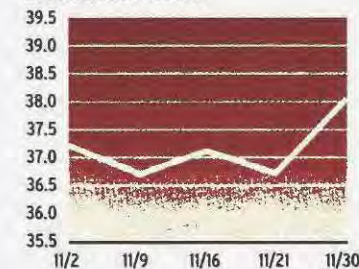
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

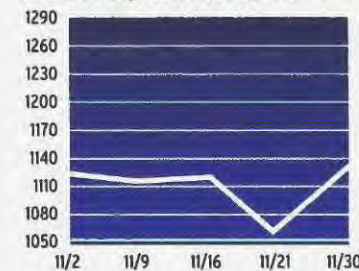
BI STOCK INDEX



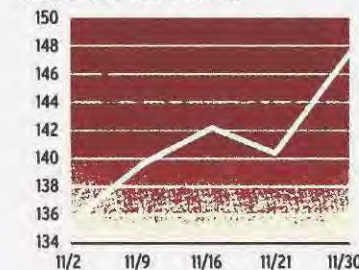
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3288.89	▲ 4.23%
DOW JONES	13371.72	▲ 3.01%
S&P 500	1481.14	▲ 2.81%

LARGEST GAINS

XL Capital Ltd.	10.45%
Harleysville Group Inc.	10.06%
AIG	9.62%
CIGNA Corp.	9.34%
Philadelphia Consolidated	9.32%

LARGEST LOSSES

Gainsco Inc.	-14.20%
American Safety Insurance	-8.33%
Navigators Group Inc.	-3.10%
Fairfax Financial Holdings	-2.64%
UNICO American Corp.	-1.89%

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

Business Insurance END PAGE

Daredevil, hip hop artist settle trademark lawsuit

Evel Knievel and Kanye West struck a deal. The agreement was finalized before the death of Mr. Knievel, which was announced November 30.

A meeting between the motorcycle daredevil and the hip hop star reportedly settled a lawsuit over the use of Mr. Knievel's trademarked image in one of Mr. West's music videos.

Both parties ended the discussions "satisfied," the Associated Press reported.

In the suit, Mr. Knievel, 69, claimed that Mr. West's 2006 video for "Touch the Sky" damaged the daredevil's reputation and accused Mr. West of using Mr. Knievel's image to "promote his filth to the world."

In the video, the 29-year-old rapper presents himself as "Evel Kanyevel," complete with a replica of Mr. Knievel's trademark white jumpsuit. Mr. West attempts to clear a canyon with a rocket-powered motorcycle, much like the feat Mr. Knievel attempted in 1974 when he tried to jump the Snake River Canyon in Idaho.

Mr. West's attorneys claimed that the video is a satire protected by First Amendment rights. Mr. Knievel and Mr. West went into mediation during the summer to try to work out a settlement. The two parties reportedly agreed not to publicly discuss the terms of the recently reached settlements.



Just days before his death last month, daredevil Evel Knievel settled a suit he filed against rapper Kanye West.

Suit claims insurance for churchgoers is biased and unlawful

Two fair-housing groups have filed a lawsuit against West Des Moines, Iowa-based insurer, GuideOne Mutual Insurance Co., alleging that the insurer offers and advertises its homeowners insurance products in a discriminatory manner based on religious status and shows a preference for Christians.

The offer is in violation of the federal Fair Housing Act, according to the National Fair Housing Alliance.

The Washington-based NFHA and the Fair Housing Associates Assn. of Akron, Ohio, filed the federal lawsuit in the U.S. District Court for the Northern District of Ohio last week. In the complaint, the two groups say that the insurer's "FaithGuard" policy is discriminatory "by offering special terms, conditions, and claims benefits only to churchgoers."

According to the lawsuit, the GuideOne policy will waive the insurance deductible if there is a loss to personal property while that personal property is in the care of the policyholder's church; it will pay church tithes or donations up to \$750 if the policyholder suffers a loss of income from a disability caused by an accident that occurs at the policyholder's residence; and double the medical limits for an injury if someone is injured while involved in a church-related activity at the policyholder's home.

In the lawsuit, the two housing groups ask that the court order a halt to the practices and award an unspecified amount of monetary damages that would "fully compensate the (plaintiffs) for their diversion of resources, frustration and other damages they have suffered as a result of GuideOne's unlawful and discriminatory acts."

Tom Farr, general counsel for GuideOne, said in a statement that the insurer's product is "in no way discriminatory" and believes the complaint to be "baseless and without merit."

Playing hooky goes high-tech

Has your nasty roommate locked all your clothes in the shed out of spite? Have you met a movie star and plan to spend the day with him?

Those were real excuses that employees gave their employers when calling in sick, according to CareerBuilder.com's annual survey on office absenteeism.

The online survey, released in November and conducted among nearly 9,000 workers and supervisors, found that 32% of workers said they have called in sick when they were well at least once in the past year. The survey also found that 10% of workers admit to "playing hooky" at least three times or more.

For those who lack the creativity of feigning roommate troubles or star-struck luck, there appears a marketplace for fake doctors' notes, emergency room forms, funeral notices and

even summons for jury duty.

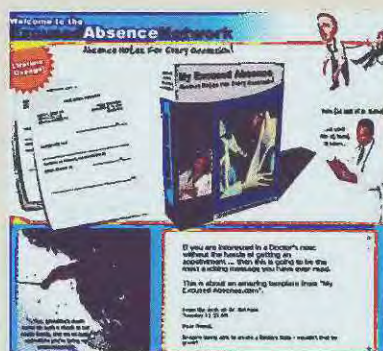
Described as "novelty" items, Web sites such as www.phoneyexcuses.com and www.myexcused-absence.com sell authentic looking but fake

electronic templates that allow users to type in a doctor's name and information. The templates cost between \$5 and \$25 and, according to recent news reports, are gaining popularity outside the workplace as well.

For example, as reported in The Star-Ledger, a Newark, N.J., woman added to her woes earlier this year after allegedly using a fake note purchased online from a "chiropractor" to prove that she was too disabled to

appear in traffic court for a speeding ticket.

"There was something that just didn't look quite right about it," Tammy Baird, deputy court administrator, told the newspaper of her investigation that proved the note was bogus.



Many employees admit to playing hooky and myexcusedabsence.com helps workers by selling fake notes.

Insurance cards too bulky for New Jersey lawmaker

Oversized auto insurance cards are driving a New Jersey legislator to action.

Assemblyman Patrick Diegnan, D-Middlesex, introduced a bill last month that would require auto insurers to provide wallet-size insurance cards plus the larger cards drivers typically store in their glove compartments.

He said sizing insurance cards like driver's licenses and vehicle registrations would make them easier to store and find, avoiding many citations issued when drivers are pulled over and can't find their insurance card.

Currently, New Jersey driver's licenses and vehicle registrations are about 2.5 inches by 1.5 inches. Auto insurance cards, however, are between 3 by 5 and 5.5 by 8 inches, as required by state regulations.

With a fine of \$150 for failing to produce an insurance card and a guaranteed trip to court, Mr. Diegnan said wallet-size cards could cut back on such inconveniences. He said drivers regularly show up to court with their insurance card in hand and the cases are then dismissed.

A spokesman for the New Jersey Department of Banking and Insurance said he doesn't really see a purpose in making the cards smaller. He said the larger cards provide anti-counterfeiting measures. In addition, about 2% of driving violations in 2006 were the result of drivers failing to produce an insurance card—about 46,000 citations out of 2.5 million, he said.

Still, "That's a lot of tickets," Mr. Diegnan said. "I look at my role in the Legislature as trying to help people, and I think this will help a significant number of folks."

The legislation is likely to be voted on in 2008, Mr. Diegnan said.





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