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# Business Insurance

February 19, 2007

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## In Brief

### Bills would end antitrust exemption

Bills that would repeal the insurance industry's limited federal antitrust exemption were introduced in both the House and Senate. The bipartisan measures, called the Insurance Industry Competition Act in both chambers, would retain state regulation of insurance while giving the federal Justice Department and the Federal Trade Commission the authority to apply antitrust laws to insurance companies. The McCarran-Ferguson Act of 1945 granted insurers a limited exemption from federal antitrust laws.

### Calif. lowers standard for smoker lawsuits

California's Supreme Court has ruled unanimously that plaintiffs are allowed to sue cigarette

See **IN BRIEF** page 23

**BENEFITS MANAGEMENT**

**VOLUNTARY BENEFITS**

Employer response to higher costs reinforces consumerist trend; traditional voluntary benefits remain the most popular; more employers aid workers in battling identity theft, but coverage far from universal; ERISA protection for voluntary plans has pluses, minuses.

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# Parity legislation gains momentum

*Change would force most employers to boost coverage*

By JERRY GEISEL

**WASHINGTON**—For the first time since the drive to expand a federal mental health care benefits parity law began several years ago, Congress is likely to pass comprehensive expansion legislation, Washington observers say.

Last week, federal lawmakers took the first step when a Senate panel overwhelmingly approved a bipartisan parity measure.

The bill—passed by the Senate Health, Education, Labor and Pensions Committee on an 18-3 vote—would force most employers to increase their coverage for treatment of mental health conditions.

The measure would require employers to provide the same financial cost-sharing requirements for mental health coverage as they do for other medical conditions.

For example, if a group health care plan covered 80% of medical treatment expenses, it would have to do the same for mental health care expenses.

Additionally, discriminatory treatment limitations would be banned. That would mean an end to common plan designs in which a maximum of 20 or 30 annual visits to mental health care therapists are covered, with no limits imposed on the number of visits to physicians

See **PARITY** page 21

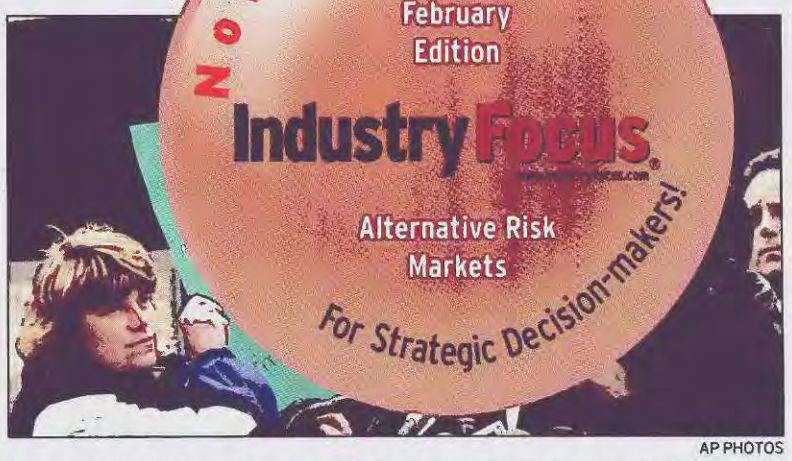
### MENTAL HEALTH PARITY ACT OF 2007

**WHAT THE ACT WOULD DO:**

- Require that deductibles, copayments and coinsurance be the same for mental health care services as for other medical services
- Ban discriminatory limits on number of outpatient visits and days of inpatient coverage for mental health care services
- Pre-empt state laws affecting financial requirements and treatment limitations for mental health care services

**WHO IS EXEMPT?**

- Employers with fewer than 51 employees
- Employers that can prove that complying boosts health care costs by more than 2% in the first year after enactment or more than 1% in succeeding years



AP PHOTOS

**A paramedic points to a poster detailing the medications he must take since working at Ground Zero. New York City Mayor Michael R. Bloomberg has proposed shifting funding from the WTC captive to a victims compensation fund.**

# NYC mayor proposes WTC Captive shutdown

*$1 billion in capital would be transferred to fund for victims*

By RUPAL PAREKH

**NEW YORK**—WTC Captive Insurance Co. would be shuttered and its $1 billion in funding for potential claims shifted to a victim compensation fund, under a proposal unveiled last week by New York City Mayor Michael R. Bloomberg.

The mayor's proposal to close WTC Captive—part of a broad plan to improve the public health response for individuals suffering from health problems stemming from the Sept. 11, 2001, terrorist attacks—further calls for blanket immunity from current or future liability claims against the captive's insureds arising from the cleanup of the World Trade Center site.

WTC Captive, which is managed by Marsh Management Services Inc., was created with $1 billion in federal funding in December 2004 to provide otherwise unavailable liability coverage—including general, environmental, professional and marine liability—to the city of New York and some 100 contractors who worked to clean up the site.

The New York-domiciled captive has been a source of controversy,

See **WTC** page 22

# Surplus lines reform effort gets buyer backing

*Risk managers welcome compromise on measure's market access restrictions*

By MARK A. HOFMANN

**WASHINGTON**—A legislative effort to streamline the regulation of reinsurers and nonadmitted insurers has won the backing of risk managers, who objected to an earlier bill because of restrictions on who could take advantage of the proposed changes.

The Risk & Insurance Management Society Inc. had opposed a version of the Nonadmitted and Reinsurance Reform Act passed by the House last year on a 417-to-0 vote because of its stringent definition of a "qualified risk manager," a definition that would have to be met before a broker representing a policyholder could access the nonadmitted market directly without first having to seek to place coverage in the admitted market. But a revised version of the bill introduced in the House of Representatives on Feb. 15 by Reps. Dennis Moore, D-Kan., and Virginia Brown-Waite, R-Fla., contains a much more flexible definition, flexible enough to win RIMS support.

In a statement announcing the introduction of the new bill, Rep. Moore said it was designed "to eliminate the problem of conflicting and inefficient state laws regarding nonadmitted insurance and reinsurance. Making the insurance market fairer and simpler benefits us all. With such broad, bipartisan support in the past, I'm confident that this legislation, which is long overdue, will again receive very strong support in the House and I hope that the Senate will join us in passing

See **SURPLUS** page 21



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# How is globalization reshaping your workforce?

## Ask Aon.

As globalization reshapes the workforce, your company is facing a growing demand for talented employees, a heightened focus on healthcare and benefits, and issues surrounding employee retirement strategies. Leading companies are answering these challenges with innovative strategies and solutions in health, talent management and rewards. To learn how to design and implement programs for attracting, developing and enriching the lives of your employees, visit **www.aon.com/ask**.

– **Andrew Appel**, *chief executive officer, Aon Consulting Worldwide*


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## On the Web

EMERGING RISK STRATEGIES

### ERM—What does it mean?

*BI* columnist John J. Hampton says there are problems with how enterprise risk management is presented and defined from organization to organization. Rethinking the definition is part of the solution, but there is more to do, he writes in the "Emerging Risk Strategies" department. See his ideas at *www.BusinessInsurance.com/emergingriskstrategies*

ONLINE EXECUTIVE FORUM™

### Is consumerism in health care working?

Consumer-driven health plans are a new weapon in employers' war against health care costs. Join *BI* Senior Editor Joanne Wojcik and a panel of experts on March 20 for an in-depth discussion of these plans and what consumerism is doing for employers. Register now to attend this free live event at *www.BusinessInsurance.com/webinars.*

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**Business Insurance.**

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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# Genetic bias bill sparks liability concerns

*Employers worrying over differences in enforcement*

By MARK A. HOFMANN

**WASHINGTON**—Employers fear that a bill designed to prevent the misuse of genetic information for insurance and employment purposes could expose them to new and unjustified liabilities.

But a leading proponent of the Genetic Information Nondiscrimination Act holds that such fears are overblown.

The bipartisan measure, introduced in the current Congress by Reps. Louise Slaughter, D-N.Y., and Judy Biggert, R-Ill., has about 200 co-sponsors.

The House Education and Labor Committee gave its approval to the bill on Feb. 14. The measure would amend several federal laws, including the Employee Retirement Income Security Act, to prohibit health insurance enrollment and premium discrimination based on genetic information and would prohibit genetic testing as a prerequisite for insurance. The bill would also make discriminating against an employee on the basis of genetic information an unlawful employment practice, and would extend medical privacy and confidentiality rules to the disclosure of genetic information.

The bill's different enforcement mechanisms, however, concern employers. Paul Dennett, vp-health policy at the American Benefits Council in Washington, pointed out that group health plans governed by ERISA would not face the possibility of punitive or monetary compensatory damages if they violated the law.

But "there is a much broader range of remedies" available to those alleging unlawful employment practices, said Mr. Dennett.

"The concern we have is there is ambiguity about whether the remedies available," regard-

See **GENETICS** page 20


## 2006 RESULTS OF FOUR LARGEST BROKERS

*In millions of dollars*

| Brokerage | Brokerage revenues* | % change from 2005 | Net income | % change from 2005 |
|---|---|---|---|---|
| Marsh & McLennan Cos. Inc. | $10,290.0 | 4.0% | $990.0 | 145.0% |
| Aon Corp. | 6,964.0 | 5.2 | 721.0 | -2.2 |
| Willis Group Holdings Ltd. | 2,341.0 | 6.7 | 449.0 | 59.8 |
| Arthur J. Gallagher & Co. | 1,437.80 | 6.5 | 128.5 | 317.2 |

** Brokerage revenues comprise commissions and fees from insurance brokerage and consulting services and other income but not investment or fiduciary income*
*Source: Company reports*

# 2006 was a mixed bag for world's big brokers

*Of the top four, only Aon Corp. showed a drop in net income*

By SALLY ROBERTS

While 2006 may have been a more stable year for the world's largest insurance brokerages from a regulatory standpoint, restructuring initiatives and a soft pricing environment made for another challenging year.

The world's four largest brokerages, which gave up millions in contingent commission revenues in 2005 as part of regulatory settlements, all reported increases in their 2006 brokerage revenues, albeit in the single digits.

And, with the exception of Chicago-based Aon Corp., which reported a 2.2% decline in profits, the largest brokers reported improved profits last year.

Analysts say that after the regulatory upheaval in late 2004 and 2005, various restructuring initiatives and the soft pricing environment were the main themes for the world's largest brokers in 2006.

Overall, "it was a year of normalization...where you started to see some stabilization and refocus within the brokerage market," said David Small, an analyst with Bear Stearns & Co. Inc. in New York.

"It was a mixed bag," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York. "On one hand, you had a more stable environment, but on the other, internally there was a lot of restructuring and a more difficult operating environment."

London-based Willis Group Holdings Ltd. reported the largest brokerage revenue increase among the four, a 6.7% rise to $2.34 billion. New York-based Marsh & McLennan Cos. Inc. reported the smallest growth in its brokerage revenues—a 4% increase.

Itasca, Ill.-based Arthur J. Gallagher & Co. Inc. reported the biggest profit improvement, a more than 300% surge to $128.5 million vs. 2005, which was impacted by more than $200 million in litigation and contingent commission-related expenses.

"I generally think the results this year were uninspiring for Marsh and Aon specifically," said Mark Lane, an analyst with William Blair & Co. in Chicago. "Organic revenue growth was pretty sluggish and we didn't see the margin lift that we

See **BROKERS** page 20

# Blue Cross Blue Shield banking on new service

*Organization charters bank for health accounts*

By JOANNE WOJCIK

**CHICAGO**—The Blue Cross & Blue Shield Assn. last week became the second major health care organization to charter its own bank, a move its top executives believe will give member plans an edge in selling consumer-driven health plans.

Whether the association's move will become a trend remains to be seen. So far, at least one major health plan—Indianapolis-based WellPoint Inc., which is an independent licensee of the BCBS Assn.—said it has filed an application to open an industrial bank in Utah for its CDHP business.

But other big health plans maintain that the relationships they have established with non-owned financial institutions can offer the same seamless administration as the insurer-owned banks claim they can provide.

Sandy, Utah-based Blue Healthcare Bank will enable BCBS Assn. plan members in all 50 states to manage and pay for qualified medical expenses via a debit card linked to multiple personal accounts, such as health savings accounts, flexible spending accounts and health reimbursement arrangements.

The bank will provide integrated, one-stop service to customers while providing a wide array of services, including online banking, banking by phone, debit cards, checks and statements, all designed to help consumers manage their health care accounts. Brookfield, Wis.-based Fiserv Inc. and San Francisco-based Visa Inc. will support the bank's claims administration, investment and debit card services.

"It is a critical piece of our consumer-directed strategy," Scott Serota, president and chief executive officer of the Chicago-based BCBS Assn., said during a conference call. "Consumers want to be able to do things easily, they want to be able to track their account information, they want to be able to manage their health care assets, and our new Blue Healthcare Bank offers a simple way for them to do that."

Four Blue Cross Blue Shield Assn. plans initially will offer Blue Healthcare Bank services: Arkansas Blue Cross Blue Shield, Blue Cross of Idaho, Blue Cross & Blue Shield of Michigan and Blue Cross & Blue Shield of South Carolina. An additional 12 to 15 BCBS plans will offer the bank's services later this year.

Minnetonka, Minn.-based UnitedHealth Group was the first health insurer to charter its own bank, Exante, in 2003. The industrial bank, based in Salt Lake City, currently has more than $300 million on deposit in more than 250,000 HSAs. More than 80% of UnitedHealth CDHP members use Exante even though they are permitted to use whatever bank they want to manage their HSAs.

By having its own bank, UnitedHealth can provide faster, easier administration of HSAs, HRAs and FSAs at the point of service than would be possible if the insurer were using another financial institution, according to John Prince, chief executive officer of Exante Financial Services, which is based in Minnetonka.

"Our transactional experience is integrated with the health plan, and you have more options and features than you would have with a typical HSA in the market," he said. For example, "we're one of the only ones in the market that can do real-time bill pay to your provider out of your HSA."

By contrast, banks not owned or affiliated with health plans usually

See **BLUES** page 20

# Anti-harassment regulations delayed

By JUDY GREENWALD

**SAN FRANCISCO**—Employers in California, who have long waited for regulations clarifying legislation that requires them to provide sexual harassment prevention training, apparently are going to have to wait a bit longer.

The legislation, which became law in 2004, called for businesses with 50 or more employees to provide two hours of training and education on preventing sexual harassment to all supervisors by January 2006. However, there were ambiguities concerning implementation of the law.

Following a long review process, the San Francisco-based Fair Employment and Housing Commission issued its final proposed regulations in November.

They were sent to California's Office of Administrative Law in anticipation of receiving the required approval, after which they were to be submitted to the Secretary of State, the final step.

But the OAL returned the proposal to the FEHC earlier this month, saying further clarification of trainers' qualifications is needed.

As result, the FEHC will hold a Feb. 27 public hearing by telephone on additional revisions to the proposal, said Ann Noel, FEHC executive and legal affairs secretary.

The modified regulations then will have a 15-day public comment period, after which the commission will meet March 27 to consider any further changes. Then the plan would return to the OAL for final approval.

"They didn't think we were specific enough in two of our definitions," Ms. Noel said. "We're going to be more clear."

She said the commission could have made the changes without the public hearing, "but we decided the public has been our partner all along, and we're going to invite them into this process."

Shanti Atkins, president and chief executive officer of San Francisco-based ELT Inc., which provides employment law training programs, said the changes requested by the OAL were not substantive and focused on trainers' educational and practical experience.

"I really don't think it changes much of anything, practically, for employers" beyond that they will have to be more aware of their trainers' qualifications, Ms. Atkins said.

# Next *BI* webinar spotlights CDHPs

*Business Insurance* is hosting a free Online Executive Forum™ webcast on March 20 on "Mapping Consumer-Driven Health Care: Strategies to Drive Enrollment and Employee Understanding."

Consumer-driven health plans are the newest weapon in employers' arsenal in the war against runaway health care costs, and their popularity with employees is growing. Join *Business Insurance* Senior Editor Joanne Wojcik for an in-depth discussion of how the various types of CDHPs operate and whether they are helping save money by making employees better health care consumers. Participants will hear expert viewpoints and can ask questions during this live event, March 20 at 11 a.m. EDT.

Panelists will include:

- Jay Savan, a principal at Towers Perrin in St. Louis specializing in development of consumerism initiatives.
- Meredith Baratz, vp-market solutions in New York for Definity Health Inc., a pioneer in the development of the consumer-driven health plan and now part of UnitedHealth Group Inc.
- Mark Snyder, director of benefits at Toledo, Ohio-based Owens Corning Corp., which has offered a CDHP since January 2004.
- Jim Dwyer, vp of global benefits at New York-based American Express Corp., which also sponsors a type of CDHP.

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

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**Commentary**

# Industry's good works outnumber bad ones

REGIS COCCIA

*Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com*

When I wrote in my Jan. 22 column about the unheralded heroics and contributions made by the insurance industry following loss, I invited readers to send me stories about the good works the industry does.

To the many who shared a tale or two, thank you. Below are a few examples of how the industry helps communities, apart from its daily business of providing advice and resolving claims.

- A remarkable example of going above and beyond the call of duty is Irma Duckworth of Aon Risk Services in New Orleans. During Hurricane Katrina, Ms. Duckworth lost her home and most of her possessions. Yet she quickly relocated to an Aon office in Houston so that she could continue helping clients with their claims. Months after the storm, she went back to New Orleans to live out of a trailer parked next to her devastated home.
- One reader wrote that Houston's CPCU Society chapter supports the arts at a local elementary school. Responding to the removal of such programs from many schools' curriculums, the chapter provides musical instruments and other material to help kids learn music.
- Also in Houston, the local Risk & Insurance Management Society chapter sponsors a holiday party for battered women and children. All the kids get gifts, and in one case, a child was confused because she had never received a Christmas gift before. The reader wrote that such acts are "done by people in the insurance industry, many times with their own funds, to help others and are done with no expectation of reward."

**Examples abound of how the industry gives back.**

- Another reader cited an organization called Kids Chance of Pennsylvania, which raises money to give college scholarships to students with financial hardship resulting from a fatal or serious workplace injury to their parent or guardian. Most of this group's leaders work in the insurance and workers compensation industry. The reader said similar groups are in at least 26 other states.
- Fireman's Fund Insurance Co. sponsors a program that has donated more than $10 million in equipment and training for fire departments.
- To honor their 20th anniversaries, both ACE Ltd. and XL Capital Ltd. held global days of service for all their employees to work on projects supporting the needy and communities.
- Even small entities can make a difference. Insight Insurance Services Inc. in Geneva, Ill., is supporting Nothing But Nets, a global program that raises fund to provide bedding nets to protect against mosquitoes carrying malaria. The disease kills more than 1 million a year. Insight, a program administrator, is donating $10 for each policy order it receives from agents.
- The Foundation for Agency Management Excellence, created by the Council of Insurance Agents & Brokers in 1994, funds programs promoting agency leadership, training and research of issues critical to the insurance industry, including how to insure catastrophic events. Last year, it created a scholarship program for needy students who major in risk management and insurance, a FAME leader wrote. In September 2005, following Katrina, FAME announced that all proceeds from its annual major fund-raiser during the Insurance Leadership Forum at the Greenbrier would be donated to help victims of the disaster. FAME collected more than $125,000 for that effort, most of that coming from individuals in the insurance industry.
- Collectively, the industry responds generously to disasters. For example, hundreds of millions of dollars were donated through company foundations, employee matching funds and other programs to aid victims of the 2004 Indian Ocean earthquake and tsunami, not to mention similar amounts for Katrina.

From disaster relief to disease research to supporting individuals with disabilities, there are far too many examples of foundations, scholarships, grants and the personal generosity of industry employees to list here, but I hope you see my point: The insurance industry does many good things to enrich and even save lives, and not just for paying customers.

...costly to the individual," Dr. Burton ... See NYBOH page 19

# Business Insurance OPINIONS

## Remove barriers to mental health care

IF EVER THERE WERE an example of the importance of employers getting involved in the legislative process, the drive to expand a 1996 mental health care benefits parity law is it.

While most business groups have a philosophical aversion to benefit mandates, the more far-sighted ones recognized that parity advocates eventually were going to succeed in expanding the act and the groups would have to drop their opposition to have any chance of shaping the legislation.

That is exactly what some employer lobbying groups have done, and the result is a legislative proposal far more palatable to employers than if they stayed out of the debate.

For example, the employer groups strongly lobbied, successfully as it turns out, to strip a provision found in earlier proposals that would have required group health care plans to cover any mental condition. The latest bill, assembled with input from employer groups, leaves it to each health care sponsor to decide which mental health care conditions it will cover—as is the case for other medical conditions.

If an employer does provide coverage, it must be—in terms of employee reimbursement and treatment limitations—on par with coverage for other medical conditions. Fair is fair.

There is no question that such a change would not have been possible had not the business groups gotten involved. Lawmakers and their staffers would have lacked an incentive to negotiate with employers if all they received in return was continued opposition to parity legislation, regardless of how it was structured.

A bigger issue, though, is why most employers continue to provide less coverage for mental health than for other medical conditions.

We think putting up barriers to care, such as through higher cost-sharing arrangements, is penny-wise and pound-foolish. The sooner employees get treatment for mental disorders the sooner they will get better and be more productive. That is in everyone's best interest.

## Surplus lines reform bill offers more flexibility

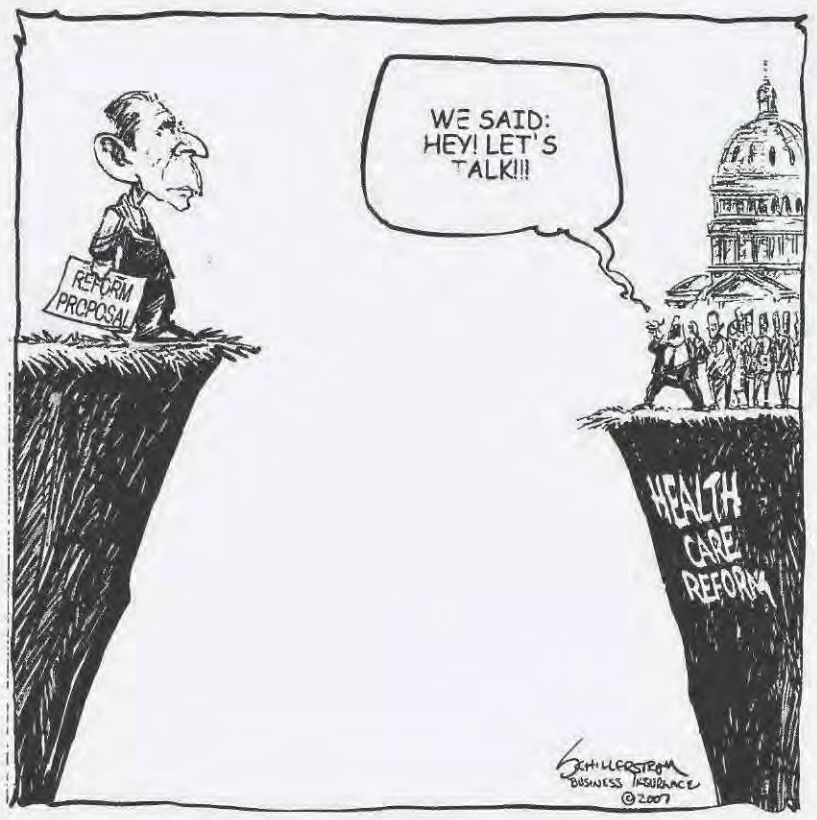
A FAST START can be key in getting legislation enacted. That's why we have nothing but praise for the House backers of more efficient insurance regulation who wasted no time in introducing a new—and we believe improved—version of the Nonadmitted and Reinsurance Reform Act.

We say improved because, as we report on page 1, the new bill contains a much more reasonable definition of a "qualified risk manager" than the measure passed by the House last September. The previous bill defined a qualified risk manager as someone who possessed at least two of three credentials: an undefined "advanced degree" in risk management, five years' experience or at least one of several specific professional designations.

A commercial policyholder would have to employ a qualified risk manager before the policyholder could have its broker go directly to the nonadmitted market without approaching the admitted market. Such a restrictive definition would have defeated one of the bill's key purposes—to ease access to the nonadmitted market.

Fortunately, the new bill allows risk managers much more flexibility in meeting the definition. Rather than a one-size-fits-all approach, the bill provides five ways for risk managers to be considered "qualified." That flexibility led the Risk & Insurance Management Society Inc. to drop its opposition to the measure.

Given the previous bill's overwhelming support in the House, we see no reason why the new measure shouldn't have equally easy sailing. And given that this time there's interest in the Senate as well, we hope this will culminate in swift enactment of the measure into law. This year's bill is off to a good start, and merits an even better finish.




## Community Forums

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

- **Risk Managers Forum** on various risk management issues.
- **Benefits Managers Forum** on general benefits management issues.
- **In the News** to express opinions and comments.
- **Industry Focus Forum** on issues from probes, to quality improvement.
- **The Lighter Side.** Share stories of success as well as blunders.
- **General Forum.** Discuss general insurance market issues and conditions, trends and other topics.

Please visit *www.BusinessInsurance.com* today and click on the Community Forums link. A simple free registration to create a user ID is all you need to join this online community and begin exchanging information, discussing ideas and sharing your observations.

## Write us

*Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3805; fax: 312-280-3174; e-mail: rcocca@businessinsurance.com*

## Online Poll at www.businessinsurance.com

*How would you rate the way your property insurer handled your most recent major claim?*


**NEXT WEEK'S POLL:** *Do you think it is good benefits policy to provide the same coverage for mental health care conditions as for other medical conditions?*

# Business Insurance PERSPECTIVE

# Well-crafted worker discipline program diminishes risk

By Joseph C. Palermo

*Joseph C. Palermo is a technical director for the Public Sector Services, Oil & Gas and Financial and Professional Services business units of St. Paul Travelers Cos. Inc.*

In today's litigious environment, business executives need to work closer with their risk management and human resources teams to create effective multilayered employee discipline programs that will reduce liability, improve morale and even save lives.

A well-designed employee discipline program can help mitigate both minor problems, such as an employee wearing inappropriate clothing, and major problems, such as an alcoholic employee whose duties require driving.

The following are elements of a successful employee discipline program:

**Create an effective hiring process.** Standardize job descriptions and applications to ensure only qualified candidates are considered. Personnel involved in hiring should be formally trained on effective interviewing techniques, and once candidates meet the initial criteria, conditional offers can be made. This allows an organization to check references, perform drug testing and check criminal or financial records before hiring.

**Secure the support of administration.** Get the buy-in of the organization's leadership. Supervisors who refuse to terminate or otherwise discipline rule violators will erode the validity of the system. Build support for the program by securing the input of senior management during the development phase.

**Work with a labor attorney.** Secure the advice and ongoing counsel of an attorney specializing in local labor law. The attorney should review every aspect of the proposed discipline program, and should advise on the wording of disciplinary documentation and the structure of an employee grievance process.

**Publish an employee manual.** This document will take time to create—sometimes as long as eight months in a union environment. But, it is worth the effort. Manuals should include policies on proper and improper attire, offensive behaviors, use of fleet vehicles, Internet and e-mail usage, and tardiness and absences. It should also outline the counseling, discipline and grievance processes. Once the manual is finalized, all employees should be required to provide written agreement to the terms outlined in the manual.

**Train supervisors.** Supervisors must understand all of the behavioral policies and disciplinary procedures because they will be on the front lines of explaining and enforcing the program. More importantly, management should be trained on coaching and counseling practices that are designed to help employees avoid running afoul of the discipline system.

**Always begin with counseling.** It may seem counterintuitive, but the goal of an employee discipline program should be to avoid disciplinary action. The purpose is to correct behaviors and fix small problems before they escalate. Most people respond well to an initial discussion and a definition of the conditions that would require further action. If the situation does progress, it should move to written acknowledgement of the verbal counseling.

**Establish an employee evaluation process.** Regular performance reviews are an important component of an employee discipline program, but are not the venue for bringing up new problems. There should be no surprises in an evaluation. As a rule of thumb, positives should outweigh negatives by 5-1.

**Offer an employee assistance program.** Frequently, discipline problems can be traced to extenuating circumstances such as alcohol and drug abuse, mental health issues and family crises. Most health plans offer EAPs that can help employees get the support they need and prevent personal issues from spilling over into the work environment.

**Standardize documentation.** Create form letters that document when counseling has taken place and exactly what was discussed. This both accurately informs employees of an official offense, and defends the organization if an employee later alleges that he or she was unaware of their detrimental conduct.

**Establish a grievance procedure.** Employees may not always agree with a supervisor's version of events, and must be provided with a forum for disputing disciplinary actions. Consult with a labor attorney about systems that comply with state laws.

Effective employee discipline programs are often required to secure employment practices liability insurance coverage and other policies because they significantly reduce overall risk exposure. Additionally, organizations that correctly implement these programs actually end up with improved employee morale. As long as policies are clear and rules are consistently and fairly enforced, with an eye toward helping employees succeed within the program, companywide acceptance is assured.

# Preserve ERISA plans with proactive, voluntary changes

By Marcia S. Wagner

The Employee Retirement Income Security Act of 1974 includes governing rules that are complex and constantly changing. Plan fiduciaries, administrators and managers of a plan face the most penalties due to this act. These sanctions were a significant obstacle to employers contemplating establishing tax-qualified plans as well as welfare benefit plans.

For this reason, the government utilizes penalties and rewards to ensure legal compliance for ERISA plans. The rewards include self-correction programs that can be used if mistakes are made, while the penalties are extreme tax sanctions that are imposed if a sponsor is caught out of compliance.

A tax-qualified plan can become disqualified in many ways. Regardless of why it was disqualified, the plan will lose—retroactively and prospectively—its tax advantages as well as subject the sponsor to penalties that can exceed half the value of the plan's assets. Penalties can include denial of corporate deductions, taxation of pension trusts and halting the ability to roll over individual retirement accounts.

The most common disqualification is a form defect. This occurs when the plan is not updated to reflect changes in tax law, for example GUST and the Economic Growth and Tax Relief Reconciliation Act of 2001. If your plan has not been updated for these laws between 2003 and 2005, it is likely disqualified and should be reviewed. "GUST" refers to the following tax laws: the General Agreement on Tariffs and Trade, the Uruguay Round; the Uniformed Services Employment and Reemployment Rights Act of 1994; the Small Business Job Protection Act of 1996; and the Tax Relief Act of 1997. It also includes the Internal Revenue Service Restructuring and Reform Act of 1998 and the Community Renewal Relief Act.

Another typical disqualification is an operational defect. This occurs when the terms of the plan are in compliance with the law, but the plan is not operated in accordance with its terms. Examples include allowing entry into a plan after six months of service when the plan requires 12 consecutive months for entry, or making late contributions to a 401(k) plan when its terms require timely elective deferrals.

Two other common problems are demographic and employer eligibility defects. A demographic defect occurs when a plan initially satisfies the various nondiscrimination testing rules, but falls out of compliance because of a change in the workforce. Employer eligibility defects occur when an employer adopts a plan that it legally cannot adopt (e.g., a for-profit entity adopts a 403(b) plan).

These defects may be cured under the Employee Plans Compliance Resolution System, which places plan participants in the position they would have been in had the defect not occurred. EPCRS is conditioned on correction by the plan sponsor and provides general guidelines on correction principles and some specific correction methods. These correction programs are available only if an Internal Revenue Service audit has not commenced.

Plan officials and employers that engaged in prohibited transactions may apply to the Department of Labor for relief under the Voluntary Fiduciary Correction program. A prohibited transaction is, in general, a non-arm's-length transaction between an ERISA plan and "parties-in-interest." A prohibited transaction will occur when a service provider to an ERISA-covered plan (also known as a party-in-interest) engages in transactions with the plan that harm the plan's economic interests by, for example, overcharging the plan or the plan receiving below-market rates of return for the risk involved and the plan having its assets dissipated—all as a result of its relationship with the service provider. Applicants must fully correct any prohibited transactions, restore any resulting plan losses with interest and distribute any supplemental benefits owed to eligible participants.

Some of the fiduciary breaches eligible for correction under the VFC program include:

- Loans to or from parties-in-interest at below-market interest rates.
- Late payment of participant contributions to pension or welfare plans.
- Sale and leaseback of property to a sponsoring employer.
- Purchase or sale of assets between a plan and a party-in-interest or an unrelated party at below-market value.

Given that prohibited transactions can result in up to a 100% excise tax on the amount included in the transaction—plus interest and penalties in addition to significant exposure to litigation—it is usually prudent to consider using the VFC.

Most pension plans, and all welfare benefit plans with more than 100 participants, must file Form 5500 annual with the Labor Department. Failure to do so can result in penalties of more than $1,100 per day. To encourage plan sponsors to submit Form 5500, the federal agency created the Delinquent Filer Voluntary Compliance program, which reduces penalties if Form 5500 is submitted voluntarily before audit.

The government created voluntary compliance programs as a way to provide an incentive to the private sector to bring pension and welfare plans into legal compliance. Voluntary correction programs are attractive because the sanctions are so significant. However, these programs are not available if a plan is under governmental audit. Therefore, it would behoove most employers to engage in a due diligence check of their ERISA plans to determine if all is in good order.

*Marcia S. Wagner is president of Wagner Law Group, a Boston firm specializing in ERISA, employee benefits and employment law.*

# China: Risks & Rewards

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**Issue: March 26 | Ad Close: March 14**



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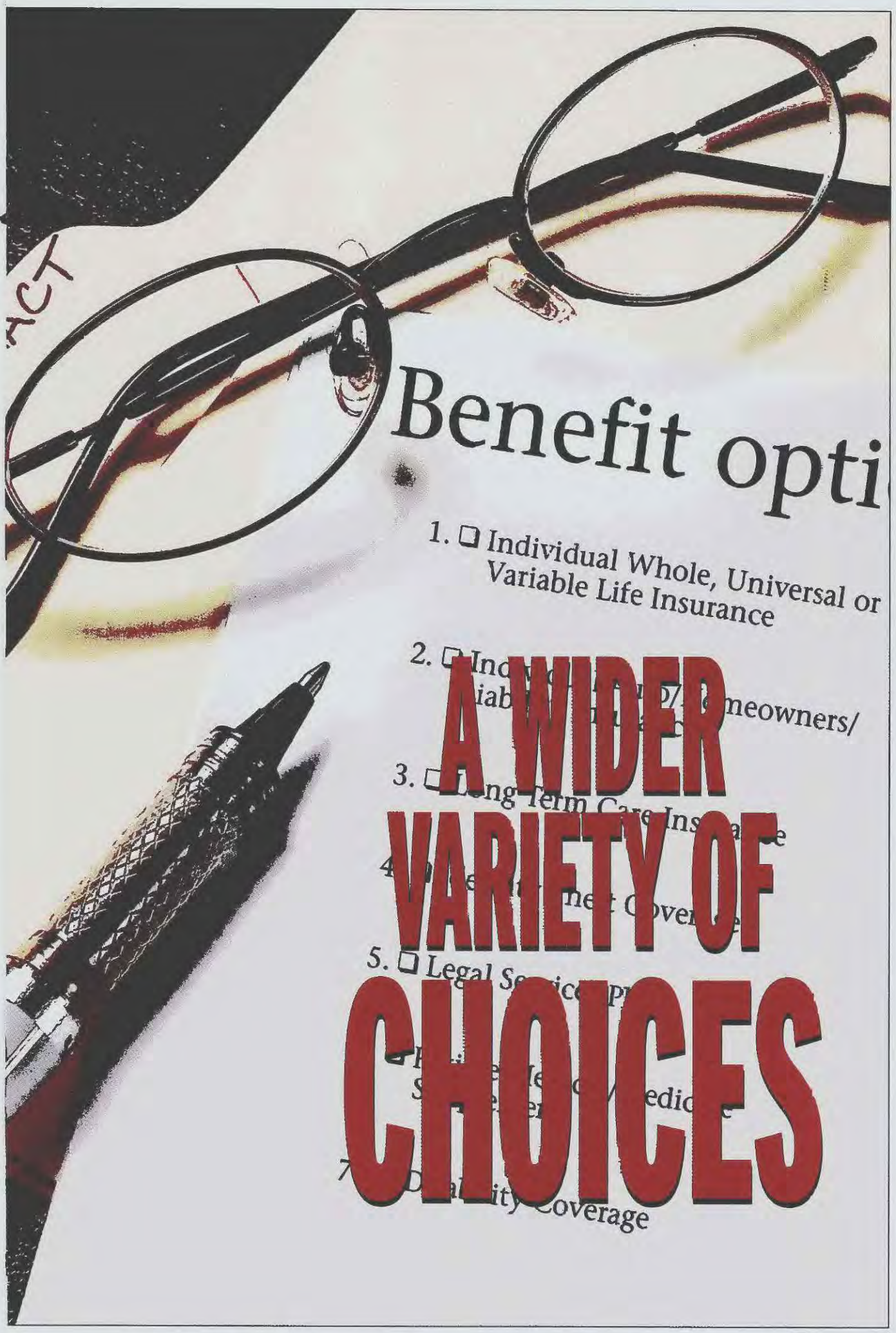
## VOLUNTARY BENEFITS

**More employers help their employees battle identity theft, but coverage is far from universal** / Page 14

**Should voluntary plans seek protection through ERISA? Approach has advantages and disadvantages** / Page 14

# BENEFITS MANAGEMENT




# Optional benefits grow, but slowly

*Employer response to higher costs also reinforces consumerist trend*

By JUDY GREENWALD

Voluntary benefits are enjoying steady, if unspectacular, growth as firms continue to introduce programs that complement their employer-paid benefits packages and strive to offset some of the ill feeling among employees as health care cost increases continue.

At the same time, employers are moving away from a "one-size-fits-all" approach and offering programs that reflect their employee populations—such as concierge services for workers in their 20s and long-term care for those in their 50s.

The most popular voluntary benefits, though, continue to be the standard insurance coverages: auto, homeowners, accidental death and dismemberment, disability, life, dental and vision (see story, page 12).

Interest in voluntary benefits continues to grow, say observers. According to a 2006 MetLife Study of Employee Benefit Trends, 20% of all employers are offering a wider array of voluntary benefits compared with the previous year.

**TRADITION:** Despite expansion of offerings, the most popular voluntary benefits among employers and employees remain life, disability and auto insurance. Page 12.

Employers are reviewing what "they already do offer as well as looking to expand it," said Rich Fuerstenberg, a principal with Mercer Health & Benefits in Princeton, N.J. "A lot of that is being fueled by some of the cost pressures in other areas of benefits," he said.

Employers facing higher health care costs are offering voluntary benefits to try to "offset some of the bad taste" created by pushing more health care costs onto employees, said Vincent Ashton, executive director of New York-based HealthPass, a consulting firm that focuses on small companies.

In addition, increased voluntary benefit offerings are part of a growing shift toward health care consumerism, observers say.

Employers are "moving away from a world of entitlement" to one of engagement, where employees are being asked to make selections and pay more "and voluntary benefits are playing a big part in that," said Rick Elliott, Atlanta-based chairman of Willis Benefits, a unit of Willis Group Holdings Ltd.

As recently as six or seven years ago, an employer's attitude towards voluntary benefits might have been, "I don't want to be hassled" by their administration, said Robert Maloney, vp, national affinity sales, with Boston-based Liberty Mutual Insurance Co., which offers auto and homeowners voluntary benefits. Now, though, "it's become a more accepted product line."

And insurers are offering a wider variety of programs, said Charlotte Lazar-Morrison, director of human resources at The Aerospace Corp., of El Segundo, Calif.

Last year, the research and development company

See **CHOICES** next page

# Traditional voluntary benefits remain on top

*Employers are more selective when adding new voluntary benefit programs*

By JUDY GREENWALD

Although the range of voluntary benefits includes such diverse programs as pet insurance and legal services, observers say traditional coverages, such as life, disability and auto insurance, remain among the most popular for both employers and employees.

"There's still a lot of emphasis, I think, on some of the core benefits, where employers don't want to provide as much life insurance, or don't want to provide disability insurance from date of hire," said John Vollmer, a principal with Buck Consultants L.L.C. in St. Louis.

Salinas, Kan.-based Sunflower Bank decided to offer short-term disability coverage as a voluntary benefit for its 460 employees in light of its benefits offerings, said Patrick Salmans, vp of human resources.

"Some of the things that we looked at were the shortcomings of our benefits package," which, for instance, covers long-term disability, but not short-term disability. It "was a gap we needed to fill," said Mr. Salmans. The bank offers its voluntary benefits through American Family Life Assurance Co. of Columbus, in Columbus, Ga.

"We certainly see a lot more interest" in coverages, including vision and dental, said Jay Savan, a St. Louis-based principal with Towers Perrin.

In addition, "I think the areas of voluntary (accidental death and dismemberment) and voluntary life insurance is as robust as it's ever been," said Mr. Savan. Several companies lately have either eliminated, or greatly reduced, the level of core life insurance they offer and replaced it with a voluntary program.

"I think more and more people are looking at life insurance as something that's an individual's choice," rather than a benefit that should be offered by employers to employees at two times base salary, said Mr. Savan.

"There are still a lot of people in this country that don't have personal life insurance. We see those sales continuing to be good," said Charles Baggs, executive vp and chief administrative officer of Jacksonville, Fla.-based American Heritage Life Insurance Co., a subsidiary of Allstate Corp.

Also, companies are "rethinking their core disability offering, and going to a much more Spartan core offering," with options for employees to buy additional coverage, said Mr. Savan.

Rick Elliott, Atlanta-based chairman of Willis Benefits, a unit of Willis Group Holdings Ltd., said he is seeing "a greater influx of individual disability policies, particularly for executives," because group plans typically have limits that will not provide coverage for those above a certain salary level.

Financial planning tools are also popular, say observers. "I see employers putting in more and more voluntary benefits to assist" their employees in financial planning, such as a benefit that offers workers several visits with a financial planner, said Barry Barnett, a principal with PricewaterhouseCoopers L.L.P. in New York.

But employers are selective. For example, The Aerospace Corp. of El Segundo, Calif., which offers voluntary benefits including vision, life insurance and disability coverage, has considered adding others, such as legal and pet insurance, but has not done so, so far. "You have to weigh the administration," and conduct a cost-benefit analysis, said Charlotte Lazar-Morrison, director of human resources.

Atlanta-based Home Depot Inc. is cautious about adding new benefits, said benefits Vp Ileana Connally. "We're always looking at new opportunities, but we want to make sure that when we do offer something, that it's solid in terms of its sustainability, in terms of its quality, in terms of the value" it provides employees, said Ms. Connally.

"If I'm just going to offer an associate something they can go out and get on their own, without adding value to it, it may not make any sense," she said.

Home Depot's voluntary benefits, which are provided by New York-based Metropolitan Life Insurance Co., now include long-term care, legal services, auto and homeowners insurance and pet insurance.

Meanwhile, New York-based Innovest Strategic Advisors Inc. offers a voluntary benefits package to its 20 U.S.-based employers that includes life insurance, long-term disability and AD&D coverage but only two employees have opted for the coverage, said Chief Financial Officer Alex Marks.

The company is considering a subsidy to encourage enrollment. It may also add more benefits "It might help to have more choices within the voluntary benefits," he said. "Perhaps that's one of the reasons why there's low participation."

## EMPLOYEE BENEFIT STRATEGIES

*Participants rank the most important benefits strategies*


*Source: MetLife*

## Limited voluntary benefit plans ease health care cost burden

A growing number of employers are offering voluntary benefits that help employees cope with rising medical costs.

In particular, employers are offering disease or critical illness policies, which provide lump sum payments upon the diagnosis of a particular disease, and "mini-med" policies, which are limited plans designed for part-time, seasonal or temporary employees, or for the small employers that may not offer an employer-paid medical coverage plan.

Disease policies provide employees with a lump sum payment upon the diagnosis of a major illness, such as life-threatening cancer, heart attack, kidney failure, stroke, organ transplant or paralysis, among others. Observers note that unlike low-deductible plans, these policies can be used in conjunction with employees' health savings accounts without jeopardizing their tax-free status.

The cost of $10,000 in disease coverage for a single, 35-year-old nonsmoker ranges from about $7 to $13 monthly, said Frank J. Fimmano, New York-based senior vp at Aon Consulting.

Policy limits, though, can be significantly higher. Randall Stram, Bridgewater, N.J.-based vp, employee paid products, for Metropolitan Life Insurance Co., said MetLife's policy can provide between $10,000 and $100,000 in coverage, with no deductible.

"Someone diagnosed with one of those several conditions receives a lump sum payment to use any way they choose," whether it is for a second opinion, to make their homes wheelchair accessible, or to cover the cost for leaving the country to receive medical treatment, said Mr. Stram.

He noted that MetLife requires employers that offer these plans to also have underlying comprehensive medical coverage for their employees.

A related policy is medical bridge or gap plans, which provide lump sum benefits to employees for hospital confinements or outpatient surgeries, and are designed to cover the gaps left by high deductible plans, say observers.

These mini-med plans cover basic medical services, including physician visits and prescription drugs. Mr. Fimmano said these policies have annual maximums of anywhere from $5,000 to $50,000 and will include components such as in-hospital treatment, hospital room and board, outpatient treatment and X-rays. But they have "serious limitations," such as, for example, a maximum of five doctor visits per year, with a $15 co-pay.

Mini-med plans have had a "very significant increase in activity" over the past couple of years, said Mr. Fimmano.

As employers find the cost of providing health care coverage to their employees "becoming between very expensive to prohibitive, it's become a good way" for the employer to provide access to affordable coverage to its employees, said Phil Grece, New York-based vp and product manager for Flex Shield, a mini-med plan, in American International Group Inc.'s accident and health division, who noted that in many cases employers will make a contribution to the plan's costs.

Gisele Sampson, manager, benefits and HRrisk, at Sumner, Wash.-based REI Inc., an outdoor gear and clothing retailer, introduced such a program to its 4,500 part-time, seasonal and temporary workers last year through an Aetna Inc. unit.

The program offers $10,000 in benefits, which was based on a study by REI that indicated 89% of the claims in its major medical plan were less than $5,000, said Ms. Sampson.

Ms. Sampson said to encourage enrollment, REI subsidizes 60% of the program's cost. Employee response to the program was "huge," said Ms. Sampson. It was "greatly appreciated," she said, noting that more than a quarter of eligible employees have chosen to participate.

*—By Judy Greenwald*

# Choices: Benefits more diverse

CONTINUED FROM PREVIOUS PAGE

began offering its employees a long-term disability policy that can be converted into a long-term care policy, she said. "I think insurance companies are getting creative about the products they're offering to make them interesting to people."

### *Age appeal*

Employers are now offering voluntary benefits that meet their employee population's diverse needs, say experts.

The diversity in today's workforce, with the baby boomers, followed by the "X" and "Y" generations, "is probably greater today in our workforce than ever before, said Lance Osborne, vp, field force development, for the Amercan Family Life Assurance Co. of Columbus, in Columbus, Ga.

"And that creates a need for companies to get creative—in fact, innovative—in their plan designs and their benefit offerings, so you're seeing a lot of companies moving away from this one-size-fits all because, in fact, it doesn't fit at all, and they're looking for opportunities through voluntary products that are more suited to the diverse workforce," Mr. Osborne said.

What appeals to those under the age of 30 and those over 50 "can be very different," said David Downer, a Washington-based vp and senior consultant with The Segal Co.

Employers are "trying to match up to some reasonable degree what each one of those different groups will view as being valuable to them," giving them choice and flexibility, said Mr. Downer.

A 25-year-old, for instance, "is just not interested in buying life insurance, or long-term care," but likes fitness or vacation club discounts and other concierge-type services, while older workers are more interested in long-term care and supplemental insurance for their post-retirement years, said Mr. Downer.

"Those are the kinds of things they find important or valuable, and that's what we're encouraging employer groups to look at," said Mr. Downer.

Voluntary benefits at the Arlington, Va.-based Stanley Associates include life insurance, accidental death and dismemberment, vision and a commuter benefit that includes paying for parking expenses on a tax-free basis, said benefits manager Kara Svehla.

The firm selected its benefits based on informal focus groups formed from among its 2,300 employees, which it used to "find out what our employees are looking for most," said Ms. Svehla. The government consulting firm is also considering adding other voluntary benefits, such as legal services and car, homeowners and pet insurance, she said.

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# Employers joining identity theft battle

*But many unconvinced job-related assistance outweighs the added work*

By LOUISE KERTESZ

Concerned about security breaches that expose employees' personal data and the many ways identity thieves steal personal information, more major U.S. employers are interested in making identity theft coverage available to their employees, consultants and insurers say.

"It's something that's becoming much more important to employers of all sizes," so consultants are researching the market to help clients sort out the various identity theft insurance products available, said Vince Ashton, executive director of HealthPass, a small-business health care purchasing cooperative based in New York.

Mr. Ashton wants to add an identity theft insurance product—which could be offered as an employer-paid benefit or a voluntary benefit—to the suite of services HealthPass offers employer members.

"Employers and employees need help in sorting through the maze of products and what they do," said Paul Kersting, principal in the health and welfare practice at Buck Consultants L.L.C. in Atlanta.

Identity theft coverage is available through numerous channels that include employer-paid group insurance from American International Group Inc. and St. Paul Travelers Cos. Inc. These policies, with $25,000 limits, cover out-of-pocket expenses in recovering identity, including lost wages and legal fees. The policies include optional restoration services, in which a caseworker walks the policyholder through the steps necessary to restore identity.

AIG has 10 such programs in force covering 10 million individuals who are employees, customers or members of an association. The programs offered by employers for their employees are increasing, said Nancy Callahan, vp of AIG's identity theft and fraud division in New York.

St. Paul Travelers has more than 1,000 commercial group identity theft policies in force, a number that's "been growing significantly over the past several years," said Hartford, Conn.-based Joe Lester, identity fraud product manager for St. Paul Travelers.

AIG recently introduced a product for employers to offer as a voluntary benefit. It provides broad coverage for financial losses due to fraud, including identity theft and other losses such as theft from an escrow account. The product includes restoration services.

**'With many voluntary plans, people tend not to get interested until they have a need, and then it may be too late.'**

Gail Gentile, Palm Inc.

For Metropolitan Life Insurance Co., identity theft restoration services are included at no additional charge if an employee takes auto or home insurance products offered as a voluntary benefit by their employer, said Karen Manning, vp of group auto and home sales for New York-based MetLife.

"Our research shows that resolution (restoration) is the better coverage," minimizing the loss in work time when an employee's identity is stolen. "It can take up to 20 working days to restore their credit," said Ms. Manning, who is based in Warwick, R.I.

MetLife said 55 of the Fortune 100 companies offer the identity theft option with their voluntary auto or home policies in most U.S. states.

Some employers offer identity theft restoration services as a voluntary benefit through prepaid legal assistance programs. Such programs may outline the steps needed to restore identity, but may not provide a caseworker.

Most homeowner insurers offer or are in the process of rolling out some form of identity theft protection, said a spokesman for the Insurance Information Institute in New York. Several observers said many people don't realize they can buy identity theft protection as part of their auto or homeowner policies.

More states are requiring employers to notify their employees when an incident occurs that may compromise their personal data, such as the loss of a laptop containing human resources information.

Although employers have concerns about liability in these instances, "in working with a number of companies in developing this suite of (identity theft) products, before the fear of lawsuits, employers have a genuine concern about the impact of the notification letter on the employee when they receive it," said AIG's Ms. Callahan.

The frustration and anxiety of having one's identity stolen can take its toll on performance at work. "Employers are much more concerned about maintaining the work environment and employee loyalty" by helping affected employees restore their identity, Ms. Callahan said.

### *Mixed perspectives*

Should employers offer the coverage as a voluntary benefit?

"With all the stress just to provide health care benefits, I could definitely see employers offering this as a voluntary benefit," said Buck's Mr. Kersting.

But Gail Gentile, senior director of global compensation and benefits at Palm Inc., in Sunnyvale, Calif., said Palm decided to offer the AIG policy as a group benefit. "I wanted everyone to have access to the coverage. With many voluntary plans, people tend not to get interested until they have a need, and then it may be too late," she said.

"Identity theft is an emotional, frustrating, time-consuming experience. I felt it would benefit the individual to have professional support, and at the same time it made sense from a company standpoint because it would help people be able to concentrate on things at work," Ms. Gentile said.

But some consultants say identity theft coverage is not a high priority for employers or employees.

Aon Consulting has assisted clients in offering identity theft coverage for more than two years—both as an employer-paid and a voluntary benefit, said Robert Moriarty, assistant vp in the elective benefits practice in New York.

Although numerous companies offer identity theft coverage, "in talking to clients, I don't think there's a groundswell of interest out there," Mr. Moriarty said.

The supplier of a voluntary product once sponsored by Aon stopped offering the coverage because "they came to the realization that employees would not buy it," Mr. Moriarty said. "It's a mindset: It will never happen to me."

## Identity losses top $56.6B

Identity thieves use personal data they have stolen to open bank and credit card accounts, buy cars and merchandise, rent apartments, and obtain medical care and employment in the victim's name.

According to the Privacy Rights Clearinghouse, security breaches since February 2005 have exposed more than 100 million data records of U.S. residents, including Social Security numbers, credit card account numbers and driver's license numbers. The San Diego-based nonprofit consumer information and advocacy organization maintains a chronology of breaches that expose individuals to identity theft.

Although U.S. adult identity fraud victims decreased from 9.3 million in 2005 to 8.9 million in 2006, the value of the fraud rose from $54.4 billion in 2005 to $56.6 billion in 2006, according to a Javelin/Better Business Bureau survey.

The total resolution time—or the time it takes a victim of identity theft to straighten out his or her credit records and restore his or her identity—was at an all-time high of 40 hours in 2006. That compares with 28 hours in 2005, according to the 2006 Javelin/Better Business Bureau survey.

*—By Louise Kertesz*

# Pluses and minuses of ERISA protection

*Business and expert views often differ on voluntary benefits*

By JOANNE WOJCIK

While many consultants and insurers say voluntary benefit plans should be governed by the Employee Retirement Income Security Act because of the liability protections it provides to employers, not all employers agree.

If a plan member is dissatisfied with how a claim is handled by a benefit plan that is governed by ERISA, he or she can bring suit only in federal court and damages are limited to unpaid benefits and attorneys fees.

For plans not governed by ERISA, disgruntled members can sue in state court, which can lead to awards of compensatory and punitive damages.

Employers must file summary plan descriptions and the Form 5500 series with the U.S. Department of Labor to obtain ERISA protection for voluntary benefit plans. That can be time-consuming and add costs to administering a plan that is not supposed to cost employers a dime.

Moreover, ERISA protection is available only for so-called "welfare plans" such as health care and pension benefits, so voluntary programs such as insurance for pets, automobiles or legal expenses would not qualify. This could put the onus on employers to segregate administration of certain plans that in many cases are underwritten by a single insurer.

"There are good and bad things about coverage under ERISA," said Mark Holloway, a senior vp at Aon Consulting in Winston-Salem, N.C. "You have to do the reporting and disclosure."

Employers that fail to do so face financial consequences, including penalties and fines that would be levied by the DOL, he said.

"If you've got an ERISA plan and treat it as such, but you don't file 5500, you'd go under the delinquent filer program," he said.

Employers also must meet requirements under the Consolidated Omnibus Budget Reconciliation Act for voluntary benefits that are health-related, and there are penalties for failing to send COBRA notices to employees in a timely manner, Mr. Holloway added.

### *Punitive damage protection*

On the plus side, however, "if someone sues and it's an ERISA plan, all the state law remedies as far

Continued on next page

## Ways to avoid invoking ERISA

Some employers will go to great lengths to ensure that a new voluntary benefit program is not governed by the Employee Retirement Income Security Act—only to have it all come tumbling down when a high-level executive announces the program's availability over the company intercom system.

"Someone could consider an e-mail that lets employees know about the availability of the benefit as an endorsement, or even the fact that an employer has negotiated a group rate," said Mary Ericson, assistant vp of regional accounts and consumer segment leader at Hartford Life Insurance Co. in Simsbury, Conn.

"It would be OK to announce the program, but if you put the company logo on booklets, or tell people that the president is very excited about the program and they want employees to consider it," it could be considered a company endorsement, thereby making the benefit subject to ERISA, said Mark Holloway, a senior vp at Aon Consulting in Winston-Salem, N.C.

He added that voluntary benefit plans may be deemed under ERISA jurisdiction if employees are permitted to pay premiums for them on a pretax basis via Section 125 of the Internal Revenue Code.

"Some people believe pretax payments can be exempt from ERISA, but that's a controversial position," said Henry Saveth, an attorney at Mercer Human Resource Consulting in New York.

However, he said the U.S. Labor Department has yet to rule on such situations.

The following are so-called "safe harbors" that employers can use to ensure the voluntary benefit plans they offer are exempt from ERISA:

- No contributions are made by an employer.
- Participation is completely voluntary.
- The sole employer program functions are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions and to remit them to the insurer.
- The employer receives no consideration other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions for the program.

*—By Joanne Wojcik*

CONTINUED FROM PREVIOUS PAGE

as bad faith, punitive damages, fall under the boards," Mr. Holloway said. "They can get benefits and attorney fees, but that's it."

"I really can't see any good reason why an employer might not want their voluntary benefit plans to be governed by ERISA," said Mary Ericson, assistant vp of regional accounts and consumer segment leader at Hartford Life Insurance Co. in Simsbury, Conn. "ERISA affords the employer a lot of protections.

**'So-called experts....don't live and breathe this stuff day in and day out like employers do.'**

Ray Brusca, Black & Decker Co.

The only potential benefit would be not having to do some of the reporting requirements and the filings like 5500 forms or SPDs," or summary plan descriptions.

"But, in essence, if they are offering any kind of health or benefit plan, they've got to go through an ERISA process anyway, so the additional work to include a life or disability product is probably minimal and, conversely, the pitfalls of trying to structure non-ERISA can be pretty deep," Ms. Ericson said.

Approximately 43% of Hartford Life's book of business is voluntary benefits and "99% of our clients structure their voluntary benefit plans as ERISA unless the employer is not governed by ERISA," such as public entities, Ms. Ericson said.

While consultants and insurers tout the benefits of ERISA protection for voluntary benefits, not all employers are convinced they outweigh the required additional work.

"I understand the theories put forth by these so-called experts," said Ray Brusca, vp-benefits at Black & Decker Corp. in Towson, Md. "However...they don't live and breathe this stuff day in and day out like employers do. The reality is, there's so much extra work you have to do in terms of (Labor Department) filings...you've got to weigh that vs. possibly using ERISA as a legal shield in the eventuality that you get sued."

Black & Decker offers group universal life administered by Marsh & McLennan Cos.' Marsh@WorkSolutions and insured by Metropolitan Life Insurance Co. of New York, as well as auto and homeowner insurance, also underwritten by MetLife.

"When you get down to having to issue plan documents, having to issue notices of material modifications, having to issue (Health Insurance Portability & Accountability Act)-this and HIPAA-that, and all of the other legislative requirements, I think it would add exponentially to not only the burden (of administering voluntary benefits) but also reduce the likelihood of companies even wanting to offer those benefits," said Mark Kitchen, director of benefits at Marsh Supermarkets L.L.C. in Indianapolis, which is not affiliated with MMC.

"Once you get outside of your core benefit offering, I would, as a benefit manager, look at the burden to the department and the administrative hassle vs. the employee gain and worth of those programs and not want to get into that business unless it would be a definite advantage," Mr. Kitchen said.

Marsh Supermarkets offers all employees most of the products underwritten by Columbus, Ga.-based Aflac Inc. and a limited medical plan for part-time associates. The supermarket chain also administers via payroll deduction a handful of legacy voluntary benefit plans that haven't had any open enrollments over the past several years.

"Most employers run the other way when they hear the word ERISA," said Henry Saveth, an attorney at Mercer Human Resource Consulting in New York. "Twenty or 30 years ago, employers used to see it as a matter of life and death because they hated ERISA. But now it's not so bad, it just requires a little extra reporting work, and the ERISA protections could be seen as favorable to the employer."

# Market Moves

## Gallagher & Co. acquires Elite Benefits

**ITASCA, Ill.**—Arthur J. Gallagher & Co. has acquired Elite Benefits Insurance Marketing Services Inc., a benefits consultant and brokerage, for an undisclosed sum.

Elite Benefits President John Young and his staff will continue operating in Irvine, Calif., under the direction of Norbert Chung, western regional executive vp of Gallagher Benefit Services Inc., Itasca, Ill.-based Gallagher said in a statement.

## Brown & Brown adds Fla., La. operations

**DAYTONA BEACH, Fla.**—Brown & Brown Inc. has acquired Tallahassee, Fla.-based Shapiro Insurance Inc. and three Lockport, La., operations—Marcello Agency Inc., American Insurance Service Inc. and Beyer-Beeson Insurance Agency Inc.

Jerry J. Marcello, president of the Louisiana commercial property/casualty intermediaries in the energy and marine industries, and his staff will remain in Lockport as a Brown & Brown specialty division.

Daytona Beach, Fla.-based Brown & Brown said Shapiro President Howard Shapiro and his staff would merge into Brown & Brown's existing Tallahassee office. The Shapiro operations focus on employee benefits and administration, commercial lines and personal insurance.

The acquisitions had combined annual revenue of about $5 million.

## QBE buys P/C insurer in Latin America expansion

**NEW YORK**—QBE the Americas agreed to buy specialized Mexico-based insurer Cumbre Seguros from private investors—a transaction that must receive Mexican regulatory approval and is expected to close during the second quarter, QBE said.

The New York arm of Sydney, Australia-based QBE Insurance Group Inc. said the purchase of Cumbre Seguros, a commercial property/casualty insurer in Mexico City, completes the fourth of its five Latin American goals—to open offices in Argentina, Brazil, Colombia, Mexico and Chile.

Cumbre Seguros had 2006 gross premiums of about $58 million.

## HRH acquires Atlanta risk consultant, investigator

**ATLANTA**—Hilb Rogal & Hobbs Co. based in Glen Allen, Va., has acquired "substantially all" of the assets of Investigative Solutions Inc., an Atlanta risk management consultant and investigative service provider, HRH said.

Former FBI agent and ISI President Harold Copus and his team will operate ISI in Atlanta as a branch of HRH Risk Mitigation Inc.

Martin L. Vaughan III, HRH chairman and chief executive officer, said an "increasing number of emerging risk issues" and "elevated" client demand prompted the purchase.

Mr. Copus said joining HRH would allow ISI to meet "increasingly sophisticated client demands."

ISI had about $1.5 million in annualized revenue in 2006, the companies said in a statement.

## Chiltington sets up office in Mexico City

**MEXICO CITY**—Chiltington International Ltd. opened a Mexico City office Jan. 1, the London-based insurance and reinsurance consultant said. Oscar Botello Moreno is general manager of the office.

## Aon restructures entertainment insurer

**CHICAGO**—Aon Corp. has put its Aon/Albert G. Ruben arm, which insures entertainment and leisure industry risks, under the direction of Aon's Entertainment Group.

George Walden is Ruben's new CEO. He succeeds Sam Cargill, now group chairman. Mr. Walden, now based in Los Angeles, spent three decades as president of Ruben's New York office.

Ruben President Peter Robey will continue his association with the previously independent Aon arm and will be based in London.

Aon said the changes will help it better serve "large conglomerates" that dominate today's entertainment and leisure industries.

## AVRECO-The Park Group launches department

**CHICAGO**—Wholesaler AVRECO-The Park Group has set up a professional liability department and promoted Peter Upjohn to manager. Mr. Upjohn most recently was assistant vp in AVRECO-The Park Group's casualty department, a spokeswoman said.

## Starr Foundation donates $10M to N.Y.'s Cooper Union

**NEW YORK**—The Starr Foundation, headed by C.V. Starr & Co. Chairman Maurice R. Greenberg, donated $10 million to support a $250 million capital campaign by The Cooper Union for the Advancement of Sciences and Art, reported *Crain's New York Business*, a sister publication of *Business Insurance*. The New York arts, engineering and science institution said the donation is the largest in its history. Technology innovation is "the key to American competitiveness in our rapidly changing global economy," Mr. Greenberg said.

### TO SUBMIT ITEMS

*BI*'s new Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while Products & Services reports on new product offerings. Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; *cbenton@businessinsurance.com*. P&S and C&G items should be sent to Joe Walker at *jwalker@businessinsurance.com*.

# International NEWS

## APRA bans second exec over reinsurance deal

By SARAH VEYSEY

**SYDNEY, Australia**—The Australian Prudential Regulatory Authority has disqualified Robert Stevenson, a former group reinsurance officer at Zurich Re, from being or acting as the director of senior manager of a general insurer.

Mr. Stevenson was group reinsurance officer at Zurich Re, a unit of Zurich Financial Services Group, from 1999 to 2001.

APRA said that Mr. Stevenson played a role in facilitating and structuring a reinsurance deal between Zurich Australia Insurance Ltd. and General & Cologne Re Group Australia that resulted in ZAIL's profits for 2000 being overstated.

APRA determined that Mr. Stevenson knowingly facilitated the transaction and "in doing so enabled ZAIL to deceive its auditors, APRA and Standard & Poor's Corp. as to the true nature and effect of the transaction."

Last year, in connection with the same investigation, APARA disqualified John Stanbridge, ZAIL's former CFO, from acting as director or senior manager of a general insurer, authorized nonoperating holding company or agent of a foreign general insurer.

## Takaful insurer, reinsurer granted Bahrain license

By MICHAEL BRADFORD

**MANAMA, Bahrain**—Dubai Islamic Insurance & Reinsurance Co. and several investors have been granted a license by the Bahrain Central Bank to establish a new takaful insurer in Bahrain.


Aman Bahrain Insurance Co. has been formed with $20 million in capital from Dubai Islamic Insurance & Reinsurance, Al Salam Bank and other investors.

A spokeswoman said the new insurer has not yet announced what coverages it will write.

Sultan Saeed Al Mansoori, chairman of Dubai Islamic Insurance & Reinsurance, said in a statement that the new insurer's formation was prompted by feasibility studies that "showed a high demand for Islamic takaful insurance" in Bahrain.

That demand was "the main reason that encouraged us to establish an Islamic insurance comp any in Bahrain," he said.

Meanwhile, the Monetary Authority of Singapore earlier this month authorized SCOR Asia-Pacific to apply to the Labuan Offshore Financial Services Authority for an extension to its nonlife branch license in Labuan, Malaysia, to underwrite retakaful reinsurance contracts.

SCOR Asia-Pacific, the Singapore-based arm of French reinsurance group SCOR S.A., opened a branch in Labuan in 2000. The Labuan branch will be the base for the group's Islamic finance retakaful activities in Asia.

SCOR said it believes that the demand for takaful reinsurance has "high growth potential," particularly in Asia and in the Middle East.

*Adrian Ladbury contributed to this report.*

## Premium volume rises in France

*Rate competition drives decrease for large risks*

By RICK MITCHELL

**PARIS**—Growth in French commercial insurance premiums lagged in 2006 because of tough rate competition, according to the French insurers' association.

Premium volumes for large enterprise risks—particularly industrial risks—fell 2.5% in 2006 compared with 2005. This was primarily caused by intense rate competition but also stemmed from a reduction in claims from the previous year, according to the Fédération Française des Sociétés d'Assurances.

The federation estimated that overall commercial premiums grew 2.8%, including 8.1% growth for civil liability premiums. Premium volume was flat for automobile and rose 1.6% for property, as intense rate competition held down revenue growth in this sector.

However French insurers reported growth in overall estimated property/casualty and life premium volume of 12.8% last year—their best performance in a decade—to a record €198.4 billion ($261.63 billion).

This followed an 11.0% gain in 2005 and was largely driven by a 16.1% increase in premiums for personal lines coverage, including life, health and bodily injury, accounting for €155.6 billion ($205.19 billion), the FFSA said.

"It was a very positive year, but the news wasn't all good" for insurers, said FFSA President Gérard de la Martinière at a Jan. 30 press conference to release estimates for 2006.

### *Tough competition*

He said tough rate competition for automotive and business coverage contributed to a continued slowdown since 2002 in premium growth for property and liability coverage.

Key concerns included rapidly increasing liability claims, particularly for automobile accidents, as well as controversy over medical liability premiums. In December, insurers opposed the government's proposed reform of the natural catastrophe insurance system.

Casualty premiums rose an estimated 2.2% to €42.8 billion ($56.44 billion) in 2006, mainly based on an increase in insured assets. The growth rate was down, however, from the 3.3% rise in 2005, 4.3% in 2004, 6.9% in 2003 and 7.4% in 2002, according to the FFSA.

But at the same time, Mr. de la Martinière warned, there has been a very significant increase in the cost of accidents "that is difficult for the reinsurance and insurance industries to support." He said there were an estimated 23,000 bodily injury court cases, up 9.5% in 2006. "The French market has simply gone off the tracks," he said.

Insurance for construction risks saw a significant upswing—14.0%—benefiting from strong growth in France's building industry, he said. Mr. de la Martinière urged the government to be cautious in its proposed overhaul of the so-called Cat-Nat regime—France's natural disaster pool—which has been delayed until after the upcoming presidential elections, slated to begin in April.

"We are against major changes to this regime, which plays a stabilizing role in big disasters. Since 1982, it has paid out some €10.8 billion ($14.26 billion) in claims," he said. He added, however, "FFSA does believe that Cat-Nat compensation for drought damage needs to be re-examined." The reform bill was inspired by a series of costly droughts that imposed large payments on the pool.

LANDOV

## Kyrill damage estimates in Germany skyrocket

By RICHARD MILLER

**BERLIN**—The German insurance association said last week it had more than doubled its estimate of insured property damage losses in Germany from windstorm Kyrill to approximately €1.9 billion ($2.47 billion).

On Jan. 19, the Berlin-based Gesamtverband der Deutschen Versicherungswirtschaft e.V. estimated losses at about €900 million ($1.17 billion).

Edmund Schwake, chairman of the GDV's nonlife committee, said in a statement that the preliminary estimate was based on comparisons with previous storms and had to be revised "significantly upward."

The new estimate is viewed as more accurate because most damage claims have been received by insurers, GDV said.

Kyrill struck Europe on Jan. 18 with hurricane-force winds that lasted two days, causing losses across the United Kingdom and continental Europe.

Emerging Risk
# STRATEGIES

# New tack to solving ERM problems

By John J. Hampton

*John J. Hampton is the KPMG Professor of Business and Dean of the School of Professional and Continuing Studies and Graduate Business Programs at St. Peter's College in New Jersey. He specializes in business ethics, legal liability and enterprise risk management. He is a former executive director of the Risk & Insurance Management Society Inc. His columns and interviews with risk experts are available at www.BusinessInsurance.com/EmergingRiskStrategies.*

When I arrived at St. Peter's College in 2004, I sought and received permission to put the words "specializing in enterprise risk management" on my business cards. Every time someone sees my card, he or she says something like "Oh, I've heard of enterprise risk management. Exactly what is it?"

That would be a fine reaction to a new idea. It is, however, a sad commentary on a term that has been used for 12 or so years and, in the past seven years, promoted by risk managers, auditors and others. A Google search of "enterprise risk management" produces 859,000 hits. At *www.amazon.com* are 200 books and articles on it. One is "COSO Enterprise Risk Management—Integrated Framework," a 230-page comprehensive description supported by professional associations of accountants and auditors. In recent years, the Risk & Insurance Management Society Inc. has created an ERM online discussion group, an ERM Center of Excellence and a risk maturity tool for evaluating ERM programs. Articles in *Business Insurance* and other publications suggest ERM is getting little traction. While this situation has improved some, we need to rethink how we present ERM and what it means. There are three problems:

**1. Definitions.** Everybody has his or her own for ERM. This includes brokers, accounting firms, consultants and professional associations. A typical definition is: ERM is the process of identifying major risks and business processes with exposures, forecasting significance of risks in business processes, addressing the risks in a systematic and coordinated plan, implementing the plan and holding key individuals responsible.

**2. Risk categories.** Brokers and others use different risk categories as they promote ERM. Examples: In 2001 and 2002, Marsh & McLennan Cos. Inc., Aon Corp., CFO magazine and the Economist Intelligence Unit variously identified four categories of risk: hazard, operational, financial and strategic. KPMG in 2001 identified seven categories of risk: strategic, operational, reputational, regulatory/contractual, financial, information and new risks. Around that year, Tillinghast-Towers Perrin declined to develop risk categories because it said risk cannot be directly managed. Instead, it said an organization should identify "risk factors"—such as culture, capital, business processes and capacity for change—and manage those. COSO, the Council of Sponsoring Organizations, categorized eight risk processes: internal environment, goals, risk events, risk assessment, risk response, control activities, information and communication, and monitoring.

All of these offer insights on ERM, but in terms of accountability, responsibility and process, most firms are not structured against the above risk classifications or processes. Firms do not have separate risk managers for each. A better categorization would be to align the risk categories with the existing management structure.

**3. Failure to tell a good story.** The third problem is ERM's real value is lost when we focus on processes, internal controls and details. Board members, senior executives and even middle managers see a cumbersome, expensive way to handle risks they are already managing. Many businesspeople pay lip service to Sarbanes-Oxley, Basel II and ERM. They believe the processes that all three require have been designed by bureaucrats, professors or regulators who do not really understand risk.

Here, then, are proposed solutions:

**1. Definition of ERM.** Let's simply say ERM is an effort to coordinate management of the risks facing an organization. We can skip more complex definitions, which all deal with risk coordination and mitigation.

**2. Matching risk categories to business model.** A business model states a firm's strategy for success. It includes: the value to be created by the entity; the network of partners for creating, marketing and delivering value; and capital, assets and other resources needed to generate sustainable profits. The likelihood of success of an ERM program rises significantly when companies align risk categories with the business model.

As an example, suppose a company has the following risk categories as components of its business model: production, or creation of goods and services; marketing, or development of customers and markets; finance, or management of liquidity, profitability, the control aspects of cash flows and investments; technology, and keeping up with changing technology; administration, or processes for efficiency, performance and structure; European and Asian regions, or entities that operate with a high level of autonomy from the corporate headquarters; and legal liability, or dealing with mounting lawsuits from a defective and discontinued product.

An advantage to this categorization is it matches risks against major exposures and the C-level individuals responsible for managing them. If we add a high-level responsibility for advising and consultation, we are coordinating risk at the organizational level. We can add other staff units, such as logistics, human resources and in-house legal counsel. The organization now has risk categories matching the senior executives who are identifying and managing risks daily. Once we have these categories, subcategories emerge easily (see chart).

**3. Telling a good story.** Up to this point, we are simply realigning the ERM message so it makes sense to the organizations, board members and senior executives. Solving the third problem, failure to tell a good story, will be the subject of my March 19 column in *Business Insurance*.

## EXAMPLES OF RISK SUBCATEGORIES

**MARKETING RISK**

*Most organizations have a chief marketing officer who manages risk factors related to entering markets, finding customers/clients, and pricing and selling goods or services. Examples of exposures include:*

**Needs risk.** Understanding what customers will buy.
**Distribution risk.** Getting the products to market.
**Volume risk.** Selling sufficient units.

**FINANCE RISK**

*Most organizations have a chief financial officer who manages financial decisions and controls. Underlying exposures include:*

**Capital budgeting risk.** Investing to earn an adequate return on assets.
**Valuation risk.** Protecting or increasing the value of a firm.
**Capital structure risk.** Managing the sources of funding for the firm.
**Credit risk.** Obtaining the value expected from business transactions.
**Financial reporting risk.** Ensuring accurate financial statements.

**TECHNOLOGY RISK**

*Many organizations have a chief technology officer who identifies risk factors and influences others to respond to changing telecommunications, data management, business systems and other technological developments. Exposures include:*

**Business support risk.** Providing technology for production and marketing.
**Information systems risk.** Responsive information on products, markets and finances.
**Communications risk.** Effective systems for linking all parties.
**Records management risk.** Accurate and timely data collection.

**ADMINISTRATION RISK**

*A chief administrative, operating officer or CEO manages ordinary operations risks. Issues include:*

**Efficiency.** Organizing work in cost-effective processes that achieve goals.
**Performance.** Ensuring achievement of leadership, management and behavioral objectives.
**Structure.** Pursuing optimal hierarchical and other relationships.

*An expanded list of risk subcategories can be viewed at www.BusinessInsurance.com/EmergingRiskStrategies*

# Exchange: Weather futures debut

CONTINUED FROM PAGE 4

market for both products may take some time to develop, although they anticipate it will ultimately be successful. "It's hard to say at this point what the takeup rate will be," said Steve Smith, senior vp of Carvill unit ReAdvisory in Chicago.

"There's an incredible amount of interest, but of course new derivative products do take time to start trading," said Larry Tucker, London-based managing partner at Gallagher Re, which is a division of Itasca, Ill.-based Arthur J. Gallagher & Co. "It's an education process."

Observers say there will be no shortage of buyers for catastrophe risk futures. "We have enough of the right counterparties that understand right away how to use these products, and many of these companies are already trading our weather products," said Felix Carabello, CME director of alternative investment products.

John L. Ward, chief executive officer of Cincinnati-based Cincinnatus Partners L.L.C., an advisory firm that specializes in the insurance industry, said investors indicated their willingness to invest in hurricane risk after the 2005 hurricane season. "I think there probably is an investor interest in participating in transactions like this," he said.

The capacity both the CME and NYMEX products will provide is welcome, say observers and participants. Estimates of the property catastrophe's capacity shortage range from $40 billion to $80 billion, despite last year's mild cat year, said Mr. Smith.

Mr. Carabello said both reinsurers and insurers have expressed interest in the product because "there is a lack of instruments to allow for very dynamic trading right now. You can transact (industry loss warranties) on a bilateral basis, but that type of trading is fairly capital

See **EXCHANGE** next page

## FUTURES FACTS

**FUTURES CONTRACTS** are standardized, transferable contracts that are traded on an exchange and represent an agreement to buy or sell a commodity or financial instrument at a particular price on a stipulated future date. Options let buyers choose whether to exercise the option to buy or sell the commodity or instrument by the exercise date.

**TRADING IN HURRICANE FUTURES** and options contracts at the Chicago Mercantile Exchange Inc. will be based on National Hurricane Center data on storm wind velocity and size.

**TRADING IN PROPERTY DAMAGE** risk futures and options contracts at the New York Mercantile Exchange Inc. will be based on property losses from U.S. catastrophes.

# Exchange: New tools to expand capacity

CONTINUED FROM PREVIOUS PAGE

intensive." And on the investor side, this product allows for lower barriers to entry, he said.

"This will help to fill a void in the supply and demand imbalance" for catastrophe risk, Mr. Ward said. "I think they're important new developments in the expanded role of the capital markets. He said that this market has been evolving for the past several years, with cat bonds and other mechanisms. This is "one new tool available to take some of those capital market tools to the next level," he said.

Barney Schauble, a principal with Bermuda-based Nephila Capital Ltd., a hedge fund manager that has invested in insurance-linked securities, catastrophe bonds, insurance swaps and weather derivatives as well as reinsurers, said, "It's encouraging to see people like Gallagher and Carvill and others trying to come up with new and innovative ways to trade this risk. This could be an interesting development."

As to "how much we would use it, and whether we use it, we would have to see what the ultimate product format is like and what the interest is," he said.

"I think it's something that the industry ought to welcome," said Morton N. Lane, president of Lane Financial L.L.C., an independent reinsurance consultant in Wilmette, Ill.

Observers and participants say the CME and NYMEX products are likely to be more successful than comparable efforts in the past, including the catastrophe options traded on the Chicago Board of Trade in the 1990s.

Among other reasons the CBOT options may have been unsuccessful is cat modeling did not exist then, said Mr. Turner, who suggested CBOT may have been ahead of its time. There is a far greater amount of sophistication in the reinsurance market today, which has since embraced both catastrophe bonds and sidecars, he said.

"The market's a little better developed than the last time this was attempted," said Mr. Ward.

# NYBGH: Cutting risk factors impacts costs

CONTINUED FROM PAGE 4

P.L.C., a specialty chemical company, employees identified as having more than four risk factors had medical expenses that were about 26% higher than the rest of the population, said Judith Kleemeier, the Bridgewater, N.J.-based director of health and wealth strategies.

Pfizer Inc. encountered the same issue. An analysis of health risk appraisal and claims data by the New York-based pharmaceutical company showed health care costs for employees with four or more risks factors were often substantially higher than those of employees with fewer than four risk factors.

"If you can reduce risk factors, you can definitely impact costs," said Jody Amodeo, director and team leader of Pfizer's Healthy Directions program, which consists of a variety of health and wellness initiatives, including onsite medical and fitness centers and lifestyle management programs.

Driving employee participation in health promotion programs, though, is vital, and incentives for behavior modification are an important factor in the success of these programs, employers say.

Kraft Foods Inc.'s Healthy Living Rewards program introduced in 2004 a $100 credit toward annual medical plan contributions—which average about $1,200 annually for employees—for participating in a health risk appraisal and disease management program, said Kathy McAlpine, associate director for global benefits compliance and communication for the Northfield, Ill.-based company. As of July 31, 2006, the company has given 3,712 credits.

"The employees need to be committed to becoming aware, being informed and taking responsibility," she said. "This is about behavioral change and getting employees to change their behavior is a process."

There are a variety of metrics employers can use to measure the return on investment of their health promotion programs. In analyzing the impact of its disease management program, for example, ICI found that emergency room utilization declined for employees participating in both the diabetes and coronary artery disease management programs, Ms. Kleemeier said.

The wide range of return on investment metrics, though, often leads to cynicism, making it difficult for benefit managers to justify wellness expenditures, Ms. McAlpine said. In response, Kraft Foods joined four other companies in forming the Alliance for Wellness ROI Inc., an organization that is developing a standard methodology for measuring return on investment that will enable employers to enhance these programs and prove they have a positive impact, she said.

## NYBGH meeting draws over 260

**NEW YORK**—More than 260 people attended the New York Business Group on Health's conference "Trends in Health & Productivity Management: Measuring the ROI of Health Programs" on Feb. 7 in New York.

The conference covered topics such as developing evaluation standards for disease management and measuring the cost impact of health promotion programs.

The second part of the two-part series, "Trends in Health & Productivity Management: Integrating Data and Delivery of Health Programs," will take place on April 12 in New York.

*—By Gloria Gonzalez*

## PENSION PLAN OVERHAUL

*Sears Canada's revamped pensions and benefits program includes the following changes:*

- The company will not provide post-retirement medical, dental and life insurance benefits for employees who have not become eligible by Dec. 31, 2008.
- The company will amend its pension plan effective July 1, 2008, by introducing a defined contribution component. New employees automatically begin enrollment in the defined contribution plan on this date.
- Employee contributions toward the defined benefit plan will be discontinued and employees will keep all pension benefits accrued in the defined benefit plan up to and including June 30, 2008.
- After June 30, 2008, future compensation growth will be included in calculating the defined benefit component of the pension plan, although no further service credit will be earned.
- The company will match the first 4% of salary that employees contribute to the defined contribution plan and will match 50% of employee contributions from 5% to 7% of salary.
- The changes do not impact current retirees.
- The benefit changes are expected to save up to $25 million Canadian ($21.25 million) per year when fully implemented.

*Source: Sears Canada Inc.*

# Sears: Alters plan design

CONTINUED FROM PAGE 4

retailers have a younger, transient workforce, said Mazen Shakeel, a principal for Hewitt Associates in Toronto. Sears Canada was the only Canadian retailer with a defined benefit plan, which made sense because of its older workforce, he said.

The company's decision, though, to shift to a defined contribution plan reflects a general trend of employers moving away from defined benefits, consultants say. Although the majority of employees covered by employer-sponsored pension programs remain in defined benefit plans, interest in defined contribution plans has increased due to the downturn in the equities markets and its impact on pension funding levels.

"There's a more pronounced trend from DB to DC in Canada," said Fred Vettese, executive vp and chief actuary at Toronto-based human resources consulting firm Morneau Sobeco. "In the last few years, it's picked up steam."

The announcement of the move to a defined contribution plan by a company the size and prominence of Sears Canada would have an impact on other Canadian employers because they start asking themselves why they still have defined benefit plans when other companies are switching to defined contribution plans, Mr. Vettese said.

### *Generous approach*

In amending its pension plan, Sears Canada has taken an approach atypical of Canadian employers converting to defined contribution plans because it will allow compensation growth in future years to still factor in the calculation of defined benefit plan payouts, consultants say. "This approach is probably more generous in that they are allowing people to grow into bigger benefits," Mr. Shakeel said.

While Quebec mandates factoring in salary growth to calculate future benefits for converted final average pension plans, other provinces, including Ontario, do not, Ms. Moriarty said. For a nationwide employer such as Sears Canada, it makes sense that the employer would not want to treat employees located in different provinces unequally, although it is not uncommon for employers to freeze both salary growth and service credit considerations in the calculation of future benefits, she said.

# Asbestos: Medical criteria requirements

CONTINUED FROM PAGE 4

tial factor contributing to their illness. Claimants who smoked within 15 years of becoming ill are subject to more stringent requirements than nonsmokers or those who quit smoking more than 15 years earlier.

Mr. Hurst, who quit smoking 13½ years before becoming ill, filed suit shortly after being diagnosed with lung cancer. His estate acknowledged to a trial court judge that it could not meet the new law's medical criteria requirements. But the estate argued that applying the law to its litigation—filed nearly seven months before the law was enacted—violated the estate's U.S. and state constitutional due-process rights. The trial judge agreed and rejected DaimlerChrysler's motion to dismiss the lawsuit.

In a 3-0 ruling, the appellate court overruled the lower court.

The appellate court noted that the state Legislature intended to apply the law retroactively, which trumps the general rule against retroactive applications. Even so, a retroactively applied law may not impair vested rights, create new obligations or impose new penalties on litigants whose cases were under way before the law took effect, the appellate court ruled.

Citing Florida Supreme Court decisions, the appellate court ruled: "Because the act expressly preserves the right of all injured persons to recover full compensatory damages for their loss, it does not impair vested rights." The court defined a vested right as "an immediate right of present enjoyment," not "a mere expectation based on an anticipation of the continuance of an existing law."

Mr. Ruckdeschel said the court failed to address two challenges the estate raised. One argued that the new law violated the state constitutional right of plaintiffs to access state courts. The other held that the law violated the constitution's equal-protection provision, which prevents the Legislature from creating arbitrary classifications of plaintiffs that discriminate against a certain group.

Lynda S. Mounts, deputy general counsel for the Washington-based American Insurance Assn., which filed an amicus brief in the case, said: "We hope that the reasoning in the opinion will be adopted in other states where AIA is currently defending the constitutionality of the medical criteria law."

Among the other medical criteria laws, three—those in Georgia, Ohio and Texas—apply retroactively, according to AIA attorney Mark A. Behrens, a partner with Shook, Hardy & Bacon L.L.P. in Washington.

Georgia's Supreme Court struck down the state's retroactive law last year because it imposed a new requirement on plaintiffs to show that asbestos exposure was a substantial factor leading to their illnesses, Mr. Behrens said. Prior to the law, plaintiffs had to show that asbestos exposure was a contributing factor, he said.

But the state's Legislature is working on rectifying the law so it can be applied retroactively, Mr. Behrens said.

In Ohio, two separate appellate courts have reached opposing decisions on the constitutionality of that state's law, which makes the issue ripe for a state Supreme Court review, Mr. Behrens said.

In Texas, the retroactive medical criteria law has not been challenged, but a separate, similar statute that holds successor companies liable in such cases withstood a challenge that reached the state's appellate court, Mr. Behrens said.

*DaimlerChrysler Corp. vs. Beatrice Hurst et al., Florida Appellate Court, No. 3D06-2593; Feb. 9.*

# Genetics: Legislation raises questions

CONTINUED FROM PAGE 3

ing employment practices, also could be brought into play for alleged violations by a group health plan or insurer, he said. "We think that the intent of the bill is to allow health plan issues to be resolved under the existing regulatory and judicial scheme established by ERISA." Still, "it's not clear that the broader" employment practices remedies aren't banned for health plan issues, he said.

Mike Eastman, executive director-labor policy for the U.S. Chamber of Commerce in Washington, also noted that employers could face both punitive and monetary damages for genetic discrimination if the bill becomes law.

"We're opposed to the bill," he said, but added that the Chamber has "never said 'no way' as far as legislation goes." He said the employer group understands the fear that some people would have about the misuse of their genetic information.

"We want people to make medical decisions made on medicine, not on fear," he said.

"If there must be legislation, then it must be narrowly drawn to prevent the possibility of frivolous litigation and implementation problems," said Mr. Eastman.

Mr. Dennett said that questions remain over "whether the definition of genetic information could overly restrict the ability of health plans to get routine information about plan administration. There's concern that necessary information for plan operations is precluded."

The bill does not, however, impact workers compensation.

"AIA worked several years ago to make sure language was included so the legislation would not affect workers comp," said a spokesman for the Washington-based American Insurance Assn.

A proponent of the bill said that the potential misuse of genetic information has been growing increasingly worrisome for the general public.

Since the first genetic information nondiscrimination bill was introduced 12 years ago, there has been "an increase in the fear that individuals have" that their health insurer or employer will receive their genetic information, said Sharon Terry, president and chief executive officer of the Washington-based Genetic Alliance, a group that backs the bill. She said opinion polls demonstrate how deeply that fear runs in some people, with some respondents refusing to participate in clinical trials for fear their genetics will be used against them.

Ms. Terry also disputed contentions that the bill was too broad. "The bill was too broad from their (employers') perspective, but in 2003 the Senate drastically altered this bill and now it's very narrow," she said.

Similar legislation won the approval of the Senate Health, Education, Labor and Pensions Committee on Jan. 31.

## HMO studies gene/disease link

**OAKLAND, Calif.**—Kaiser Permanente unveiled a research project last week aimed at examining the genetic and environmental causes behind diseases such as diabetes, asthma and Alzheimer's.

The Oakland, Calif.-based health maintenance organization said member participation will be critical for success of the Research Program on Genes, Environment and Health. Kaiser Permanente said it would mail surveys to about 2 million adult plan participants in Northern California, inquiring about health history, lifestyle and habits.

Researchers will invite members to give blood or saliva samples to obtain genetic information, probably in 2008.

Many common diseases and conditions are linked to genetic and environmental factors, and the research could help identify risks a particular person might face, how to reduce those risks and the best way to treat disease, Kaiser said in a statement.

The goal of RPGEH is to discover which genes and environmental factors—air, drinking water and personal lifestyles and habits—are linked to specific diseases and conditions, Kaiser said.

While scientists agree that genetics and the environment influence health conditions, little is understood about how the two interact to impact disease, said Cathy Schaefer, the project's director.

Researchers also said during a press conference that they hope that 500,000 plan participants and their family members respond. Their survey responses will stay within Kaiser's research unit and will not be used for underwriting or premium pricing decisions, Ms. Schaefer said.

Ms. Schaefer said that California law prohibits the use of genetic data for employment or insurance decisions. She also noted that the U.S. House last week introduced a bill similar to California's law with "equal or better protections that hopefully will become law after being passed by the House of Representatives."

The ethnic and socioeconomic diversity of Kaiser's Northern California members will assure that research results will be applicable to everyone and not just certain population subgroups, the researchers said.

*—By Roberto Ceniceros*

# Blues: Health plans' moves

CONTINUED FROM PAGE 3

issue bank statements to plan members that only show amounts withdrawn, not the reason for payment, which can cause confusion among patients, the health plan and health care providers, he said.

Both health plans believe owning their own banks will make their CDHP products more attractive.

"I think those providers that can provide a seamless experience are the ones benefit managers are going to want to listen to," said Mike Gantt, group president-insurance at Brookfield, Wis.-based Fiserv Health Inc., a unit of Fiserv Inc.

"The coordination alone would be very helpful," said Barbara Zavodny, senior manager of corporate benefits strategy at McCormick & Co. Inc. in Sparks, Md.

But at least two other major health plans say they can offer similarly integrated services at existing financial institutions.

"We feel with that approach we're able to leverage a nationally known brand name with unique expertise in financial services, which is actually a very strong selling point for our HSA accounts," said a spokesman for CIGNA Healthcare, which has contracted with JPMorgan Chase & Co. to administer its HSAs.

Aetna Inc. also has a relationship with JPMorgan Chase that is providing seamless administration for its CDHP products, a spokeswoman said.

"Aetna is the custodian of the funds, JPMorgan works at our direction on an integrated model to do some behind-the-scenes functions," the spokeswoman said. "So it's totally...seamless to the member."

## Utah popular for loan entities

Both the Blue Cross Blue Shield Assn. and UnitedHealth Group Inc. chose Utah as the home for their banks because the state, says a BCBS spokesman, has a "friendly environment" for establishing banks not owned by financial institutions.

Utah is the most popular of seven states that charter industrial loan corporations. The other states that charter ILCs are California, Colorado, Minnesota, Indiana, Hawaii and Nevada.

Utah has "a good, talented workforce," said John Prince, chief executive officer of Exante Financial Services, which operates UnitedHealth's bank.

While Exante is an industrial loan corporation, the BCBS Assn.'s Blue Healthcare Bank is a federal savings bank. A spokesman said the association originally applied for an ILC, a financial institution that lends money and may be owned by nonfinancial institutions, but opted instead to apply to the U.S. Treasury Department's Office of Thrift Supervision to open a federal savings bank.

The association did so following a moratorium on new ILCs by the Federal Deposit Insurance Corp. in response to a controversial request by Wal-Mart Stores Inc. to open a bank in Utah.

Insurers began opening banks following passage of the Gramm-Leach-Bliley Act of 1999 that repealed a law that had barred insurers from banking.

Metropolitan Life Insurance Co. of New York; State Farm Group of Bloomington, Ill.; the National Assn. of Mutual Insurance Cos. in Indianapolis; and the Independent Insurance Agents and Brokers of America of Alexandria, Va. also own banks.

*—By Joanne Wojcik*

# Brokers: Growth challenges remain despite increased stability in 2006

CONTINUED FROM PAGE 3

were expecting."

"What's funny to us is that underwriters describe the market as relatively stable and with modest pricing pressure, but it's clearly had a lot of impact on the organic growth of the large brokers," Mr. Lane said. It does appear, he continued, that Willis "is doing a better job in finding growth opportunities globally and maybe is seeing some of the benefits from the investments they've made in people over the last few years."

### *Organic growth*

Compared with Marsh and Aon, which reported zero and 2% organic growth in their risk and insurance brokerage units, respectively, in 2006, Willis reported 8% organic growth and Gallagher reported 6%.

The disparity may not be as great as it would seem. MMC and Aon include the impact of lost contingent commissions in their reported organic growth numbers, while Willis and Gallagher exclude contingent commission revenue from organic growth rates.

At this point in the insurance cycle, Mr. Small of Bear Stearns said he is looking for "a broker that has some potential to expand margins and also some potential to grow organically." Willis is in a good position to do that as it expands in specialty niche areas, builds out its geographic platform and focuses on expense reduction through its previously announced "Shaping Our Future" initiatives, he said.

Willis incurred $101 million in expenses in the second half in connection with launching its cost-reduction effort, which is expected to save $65 million by 2009 and result in 500 job eliminations.

Jay Cohen, a research analyst with Merrill Lynch & Co. Inc., noted in a report, however, that Willis will be challenged to maintain its growth rate going forward due to softening market conditions. At the same time, he noted, "Marsh, in particular, looks as if it is no longer playing defense and will likely be a tougher competitor in the future."

In a separate report on MMC, Mr. Cohen said third- and fourth-quarter 2006 results "suggest a definite change in momentum at MMC" and that his confidence in MMC's earnings has "improved."

Although Marsh reported a 1% drop in revenues in the fourth quarter of 2006, Michael G. Cherkasky, MMC's president and chief executive officer, said in a statement that new business revenues at Marsh "were the highest they have been since the first half of 2004."

"A number of nagging concerns" remain about MMC, though, Mr. Small said in a report. Among other things, "retentions are unlikely to return to pre-2004 levels" at Marsh given the trend of buyers putting their business to bid more frequently and seeking multiple brokers to handle their accounts, he said.

Marsh's biggest competitor, Aon, had "a rocky year" in 2006, but it did "end well," noted Keefe, Bruyette & Woods' Mr. Gallant.

There were "lots of changes" at the brokerage in 2006, the first full year with President and CEO Greg Case at the helm, Mr. Gallant said. Aside from selling much of its underwriting business, Aon put $167 million toward its three-year restructuring plan that is expected to result in a net reduction of about 3,600 employees and annualized savings of about $280 million by 2008.

"But the fourth quarter shows signs to be optimistic, I'd say," Mr. Gallant said, noting that while 2% organic growth is "weak" it is OK "considering the soft market." He also noted that Aon's operating margins "are starting to improve."

As for Gallagher, the world's fourth-largest broker reported "disappointing" fourth-quarter earnings, Mr. Small said in a written report. The "major reason for the miss was that expenses were $21.7 million higher than anticipated, while top-line growth was only marginally better than expected." He noted that higher expenses appear to be driven by acquisitions and staffing levels in the risk management segment.

Gallagher noted in its earnings release that pretax margins decreased in the quarter within its risk management segment "because we maintained our staffing levels in anticipation of higher reported claims—which did not occur."

On a positive note, Gallagher seems to have a very "robust pipeline" of acquisition candidates in the $3 million to $15 million in revenue range, Mr. Small said.

# Parity: Senate panel passes mental health mandate

CONTINUED FROM PAGE 1

treating other medical conditions.

Similarly, health care plans could not impose a limit on the number of inpatient days for treatment of mental disorders if they did not impose the same limit for other medical conditions.

The legislation, sponsored by HELP Committee Chairman Edward Kennedy, D-Mass., ranking minority member Sen. Mike Enzi, R-Wyo., and long-time parity advocate Sen. Pete Domenici, R-N.M., would be a big change from a 1996 federal law that bans discriminatory annual and lifetime dollar limits for coverage of mental health care expenses, but permits other discriminatory cost designs.

In the wake of the 1996 law, many employers scrapped those dollar limits and imposed new discriminatory provisions, such as covering 50% of a claim for mental health care services, but paying 80% of other medical claims' costs.

Before the ink was even dry on the 1996 law, advocates said it would be a starting point for a more expansive parity statute. Indeed, since the 1996 legislation was passed, several efforts were made to expand the law. But those efforts failed amid staunch opposition from the House Republican leadership, who prevented Senate-passed bills from being considered by the full House, and by opposition from business groups.

Many believe the wheel may have turned. With the Democrats regaining control of the House, Republican opponents no longer are in a position to block a bill.

At the same time, several business groups that for years fought against enactment of the legislation now are supporting the bill, whose official title is the Mental Health Parity Act of 2007. Recognizing that Congress eventually was likely to pass a bill, they decided to work with advocates to try to make the legislation more to their liking.

**'We had open, candid discussions. We are very encouraged with the way the bill was put together and hope the process can be a model for other issues.'**

Paul Dennett,
American Benefits Council

"We saw this coming. We recognized that we would have to get involved to seek a better outcome," said Neil Trautwein, vp and employee benefits policy counsel with the National Retail Federation in Washington.

Business groups said they found an open door at the offices of Senate supporters of parity legislation, who listened and responded to employers' concerns.

"We had open, candid discussions. We are very encouraged with the way the bill was put together and hope the process can be a model for other issues," said Paul Dennett, vp-health policy with the American Benefits Council in Washington.

Business involvement clearly shaped the bill. For example, business groups successfully fought to alter a provision in earlier bills that would have required group plans to cover any diagnosis listed in the psychiatric industry's compendium of mental health disorders. By contrast, the HELP bill leaves it to employers to decide which mental health disorders they will cover.

"The employer purchaser of services retains control," Mr. Dennett said.

"They have addressed the major concerns we have had with parity legislation introduced in prior sessions," said Katie Mahoney, director of health care policy at the U.S. Chamber of Commerce in Washington.

With political roadblocks in Congress removed and business groups no longer united in opposition, the likelihood of passage of a parity bill is high.

"This issue has been around for nearly a decade and now its time has come," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Still, obstacles remain. The biggest obstacle, for example, is the possibility that the House could pass a broader bill, turning business support into opposition.

But many believe the House eventually will go along with the Senate effort, noting that one of the leaders of the House effort, Rep. Patrick Kennedy, D-R.I., is Sen. Kennedy's son. "It is a top priority for Senator Kennedy and it is unlikely" that he won't be able to reach an agreement with his son, said James Gelfand, manager of health policy for the ERISA Industry Committee in Washington, which opposes parity legislation.

If the parity legislation does pass, most employers will have to improve their mental health care benefits to achieve parity with the coverage they provide for other medical conditions, said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

Indeed, a survey of more than 600 employers by Mercer Health & Benefits L.L.C. found that 64% imposed benefit limitations—such as a capping the number of visits to mental health therapists or inpatient days, but not imposing comparable limitations on other medical conditions.

For example, while Chicago-based Aon Corp. provides the same deductible and coinsurance for mental health care services as it does for other medical conditions, it places a 30-day annual limit on outpatient sessions and a 60-day limit on impatient days, said John Reschke, vp-corporate employee benefits.

If employers have to improve mental health care benefits, the cost of that upgrade might be offset by greater employee productivity, some say.

If financial barriers are removed and employees receive the appropriate care, they will be more likely to return to work sooner, be healthier and be more productive, said Barbara McMahon, a Hewitt Associates consultant in Norwalk, Conn.

## COVERAGE MANDATES

*Will mental health care benefits parity be the next employee benefit mandate imposed by Congress? Key benefit mandates now on the books*

**1978:** Pregnancy Discrimination Act. Requires coverage of pregnancy and childbirth to be the same as other medical conditions.

**1986:** Consolidated Omnibus Budget Reconciliation Act. Allows employees and dependents to keep employer-provided coverage after death, divorce or termination of employment by paying the group rate.

**1996:** Health Insurance Portability and Accountability Act: Curbs the use of pre-existing medical condition exclusions in group health care plans.

**1996:** Mental Health Parity Act: Bars health care plans from offering discriminatory annual and lifetime dollar limitations for mental health care services.

**1996:** Newborns' and Mothers' Health Protection Act. Requires health plans to provide at least 48 hours of inpatient coverage following childbirth.

**1998:** Women's Health and Cancer Rights Act: Requires health plans that cover mastectomy to provide coverage for reconstructive surgery following mastectomies.

**2007:** Mental Health Parity Act of 2007: Bans discriminatory cost-sharing and treatment limitations for mental health care services.*

**As passed by the Senate Health, Education, Labor and Pensions Committee*

# Surplus: House unanimously passes nonadmitted, reinsurance reform

CONTINUED FROM PAGE 1

this legislation."

The bill, like its predecessor, streamlines the regulation of nonadmitted insurers by subjecting them to the premium taxes of the policyholder's home states. States would create a compact among themselves to allocate taxes collected. The bill also eases reinsurers' regulatory burdens by subjecting them only to the solvency laws of their state of domicile under most circumstances.

A key provision of the reform bill is to allow brokers representing large policyholders to go directly to the nonadmitted market to seek coverage without having to prove that they had first sought the coverage in the admitted market. One of the prerequisites for doing so, however, is that the policyholder must employ a "qualified risk manager."

Last year's version of the bill required, among other things, that a qualified risk manager meet at least two of three criteria: holding an undefined "advanced degree" in risk management, holding at least one of several specified professional designations or having at least five years' experience in specific areas of insurance.

RIMS held that the requirements were too stringent and could ban many qualified risk managers from taking advantage of the liberalized access to the nonadmitted market.

But the new version of the bill gives risk managers five ways to meet the definition of "qualified risk manager," said Terry Fleming, a member of RIMS' board of directors.

"We were prepared to oppose this until they made the change," said Mr. Fleming, who is also director-division of risk management for Montgomery County, Md., in Rockville. "We're satisfied; we negotiated with staffers on the Hill. The language that is in the bill now is acceptable to RIMS."

Under the new bill, risk managers could meet that portion of the definition through any of five combinations of education, experience and professional designations (see box).

Industry backers of the bill were confident that the measure could move swiftly through the House and they hope the Senate as well.

"The RAA does support the principles of the excess and surplus lines and reinsurance bill," said Frank Nutter, president of the Washington-based Reinsurance Assn. of America. "We're enthusiastic about the willingness of the House and hopefully the Senate to take up regulatory reform related to reinsurance and look forward to working with them to build upon this piece of legislation as a sound basis for moving forward."

"We're delighted it's been introduced," said Richard Bouhan, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd. "We are optimistic that it can find passage in both the House and Senate."

Mr. Bouhan said the bill addresses "issues that we've had problems with for a long time," particularly regarding current requirements that surplus lines brokers collect and pay the multiple state taxes levied on multi-state risks. He also said that allowing exempt commercial purchasers to seek coverage in the nonadmitted market without having to first go through the admitted market creates a "level playing field" for those buyers.

"I feel very confident this legislation will clear the House of Representatives," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington. He noted there also is interest in the bill in the Senate, which failed to take up last year's proposal.

For example, Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd., D-Conn., told the CIAB's legislative summit earlier this month that the committee would "take a good look" at the issue.

Mr. Wood noted that the tight coastal property market could impact the bill's fate as well. Anything that eases access to coverage "is certainly welcome," he said.

## RISK MANAGER STANDARDS

*Under the Nonadmitted and Reinsurance Reform Act, H.R. 1065, a "qualified risk manager" must meet all of the following requirements: Be an employee of, or third-party consultant retained by, the commercial policyholder; provide "skilled services in loss prevention, loss reduction or risk and insurance coverage analysis and purchase of insurance"; and meet one of the following criteria:*

- Hold a bachelor's degree from an accredited college or university in risk management, business administration, economics or "any other field" determined by state regulators "to demonstrate minimum competence in risk management" and have three years' experience in insurance.
- Meet the bachelor's degree requirement plus hold at least one of several professional designations: Chartered Property and Casualty Underwriter, Associate in Risk Management, Certified Risk Manager, RIMS Fellow, or "any other designation or license determined" by state insurance regulators "to demonstrate minimum competency in risk management."
- Meet the professional designation degree plus have seven years' experience.
- Have 10 years' experience.
- Hold a graduate degree in risk management, business administration, finance, economics or any other field determined by state regulators "to demonstrate minimum competence in risk management."

## ADVERTISER INDEX

**Issue of February 19**

# News In Brief

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companies for physical injuries within two years of learning of an illness. The decision in *Leslie J. Grisham et al. vs. Phillip Morris U.S.A. Inc. et al.* revives litigation that had been halted since 2002, when the 9th U.S. Circuit Court of Appeals in San Francisco ruled that a smoker must sue within one year of becoming addicted under California law.

## GE loses asbestos coverage dispute

General Electric Co. said that it will take a $115 million aftertax charge in the first quarter following an unfavorable state court decision regarding its insurance coverage for thousands of asbestos claims. Ruling Thursday on *Appalachian Insurance Co. vs. General Electric Co.*, the New York Court of Appeals in Albany–which is the state's highest court–found that each claimant's exposure to asbestos insulation in GE turbine engines is a separate occurrence for the purposes of GE's insurance recoveries. The decision, which upholds lower court rulings, prevents GE from accessing two decades worth of excess liability insurance.

## AWAC marks funds for regulatory pact

Allied World Assurance Co. Holdings Ltd. says it has reserved $2.1 million for an expected settlement with Texas regulators of an antitrust investigation disclosed last year. The antitrust arm of the Texas attorney general's office served Bermuda-based AWAC with a civil investigative demand inquiring about whether its relationships with shareholders American International Group Inc. and Chubb Corp. restrained trade. Announcing its 2006 results last week, AWAC said it expected the investigation to end in a settlement. AWAC representatives did not respond to questions about the reserve.

## Judge tosses MBIA shareholder suit

A federal judge has dismissed a proposed shareholder class action lawsuit from 2005 charging that MBIA Inc. defrauded investors by using sham reinsurance transactions to mask a $170 million bond loss in 1998. U.S. District Judge Louis L. Stanton ruled that the suit is barred by the two-year statute of limitations in the Sarbanes-Oxley Act. Investors were aware of possible concerns related to the transactions no later than December 2002, when a hedge fund issued a report questioning the reinsurance deals and quoting an MBIA official comparing them to "borrowing" money and repaying it later, the judge wrote.

## NCQA proposes change to PPO accreditation

The National Committee for Quality Assurance is proposing changes to its PPO accreditation program to require preferred provider organizations to be evaluated on the same set of standards, clinical measures and patient experience ratings on which the NCQA measures the performance of health maintenance organizations and point-of-service plans. The clinical quality measures and patient experience ratings also would be given more weight in the evaluation process, rising to 50% from approximately one-third of the score a health plan needs to become accredited.

## Two states change insurance regulators

Massachusetts Gov. Deval Patrick has named Superior Court Justice Nonnie S. Burnes as insurance commissioner. In addition, Pennsylvania Insurance Commissioner Diane Koken has resigned to join the board of an unnamed insurer. Ms. Koken is the state's longest-serving commissioner and is a former president of the National Assn. of Insurance Commissioners. Randolph Rohrbaugh, deputy commissioner of the department's Office of Insurance Product Regulation and Market Enforcement, will serve as acting commissioner.

## Noted

**Hub International Ltd.** has agreed to acquire substantially all of the assets of Metairie, La.-based Hibernia Insurance Agency L.L.C. from Capital One Financial Corp. Hibernia, with $18 million in annual revenues, will do business as Hub International Gulf South....**Rep. Charles Norwood, R-Ga.**, a champion of legislation to expand the liability of health insurers for improper care denials, died last week of lung cancer at age 65.

# WTC: Captive closure plan

CONTINUED FROM PAGE 1

with some state officials accusing it of systematically denying claims, and the company's operations even becoming the subject of a federal investigation (see sidebar).

But the captive and its president, Christine LaSala—a former managing director at Marsh—have argued that the company has merely done its job by defending its insureds against improper claims.

"The captive is perfectly willing to settle litigation brought against its insureds when the relevant facts and circumstances are fully developed," a spokesman said.

To date, WTC Captive has faced more than 8,000 lawsuits. Only one case has been settled so far, for an amount of $45,000. That agreement was reached in late 2006, the spokesman said.

Meanwhile, he noted, the captive has spent more than $30 million in legal fees defending suits alleging liability by the city or its contractors for Sept. 11-related illnesses, including respiratory and other problems.

Mr. Bloomberg's proposal last week said Congress should pass legislation to liquidate WTC Captive and permit its funds to be reallocated to a victim compensation fund.

That fund, which was closed in June 2004, acted as a litigation alternative for victims of the attacks, providing more than $7 billion in compensation to claimants through a no-fault claims process.

As part of his proposal, Mr. Bloomberg said any such congressional action would also need to eliminate liability for the city and its contractors—which have previously filed motions in federal court to dismiss all claims based on state and federal immunity laws.

The roughly $1 billion from WTC Captive that would be funneled into the reactivated fund would only be a start, and additional federal funding would be needed, a spokesman for Mr. Bloomberg said.

David Worby, an attorney with Worby Groner Edelman L.L.P. who represents the plaintiffs suing WTC Captive's insureds, said he is in favor of shutting down the captive and reopening the compensation fund, even if it means blanket immunity for the city and contractors. "Anything that puts funds into the hands of my 9,000 clients, especially the ones who do not have insurance coverage, is a great idea," Mr. Worby said. "The sooner the better."

In a statement, New York Gov. Eliot Spitzer said he "wholeheartedly" supports Mr. Bloomberg's proposal, while some of New York's lawmakers—including Democrats Sen. Hillary Rodham Clinton, Rep. Jerrold Nadler and Rep. Carolyn B. Maloney—have also expressed support.

Whether the proposal will gain a wider backing and Congress will ultimately pass legislation to reopen the compensation fund remains to be seen, but WTC Captive is prepared to shut its doors.

"This is not a case where the company is trying to stay in business—it would be more than happy to go out of business, following the enactment of an appropriate victims compensation fund and, related to that, the granting of immunity to the city and its contractors from any current or future civil action related to the post 9-11 recovery and debris removal," the captive's spokesman said.

# DHS investigation ongoing

**NEW YORK**—An investigation into the practices of WTC Captive Insurance Co. is continuing for now.

Late last year, the Department of Homeland Security launched a probe into the captive after Rep. Jerrold Nadler, D-N.Y., charged that it was mishandling its $1 billion in Federal Emergency Management Agency funding by fighting rather than paying claims. The captive indemnifies the city and contractors against liability claims arising from cleanup efforts at the World Trade Center site.

A spokeswoman for DHS said, "what we will have to do is wait to see if (legislation that liquidates WTC Captive) is actually implemented...until it is implemented, we will continue to work on Mr. Nadler's request." A report is slated for release this summer, she said.

A spokesman for WTC Captive said that any suggestion that the captive behaved outside of the mandate set for it by the federal government at the time of its formation is "completely without basis."

*—By Rupal Parekh*

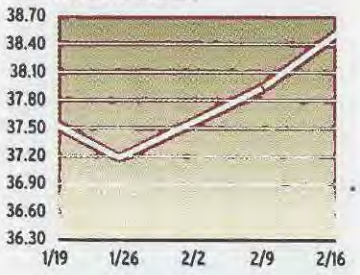
# Stock Index

[ 2/12- 2/16]

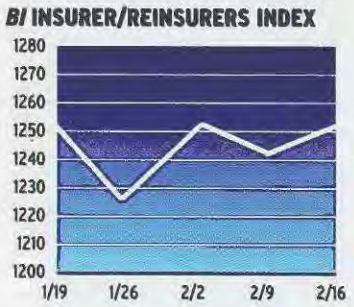
*Up-to-the-minute data for all 82 companies that comprise the* BI *Stock Index can be found at www.BusinessInsurance.com.*

**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** | 3239.70 | 0.32% |
| **DOW JONES** | 12767.57 | 1.48% |
| **S&P 500** | 1455.54 | 1.22% |

**LARGEST GAINS**

| | |
|---|---|
| Meadowbrook Insurance | 14.48% |
| Navigators Group Inc. | 9.50% |
| Aetna Inc. | 7.14% |
| UnitedHealth Group Inc. | 6.03% |
| Gainsco Inc. | 5.70% |

**LARGEST LOSSES**

| | |
|---|---|
| Baldwin & Lyons | -3.71% |
| EMC Insurance Group | -3.52% |
| Odyssey Re Holdings | -2.58% |
| Unitrin Inc. | -2.21% |
| Selective Insurance | -2.11% |

*Source: Financial Content Inc. http://financialcontent.com*

# Business Insurance END PAGE

REUTERS

The red umbrella, which is said to have first appeared in an ad for Travelers Insurance in 1870, became its official trademark in 1959.

## Travelers regains iconic umbrella

Citigroup Inc.'s decision to fold up its red umbrella exposes a challenge for the icon's new and previous owner: possibly arranging travel for a nearly 3-ton, 16-by-20 foot steel umbrella perched in front of a Lower Manhattan Citigroup office tower.

St. Paul Travelers Cos. Inc. last week said it will reacquire the red umbrella trademark from Citigroup as both companies rebrand.

Citigroup will operate as "Citi," even though it will retain its official name, and drop the red umbrella icon. St. Paul Travelers will pick up the umbrella and eliminate the hometown name from its brand to become The Travelers Cos.

"We're pleased to be bringing the reassuring red umbrella back home to Travelers, as part of our focused efforts to continue building the Travelers brand for home, auto and business insurance customers," said Jay Fishman, St. Paul's chairman and chief executive officer, in a statement.

But whether the 5,300 pound sculpture makes the 1,188-mile trek from New York to St. Paul's headquarters remains to be determined. The companies were negotiating the sculpture's fate, spokespeople for both confirmed.

If St. Paul Travelers does acquire it, the sculpture could travel to either Minnesota or Hartford, Conn., where the insurer also has operations, a spokeswoman said.

Citigroup had used the umbrella since its 1998 merger with Travelers.

But now Citigroup, which said it found that people identified the red umbrella more with insurance than banking, said it will use a stylized arc over the name Citi.

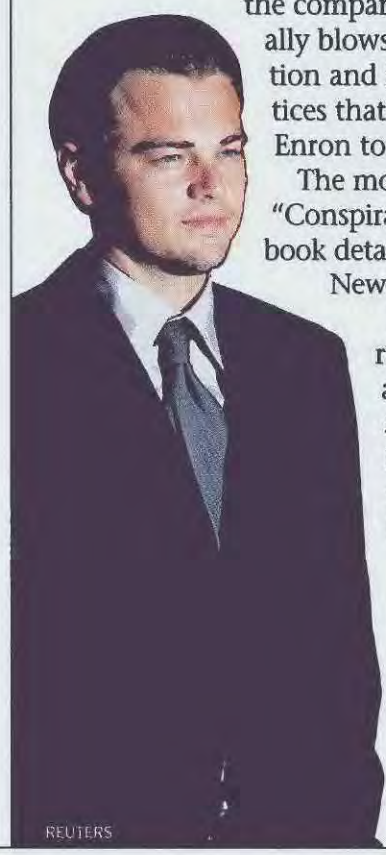
*Contributing: Roberto Ceniceros, Louise Esola, Rupal Parekh, Joanne Wojcik*

## DiCaprio set to play Enron whistle-blower

Leonardo DiCaprio apparently can't resist a flick about a sinking ship.

The "Titanic" star, who has since featured such films as "The Departed" and "Blood Diamond," reportedly shook hands with Warner Bros. Entertainment Inc. last week, agreeing to help produce and act in a new movie chronicling the collapse of energy giant Enron Corp.

The actor's character reportedly is a new hire to the company who discovers—and eventually blows the whistle on—the corruption and fraudulent accounting practices that drove the Houston-based Enron to file for bankruptcy in 2001.



REUTERS

The movie is expected to be based on "Conspiracy of Fools," a best-selling book detailing the Enron scandal by The New York Times' Kurt Eichenwald.

Houston Mayor Bill White, reacting to media questions about the movie and its star, said, "Most of our guys look a lot better than that, but otherwise it would be good casting for the movie."

## Mouse in the soup tops Hall of Shame fraud list

Carla Patterson was cooking up a good one.

Too bad it didn't have soup in its lungs and wasn't actually cooked.

That's what investigators examining a dead mouse concluded after the Newport News, Va., woman tried to extort $500,000 from Cracker Barrel after claiming she found a dead mouse in her vegetable soup at one of its restaurants in 2004.

The woman, 36, and her son, Ricky Lee, 20, each received a sentence of one year in prison for their 2006 conviction and the No. 1 spot in the Coalition Against Insurance Fraud's Hall of Shame, the insurance advocacy group's annual list of insurance fraud schemes that made headlines.

Also among the nine cases inducted into the Hall of Shame in 2006 is that of Tramesha Lashon Fox, a 32-year-old Houston high school chemistry teacher who was tired of making payments on her Chevy Malibu and gave some of her failing students passing grades for stealing and torching her car in 2005. She was sentenced to 90 days in jail in February 2006.

The coalition's list is published on its Web site *www.insurancefraud.org*, each year to draw attention to the results of insurance fraud, a crime that costs the insurance industry $80 billion annually, the coalition reports.

A spokesman said the list aims to tell the stories behind the crimes.

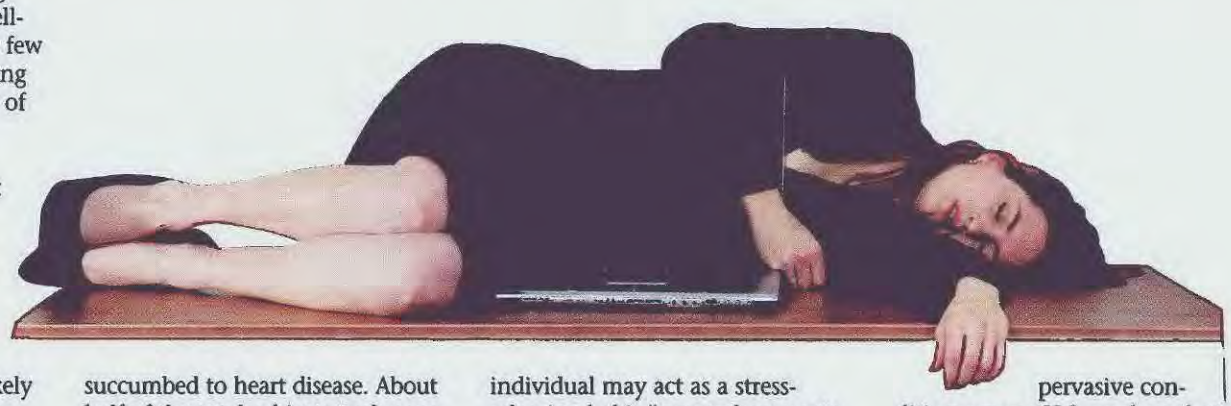
"Many people believe insurance is a faceless crime," said the spokesman. "The Hall of Shame tries to put a face on fraud."

INSURANCE FRAUD Hall of Shame 2006

## Fight heart disease with on-the-job siestas

Employers intent on improving their employees' health and well-being might consider putting a few cots in the break room, according to researchers at the University of Athens.

A six-year study of nearly 24,000 Greek adults found that those who took 30-minute naps at least three times a week reduced their risk of dying from heart disease by 37%.

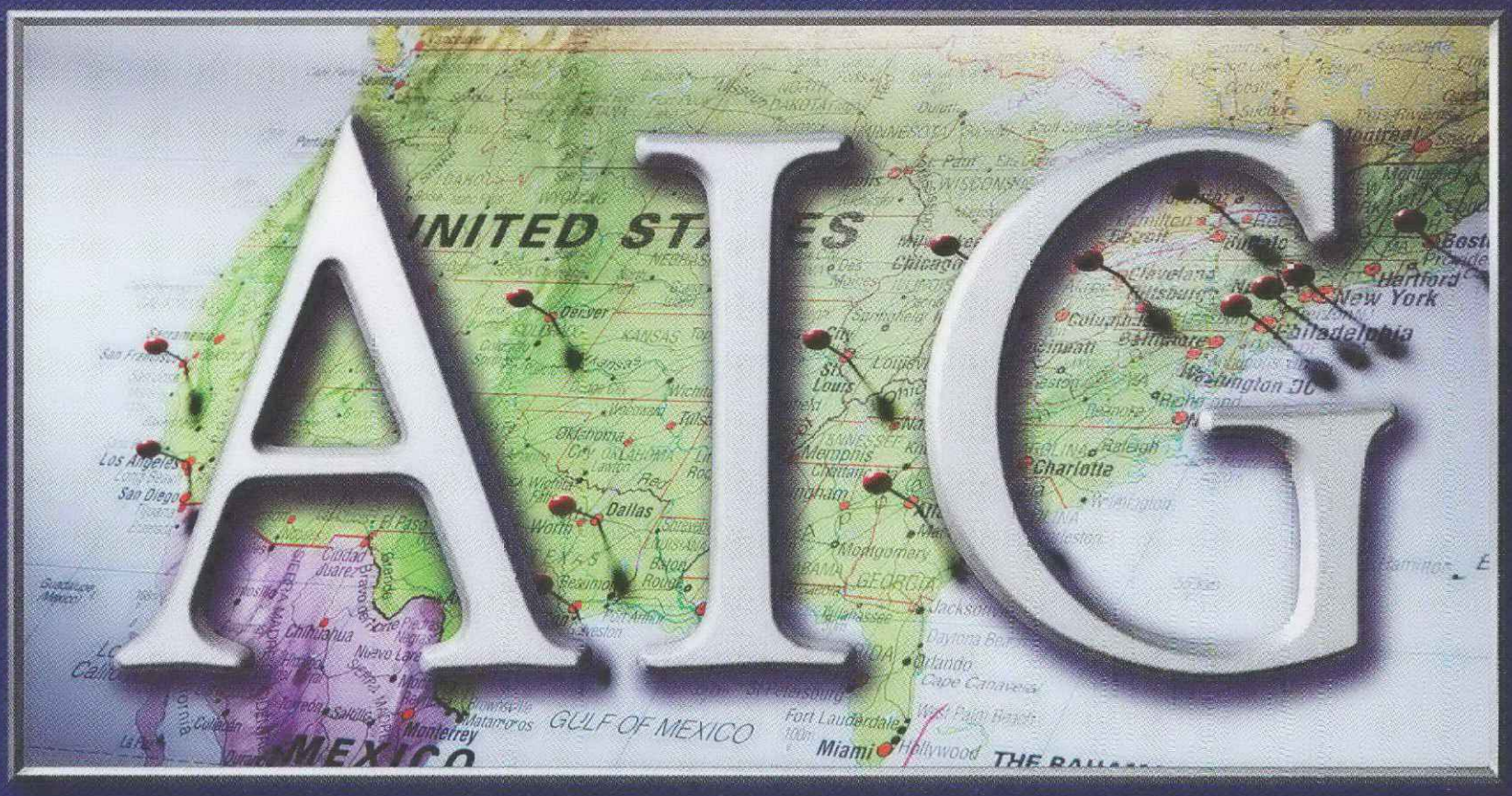


The study also showed that occasional nappers were less likely to die from heart problems than those who did not nap at all, and that employed men showed the most benefit from a daily snooze.

Of those participating in the study, 792 died, including 133 who succumbed to heart disease. About half of the total subjects took naps. None of the subjects, who ranged in age from 20 to 86, suffered from illness at the beginning of the study.

An "afternoon siesta in a healthy individual may act as a stress-releasing habit," researchers wrote in a report published in the Archives of Internal Medicine.

The study did not determine, however, whether such catnaps would cure sleep deprivation, a pervasive condition among U.S. workers that researchers at Cornell University found is costing employers $150 billion a year in reduced job productivity and fatigue-related accidents.

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