

# Business Insurance

\$5

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**REINSURER CONVERIUM REJECTS  
SURPRISE TAKEOVER BID  
FROM RIVAL SCOR / PAGE 3**

**LAWMAKERS PROPOSE REPEALING  
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IN WAKE OF KATRINA / PAGE 3**

**NEW BROKERAGE CHIEF EXPLAINS  
CHANGES AT WELLS FARGO,  
PLANS FOR FUTURE / PAGE 6**

## In Brief

**Judge refuses to block  
Caremark-CVS deal**

The Delaware Court of Chancery has denied a motion by Express Scripts Inc. that attempted to block CVS Corp.'s proposed takeover of pharmacy benefit manager Caremark Inc., paving the way for Caremark shareholders to vote on the deal, valued at around \$23 billion. Express Scripts said it would keep pursuing its \$26 billion offer for Caremark.

**RenaissanceRe settles  
shareholder suit**

RenaissanceRe Holdings Ltd. last week said it would pay \$13.5 million to resolve a consolidated shareholder securities lawsuit, according to a regulatory filing. That suit combined several class actions filed against RenaissanceRe starting in July 2005, after the firm revealed

See **IN BRIEF** page 38

## High Court limits scope of punitives



**\$79.5 million**

*Justices fault awards  
based on harm done  
to nonplaintiffs*

By **MARK A. HOFMANN**

**WASHINGTON**—The U.S. Supreme Court decision last week to overturn a \$79.5 million punitive damages award against a tobacco company may not represent a total victory for businesses, say some tort reform advocates.

That's because the 5-4 majority in *Philip Morris USA vs. Mayola Williams* held that juries can take into account evidence of harm allegedly inflicted by a defendant on people other than the named plaintiffs in determining the "reprehensibility" of the defendant's misconduct.

However, wrote Associate Justice Stephen Breyer for the majority, "a jury may not go further" and use punitive damages to punish a defendant directly for harm to others not named in the suit. "Given the risks of unfairness...it is constitutionally important for a court to provide assurance that a jury will ask the right question," wrote Justice Breyer. The risks of arbitrariness, inadequate notice and imposing one state's policies on other states made it "particularly important" that states avoid a procedure

See **PUNITIVES** page 37

### TOBACCO RULING

Main points in the U.S. Supreme Court ruling in *Philip Morris USA vs. Mayola Williams*:

#### AT ISSUE

1. Whether in reviewing a jury's award of punitive damages, an appellate court's conclusion that a defendant's conduct was highly reprehensible and analogous to a crime can "override" the constitutional requirement that punitive damages be reasonably related to the plaintiffs harm.
2. Whether due process permits a jury to punish a defendant for the effects of its conduct on nonparties to a lawsuit.

#### THE DECISION

The Supreme Court held that a jury can take into account actual harm to nonparties when determining the reprehensibility of a defendant's conduct, but it cannot go further and use punitive damages to punish the defendant for harm caused to nonparties. The court did not decide whether punitive damages levied against Philip Morris were excessive, and sent the case back to the Oregon Supreme Court for further consideration.

Source: U.S. Supreme Court

## RSA runoff sale OK'd with some restrictions

*DaimlerChrysler  
appeals decision  
by Delaware regulator*

By **JUDY GREENWALD**

**DOVER, Del.**—A major policyholder has filed an appeal in state court in Delaware in response to Delaware insurance commissioner's conditional approval of the disputed sale of Royal & SunAlliance USA Inc. to a management group.

Insurance Commissioner Matthew Denn's decision and final order was issued Feb. 20.

Observers say one unusual aspect of the order is that RSA USA's parent, London-based Royal & Sun Alliance Insurance Group P.L.C., must agree to submit to Delaware

state courts' jurisdiction in the event policyholders sue it in the future.

David Wilks, a Wilmington, Del.-based partner with Reed Smith L.L.P., said client Auburn Hills, Mich.-based DaimlerChrysler Corp. filed an appeal of the commissioner's order and a motion for a stay on it. "We are asking the court to postpone the closing of the Royal transaction until the appeal is exhausted," said Mr. Wilks.

Mr. Wilks said DaimlerChrysler objects in its appeal to a ruling in December by Delaware Insurance Department hearing officer Lawrence A. Hamermesh against policyholders' attempt to be named as formal parties in the proceeding, which would have entitled them to

See **RSA** page 37

## Account transfer rules muddy CDHP efforts

*Movement of funds  
to HSAs complicated  
by changes, experts say*

By **JERRY GEISEL**

**WASHINGTON**—New Internal Revenue Service rules to implement a 2006 law giving employees financial incentives to move from first-generation consumer-driven health care plans to health savings accounts may complicate the process.

That law, the Tax Relief and Health Care Act of 2006, sought by HSA advocates, allows employers to transfer—tax-free—balances employees have built up in health reimbursement arrangements and flexible savings accounts to newly established HSAs.

Through such transfers, employees could have thousands of dollars in seed money, alleviating their concerns about having to pay uncovered medical bills at a time

when their HSAs would not be well funded.

But as benefit experts dig through the IRS guidance issued earlier this month, they warn that the transfer mechanism may not be as easy or attractive as first thought.

"We are stuck with some very complicated rules," said Jeff Munn, a consultant in the Falls Church, Va., office of Hewitt Associates Inc.

"There is one trap after another for the unwary," said Andy Anderson, of counsel in the Chicago office of Morgan, Lewis & Bockius L.L.P.

"It is a mess," said Jay Savan, a principal with Towers Perrin in St. Louis.

Some of the problems in the IRS rules identified by experts include:

- Shifting from an HRA-linked plan to an HSA before the end of a plan year will result in employees being taxed on the amount transferred to the HSA, as well as being hit with a 10% penalty.

See **HSA** page 38

## SPOTLIGHT

### SPECIALTY RISKS

Focus on winery risks has increased since catastrophic warehouse fire hit industry;



marine operators navigate difficult waters for workers comp risks; banks strive to tackle risk management issues as criminals hone in on identity theft; Q&A with NAPSLO chief; media risks increase for nonmedia firms. Page 10

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# Is your company ready to address sustainability risks?

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— Peter Breitstone, *Managing Principal and CEO,*  
*Aon Environmental Services Group*

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The Aon logo, consisting of the word 'AON' in a bold, sans-serif font.

## On the Web

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### QUESTIONS & ANSWERS

#### Wells Fargo exec talks about Acordia changes

*Business Insurance* adds to its series of in-depth interviews with industry leaders with a Q&A



with Dave Zuercher, the new chief executive of Wells Fargo Insurance Services Inc.,

former Acordia Inc. See part of his interview with Senior Editor Sally Roberts on page 6 and the entire interview at [www.BusinessInsurance.com/QandA](http://www.BusinessInsurance.com/QandA).

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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# Converium rejects takeover bid by rival SCOR

## Swiss reinsurer says \$2.5 billion valuation underprices company

By SARAH VEYSEY

**ZUG, Switzerland**—Converium Holdings Ltd. earlier this month rejected a hostile takeover bid by SCOR S.A., which valued the Swiss reinsurer at about 3.10 billion Swiss francs (\$2.51 billion).

Despite the rejection, observers say a deal between Zug, Switzerland-based Converium and its Paris-based rival could still take place, though few expect SCOR to increase its offer substantially.

If a deal does go ahead, it would unify two European reinsurers with troubled recent histories.

SCOR, which succeeded in buying 32.9% of Converium's share capital in a surprise move launched over the weekend of Feb. 17 and 18, said it "strongly believes that the combination of Converium and SCOR is a unique strategic opportunity to create a top five global multiline reinsurer in this time of market consolidation."

SCOR offered 21 Swiss francs (\$17.02) a share for Converium, an offer Converium said undervalued the company.

Converium moved quickly to assure shareholders and cedents that it believed it was profitable and strong, with a well-recognized market position, and that it was on track to achieve a 14% return on equity by 2009.

In addition, the reinsurer brought forward the date for publication of

its 2006 financial results to Feb. 28, from March 20, and said it would discuss its "medium-term strategic plan" at that date.

A spokesman for Converium said the company believed it had "a strong story to tell" and that it was hoping for a rating upgrade shortly.

In the first six months of 2006, the latest period for which comparable figures are available, Converium reported gross premiums written of \$1.13 billion and profits of \$124.1 million. In the same period, SCOR reported gross premiums written of €1.37 billion (\$1.75 billion) and profits of €102 million (\$130.4 million).

Observers expect SCOR to continue to pursue Converium.

However, rating agency Standard & Poor's Corp. said that it had received "assurances" from SCOR

that the reinsurer will not do anything to endanger its A- rating.

And Peter Grant, an associate director at S&P in London, said he did not believe that SCOR would become embroiled in a bidding war for Converium, because such a move could pose a risk to its rating.

SCOR likely would not overbid for Converium, he said.

Analysts at investment bank Keefe, Bruyette & Woods Ltd. in London described SCOR's bid for Converium as "bold," but said that "the deal has good industrial logic."

William Hawkins, head of European insurance at KBW, said that the deal is "relatively sensible" for both parties, and noted that a counterbid from a third party is unlikely. Several large European reinsurers

See **SCOR** page 36

## Congress set to consider insurer antitrust repeal

### McCarran-Ferguson has little direct impact on risk managers

By MARK A. HOFMANN

**WASHINGTON**—Possible repeal of the McCarran-Ferguson Act's limited exemption from federal antitrust laws for insurers is unlikely to have any dramatic immediate impact on risk managers, say observers.

But some observers hold that a repeal could have an indirect impact, and could complicate the debate over whether insurers and producers should be allowed to choose to be regulated under a possible federal charter rather than state charters. The McCarran-Ferguson Act does not provide for federal charters, making states the primary regulators of insurance.

A bipartisan group of lawmakers introduced bills in both the House and the Senate earlier this month that would repeal insurers' limited antitrust exemptions (*BI*, Feb. 19). The Insurance Industry Competition Act would retain state regulation, but give the U.S. Justice Department and the Federal Trade Commission authority to apply federal antitrust laws to insurers. The lawmakers made clear that the legislation came in response to insurer practices following Hurricane Katrina and the other major storms of the 2005 hurricane season.

The Risk & Insurance Management Society Inc. "has never taken a formal position on it," said Terry Fleming, a member of New York-based RIMS board of directors.

"We think it deals primarily with personal lines. We feel it's in response to some notion of price fixing after Hurricanes Katrina and Rita, so it's being pushed mostly by" lawmakers from the Gulf Coast, said Mr. Fleming, who also is director-

division of risk management for Montgomery County, Md., in Rockville.

"Typically risk managers will negotiate directly with the insurers," he said. "This lessens the chance of price fixing."

He added that RIMS, which supports an optional federal charter, does not see the bills impacting the

### MCCARRAN-FERGUSON HISTORY

The McCarran-Ferguson Act of 1945 came in response to the Supreme Court's 1944 decision in *U.S. vs. South-Eastern Underwriters Assn.*, a decision that declared insurance to be interstate commerce and therefore subject to regulatory authority.

The Supreme Court's decision in *South-Eastern Underwriters* overturned its 1869 decision in *Paul vs. Virginia*, which held insurance did not constitute interstate commerce. Sens. Patrick McCarran, D-Nev., and Homer Ferguson, R-Mich., introduced a bill to restore state primacy in insurance regulation.

Under the McCarran-Ferguson Act, states retain primary regulatory authority over the business of insurance. The act exempts insurers from certain federal antitrust statutes to the extent that it is regulated by the states. The exemption applies primarily to gathering data for the purposes of rate-making.

The act does not exempt insurers from federal antitrust law as it applies to agreements or acts of boycott, coercion or intimidation.

OFC "at this point."

Julie Gackenbach, principal at the Washington-based Confre Strategic who also serves as a consultant to the National Assn. of Mutual

See **ANTITRUST** page 36

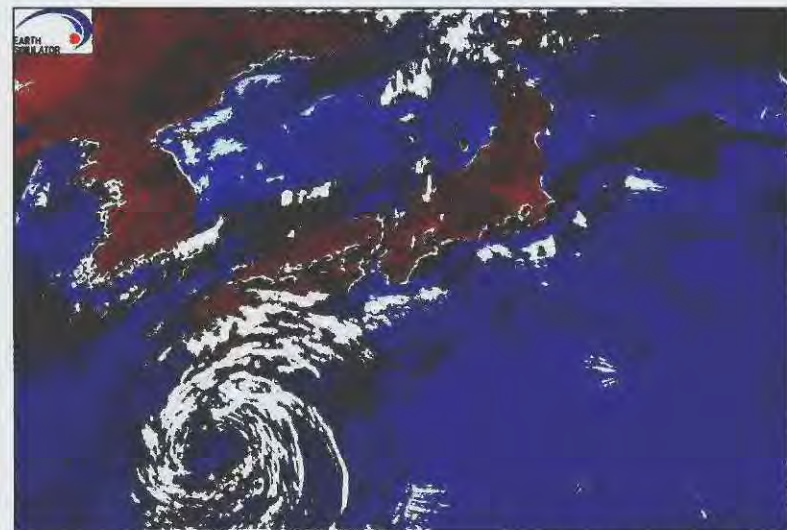


IMAGE COURTESY OF EARTH SIMULATOR

Japan's Earth Simulator supercomputer, with processing speeds of 27 trillion operations per second, can provide highly detailed projections of changing weather patterns.

## Japan's Earth Simulator to model catastrophes

### Willis joins research into possible impact of global warming

By DOUGLAS McLEOD

**LONDON**—Willis Group Holdings Ltd. has joined researchers in the United Kingdom and Japan in an effort to measure the impact of climate change on the frequency and severity of natural catastrophes using a Japanese supercomputer.

With guidance from Willis Research Network, a unit the broker created last September, researchers will use the NEC Earth Simulator computer in Yokohama, Japan, to develop catastrophe projections useful to international insurance and reinsurance markets.

The power of the Earth Simulator, with a sustained processing speed of 27 trillion operations per second, will allow much more detailed projections of changing weather patterns than have been possible on

other systems, said Rowan Douglas, London-based chairman of Willis Research Network and executive director of Willis Re.

"The scale difference is an order of magnitude different from where we were before," he said.

The project "has the advantage of having the most resolution of any of the models available for climate study," said Christopher Landsea, science and operations officer for the National Oceanic and Atmospheric Administration's National Hurricane Center in Miami. Mr. Landsea is not involved with the Willis project.

Global climate models typically don't capture hurricanes well because the storms are too small—at, say, 100 miles in diameter—for those models to make their features recognizable, Mr. Landsea said. The finer resolution possible with the Earth Simulator should pick out those features more readily, he said.

The first results of the research are

See **SIMULATOR** page 36

# Stray remarks—even nice ones—may be age discriminatory

*In unusual move, appeals court clarifies its earlier guidance*

By DAVE LENCKUS

**NEW YORK**—Employers can learn some important lessons from a federal appellate court decision that overturned an age discrimination ruling in favor of an employer, employment attorneys say.

Among them is that courts likely will not consider anything said by a supervisor with the authority to fire subordinates as a "stray" remark that has no evidentiary value, attorneys said. Another is that ostensibly

benign or even complimentary comments from a supervisor can form the basis of a claim, they said.

In the case, a three-judge panel of the 2nd U.S. Circuit Court of Appeals on Feb. 16 unanimously vacated a decision by a lower court that had dismissed an age discrimination case against Greenville, S.C.-based Insignia Financial Group Inc. The lower court had determined in November 2005 that an Insignia supervisor's occasional age-related remarks to a woman he eventually terminated were "stray" and inoffensive and did not show that his decision to terminate the plaintiff was discriminatory.

Employment law attorneys said the appellate panel's decision does

**'We did not mean to suggest that remarks should first be categorized either as stray or not stray and then disregarded if they fall into the stray category.'**

2nd U.S. Circuit Court of Appeals

not create new law but still is important.

"I think it's a concept that needed clarification," said Joel Bertocchi, a partner with Hinshaw & Culbertson L.L.P. in Chicago.

The decision by the influential 2nd Circuit likely will impact rulings in other jurisdictions as well, agreed Mr. Bertocchi and Eve I. Klein, a partner with Duane Morris L.L.P. in New York.

Plaintiff Patricia McCarthy Tomassi sued Insignia after she was terminated in 2003 at age 63 and replaced with a 25-year-old woman.

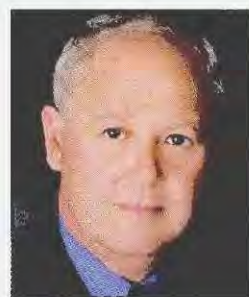
Since 2000, Ms. Tomassi had been Insignia's liaison with the tenants of the 11,000 apartments that Insignia managed in Manhattan,

and she routinely had received favorable job performance reviews and pay raises.

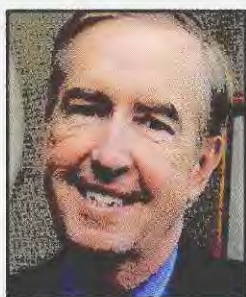
But Ms. Tomassi contends that her supervisor occasionally commented to her about or asked for her thoughts on retiring or working somewhere less demanding. The supervisor at one point told her that her skills made her "well-suited" for working with senior citizens, according to court papers.

When she was terminated, Ms. Tomassi was informed that she was being replaced only because of her lack of Web site experience. But in court, her supervisor testified that she had not been addressing ten-

See **COURT** page 36



Mr. Austin



Mr. Bennice



Mr. Brown



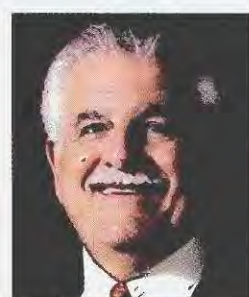
Mr. Cubbin



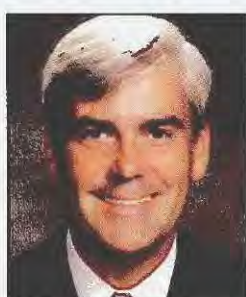
Mr. Gallagher



Ms. Griffith



Mr. Hold



Mr. Long



Mr. Moor

## Independent panel picks Risk Manager of the Year

*Judges represent industry leaders, top risk managers*

Nine independent judges were named this year to select the Risk Manager of the Year and Risk Management Honor Roll members.

The 2007 Risk Manager of the Year will be the 30th person so honored. The judges review and score nominees based on information in the candidates' nomination forms (see box, page 34).

The honorees will be announced in the April 30 issue of *Business Insurance*.

Judges for this year's awards are:

- William K. Austin, co-founder and principal of Austin & Stanovich Risk Managers L.L.C., a risk management and insurance consulting firm with offices in Massachusetts and Rhode Island. Mr. Austin, a former risk manager for a large international financial services company, represents risk management consultants on the panel.

- Dennis Bennice, a vp at insurance brokerage Hylant Corp. in Toledo, Ohio. Mr. Bennice, the retired president of Dana Corp.'s Dana Risk Management Services Inc. unit, was a member of the 2006

See **JUDGES** page 34

## Bank to convert to cash balance plan

*SunTrust also sweetens 401(k) offering in shift from traditional pension*

By JERRY GEISEL

**ATLANTA**—One of the nation's biggest banks is converting its traditional pension plan to a cash balance plan, the second major company to do so since Congress passed legislation last year that protects new cash balance plans from age discrimination lawsuits.

Beginning Jan. 1, 2008, new SunTrust Banks Inc. employees and employees with less than 20 years of service will earn benefits under the cash balance plan. SunTrust employees with 20 or more years of service as of Dec. 31, 2007, will be given the option of staying in the traditional plan under a reduced benefit formula or earning future benefits in the cash balance plan.

Cash balance plan participants will receive annual pay-related credits with the amount of the credit based on an employee's age and service. For example, employees whose combined age and service is less than 30 will receive a credit equal to 2.5% of pay, while employees whose age and service is between 30 and 39 will receive a credit equal to

3% of pay. Additionally, employees whose age and service is between 40 and 49 will receive a 4% pay credit; employees whose age and service is

**Beginning Jan. 1, 2008, new SunTrust Banks Inc. employees and employees with less than 20 years of service will earn benefits under the cash balance plan.**

50 or more will receive a 5% annual pay credit.

Atlanta-based SunTrust, which has more than \$180 billion in assets and reported \$2.1 billion in net income in 2006, also will credit employees' account balances with interest based on a current market rate. It is waiting for upcoming

Internal Revenue Service guidance before deciding on how to calculate a market rate.

Aside from adding a cash balance plan, which the Atlanta office of benefit consultant Towers Perrin helped design, SunTrust also is sweetening its 401(k) plan. Effective Jan. 1, 2008, SunTrust will fully match employees' 401(k) plan salary deferrals, up to the first 5% of pay. Currently, SunTrust fully matches deferrals on the first 3% of pay, and matches 50% of deferrals on the next 2% of pay.

On the health care side, SunTrust, effective Jan. 1, 2010, will stop subsidizing retiree health care coverage for retirees under age 65 unless retirees were at least age 55 and had 10 years of service prior to that date.

The pension and retiree health plan changes, SunTrust reported in a U.S. Securities and Exchange Commission filing, will make the "retirement program financially sustainable over the long term by stabilizing the volatility of pension expense" while maintaining a bene-

See **CASH BALANCE** page 36

## When cutbacks cause safety lapses, exclusive remedy won't apply: Court

By ROBERTO CENICEROS

**SPRINGFIELD, Ill.**—A parent company can be held liable—and workers compensation's exclusive remedy does not apply—when the parent directs budget cuts that create dangerous conditions at a subsidiary operation, the Illinois Supreme Court has ruled.

The court's Feb. 16 ruling in *Marguerite Forsythe vs. Clark USA Inc.* stems from the March 1995 death of two mechanics in a fire at a Blue Island, Ill., refinery owned by Clark Refining & Marketing. The mechan-

ics' widows received workers compensation death benefits and later sued Clark and its parent company, Clark USA.

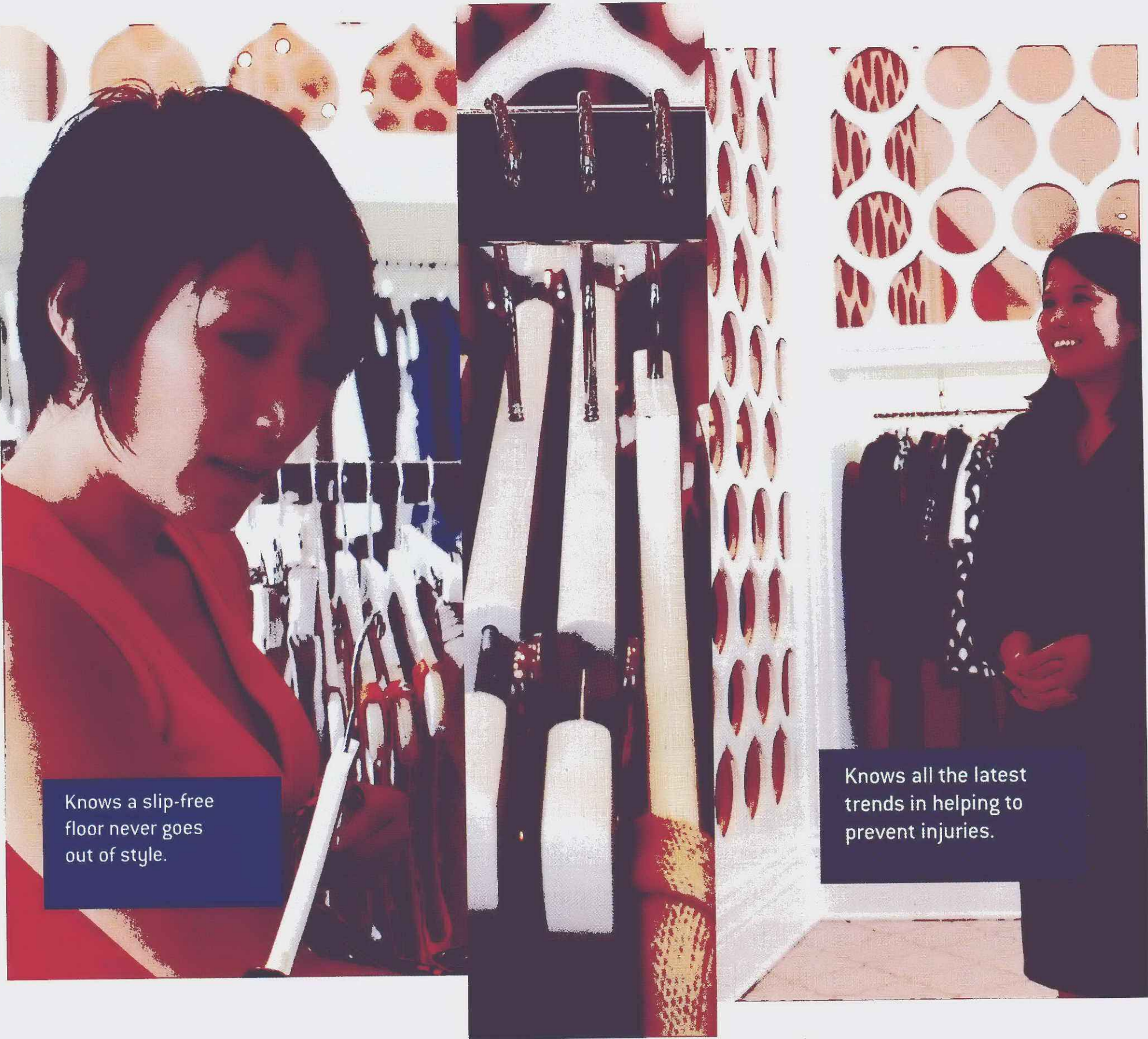
A trial court granted the employer summary judgment, but a state appeals court reversed that decision. Clark petitioned the Illinois Supreme Court and argued that a holding company parent cannot be held liable for its subsidiary's negligence even if it did set financial goals, which are part of its duties as a shareholder.

Plaintiffs argued that Clark operated its refinery under a low-cost

strategy that it knew would adversely affect safety by forcing training and maintenance reductions, court records show.

The high court found that "direct participant liability" is a valid theory of recovery when "a parent company mandated an overall business and budgetary strategy and carried that strategy out by its own specific direction or authorization, surpassing the control exercised as a normal incident of ownership in disregard for the interests of the subsidiary."

The high court remanded the case back to the trial court.



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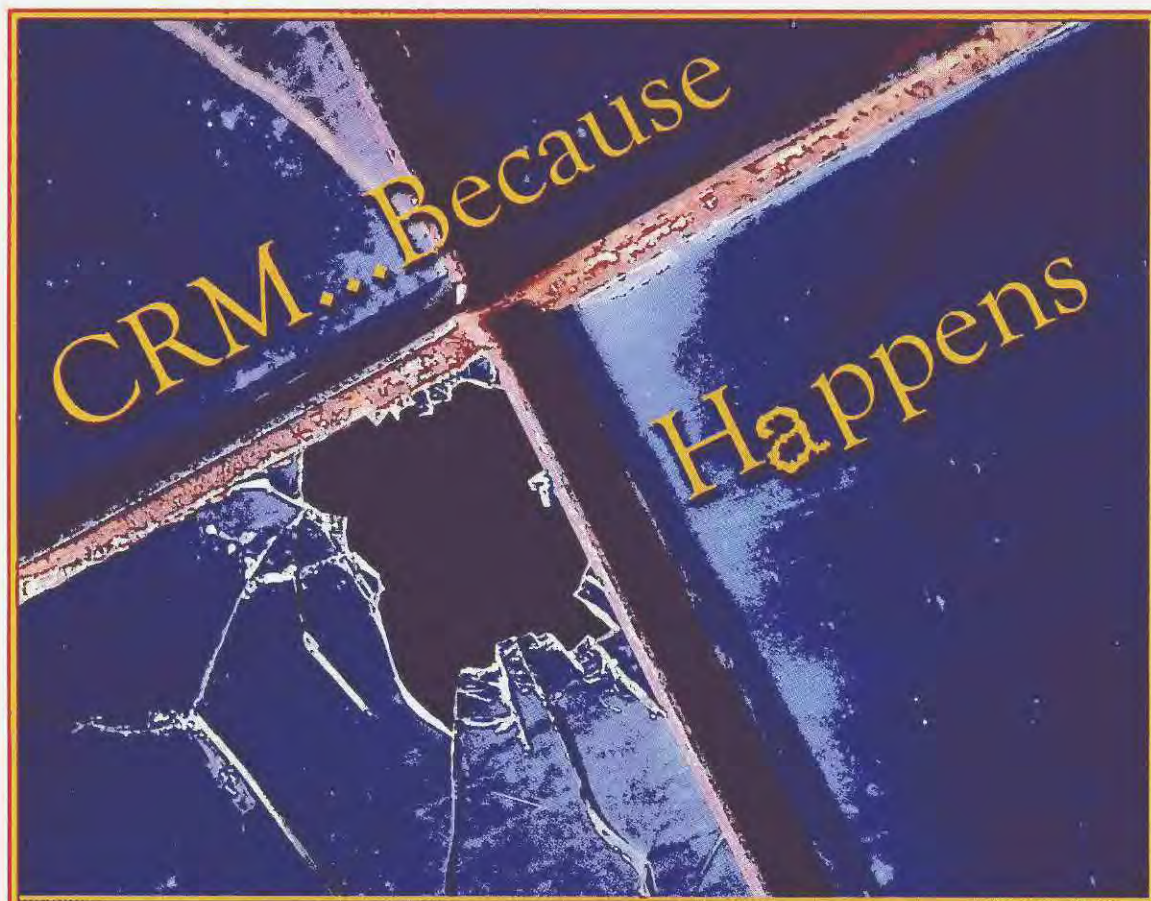
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## Questions Answers



Chicago-based brokerage Acordia Inc. has a new name and a new CEO. Dave Zuercher, who has been Acordia's chairman the past five years and head of international and insurance services for Wells Fargo & Co., became president and CEO of the world's fifth-largest brokerage in August, 2006, succeeding Peter J. Wissinger, a 20-year Wells Fargo veteran who served at the helm for only eight months. Earlier this month, Acordia became known as Wells Fargo Insurance Services Inc. in a move to better associate the broker-

age with its banking parent. Mr. Zuercher spoke recently with Business Insurance Senior Editor Sally Roberts about the management change and the brokerage's future.

## Acordia changes at the top

**Q: You quietly succeeded Pete Wissinger in August after he spent less than a year at the helm. What was behind the management change?**

In respect to Pete, he had a very successful career with us in businesses other than insurance, and it was just one of these things where he decided he wanted to do some other things in his life. I wish he would have decided that last January when we put him in charge of everything (laugh), but unfortunately he decided that in July. We wish him well. He was a big star for us for many years.

**Q: Why did you decide to assume the role?**

We have had some turnover. Kevin Conboy (former CEO) had retired and then we had Pete, so I felt it was more appropriate for me to take over the role. Most of the 5,000 team members that we have knew me very well. I had been a presence. We had set some strategic initiatives in place, such as the name change...so I felt it would be inappropriate to bring in another executive at this time to have to implement those things.

**Q: What is your strategy for cross-selling in commercial lines?**

It's a real referral model. So in commercial, a Wells Fargo business entity, like one of our branch stores that handles small businesses or one of our regional commercial banking offices that handles medium-sized business or one of our U.S. corporate banking offices that handles large businesses... they would typically talk to their customer about the idea of insurance and then make a referral to one of our producers. We have it essentially set up to where if you're in Denver, say, you would make a referral to a Denver producer and then that producer would make the sale from there and the banker would be out of the mix.

**Q: Like other insurance brokers, Wells Fargo Insurance has faced charges over its compensation practices from several state**

**attorneys general, including former New York Attorney General Eliot Spitzer. Unlike the other brokers, though, you did not settle the lawsuits, choosing instead to fight. Why?**

The short answer is we haven't done anything wrong. Contingent

**THE FULL TEXT** of this abridged BI interview is at [www.BusinessInsurance.com/QandA](http://www.BusinessInsurance.com/QandA)

compensation is a longstanding practice in the industry and it is legal and it's been upheld in numerous legal cases over the years. I think that's the main reason; we just don't think we've done anything wrong. We do agree that disclosure is a very important aspect to any kind of compensation we receive and our customers should be entitled to understand where we make our money, and we employed a very rigorous procedure two years ago, almost. So far, we've disclosed every dime we've received on a policy-by-policy basis to every client.

**Q: Where does the lawsuit stand?**

I really don't want to comment on the case itself and on the particulars of the case.

**Q: What do you think of Travelers' and Chubb's recent decisions to phase out contingent commission payments to brokers and replace them with supplemental payments that fall outside the definition of contingents?**

We believe we perform a valuable service for our insurance carriers. If you look at the type of customer we have—the middle-market and small-business customer—for 99% of our clients, the only risk manager they see is one of our people. So there is a value we perform and we are happy to be compensated for that. If (Travelers and Chubb) choose to develop another form of compensation that recognizes the fact that we give them business that performs at or above the norm or an acceptable rate to them—and that's what we're intending to do—then consequently we're happy to be compensated for it and disclose it to our clients.

## Call for Nominations

### 2007 Benefit Manager OF THE YEAR®

The Honoree is announced and profiled in the annual Benefit Manager of the Year, feature published by *Business Insurance* on September 17, 2007 which will be distributed at the annual ISCEBS Conference and BMFE Conference. Awards will be presented at a special luncheon honoring this benefits executive.

**DEADLINE FOR NOMINATIONS:  
June 1, 2007**

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Nominations for the Benefit Manager of the Year, Award are now being accepted by *Business Insurance*.

The Benefit Manager of the Year Award, was created in 2005 by *Business Insurance* to salute outstanding performance in the field of benefits management.

Executives anywhere in the world who are involved in benefit management are eligible to be nominated.

The nominations will be judged by a panel of executives representing all aspects of benefits management and the commercial insurance industry.

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# Business Insurance OPINIONS

## Defined benefit system gets a welcome boost

WHILE THREE LARGE employers taking similar actions hardly constitute a trend, we think the decision of those organizations to stay in the defined benefit plan system is significant.

SunTrust Banks Inc. is converting its traditional pension plan to a cash balance plan, a step MeadWestvaco Corp. took last year, while Phoenix Cos. Inc., a big player in the annuity market, is moving to a pension equity plan, another type of defined benefit plan.

The actions of these employers is a contrast to the pension storyline of the last couple of years in which one employer after another announced that it was phasing out its defined benefit plan, typically in favor of an enhanced 401(k) plan.

Certainly, there are good reasons for employers to wind down defined benefit plans. The annual cost of such plans—due to fluctuations in interest rates and investment returns—can be unpredictable, which is anathema to risk-averse companies.

While that is a legitimate issue, it doesn't tell the whole story. Defined benefit plans are financially volatile, but that is not always a bad thing. Consider the above-average investment results defined benefit plan sponsors earned on plan assets during the last few years, which will allow employers to cut back on future contributions.

By contrast, investment results play no role in employer contributions to defined contribution plans. If the return on assets is 5% or 50%, the employer contribution isn't going to change.

On benefit design, defined contribution plans aren't without problems. Employees in such plans who join in mid-career may not be around long enough to earn meaningful benefits. Defined benefit plans lend themselves to designs that address that problem.

All pension plan approaches have pros and cons, and no single design is best for all employers. We say that because we believe a herd mentality—rather than careful analysis—has driven many employers away from the defined benefit system. When it comes to pensions, employers must act thoughtfully, not on impulse or as copycats.

*All pension plan approaches have their pros and cons.*

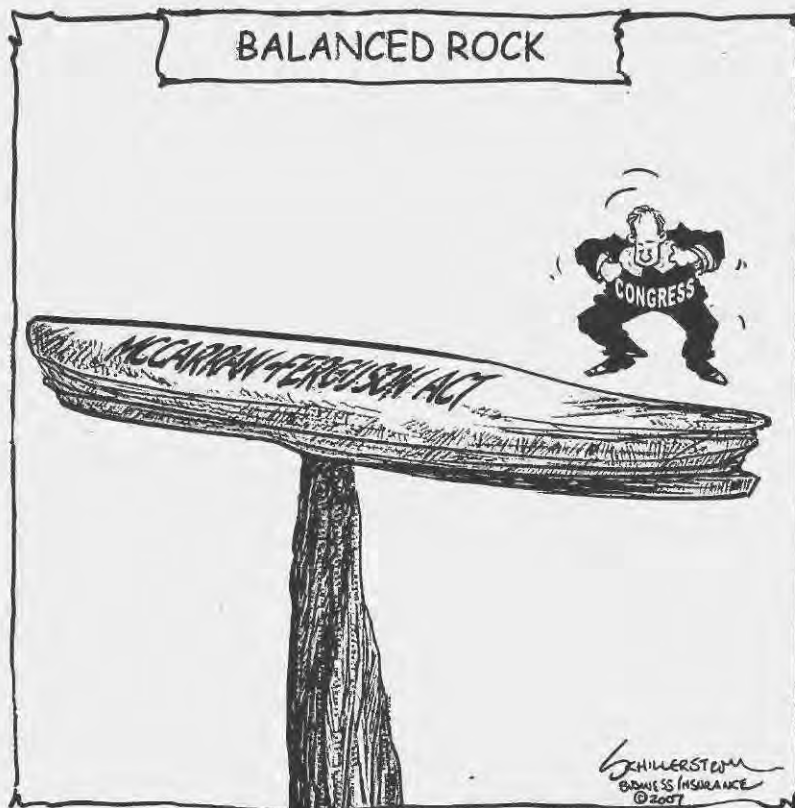
## Delaware commissioner makes right call on RSA

THE DELAWARE INSURANCE Commissioner appears to have made the best of a bad job with his conditional approval of the sale of Royal & Sun Alliance USA Inc. to a group of the defunct insurer's former managers.

Although the process whereby insurers ring-fence liabilities and walk away seems to have become an accepted and legal practice, we share the skepticism of several large policyholders about the adequacy of the funding of the runoff insurer. By some estimates, the various long-tail liability claims will exceed RSA USA's surplus to the extent that even if the claims are only partially successful, the insurer would have great difficulty meeting its obligations.

Policyholders that paid for coverage from RSA USA might feel better about the deal if the insurer's U.K. parent, Royal & Sun Alliance Insurance Group P.L.C., bought more catastrophe coverage for its former unit. That way, they would have had some back-up should it turn out that RSA USA is being optimistic in its view that some of the huge potential claims it faces are without merit.

Regardless of the rights and wrongs of the move, we welcome the decision by Delaware's authorities to impose conditions on the deal that would keep policyholder disputes in U.S. courts. The possibility of U.S. policyholders that bought coverage from an insurer incorporated in the United States having to go to London to pursue their claims should not be an option.



## Letters

### Runoff article promotes misconceptions

TO THE EDITOR: There are at least two glaring misconceptions that scream for correction in Judy Greenwald's Feb. 12 *Business Insurance* article, "Runoffs Change the Relationships Between Buyer and Insurer."

First is the implication that once an insurer goes into runoff it is difficult for risk managers to obtain "a fair settlement of claims." Such an observation ignores or fails to understand usual and customary historical business practices. Questionable claims that had been paid in full when the company was active often resulted in an agreed-upon increase of premium when the policy or contract was renewed. At a minimum, the loss pay-

ment became part of the experience record and factored into the premium calculations for all new or renewed accounts. Once in runoff, however, such premium-related options no longer exist for the company and the sole mechanism to resolve disputable claims, many of which are "not black or white to begin with," is to compromise. While that process might result in a less-than-expected payment, it is hardly an unfair settlement.

Secondly, Ms. Greenwald's article states runoff entities "have no incentive to pay claims promptly." Well, the good ones certainly do, because

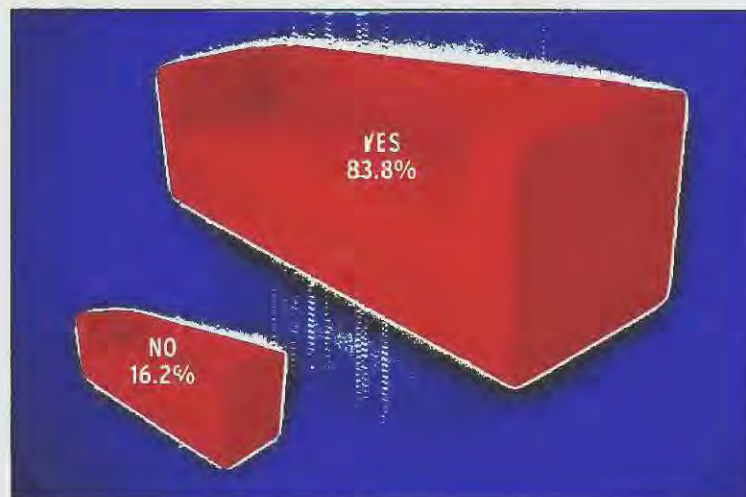
See **LETTERS** page 32

## Write us

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## Online Poll at [www.businessinsurance.com](http://www.businessinsurance.com)

Do you think it is good business policy to provide the same coverage for mental health care conditions as for medical conditions?



**NEXT WEEK'S POLL:** What do you think of the Nonadmitted and Reinsurance Act's proposed "qualified risk manager" requirements?

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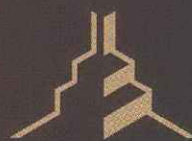


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## Vintners must consider more than winemaking

*Warehouse fire  
increases focus  
on winery risks*

By GLORIA GONZALEZ

A major fire that destroyed the wine stocks of dozens of commercial wineries in California sharpened the focus on insurance policies and risk management techniques to mitigate the exposure.

For wineries, the ramifications of

losing years of wine stocks were thrust to the forefront by the October 2005 fire at a Vallejo, Calif., warehouse where dozens of wineries stored their products. The arson led to significant losses for many wineries and a sizable loss for the insurance industry, said Robin Reeve, a Pleasanton, Calif.-based senior commercial underwriter for Chubb Corp., a major insurer of winery business.

The 240,000-square-foot facility was operated by Wines Central L.L.C. and licensed by the Bureau of

Alcohol, Tobacco, Firearms and Explosives.

The eight-alarm fire caused an estimated \$10 million in structural damage, according to the ATF.

Estimates of the total loss were projected as high as \$100 million, although how much of that was related to the wine stocks is unclear, market and government sources say.

The Vallejo, Calif.-based facility had the capacity to hold more than 1.2 million cases of wine. It was home to an unknown number of

cases of library wines or staged release wines, which are wines set aside to be released at a future date and are often more valuable and expensive than current vintages.

Although winery fires are relatively infrequent, they can cause substantial losses, as wineries often have \$100 million worth of inventory, said Gary Delucchi, vp, of St. Helena Insurance Associates, an independent insurance agency in St. Helena, Calif. "The primary loss

See **WINERIES** next page

## Wineries: Protecting stock

CONTINUED FROM PREVIOUS PAGE

from an insurance standpoint is the loss of the wine itself," rather than damage to the buildings, he said.

Fireman's Fund Insurance Co., which has been insuring wineries for about 50 years, is a major market for winery coverage. Most of its severe losses for warehouse fires have occurred at offsite locations, said Steven Bones, product director for the Novato, Calif.-based insurer.

The Vallejo warehouse fire had a major impact on Fireman's Fund and other insurers, Mr. Bones said. "It was a huge wake-up call for the

industry," he said.

Justin Vineyards & Winery had wine stock stored in the Vallejo warehouse, but the winery weathered the situation fairly well because it had adequate coverage, said Cheryl Wiecek, vp, finance, human resources and risk management for the Paso Robles, Calif.-based winery.

But some other winery owners were not as fortunate she said. "A lot of people got into trouble because they didn't have policies that covered the selling price of the wine," she said.

See **WINERIES** page 14

## Crush of exposures forces wineries to take steps to mitigate losses

*Leaks, tainted wines are among key perils for winemakers*

By **GLORIA GONZALEZ**

Although losses caused by fire have the most potential to ruin a winery owner's business, wineries face numerous other exposures.

A key exposure for commercial wineries is wine leakage and con-

tamination, which often occurs when employees don't turn off valves or when wine is processed or transferred. Although leakage and contamination are the most frequent causes of insurance losses for wineries, they usually generate only small claims, insurers say.

Claims for wine leakage, though, can be as high as \$100,000, so wineries often take steps to mitigate potential losses, including carefully monitoring the transport of wine to ensure that no leakage occurs, said

Robin Reeve, senior commercial underwriter for Chubb Corp. in Pleasanton, Calif.

Liquor liability is a constant exposure for wineries with tasting rooms, but claims in this area are not frequent because of the high cost of wine tasting and the training received by winery employees serving alcohol, insurers say.

Frost is probably the biggest concern for wineries, although heat-related damage is another risk, said Gary Delucchi, vp of St. Helena Insurance Associates in St. Helena, Calif. Most farmers, though, have protective equipment such as wind machines or



Wine leakage and contamination are among the most frequent causes of insured losses for wineries.

overhead sprinklers to help mitigate weather damage, he said.

Intellectual property issues have become a significant exposure, particularly with disputes arising over similar wording on wine bottle labels, said Barbara Herbert, agricultural product specialist for Seattle-based Unigard Insurance Group.

An evolving exposure in the wine industry relates to virtual or custom-crush wineries—those that do not have winery operations but buy the fruit and pay a winery to process it. These arrangements are becoming more prevalent and there are an increasing number of disputes over liability for accidents that damage wine during processing. As a result, custom-crush operators should ensure they are covered for any potential exposures, said John Sutak of John Sutak Risk Services, a San Francisco-based brokerage that specializes in coverage for wineries.

Wineries often choose to self-insure certain risks due to the expense associated with the policies.

Many wineries, for example, do not have coverage for earthquakes even though they are a concern for wineries in the Napa Valley region, said Suzy Reynolds, a vp with surplus lines broker and general agent M.J. Hall & Co. Inc. in Stockton, Calif., and owner of the Reynolds Family Winery in Napa, Calif.

Quake coverage tends to be expensive, with a typical deductible of 15% to 25% of insured value and often requiring a \$30,000 annual premium to include wine leakage cover, she noted. For her winery operations, Ms. Reynolds purchased earthquake coverage only for damage to her building, not her actual wine stocks, she said.

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A 2005 fire at a Vallejo, Calif., storage facility destroyed millions of dollars of rare wine. The blaze prompted installation of sprinklers and more precise coverage terms for businesses and insurers.

AP PHOTOS

## Wineries: Blaze served as a wake-up call

CONTINUED FROM PAGE 12

The Vallejo fire underscored the importance of valuing the wine based on the projected selling price rather than the bulk value or basic costs of the fruit, insurers say.

Fireman's Fund encourages wineries to account for their wine stocks at peak value to ensure they are properly insured against the true value of any losses, Mr. Bones said. "Valuation has become a big issue," he said.

In addition, the fire emphasized the importance of taking basic risk management precautions, insurers and winery owners say. While most

facilities are built to strict building codes that minimize the risk of fire, the Vallejo warehouse fire was particularly damaging because the building did not have a sprinkler system.

The key lesson Justin Vineyards & Winery learned from that fire was to ensure that all of its facilities had sprinkler systems, Ms. Wiecezonek said. "That's definitely something we look at now," she said.

Ensuring that a winery has listed all of its onsite and offsite storage locations on its insurance policies is also important. Some wineries did not have the Vallejo storage facility listed on their insurance policies

and ran into coverage disputes, brokers and winery owners say.

The fire also taught policyholders the importance of spreading risk by not having their entire wine stock stored in one location, said Tonya Beaulac, vp, underwriting, for Napa Specialty Insurance Services L.L.C. in Napa Valley, which focuses on small to midsize wineries.

And for insurers, the fire highlighted the need to track accumulations to see whether multiple policyholders use the same storage facilities, said Barbara Herbert, agricultural product specialist for Seattle-based Unigard Insurance Group, which writes winery coverage primarily for midsize wineries. "It was a wake-up call for a lot of carri-

**'The insurance (for wineries) isn't cheap, especially if you want to be insured adequately.'**

Suzy Reynolds,  
M.J. Hall & Co. Inc.

ers that work with wineries," she said.

Commercial wineries have exposures other than fire risks, but claims for those risks are less frequent and less costly, insurers say (see story, page 12). Wineries are generally able to secure comprehensive coverage from the specialty insurers writing the coverage, although weather-related risks are typically excluded, insurers and brokers say.

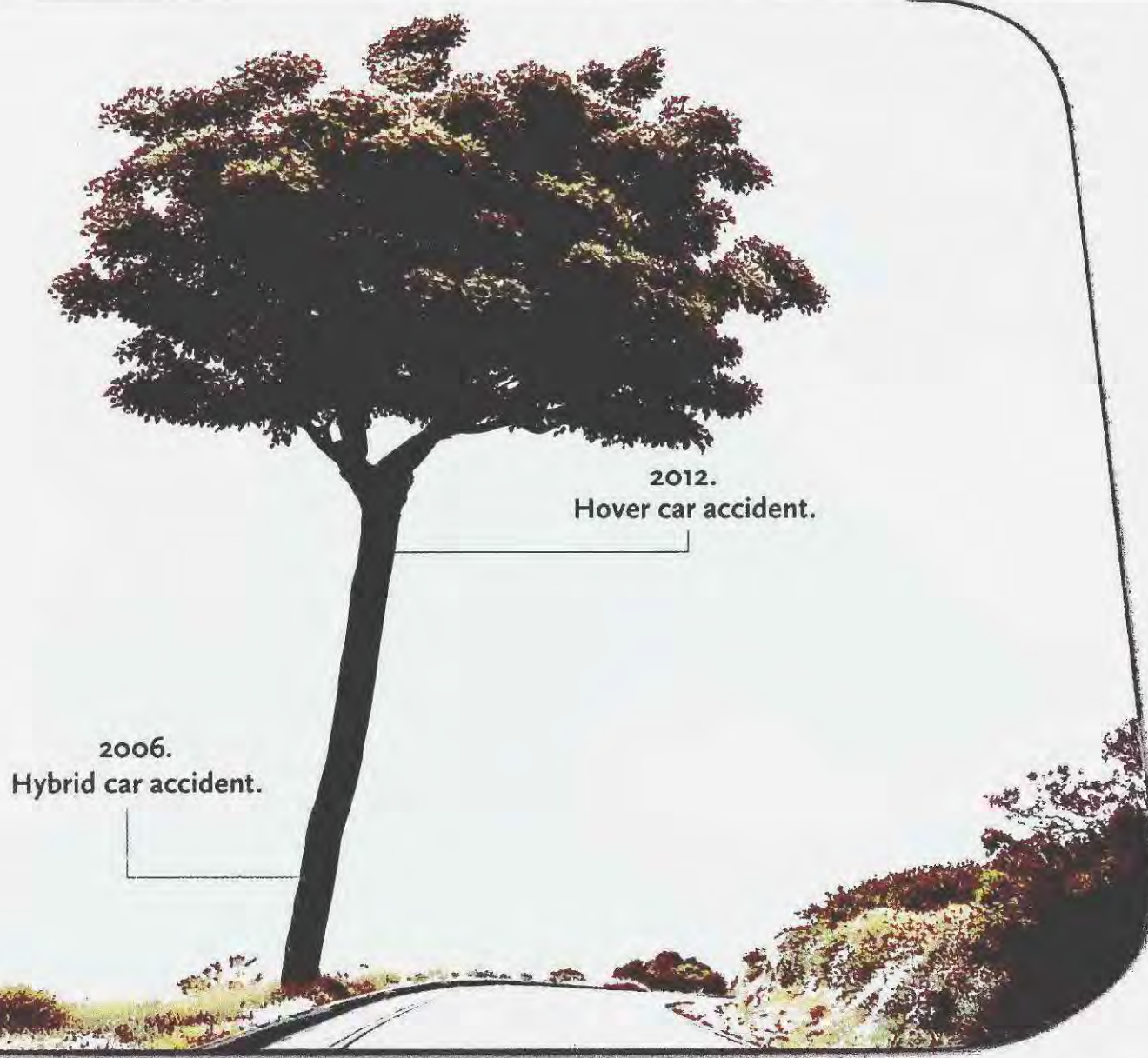
"The coverages have improved and the pricing is competitive," Mr. Delucchi said. Insurers "keep trying to tailor the package more and more for what the wineries' needs are."

In response to the growing emphasis on accurately valuing wine stocks, Fireman's Fund launched a policy last September that offers coverage and valuation options for buildings, wine products and other property against a variety of perils. The policy can also cover other unique winery risks, such as expenses incurred when a defect, such as contamination or mislabeling, causes the withdrawal of a wine.

About a dozen insurers write winery business, though Chubb, Fireman's Fund and John Sutak Risk Services—a San Francisco-based brokerage and program administrator for an insurance program for wineries and vineyards—are the major markets for winery coverage, said Suzy Reynolds, a vp with surplus lines broker and general agent M.J. Hall & Co. Inc. in Stockton, Calif., and owner of the Reynolds Family Winery in Napa, Calif.

"I think this class of business is a pretty profitable business for insurers," she said.

Many commercial wineries, though, are underinsured because they do not want to pay high insurance premiums, Ms. Reynolds said. "The insurance isn't cheap, especially if you want to be insured adequately," she said.



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The U.S. Longshore and Harbor Workers' Compensation Act provides compensation for employees injured on the navigable waters of the United States.

# Claims made under Longshore Act difficult for employers to navigate

*Federal law's rules are complex, add to employers' costs*

By ROBERTO CENICEROS

Marine operations often require specialty workers compensation arrangements that differ substantially from those used by landlocked employers, brokers, insurers and risk managers say.

Companies involved in shipbuilding, stevedoring or offshore oil operations, for instance, are likely to need coverage for injured worker claims filed under the U.S. Longshore and Harbor Workers' Compensation Act.

Claims filed under the federal law often expose employers to greater financial loss than those brought under state workers comp systems. The complexity and additional expense of Longshore Act claims drive a need for specialty underwrit-

ing and claims handling expertise, several experts say.

"Certainly, USL&H is very much a specialty field and in the (United) States, there are probably only four or five markets that really specialize in writing that business," said Gary Moore, a principal and marine practice leader at Integro Ltd. in New York.

In addition to specialists, many multiline and workers compensation insurers offer Longshore Act coverage as an extension of their state act policies. They often do so for employers that mostly operate inland, but have some incidental marine-related risks.

"Longshore claims are very, very expensive in comparison to state act claims," said Kristy Bottomley, senior vp, claims and employee risk for Alaska National Insurance Co. in Seattle.

**'Longshore claims are very, very expensive in comparison to state act claims.'**

Kristy Bottomley,  
Alaska National Insurance Co.

Several factors drive up the costs.

Dock workers tend to have high salaries, so wage replacement costs are greater than for employees working inland. In addition, Longshore Act benefits often are more generous than those provided under state workers comp laws, several industry watchers said.

Under the Longshore Act, for example, the duration of benefits to be paid for permanent partial disability claims is sometimes determined by a statutory schedule, while other times the benefit duration is not scheduled.

Whether benefits are scheduled depends on the body part that is injured, Ms. Bottomley said. Head and back injuries, for instance, are not scheduled.

For those that are not scheduled under the Longshore Act, a claimant can collect for loss of wage capacity for their entire lifetime—not just their working years, Ms. Bottomley said.

## Varying systems

In contrast, state workers comp systems more often compensate permanent partial disability injuries using a schedule that caps benefits at a certain number of weeks. The number of weeks for which the injured employee is compensated often is less than the employee's work life, Ms. Bottomley said.

Unlike many state systems that allow employers or insurers to direct injured employees to doctors with proven track records, that is not allowed under Longshore Act

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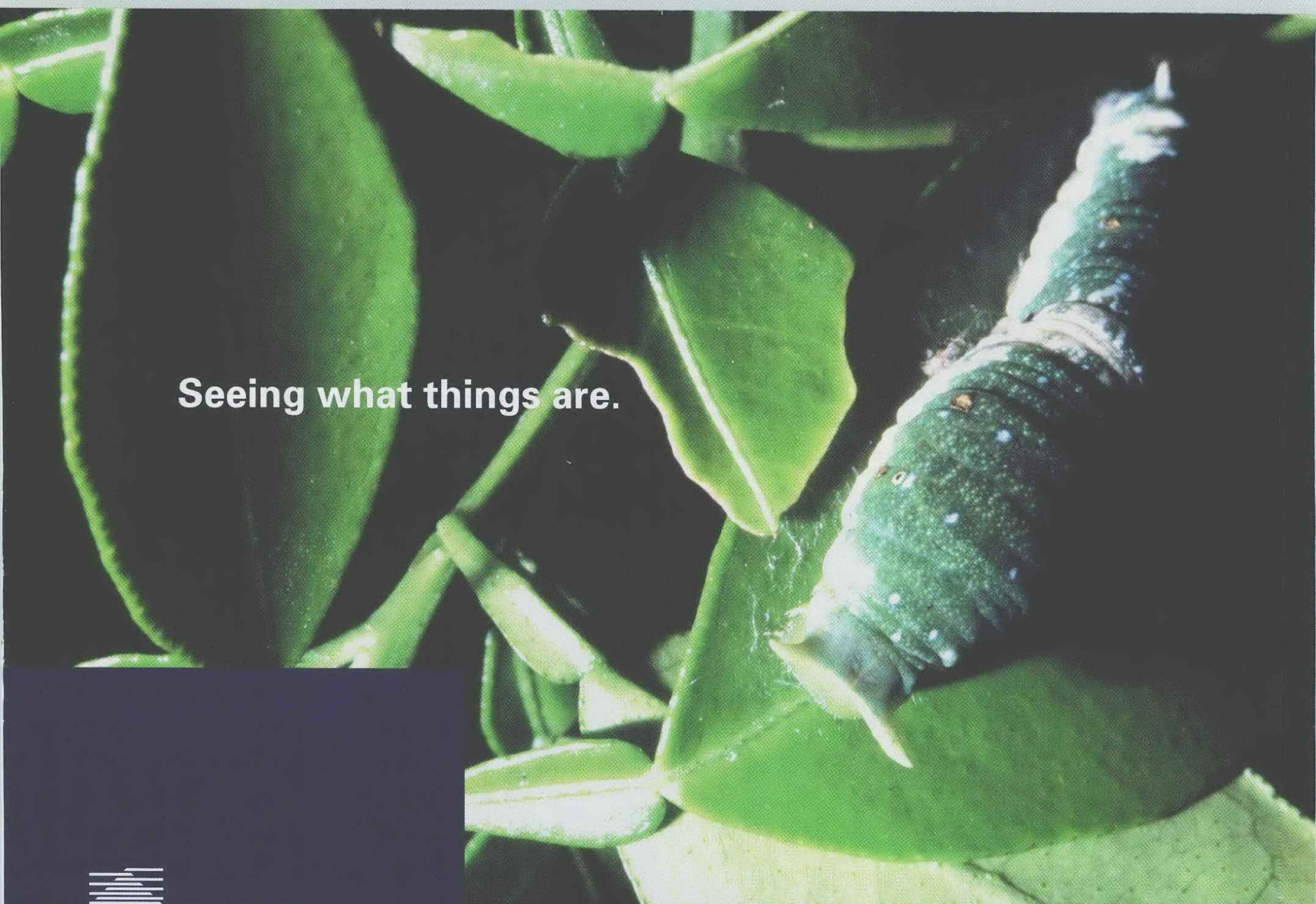
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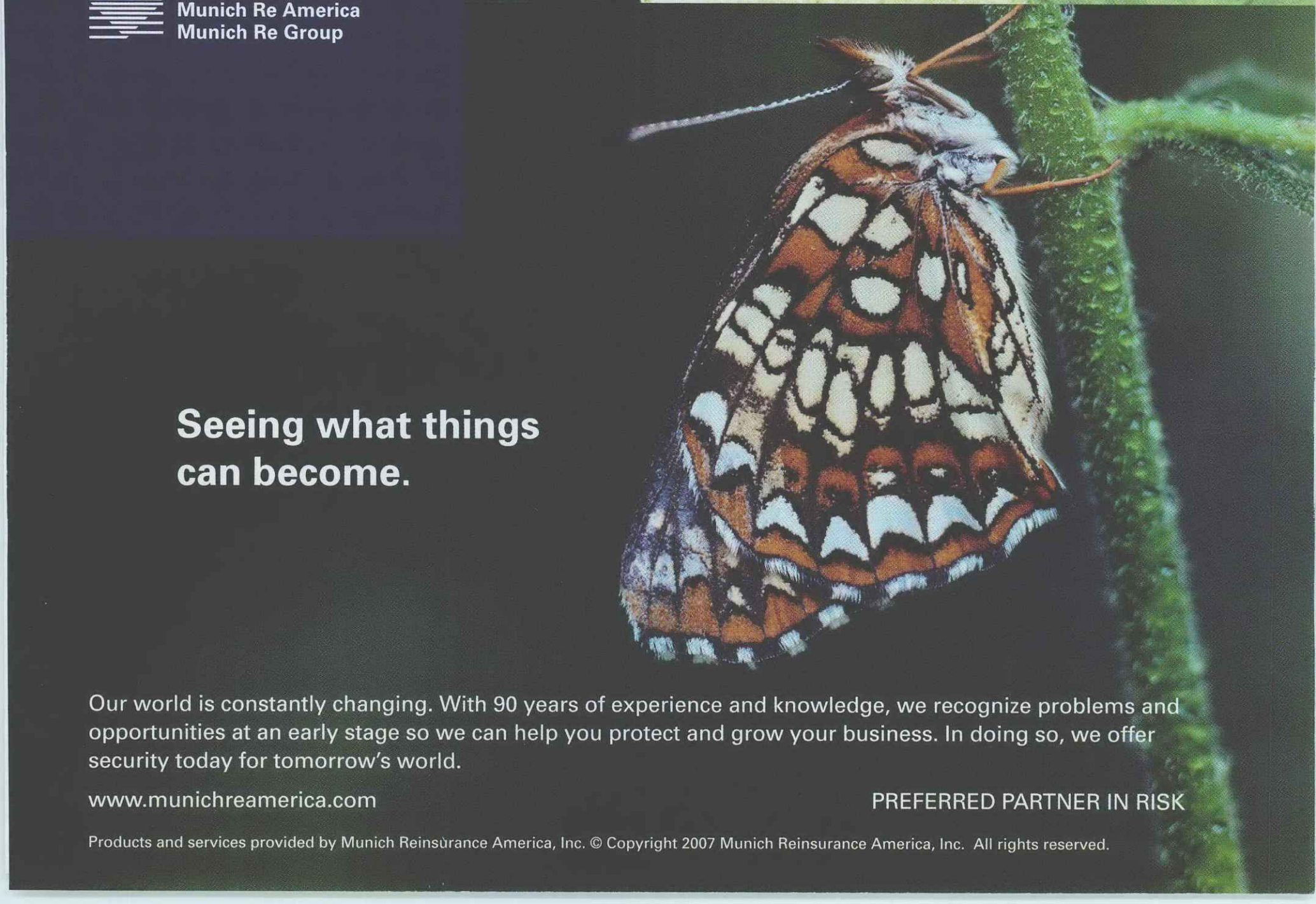
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# Banks consider identity theft cover as criminals target data

*Information security becomes big concern as losses mount*

By LOUISE ESOLA

A rogue employee leaves at the end of the day with more than his briefcase and car keys. A dumpster-diver makes a jigsaw puzzle of shredded documents. A computer whiz hacks into a secured online database. An office cleaning crewmember sweeps up files left on a desk.

Experts say personal information has reached diamond-status in the criminal world and banks are among the most vulnerable.

"For banks we think this risk is more important than for other types of companies because banks store a lot of information," said Michael Lamprecht, a national practice leader with Gallagher CyberRisk Services, a Chicago-based division of Arthur J. Gallagher & Co.

Mr. Lamprecht and his colleague Michael Flanagan, a managing director also with Gallagher CyberRisk Services in Chicago, work together to help banks find insurance and risk management solutions to help deal with the risk of stolen information and identity theft.

They say interest in addressing identity theft is growing and, unlike most product development efforts, it's policyholders that are pushing their insurers to offer solutions and products.

"The banks are the ones telling (the insurance) marketplace what they need here," said Mr. Flanagan. "If (a bank) hasn't experienced a loss, they are seeing other banks that have suffered a loss."

While risk managers for several banks would not comment on iden-

tity theft coverage, experts say the topic is on the forefront thanks to numerous reports of data breaches at banks and other institutions, new regulations and concerns from lawmakers.

"This is probably the most common question I get from banks right now: 'Is identity theft covered under our policies?'" said Judy Kovach, a Cleveland-based product marketing manager for Progressive Casualty Insurance Co., which claims to insure 20% of the community banks in the United States.

Ms. Kovach's company in late February introduced a specialty

insurance product zeroing in on identity theft mitigation for organizations as a way to broaden identity theft-related coverage.

Litigation and claims related to identity theft and data breaches have long been tied to Progressive's directors and officers liability and financial institution bond coverages. But that may not be enough given the current climate, she said.

"There is such a heightened awareness of responsibility for banks," she added.

Progressive's new product serves to supplement existing coverages by helping companies pay for the

expenses incurred when their customers' data has been stolen.

Mr. Lamprecht estimates that the tally for banks can run as high as \$40 per person affected thanks to new regulations and a push to protect reputations.

Breach notification laws passed in 34 states now require businesses and organizations to locate and notify clients—both current and former—when their personal information has been stolen, via missing files, computer hacking or other methods.

Notifying individuals can cost between \$1 and \$2 per person

affected, according to Nicholas Economidis, Philadelphia-based vp and product manager for technology and network security with National Union & Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc. which has been providing specialty identity theft mitigation coverage since 1996.

When a data breach affects tens of thousands—as can be the case when a laptop computer is stolen or a computer disk misplaced—those costs alone can run a high tab,

Continued on next page

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EVERYTHING WE KNOW GOES

CONTINUED FROM PREVIOUS PAGE

experts say, adding that traditional coverages don't always cover the bill to comply with the new regulations.

Taking the issue a step further, banks often take voluntary action to protect their reputations, keep customers and guard against lawsuits. They provide credit-monitoring services for anyone affected; they issue new account numbers and debit or credit cards; and they start a public relations campaign to tell everyone what they are doing.

Others estimate that the cost can run even higher than Mr. Lamprecht's \$40 per person estimate, if for example, a bank decides to cov-

er court fees and credit recovery services for someone whose identity has been stolen, according to Mark Pribish, director of identity theft management services for Phoenix-based Merchants Information Solutions Inc., a company providing identity theft solutions and risk management services for companies and insurers.

Mr. Economidis, of National Union, said he has seen claims as high as \$9.4 million from companies overall with at least one of those claims coming from a financial institution that experienced a data breach. He would not elaborate on specific cases.

The newer and existing identity theft mitigation insurance products serve to help banks pay those

expenses and to help banks avoid lawsuits—a major fear in the industry, according to experts.

Using Mr. Lamprecht's figure, a breach where 100,000 people are affected could cost \$4 million alone, without lawsuits.

"One thing that has piqued banks' interest is that there isn't a lot of (legal) precedents," said Ray DeCarlo, New York-based executive vp in the financial institution practice at National Union.

Tracey Vispoli, Warren, N.J.-based vp and global fidelity manager for Chubb Specialty Insurance, said the uncertainty and fear is helping drive the market.

"I think what makes everybody unsure is what kind of (legal) exposure this is," said Ms. Vispoli, whose

company also provides banks with identity theft mitigation coverage similar to that of Progressive and National Union. "It's safe for banks to assume that they will have some sort of hack or have someone steal information."

"Nobody knows what the legal landscape is going to look like," said Ms. Kovach, of Progressive, adding that banks are most afraid of massive lawsuits and expensive defense costs.

That's why the specialty insurance products that help mitigate losses stemming from data breaches are becoming more popular, according to Mr. Pribish.

"The trend in the future is all banks are going to offer their customers an identity theft recovery

program," Mr. Pribish said. "It's a lot less expensive for the bank to pay the upfront costs (following a data breach) than to pay for lawsuits."

Mr. Flanagan, of Gallagher, calls the products on the market "evolving."

"Has the winning model been developed yet? We don't know. Time will tell how this is going to play out," Mr. Flanagan said.

## PRIVACY MATTERS

*A sampling of financial industry data breaches in 2006*

### JANUARY:

In early January, a computer tape containing the social security numbers and account numbers of 90,000 clients at People's Bank of Bridgeport, Conn., was lost while en route to a credit reporting bureau.

Later in January, Ameriprise Financial Inc. in Minneapolis notified 158,000 customers and 68,000 financial advisers that a laptop containing their personal information had been stolen in December 2005.

### MARCH:

In March, University of Michigan Credit Union in Ann Arbor, Mich., notified 5,000 members by letter that their information may have been stolen from a warehouse in the summer of 2005 while the bank was preparing to destroy the documents.

Also in March, Boston-based Fidelity Investments reported a laptop containing personal data of 196,000 employees of Hewlett-Packard Co. and former employees—whose 401(k) plans are administered by the financial firm—was stolen.

San Francisco-based Wells Fargo & Co. sent letters during the spring to an undisclosed number of its home mortgage clients stating that a laptop containing their personal information was missing and may have been stolen.

### MAY:

In May, Baltimore-based Mercantile Bankshares Corp. reported that a laptop computer containing personal information of more than 48,000 customers was stolen from an employee of its subsidiary, Mercantile Potomac Bank.

### AUGUST:

In August, Wyomissing, Pa.-based Sovereign Bank warned thousands of customers that some of their account information might have been stolen in the theft of three employees' laptops.

### SEPTEMBER:

In September, Chase Card Services, a unit of New York-based JPMorgan Chase & Co., said it was notifying 2.6 million cardholders that computer tapes containing their personal information were mistakenly thrown in the trash. After federal and local authorities investigated, the company said it believed the tapes were compacted and destroyed.

*Source: Company and news reports*

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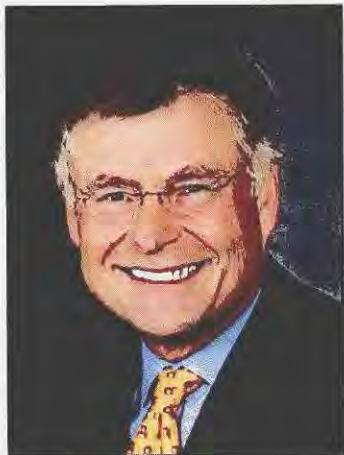
## Questions & Answers

Bill Newton is president of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd., which represents nonadmitted insurers and wholesalers. He became president of Los Angeles-based Lemac & Associates Inc., a wholesale brokerage, in 1984. He became sole owner of Lemac in 1990 and sold

it last year to Risk Placement Services Inc., a unit of Arthur J. Gallagher & Co.

Mr. Newton spoke to Business Insurance Senior Editor Roberto Cenicerio about the surplus lines industry's role in helping large risk management accounts obtain coverage as well as Mr. Newton's goals for NAPSLO.

# Education, legislation top NAPSLO leader's goals



**Q: Observers often associate the surplus lines industry with insuring specialty, hard-to-place risks such as bars and taverns, nursing homes or trucking operations. Does it play a role in placing coverage for large risks?**

I would be surprised if there are many large risks that do not utilize the surplus lines market. One example is wind coverage. So many risk management accounts have properties that are located somewhere in wind zones, and it is next to impossible for them to get their property insurance needs met without tapping the surplus lines market.

**Q: Is that also the case for California property/earthquake risks?**

You can say the same thing for Cal-

ifornia earthquake, absolutely.

You would also see it on the directors and officers liability side where accounts are building high limits and on the umbrella side for liability. Large risk management accounts that are building multi, hundred-million-dollar layers, they are going to have to tap into the surplus lines marketplace to provide that capacity.

**Q: Will wholesale brokers always remain invisible to most insurance buyers without getting credit for their role, or might that ever change?**

There is controversy within the industry as to whether or not we should become more visible. Some wholesalers say, "Let's do it." Others say, "I think even NAPSLO should take a role and educate the buyer as

to the real role of the wholesaler." Then there are other members of our industry that say, "Wait a second. We have always been in the background. Let us stay in the background and not steal the retailer's thunder."

**Q: What would be the advantage of getting wholesalers known more among insurance buyers?**

The advantage is that there are probably some buyers that are prejudiced against using a wholesaler. They may look upon it as a weakness if the retail broker has to use a wholesaler (and think), "Gee, why can't you get to all the markets yourself?"

It could help us eliminate that thinking having them know a wholesale broker is more than just someone who is swapping paper to a market so a market can provide some capacity. Too many buyers may look upon us in that simplistic fashion. I think what a good wholesale broker brings to the table—and perhaps buyers don't know enough about—is market knowledge and relationships with these markets to get the job done, and product knowledge. Insurance has gotten so sophisticated and there are so many products out there it is very difficult for one person to know them all on a very intricate level. And wholesale brokers who are specializing in some of these tougher lines of business really understand and know forms and how carriers can fit together, and they bring a lot of value to a transaction. I think sometimes that value is not understood by the buyer.

**Q: Is it not understood because wholesalers stay in the background and remain invisible to the buyer?**

Because we are invisible and they think we are just this extra expense that is thrown into the transaction to copy whatever the retail broker sends them and gives access to a special company.

**Q: Is that a frustration or just the way the market has always worked?**

Yes, I think it is a frustration. Too many people don't really know what a professional wholesaler does. I rarely take what is sent to me and send it to a market. There is a way of packaging a submission I get from a retail broker. Most professional wholesale brokers have a way of making the risk sound better by bringing the pertinent information to the underwriter in a more concise fashion so they can make a quicker...more intelligent decision.

**Q: Wholesalers have to know what specialty underwriters look for.**

Right. If I just send them a pile of

paper, they are never going to understand the risk. But I can take that pile of paper and create a two-page document that summarizes everything so they are in a much better position to respond to the insured's needs.

**Q: What do you hope to accomplish as president of NAPSLO?**

We started a political action committee last year and we are in the process of trying to get that funded. We need to build that up substantially because one thing that has changed in our world is that federal regulation of the entire property casualty insurance industry is looming. That is going to have tremendous impact on the surplus lines industry.

In order for us to have any influence in the legislative process, we are going to need a fully funded PAC in order to get a seat at the table.

Secondly, our main legislative priority is to get a bill like H.R. 5637. It passed by unanimous vote in the House last year and was called the Nonadmitted and Reinsurance Reform Act.

While it passed the House, we were not able to find a sponsor in the Senate. So it died. Now, we have

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set this as our legislative priority for 2007, to get similar legislation passed. It simplifies the very arcane and paper-intensive way of making multistate surplus lines filings, which is now a complete mess. H.R. 5637 said you can do the surplus lines filing and pay the tax in just one state.

**Q: What are NAPSLO's other goals?**

NAPSLO has always been known for education. Ten years ago, we had one school where we educated maybe 50 or 60 students, and we moved it up to two schools, and then we moved it up to three schools. Now we are thinking of expanding that. There is a tremendous need from our members to educate the younger people coming into the business.

We are also mounting a public relations campaign to try to reach young college students and acquaint them with the surplus lines industry. That is to meet the growing demand for surplus lines products.

Ten years ago, we used to talk about surplus lines being 5% of the commercial lines marketplace. We now talk about it being 15% of the commercial lines marketplace. Part of it has to do with the hard market—particularly in casualty that we have had over the past five years. But it also shows a tremendous maturing of the surplus lines segment of the insurance industry.



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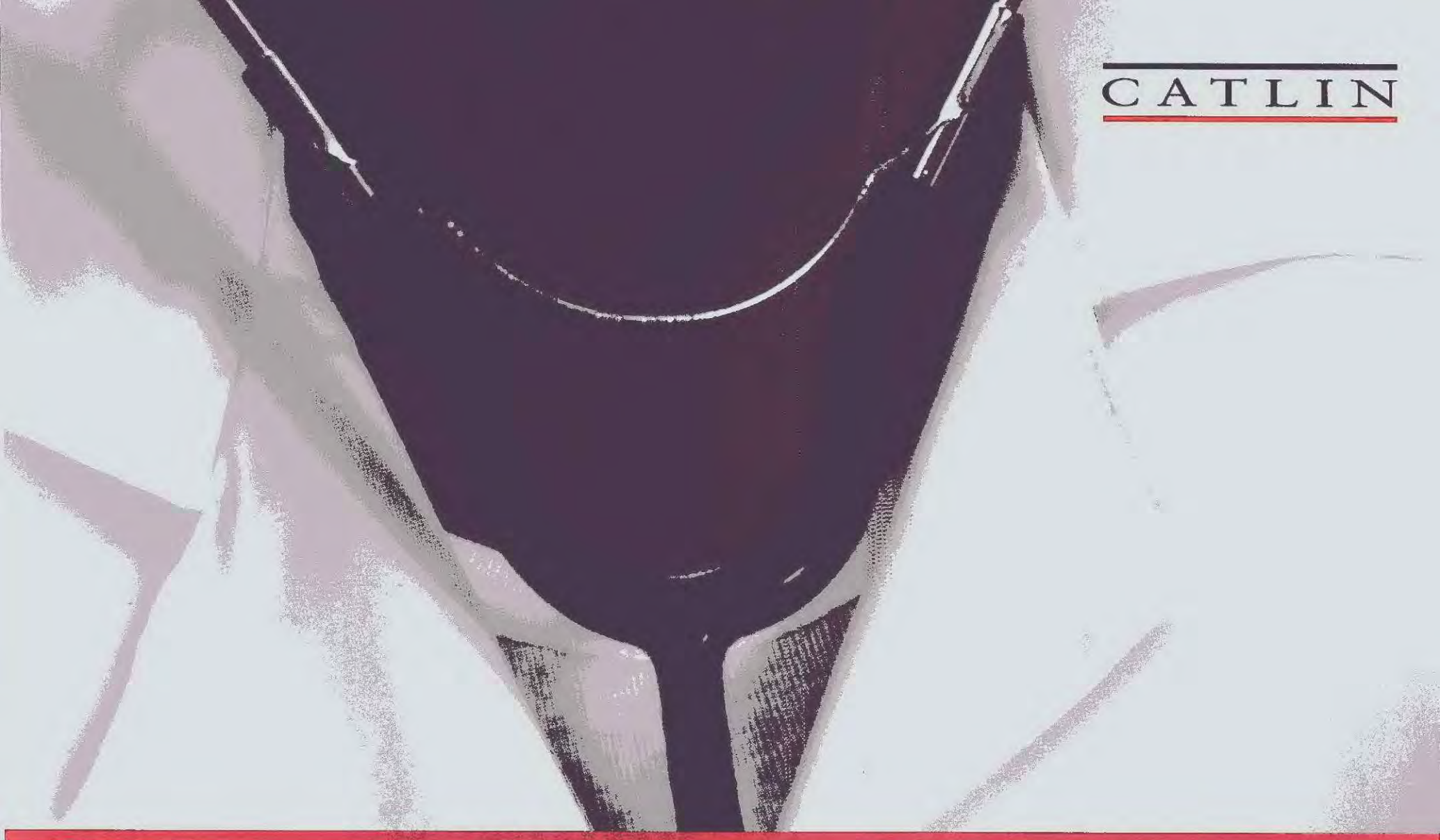
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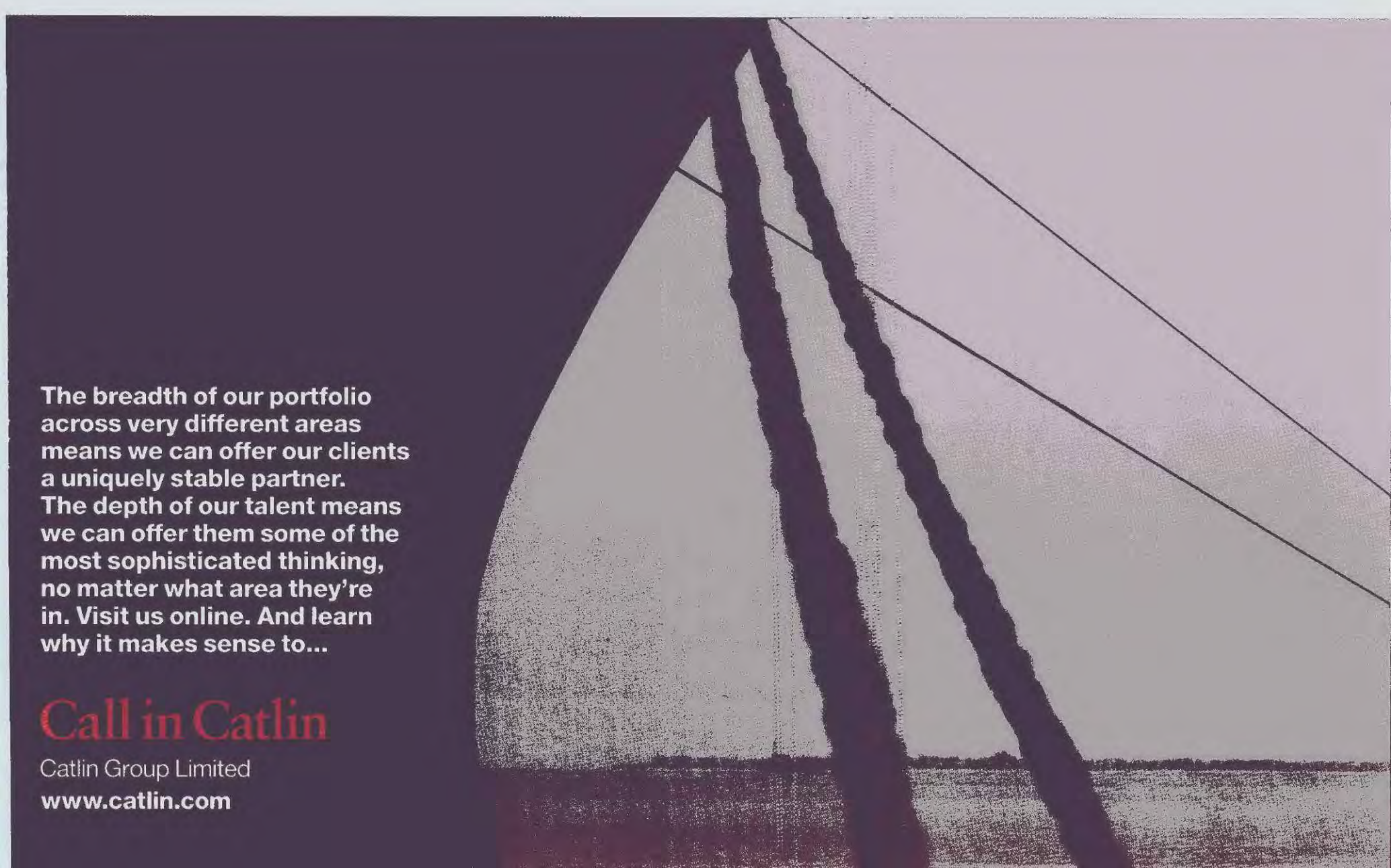
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Bank of America's Ethan Chandler, described as a Manhattan banking center manager, gained Internet fame for crooning lyrics—borrowing the tune of U2's "One"—to tout the merger of Bank of America with MBNA. The video sparked a cease-and-desist order from Universal Music Publishing Corp.

## Multimedia communications open fresh risks and specialty coverage

*Nonmedia operations face medialike perils in reaching audience*

By DAVE LENCKUS

In an age of multimedia communication complicated by Internet tell-all sites and data security threats, risk managers probably should view all the world as an audience and all businesses as merely media outlets.

While that allows nonmedia businesses to market themselves and their products more efficiently and effectively than ever, it also exposes them to risks that they may not realize are not insured, some insurance experts say.

But one media liability underwriter, Media/Professional Insurance Agency Inc., says a new coverage would help shield nonmedia companies from not only traditional media risks but also intellectual property infringement claims that

their various so-called corporate expressions could inadvertently generate, as well as cyber risks.

Nonmedia companies have greatly expanded the kind of audiences they are trying to reach as well as the types of measures used to communicate with them, said Chad Milton, a senior vp and national practice leader for media liability and intellectual property with Marsh Inc. in Kansas City, Mo.

Beyond traditional print and broadcast advertising, nonmedia organizations as well as their industry associations have Web sites; produce ancillary videos, such as how-to pieces or conference presentations; publish newsletters; arrange product placements in movies and TV shows; and, in the case of universities, run radio stations.

### *Sensitive topic*

How a company manages its advertising and intellectual property risks—whether through insurance or other risk mitigation efforts—can be a sensitive topic for some risk managers.

For example, one risk manager at a large corporation said she could not discuss the issue for fear that any information she revealed would be used against the company by plaintiffs' attorneys.

But Gary Kilburg, a former risk manager for Fortune 200 companies, said he and his peers managed their advertising, intellectual property and data security risks rather than counting on insurance to cover them.

That was essentially the case even with advertising injury claims to which a commercial general liability policy would respond, because deductibles or retentions usually would exceed most claims, said Mr. Kilburg, a senior vp and the chief risk officer for broker ABD Insurance & Financial Services Inc. in Seattle.

In addition to not being able to pierce the deductible or retention level consistently, risk managers have seen CGL insurers increasingly restrict that coverage in many areas and only marginally improve coverage in others, insurance experts said.

The advertising injury provision in traditional CGL policies has been expanded in recent years to cover claims arising from Internet-based advertising, said Richard S. Betterley, president of Betterley Risk Consultants Inc. of Sterling, Mass.

It even may cover a Power Point presentation if it was designed to attract customers or clients, said Joe Underwood, a senior consultant with Albert Risk Management Consultants in Needham, Mass.

But while claims of defamation and invasion of privacy would be covered if the alleged improper statements were published, coverage questions are arising on what "publication" means, Mr. Milton said.

In addition, if the publication involved in the incident is the policyholder's own enterprise, under-

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writers could consider that a traditional media business, for which coverage is excluded, he said.

Meanwhile, newer CGL policies cover copyright infringement claims arising only out of advertising, which the policies "narrowly" define as traditional advertising, Mr. Milton said. Claims arising from material on the policyholder's Web site are covered "only to the extent the Web site is considered advertising."

Additionally, trademark infringement claims and claims resulting from data security breaches are not covered, Mr. Milton said.

Policyholders also would not be protected if their Web domain name violated another company's trademark, Mr. Underwood said.

The advertising injury provision also would not respond to claims stemming from statements that a policyholder's employees made about a competitor in a chat room, Mr. Underwood said.

As with their advertising risks, many risk managers do not look to insurance to manage their intellectual property risks, because of the typically low limits that are available and the perceived small risk of such claims, Mr. Betterley said. In addition, patent infringement coverage is "really tough to get," he said.

And while data security coverage is available, the majority of risk managers prefer to manage the risk rather than purchase coverage, said Mr. Underwood.

Some media liability underwriters have expanded their market base by offering multimedia content coverage to nonmedia companies.

For example, Chubb Corp. offers an all-risk content policy that would respond to claims alleging not only defamation but also copyright infringement, invasion of privacy and any new type of claim "not seen before," said Ken Goldstein, worldwide media liability manager for Chubb Specialty Insurance in Simsbury, Conn.

Mr. Goldstein said that means Chubb's policy—unlike a typical CGL policy—would have responded to the kind of claim that Bank of America faced last fall because of an employee musical performance that was videotaped during a bank meeting. In the performance, a duo borrowed the tune and reworked the words from the song "One" by the Irish rock band U2. The performance was designed to celebrate the bank's recent acquisition of MBNA Corp. and ostensibly was intended only for internal use.

The video, however, did not remain internal for long.

Instead, it wound up on the Internet, including on YouTube.com, the popular Web site that hosts user-generated and professional videos, and music blog Stereogum.com.

As a result, Bank of America wound up with a cease-and-desist order from Universal Music Publishing Corp., which charged that the bank had violated the Los Angeles-based music catalog owner's copyright of the U2 song.

As of late February, the video still could be viewed on YouTube. Universal Music did not return phone calls, but a Bank of America spokeswoman said Universal Music had not taken any further action.

But other risks that could arise

from corporate expressions are not covered by multimedia or CGL policies, according to Mr. Milton and Media/Pro executives.

Media/Pro's "Corporate Expressions" coverage would fill that gap, according to Vp Mike DiSilvestro.

The policy covers claims resulting from any form of advertising and spoken conversations, such as sales pitches; claims arising from security breaches of client and customer databases; and product-related intellectual property claims, including product designs as well as logo and trademark infringement claims.

The product design coverage is "what makes it unique," said Leib Dodell, president and chief executive officer of Media/Pro. "If you're a shoemaker and you advertise, a

multimedia policy covers the content of the ad," he said. "If you're sued based on the design of the shoe, your multimedia policy won't cover that claim."

The coverage, unveiled in mid-February, provides \$5 million of limits with a minimum deductible of \$25,000. Media/Pro is the managing general underwriter for National Casualty Co., a nonadmitted unit of Scottsdale Insurance Co. of Scottsdale, Ariz.

### Management vs. insurance

Although many risk managers have opted to manage their various corporate expression risks rather than finance them with insurance, "that doesn't mean an insurance policy wouldn't add value to certain

firms" smaller than the Fortune 200, Mr. Kilburg said. "It boils down to understanding and managing the more critical risks of your business, and whether these types of risk qualify as such."

Indeed, Mr. Underwood said, a growing number of risk managers at companies with up to \$100 million of revenue are beginning to look for data security coverage.

Demand for the corporate expression coverage from organizations "doing a lot of advertising and public outreach" could be "pretty strong" eventually, but not immediately, Mr. Milton said. "Some of them are waiting to have the coverage taken away from them," he said, referring to their media coverage in their CGL policies.

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# Comings & Goings

**BROKERS:**

Colemont Insurance Brokers has promoted **Woody Baird** to executive vp in the Hartford, Conn., office. Previously, he was a senior vp.

Hamilton, Bermuda-based **Integro (Bermuda) Ltd.** has appointed **Susan N. Pateras** to principal in the health care practice. Before joining Integro, she was a senior vp with Willis Bermuda.

Willis Group Holdings Ltd. has appointed **Carla D'Andre** as executive vp of global sales and marketing to lead the newly formed global corporate practice. Before joining Willis, she was a managing director at Aon Risk Services of New York.

Atlanta-based **Beecher Carlson** has named **Frank McKenna** to lead the company's California operations, which include offices in Los Angeles, Woodland Hills, Walnut Creek and Irvine. He will continue to serve as executive managing director of the national health care practice.



Mr. Baird

**INSURERS:**

New York Life Insurance Co. has named **Alexander A. Burbatsky** as senior vp of the corporate information department in New York. Before his promotion, he was a vp.

New York-based **Risk Specialists Cos. Inc.**, a member company of American International Group Inc., has named **David A. Jordan** chief operating officer. He will continue as a senior vp of Lexington Insurance Co.

Glen Allen, Va.-based **Markel Corp.**'s London-based business unit **Markel International Ltd.** has appointed **Conor Finn** to the new position of director of business development. Before his promotion, Mr. Finn was managing director of Markel International's nonmarine

property division.

**REINSURANCE:**

Hamilton, Bermuda-based **Validus Holdings Ltd.** has appointed **C. Jerome Dill** as general counsel of the company and its subsidiary, **Validus Reinsurance Ltd.** Previously, he was a partner and team leader of the immigration and employment practice of Appleby Hunter Bailhache.

Guy Carpenter & Co. L.L.C. in New York has named **Chi Hum** to the newly created role of global head of distribution for insurance-linked securities in its investment banking specialty practice. He joins Guy Carpenter from Swiss Re Capital Markets, where he led the building of its investor base.

Benfield Group Ltd. has appointed **Michael Lazarus** as head of the group's facultative solutions team for Australia, New Zealand and South Africa. Mr. Lazarus, who will be based in Sydney, Australia, formerly was a senior vp at Guy Carpenter.

**OTHER PROVIDERS:**

New York-based **Buck Consultants L.L.C.** has named **Karri Ludwick** as director of its human capital consulting team in London. Previously, she was director of global sales compensation at AT&T Corp.

Also at Buck, **Richard Lemieux** has joined the Secaucus, N.J., office as director in the global consulting practice. Previously, he was responsible for the actuarial and consulting practice within the global human resources services group of PricewaterhouseCoopers L.L.P. in France.

**Maureen Breakiron-Evans** has joined Stamford, Conn.-based **Towers Perrin** as chief financial officer. Ms. Breakiron-Evans joined Towers Perrin from CIGNA Corp., where she was vp and general auditor.

**Burns & Wilcox**, a Farmington Hills, Mich.-based national specialty insurance wholesaler, underwriter and managing general agent, has named **Jennifer Ebert** as senior commercial underwriter in the Baltimore office. Previously, she was a program sales manager at MIMS International Ltd.

New York-based **National Investment Managers Inc.**, a retirement plan administration and investment management company, has appointed **John M. Davis** as its new chief financial officer. Previously, he was president of private-sector retirement plans at Nationwide Mutual Insurance Co.

The Segal Co. in New York has named **Steven M. Rabinowitz** as senior vp in its national retirement practice. Most recently, he was a senior consultant in Towers Perrin's metro New York retirement practice.

**Patrick L. Funck** has joined Memphis, Tenn.-based **Sedgwick Claims Management Services Inc.** as executive vp and chief information officer. Previously, he was CIO of Broadspire Services Inc.



Mr. Funck

New York-based **Sibson Consulting** has named **Richard V. Smith** as a senior vp and executive compensation consultant in the company's organizational effectiveness practice. Before joining Sibson, he was director and executive compensation practice leader for McDermott Will & Emery L.L.P.



Mr. Lord

**Nathaniel E. Lord** has been named chief executive officer for the Sacramento, Calif.-based **Schools Excess Liability Fund**. Before his promotion, he was vp of risk management.

**TO SUBMIT ITEMS**

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

## UP CLOSE

### Brad Sickinger

**NEW JOB TITLE:** Senior vp, property/casualty with Hilb Rogal & Hobbs Co. in Milwaukee.

**START DATE:** Feb. 7

**PREVIOUS POSITION:** Senior vp, property practice leader with Marsh Inc. in Milwaukee.

**REASON FOR THE CHANGE:**

I switched jobs for a better opportunity to focus on the needs of my clients and potential clients.

**VITAL STATISTICS:** I graduated from Oklahoma State University with a B.S. in fire protection and safety engineering. Before Marsh, I worked at Kemper, Hartford Specialty and AIG (Starr Tech), with duties including loss prevention, underwriting, marketing, new business development and management.

**GOALS FOR NEW POSITION:** My goals are to assist HRH in becoming the pre-eminent property/casualty brokerage/risk management consulting firm in Wisconsin by maintaining our focus on our clients and delivering the best resources and solutions to them.

**FIRST TIME IN THE JOB MARKET:** My first-ever job was working at a pharmacy in high school.

**TOP ADVICE:** The best advice I ever received was from Jess Pinson, at Starr Tech in Dallas, who hired me from college: When meeting someone, always be sincere, look them square in the eye and have a solid handshake. After that, anything is possible.

**OUTSIDE THE INDUSTRY, A DREAM**

**JOB:** My dream job outside of insurance would be to discover/manage new talent in the music industry.



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Issue: March 26 | Ad Close: March 14

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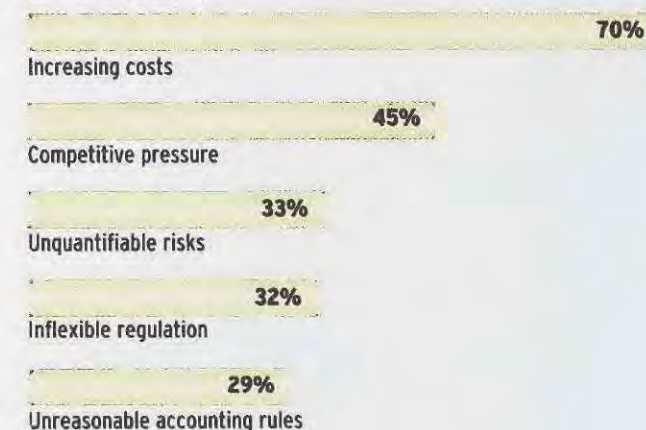
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## WHY PLANS ARE FROZEN

Defined benefit plan sponsors are closing or freezing their plans primarily because of the following:



Source: Pensions & Investments/Oxford University survey

# Defined benefit plans hamper corporate competitiveness: Survey

*DB plans must be restructured in order to survive*

By BEATRIX PAYNE

**OXFORD, England**—Corporate defined benefit plans are a barrier to their sponsors' economic competitiveness and are not funded or structured in a sustainable way, global pension experts contend.

Nonetheless, the plans still will be open to new members in 20 years, said many of these experts, responding to a survey on the future of pension plans that was sponsored by Pensions & Investments, a sister publication of *Business Insurance*, and Oxford University.

Gordon Clark, an Oxford professor, said corporate pension plans will have to be structured dramatically differently—with benefits restricted to only what the corporate sponsor can afford to provide—in order to

survive. Mr. Clark and Oxford doctoral candidate Ashby Monk oversaw the survey and analyzed the results.

Plans also might be open to only certain sectors of the workforce, Mr. Clark said.

Other survey highlights:

- More than half of the pension experts surveyed do not believe mature pension plans should be largely invested in bonds.

- Increases in costs and competition are causing employers to close or freeze plans.

- A marked lack of confidence in decision-making on investments was apparent among U.K. and Australian respondents.

- No consensus exists about who—e.g., plan sponsors or government—should rescue pension plans struggling to meet their long-term liabilities.

- Most of those surveyed aren't prepared to push losses forward to future generations, indicating to Messrs. Clark and Monk that the experts are willing to resolve funding problems now.

## Expert responses

The survey, conducted last month, drew responses from 1,605 pension experts in the United States, Canada, Australia, United Kingdom and Europe. (Messrs. Clark and Monk also are working on a Japanese version of the survey to extend the survey's findings in Asia. No further details were available.)

Respondents to the P&I/Oxford survey were a cross-section of corporate and public pension executives; money managers; trustees of corporate, public and union pension funds; and governmental regulators.

Most participants—1,058—had more than 10 years' experience each in the pension industry, giving Mr. Clark confidence that the findings reflect expert opinion from decision-makers.

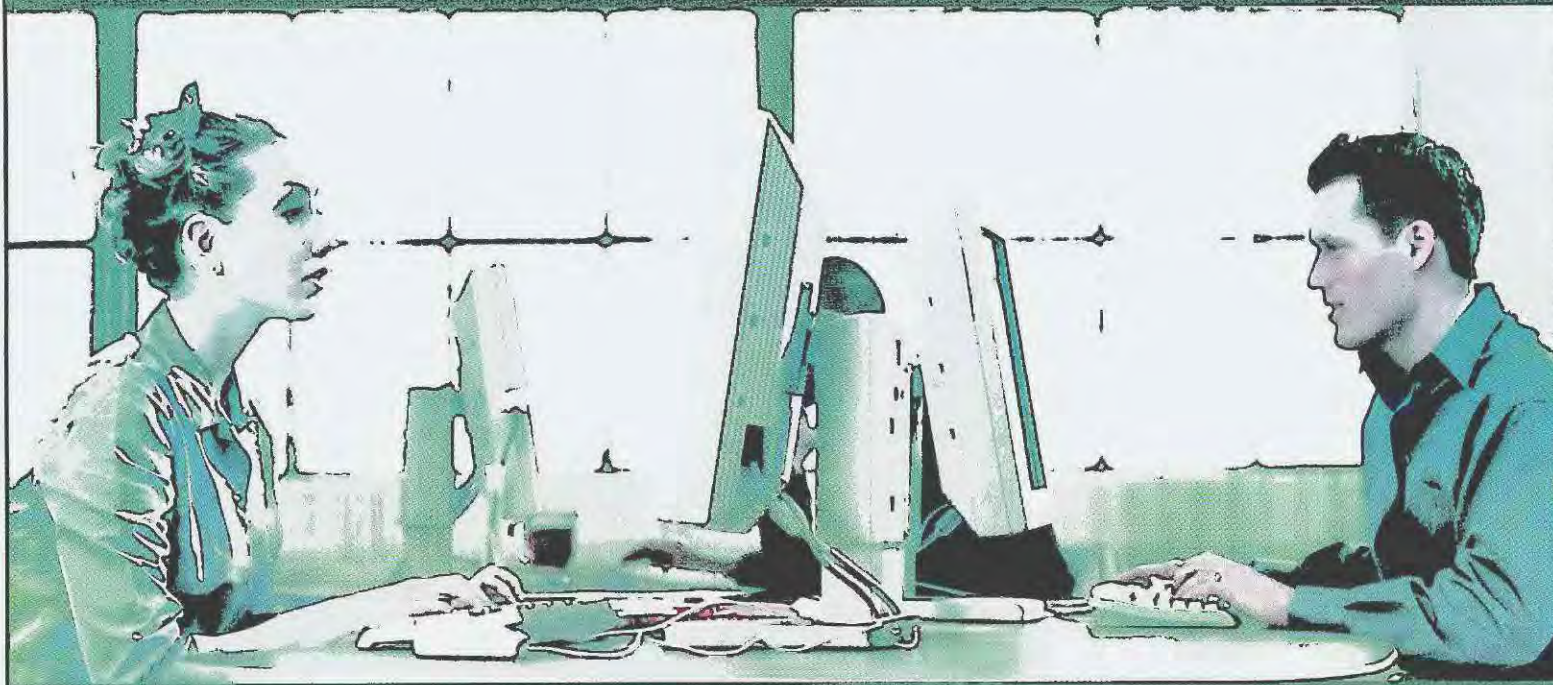
"We are dealing with people paid to have opinions on these issues. There is nothing off the cuff or superficial in their responses," he said. The findings should help encourage a more flexible understanding of how to secure the future of defined benefit plans, he added.

Mr. Monk said he was surprised by the degree of agreement (nearly three-quarters of respondents) that defined benefit plans are a drag on corporate competitiveness. Previous research among a smaller group of pension experts showed no agreement, he said.

Nearly half of the respondents said pension plans are being closed to new members or frozen because of competitive pressure. This raises the question of whether modern companies are the most effective sponsor of long-term liabilities, Mr. Monk said.

And, 65% predicted corporate pension plans will play a less significant role in retirement provision in 20 years than they do now.

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Continued on next page

CONTINUED FROM PREVIOUS PAGE

That's because in the modern global economy, older industrial corporations are now struggling to meet long-term pension liabilities that had seemed affordable under very different economic conditions in the 1950s and '60s, said Mr. Monk.

But, Messrs. Clark and Monk say it's not clear that today's corporations have a life cycle long enough to match the lengthy liabilities the pension promise creates.

Company executives will have to reconsider plan design to ensure the competitiveness of the plan sponsor and the long-term health of the pension plan, Mr. Clark said.

That more than half of the respondents expect defined benefit plans to still be open to new members in 20 years is a "bold prediction," Mr. Clark said. He noted experts in Canada, continental Europe and the United States were the strongest proponents of that view, while the majority of experts in the United Kingdom and Australia disagreed.

This geographic bias reflected the extent to which experts in Australia and, to some degree, the United Kingdom have debated the future of defined benefit plans and were "actively planning for a post-DB world," said Mr. Clark.

When told about the survey results, Gerry Degaute, chief executive of Royal Mail Pension Trustees Ltd. in London, said he was surprised how many respondents expect DB plans to remain open in 20 years. He said for this to happen, benefits will have to be capped and contributions shared.

### Older, younger needs

Another notable survey finding, Mr. Clark said, was the distinction many experts drew between the needs of older and younger workers: Most recognized that defined benefit plans don't meet the needs of younger workers.

And just over half said the model of intergenerational funding—where younger workers pay for the benefits of older workers in the belief that they will be supported by following generations—has negative effects for those expected to bear this legacy cost. This opinion was strongest among experts based in Australia, the United Kingdom and the United States.

While most respondents accept the theory of intergenerational funding, only a minority believes it works in practice, Mr. Clark said. Intergenerational funding, he noted, is at the heart of the defined benefit model.

"Hard questions have to be asked about the level of contributions: Who is making those contributions, what level of risk immunization is offered, and how to balance the interests of the older and younger workers," the Oxford professor said.

Another significant finding: Most experts still believe in the equity risk premium and are unwilling to allow a mature pension plan to invest mainly in bonds. "There is a lot of discussion in the (money management) industry of the perceived need to immunize, but we find people in the industry say, 'Let's stick with equities and risk-

based strategies,'" Mr. Clark said.

"I don't think the appetite for immunization is what people might have thought."

Experts with more than 10 years in the pension industry were most strongly opposed to a strategy of mainly bonds. Those veterans "have ridden the tiger from boom to bust and back again. That's a salutary lesson against short-termism," Mr. Clark added.

The issue of who should be responsible for financing the unexpected risks of defined benefit plans proved highly contentious.

While most respondents agreed that plan sponsors could not "take into consideration" all unforeseen risks stemming from defined benefit plans, there was strong disagree-

ment over whether plan sponsors should foot the bill for these unforeseen costs.

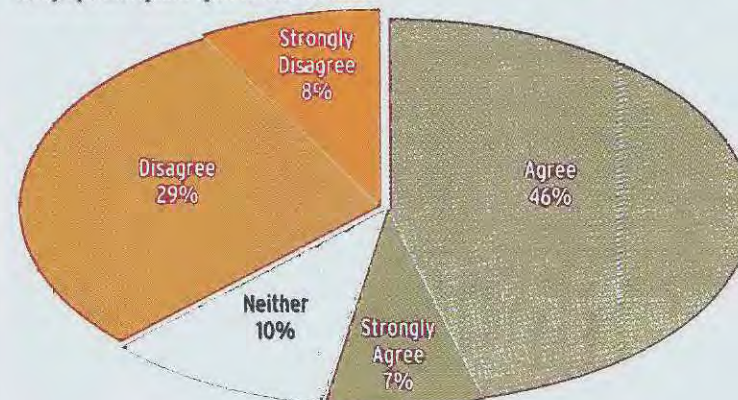
More than half of European experts said plan sponsors could not be responsible. But that's where any consensus ended. There was considerable disagreement among experts in the same sector, particularly among regulators and consultants.

"I don't think the model of holding the plan sponsor accountable for unlimited liabilities is viable for the future. The cost of that may be to destroy DB for younger workers," said Mr. Clark.

"If DB is to survive, it has to be redesigned to be more flexible to reflect unforeseen liabilities and different ways to adjust to those," he said.

## THE FUTURE OF DEFINED BENEFITS

Respondents' answer to the statement: In 20 years, there still will be private-sector defined benefit pension plans open to new members.



Source: Pensions & Investments/Oxford University survey

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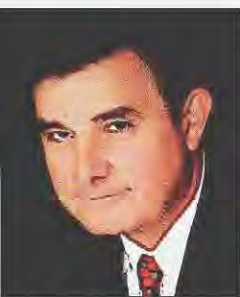


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# Business Insurance PERSPECTIVE

## Continuity belongs in business planning process

By William J. Kelly



William J. Kelly, a former president of the New York-based Risk & Insurance Management Society Inc., is president of WJK Advisory L.L.C. in Morris Township, N.J.

Terrorism, pandemics and hurricanes are just a few of the dreaded disasters that have generated growing corporate interest in planning for the potential effects of these and other types of catastrophes. Risk managers often are assuming such planning responsibilities and have many questions about the nature, scope and resource requirements involved.

Corporate contingency planning originally focused on technology, more specifically on the need to back up the corporate data center. In those early days, mainframe technology was the rule, and it was relatively simple to arrange for a duplicate backup site. Over time, technology became more and more widely distributed, morphing into an environment of networks in a server-dependent framework, making contingency planning far more complex and business-specific. It was also recognized that technology backup planning was only part of the answer. The businesses that were to access the backup sites also had to have the capability to recover their own operations.

A more holistic approach evolved: business continuity planning. However, this integration of business and technology planning engendered new potential conflicts between the per-

ceived needs of the business and the capacity of technology to respond.

The most fundamental obstacle to progress is that business continuity planning does not generate revenue in the short term. While the business manager's compensation and continued employment are usually tied to the achievement of such short-term revenue targets, planning requires the initial and ongoing commitment of time, people and financial resources to create, test and monitor. This represents both a direct expense and an opportunity cost, drawing resources away from the achievement of revenue targets.

Risk managers will quickly discover that managing these new responsibilities requires a very different approach. In the traditional role of risk funding, the risk manager exercises significant control. In risk response planning, the risk manager must attempt to influence business and support units, driving the planning process forward while competing for available resources.

Given the level of difficulty, it is always stressed that effective planning first requires the buy-in and support of executive management. However, even given such buy-in, management will view its first responsibility as sustaining and increasing the stock price through continuously improving income. When a corporation encounters earnings difficulties, support for

planning efforts can be pre-empted. The best use of executive management support is in institutionalizing continuity considerations into the business/systems planning cycle itself, such that no venture is entered into or system adopted without continuity issues having been thoroughly addressed.

An efficient way of achieving ongoing progress is to eliminate ad hoc discretion. This can be accomplished by integrating continuity planning into the business planning process itself, so that it becomes transparent.

In a large, complex organization, it is necessary to have some internal staff focused on the planning process. Ideally these resources should be at the corporate level, outside the potentially conflicting interests of business and technology. It may be of strategic value to associate this responsibility with that of managing the property insurance program, with its requisite focus on the business interruption and extra expense losses that the business continuity program is intended to address.

External experts should be engaged from the outset. There are highly experienced firms that may also offer physical facilities as alternative sites.

The risk manager should be aware of existing and developing regulations dictating business recovery capability requirements, for example, at one point, that banks were required to

recover their money transfer operations in three hours. The need for compliance can greatly accelerate progress.

A potentially time-consuming detour in the planning process lies in becoming overly concerned with the specific causes of potential business interruptions. The primary focus of planning should be on the potential failure of facilities, systems and personnel—the key operational dependencies.

The risk manager also should recognize that business continuity planning is one component of crisis management planning. The spectrum of potential corporate crises is far broader than business interruption, and the arsenal of potential responses to such crises goes well beyond contingency plans. However, the corporate infrastructure established to address business continuity can help to facilitate crisis management, and the implementation of plans can serve as critical component of the response to certain types of crises.

Business continuity planning has come a long way from simple data center backup. Involvement in business continuity planning represents an important opportunity for the risk manager to contribute to addressing operational risk and, ultimately, corporate crisis management.

## Pension law may actually boost defined benefit plans

By Mark Warshawsky



Mark Warshawsky is director of retirement research at Watson Wyatt Worldwide in Arlington, Va. Before joining Watson Wyatt last August, Mr. Warshawsky was assistant secretary for economic policy at the U.S. Treasury Department.

Several months after President Bush signed into law the most sweeping pension reform legislation passed in more than 30 years, the jury is still out on what changes the measure will bring for U.S. workers and their employers.

But one thing is clear: Initial concern that the new law was uniformly negative for defined benefit pension plans was off base. With improved funding provisions and more plan design options, the Pension Protection Act may actually lead companies and their workers back to defined benefit pension plans.

The new law takes a number of steps that are likely to make good on the bill sponsors' promise of improving retirement security for millions of Americans. Most well-known are provisions that require better, more consistent funding of defined benefit pension plans. But other, lesser-known provisions in the act could have as much impact. Companies will be allowed to make higher tax-deductible contributions to their pension plans and, in

many cases, will be given a longer period of time to make up any funding shortfalls. This allows employers to put more money into their plans when times are good and profits are high, and it also allows more time to fund the plan when times are tough.

As a recent Watson Wyatt Worldwide analysis confirms, the changes reduce the volatility of the minimum amount companies are required to contribute to their pension plans. In particular, they reduce the likelihood of sudden large spikes in required contributions, such as was experienced by many plan sponsors earlier this decade when interest rates declined and asset values dropped.

The new law also helps reduce the risk of pension defaults by restricting benefit increases and placing other constraints on poorly funded plans. That will reduce the exposure of the Pension Benefit Guaranty Corp. to future big losses. And that can only be good for defined benefit plan sponsors paying PBGC premiums as well as their employees and retirees.

In addition, the law, combined with

recent federal court decisions, allow companies to reconsider a once-popular option many had put on hold due to past regulatory uncertainty—hybrid plans, such as cash balance plans. These plans can offer the best of both worlds—the security of a company-backed pension with the portability of a 401(k) plan. We are already beginning to see companies seriously consider these plans.

All of these changes make defined benefit plans more attractive, but it is unclear if the new law will be as supportive of defined contribution plans, such as 401(k)s.

Defined contribution plans largely shift the risks of financing retirement from employers to employees by requiring employees to contribute toward the cost of benefits and to experience directly the consequences of investment decisions. These plans are sometimes underused by employees who do not enroll in the plans or do not make contributions or investment choices sufficient to fund their retirement. The law's efforts to remedy

that—by making it easier for employers to automatically enroll employees in these plans—will increase the cost and administrative burden of defined contribution plans for many employers. Simply increasing the number of participants in a plan means the employer has to manage the administration around more loans, hardship withdrawals and cash-outs, small accounts and turnover. Given these added burdens, it is unclear whether companies will opt to cover more of their workers with this automatic enrollment option.

Even if more employees are enrolled in defined contribution plans, research shows that such plans alone will not consistently meet employees' long-term retirement needs. For decades, employers have turned to defined benefit pension plans to manage their workforces, ensuring workers will be financially able to retire when their most productive years have passed. The Pension Protection Act gives employers a more supportive environment in which to provide such security. And that is certainly a step in the right direction.



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## Letters

CONTINUED FROM PAGE 8

while claims will be subjected to careful coverage and documentation criteria, the well-managed runoff entity, or its service provider, recognizes that maximum credibility to raise issues and successfully seek reasonable compromises will only materialize if properly covered claims are paid promptly.

A successful runoff strategy must recognize both the financial limitations inherent in the runoff entity and the good faith obligations attendant thereto. The best way to achieve both is through quantifiable, technically proficient and responsive claim management. Risk managers would be well-served to apply similar standards.

**Renny W. Hodgskin**

Senior Vp  
Cambridge Integrated Services  
Group Inc.  
Cranbury, N.J.

## Captive critique draws response

TO THE EDITOR: This is in response to John Bell's Jan. 29 letter, "Beware Misnomers in Captive References."

I am the author of the quarterly column to which the letter writer refers. Everything the learned letter writer wrote is basically true if the topic is a single-parent captive. However, my article addressed group captives.

As Mr. Bell may not know, the financial dynamics of group captives are far different from those of single-parent captives. Most importantly, because group captives share some risk, each member potentially benefits from the good loss experience of every other member.

So in this structure, it is quite possible for individual captive members to realize financial gains. In his letter, Mr. Bell, issued a challenge to me to come up with a "single significant benefit that would

accrete to the majority of captive owners." Here is the answer to your challenge.

**Donald J. Riggin**

Practice Leader,  
Alternative Risk Solutions  
Albert Risk Management  
Consultants  
Needham, Mass.

## Rights sacrificed for 'imagined safety'

TO THE EDITOR: Sally Roberts' commentary in the Feb. 12 edition of *Business Insurance* once again reminded me how we as a nation are allowing our values to change. We adopt a new mantra: Don't hold me responsible, hold someone else responsible.

Holding gun manufacturers responsible for how an individual chooses to use their products, or a fast-food restaurant responsible

because a person overeats, transfers the responsibility from the individual to a company, which is easier to control through laws or financial repercussions.

We migrate our value system to another point on the spectrum where the end, indeed, justifies the means. We sacrifice our freedoms for imagined safety. We teach our children to live their lives based on fear rather than reasonable caution.

Perhaps we need another leader as powerful as Dr. Martin Luther King who might say, "I am responsible for me; I am responsible for the values I hold, the decisions I make, the actions I take. I am responsible for the consequences of my action or inaction. I cannot blame the person who raised me, the person who harmed me, the door that was closed to me. It is in my power to institute change, and that change begins with me. I am the nation."

In her article, Ms. Roberts states,

"I've never been a big fan of such litigation" and then proceeds to criticize laws that make that litigation impossible. I shudder not so much because we have allowed confiscation of personal property because of alleged crimes without due process, but rather because of the Americans so willing to accept an invasion of civil rights to accomplish the end.

**Judy Wirzberger**

Fremont, Calif

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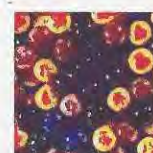
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# International NEWS

## U.K. pension regulator faulted over plan security assurances

By JONATHAN GARDNER

**LONDON**—The British government may have to ask taxpayers to foot a bigger share of the promised pension benefits of thousands of retirees whose employers went bankrupt, after the High Court ruled that regulators did not provide accurate information about the security of pension plans.

The court last week ordered the Department for Work and Pensions to reconsider a recommendation from the Parliamentary Ombudsman's office, a government watchdog, to restore benefits for between 75,000 and 125,000 retirees whose companies began closing down plans between April 1997 and March 31, 2004, with money potentially coming from public coffers.

Deciding on an appeal from the department last week, the court agreed with the ombudsman's finding that the department was guilty of maladministration of the law designed to guarantee solvency of pension funds.

In particular, the court found that the department, in its publications, had overstated how secure pension plans were following the enactment of a 1995 law that set minimum funding levels.

Because it found the information potentially misleading to consumers, the court ruled that the department needs to reconsider recommendations from the ombudsman that the government ought to restore all or part of the retirees' lost benefits, at an estimated present-day actuarial cost of as much as £3.5 billion (\$6.83 billion).

But the High Court also said that it may not have been entirely the

**"People who have lost their pension rights in these circumstances have suffered a great deal.... My aim will be to return to the House with our conclusions and our proposals for how we should proceed, and to do that before the conclusion of proceedings on the pensions bill."**

John Hutton, secretary of state for work and pensions



REUTERS

fault of the department that employees lost their benefits, possibly paving the way for individual judgments on how much, if any, the government would owe.

"The headlines have been, 'A victory for pensioners,'" said Stephen Yeo, a senior consultant in the London office of Arlington, Va.-based Watson Wyatt Worldwide. "But I think there's some comfort for both sides."

The case centers around a report published in March 2006 by Ombudsman Ann Abraham on flaws in the 1995 pension law that left members of final salary occupational pension plans at risk when those plans began to close.

The law established a minimum funding requirement that was designed to ensure adequate funding of future pension liabilities. The

government in subsequent years lowered the requirement on the advice of the actuarial industry, but did not raise it when advised to by actuaries, according to Ms. Abraham.

Outlined in the report are four cases of workers who lost pension benefits as a result of a company insolvency or dissolution of a pension fund, with another 200 complaints referred to the ombudsman from members of Parliament.

The workers said they believed their pensions were secure because of government publications touting the minimum funding requirements, which prompted the ombudsman's office to charge the Department for Work and Pensions with maladministration.

See **PENSIONS** next page

## Aussie regulator stays ex-exec's ban

By SARAH VEYSEY

**SYDNEY, Australia**—The Australian Prudential Regulation Authority has stayed a decision to disqualify a former Zurich Australia Insurance Ltd. executive.

APRA said that in February, it had banned John Butler from being or acting as a director or senior manager of a general insurer.

APRA said that Mr. Butler had applied to the Australian Administrative Appeals Tribunal for a stay of the decision to disqualify him as a result of the role he played in two financial reinsurance transactions between Zurich Financial Services Ltd. and General & Cologne Re Group Australia in 2000, which resulted in Zurich's profits being overstated.

Mr. Butler held a number of positions at Zurich in Australia, including chief financial officer, general manager of general insurance, chief operating officer, chief executive officer and a director.

APRA said that last week, the AAT ordered that the regulator's decision to bar Mr. Butler be stayed until March 2 when a reconsideration must be completed.



NEWSPIX



Former James Hardie Industries N.V. chairman Meredith Hellicar and former CEO Peter Macdonald (above) resigned from the building materials company last week.

## Ex-James Hardie execs face charges in Australia

*Authorities focus on asbestos fund disclosure*

By SARAH VEYSEY

**SYDNEY, Australia**—Australian securities regulators have begun legal proceedings against several former and current executives of James Hardie Industries N.V. related to the company's asbestos compensation fund.

Building materials company James Hardie, which formerly was based in Australia and now is incorporated in the Netherlands, set up a fund in 2001—the Medical Research & Compensation Foundation—to compensate people who contracted asbestos-related diseases from contact with its products.

The Australian Securities & Investments Commission said Feb. 15 that it had initiated civil proceedings in the New South Wales Supreme Court related to disclosures made by the company about the adequacy of the fund. ASIC seeks both financial penalties against the individual defendants and an order barring them from acting as company directors.

ASIC alleges that some executives of the company did not act with the requisite care and diligence when making certain statements about the adequacy of the MRCF, and ongoing asbestos-related liabilities faced by the company.

When it was established, the MRCF, provided \$293 million Australian (\$154 million) to pay all claims related to its former asbestos producing subsidiaries. Citing actuarial assessments, the company

attested to regulators that the fund was adequate to cover its liabilities. However, amid public criticism, the trust was later found to face a significant funding shortfall.

The company and the New South Wales government eventually reached a \$3.4 billion, 40-year compensation package for asbestos sufferers (BI, Dec. 12, 2005).

While that deal shielded James Hardie officers from being sued individually, it did not grant immunity from actions by securities regulators.

Among the defendants facing various allegations from ASIC are James Hardie Industries Ltd. and former James Hardie Chief Executive Peter Macdonald, according to ASIC's statement of claim, which was filed in the Supreme Court of New South Wales. Also named are several former James Hardie directors, including Michael Brown, Michael Gillfillan and Meredith Hellicar, the company's former chairman.

Those three individuals resigned from James Hardie's board last week.

In a statement, acting James Hardie Chairman John Barr said: "The Board acknowledges that these three directors have put the best interests of the company ahead of their own personal circumstances in deciding to remove any conflict of interest by bringing forward their resignations."

Matt Scroggins contributed to this report.

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## Commentary

# Another day older and deeper in debt

As I get older, I often joke about "what a drag it is getting old," reciting from some of my favorite rock 'n' roll wisdom. But my smile fades with each article I write about what we—the younger generation—are doing to the older generation. I'm beginning to fear that when I reach retirement that I won't have the wherewithal to pay for that proverbial "mother's little helper."

I recently had the opportunity to visit my 85-year-old Uncle Ralph just before he died. He was a member of "the Greatest Generation" who had served his country during World War II and spent his career working as a civil servant, which provided him the good fortune of having both a defined benefit pension plan and retiree medical benefits. And, having lived beyond the life expectancy of most men born in 1921, Uncle Ralph tapped those benefits for 20 years.

But most of my uncle's contemporaries and those who have followed him into retirement are not so fortunate.

Rather than recognizing the contributions of those who have completed their workforce lives, pensions are being pared and their employer-sponsored health benefits stripped away.

According to Mercer Human Resource Consulting, 19% of employers provide supplementary health benefits for Medicare-eligible retirees, down from 66% that did so in 1988.

At the same time that access to employer-sponsored benefits is becoming scarce, retirees are being asked to foot more of the bill. A recent survey by the Kaiser Family Foundation and Hewitt Inc. found that 80% of employers plan to increase retiree premium contributions in 2007.

Since the majority of employers have capped their annual contributions for retiree health benefits, health care costs will continue to shift to retirees. If health care costs double over the next 10 years—which is very likely given the rate of medical inflation—a person who retires today will have to pay twice as much for health benefits in the year 2017.

Those just entering the workforce or who have 20 or more years until retirement could feasibly prepare for their post-retirement health care expenses. But because many retirees are living on fixed incomes, with little or no savings, a growing number of them are going into debt to pay for their medical expenses.

According to the Employee Benefit Research Institute, the debt load for seniors 75 and older surged 160% between 1992 and

2004 to an average of \$20,234. In fact, the percentage of households 55 and older that are in debt grew faster than the overall population, EBRI found.

This should remind us about the futility of teaching old dogs. You can't introduce consumerism—a euphemism for patients paying more out of their own pockets—to people who are already chronically ill and, in some cases, barely clinging to life.

When I think about where it

**You can't introduce consumerism to those already chronically ill.**

all might lead, I am reminded of the 1968 cult movie "Wild in the Streets" in which a twentysomething rock star becomes president and orders everyone older than 30 exiled to internment camps.

But that wouldn't solve the pension or retiree health care crises because we'd still have to feed and clothe them and provide medical care when they got sick—unless we did something drastic like the solution imposed in the 1973 science fiction drama "Soylent Green." When the old are no longer contributing to society, we could just recycle them as fodder for the food supply. Then there's always the "Brave New World" solution—voluntary euthanasia.

I have no children, so I've informed my 17-year-old niece that she will be responsible for my care. She laughed and said, "I'll find you a nice nursing home, Auntie Joanne." Disappointed, I insisted that if she is going to put me in a home that it at least be someplace warm, like Hawaii. Her reply? "We'll just put you somewhere cheap and tell you it's in Hawaii. You'll be too senile to know the difference."

There's got to be a better way to treat our elders.



**JOANNE WOJCIC**

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## Pensions: Government agency faulted

CONTINUED FROM PREVIOUS PAGE

To address the problem, the report recommended that the government consider restoring core and noncore benefits to pensioners who were affected by the insolvencies.

The report acknowledges the cost of such a commitment but pointed out that the cost would likely decline over the years because of new legal protections that the government has been implemented since then.

The report also suggests that the

government consider consolatory payments and apologies to pension fund trustees for the maladministration.

The government rejected most of the Ombudsman's findings, thrusting the case into court.

### Parliamentary action

A decision in the case comes as Parliament is considering reform of its pension law, and the plight of those affected by the Ombudsman's report could play a role in negotiations over the final form of that legislation.

Following the ruling, Secretary of State for Work and Pensions John Hutton told the House of Commons that he would come forward with a new proposal.

"People who have lost their pension rights in these circumstances have suffered a great deal," Mr. Hutton said.

"My aim will be to return to the house with our conclusions and our proposals for how we should proceed, and to do that before the conclusion of proceedings on the pensions bill," Mr. Hutton said.

## Judges: Panel to select top risk honorees

CONTINUED FROM PAGE 4

Risk Management Honor Roll.

- Ryan Brown, director-insurance and enterprise risk management at Peabody Energy Corp. in St. Louis. Mr. Brown, former director of risk management and fleet operations at Raben Tire Co. in Evansville, Ind., was a member of the 2006 Risk Management Honor Roll.

- Robert S. Cubbin, president and chief executive officer of Meadowbrook Insurance Group Inc. in Southfield, Mich. Mr. Cubbin represents midsize brokerages on the panel.

- J. Patrick Gallagher Jr., president and CEO of Arthur J. Gallagher

& Co. in Itasca, Ill. Mr. Gallagher represents large brokerages on the panel.

- Debra Griffith, director of the property division of the Irving, Texas-based Boy Scouts of America. Ms. Griffith was the 2006 Risk Manager of the Year.

- William Hold, co-founder and president of the National Alliance for Insurance Education & Research in Austin, Texas. The National Alliance conducts research and educational programs relating to risk management and insurance, including the Certified Risk Managers designation program. Mr. Hold, a longtime professor of insurance and risk management, repre-

sents educators on the panel.

- David H. Long, president, commercial markets, at Boston-based Liberty Mutual Group Inc. Mr. Long represents mutual insurance companies on the panel.

- Kristian P. Moor, executive vp, domestic general insurance, at American International Group Inc. in New York. Mr. Moor represents stock insurance companies on the panel.

For information and a nomination form for the 2008 competition, please visit [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY) or request one from BI Editor Regis Coccia by sending an e-mail to [rcoccia@BusinessInsurance.com](mailto:rcoccia@BusinessInsurance.com).

## Criteria for choosing Risk Manager of the Year

Ten criteria are used to score the nominations for the annual *Business Insurance* Risk Manager of the Year Award and Risk Management Honor Roll.

The panel of independent judges scores each nominee on a scale of one to 10, according to how well he or she:

- Establishes and implements an effective risk management program within the organization.
- Tackles and solves one or

more major problems.

- Innovatively applies the diverse tools of risk management and insurance.

- Creatively and effectively uses insurance markets to serve the organization's needs.

- Establishes a workable intelligence system inside and outside the organization, culminating in a flow of information about events and activities that affect risk management and insurance.

- Skillfully performs the functions of management, including planning, organizing, directing and controlling.

- Achieves the most effective program at optimum cost.

- Develops technical expertise in risk management.

- Exhibits an attitude and performs activities fostering advancement of the risk management profession.

- Develops in his or her career.

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\*Erdos & Morgan Survey of 2005 RIMS Attendees.

## SCOR: Deal may reduce buyers' choices

CONTINUED FROM PAGE 3

have previously stated that they are not on the lookout for acquisitions and other smaller reinsurers may not have sufficient resources to buy Converium, he said.

Some cedents might be concerned that a deal would mean less choice of reinsurance capacity, said Mr. Grant, but the fact that both SCOR and Converium are mid-sized—rather than very large—reinsurers is likely to lessen those fears for other reinsurance buyers.

A tie-up between SCOR and Converium would mean less choice for reinsurance buyers, said to Jean-Michel Lewis, director of reinsurance at London-based broker Heath Lambert Group.

A combination of the two would result in some overlap, he noted, as both reinsurers already participate on some of the same reinsurance contracts.

### Similar portfolios

If SCOR does succeed in buying Converium, a big challenge would be the integration of the two groups, according to S&P's Mr. Grant.

In some sense the two have similar portfolios, although SCOR is stronger in the French market than Converium and Converium has a stronger position in the Swiss and German markets than SCOR, he said.

SCOR and Converium both have fought back in recent years from

rating downgrades linked, in part, to reserving problems caused by U.S. casualty business written between 1997 and 2001.

SCOR in August 2005 bounced back into the ranks of A-rated reinsurers when S&P and A.M. Best Co. Inc. restored A- ratings on the company.

Converium in October announced the sale of its U.S. reinsurance operations, which were in runoff—a move that was welcomed by rating agencies.

But the company must yet resolve outstanding finite reinsurance issues with regulators in the United States before an upgrade to A is likely, sources say. Converium is rated BBB+ by S&P and B++ by Best.

## Antitrust: Repeal complicates OFC debate

CONTINUED FROM PAGE 3

Insurance Cos., said repeal of the antitrust protection could have a broad impact.

"The bill as written would have the potential to reduce availability and increase costs across all lines of insurance," Ms. Gackenbach said. "What's going to happen is that the restrictions on the ability to exchange data and possible restrictions on the ability of companies to work together on other joint efforts could reduce the availability of coverage for large risks and could preclude insurers moving into additional lines."

The exemption is quite limited, pointed out Claire Wilkinson, a vp at the Insurance Information Institute in New York.

McCarran-Ferguson was designed to ensure "the pre-eminence of state regulation, rather than to free insurance companies from federal antitrust laws. It has a very limited antitrust exemption," Ms. Wilkinson said.

"Repeal would likely reduce competition," she added. "Generally the

feeling is that it would impact smaller insurers disproportionately."

Repeal could complicate the OFC debate, said Joel Wood, senior vp at the Washington-based Council of Insurance Agents & Brokers, in an e-mail interview.

That's because "most legislators link McCarran and OFC into the same debate about state vs. federal. Some of this is rooted in the old industry orthodoxy about the sanctity of McCarran. I'm not suggesting the proposed bill wouldn't be disruptive, but it really isn't tantamount to the punishment some of its authors intend. And perversely, it could help educate members on the complexity and range of regulatory issues that can and should be considered," Mr. Wood wrote.

Ben McKay, senior vp in the Washington office of the Property Casualty Insurers Assn. of America, noted that the repeal bill "adds federal regulation to anything that can be considered 'unfair competition,' but it fails to define 'unfair competition,' so it could mean anything."

That would represent the "worst possible OFC" for OFC supporters, he said. "You get all the regulation and none of the benefits."

Repeal "could mean a lot" for commercial buyers because, without McCarran-Ferguson, "you could see costs rise and competition diminish," Mr. McKay said.

Any repeal would have to be tied to modernizing insurance regulation overall, said a spokesman for the American Insurance Assn. in Washington.

"Repealing McCarran-Ferguson without also addressing the need to modernize insurance regulation could set up a situation where legitimate state-regulated data collection could be subjected to litigation," the spokesman said. "That in turn could create chaos. Insurers are mandated by states to provide information for such things as workers compensation, for example, and repealing McCarran could raise the possibility of putting insurers in a position of complying with state regulation but being challenged for violating federal antitrust laws."

## Simulator: Data to improve cat modeling

CONTINUED FROM PAGE 3

expected in about a year and will be publicly available in published academic papers, Mr. Douglas said. The data should be useful in its published form to insurers assessing their exposures, and may also be used in future updates of catastrophe modeling programs, Mr. Douglas said.

"We are right at the first stages of it," he said.

The Earth Simulator was built by the Japanese government in 2002 and is managed by the Japanese Agency for Marine-Earth Science and Technology. With 640 processor nodes, the computer occupies a space roughly equivalent to four tennis courts, Mr. Douglas said.

In 2005, academic and government researchers formed the U.K.-Japan Climate Collaboration, and

began using the Earth Simulator to run a global climate model developed by the U.K. government's Hadley Centre for Climate Change. The Hadley Centre model, known as HadGEM, provided data for the Intergovernmental Panel on Climate Change's recent report concluding that human activity is causing global warming.

Now, Willis Research Network is working with these scientists and the University of Reading's Walker Institute for Climate System Research in Reading, England, to tailor the HadGem model to the needs of insurers and reinsurers.

The three-year research project aims to use the Earth Simulator to analyze the likely frequency and severity of hurricanes and typhoons, along with changes in rainfall patterns, under different climate change scenarios. The project will provide better data for catastro-

phe modeling programs and will improve seasonal forecasts and climate change projections, those involved say.

While the Earth Simulator models global climate patterns, its power and improved simulation techniques will allow researchers to model regional weather and extreme events such as hurricanes, according to Willis.

Insurers, in turn, will be able to use the data to prepare for the levels of catastrophe exposure that may come with climate change.

"We expect to give the market a much better view of likely events from realistic climate change scenarios," Mr. Douglas said.

Willis formed the Willis Research Network to collaborate with scientific institutions involved in studies of natural hazards and their impact. Partners in the network include seven U.K. universities.

## Court: Says its earlier precedents were confusing

CONTINUED FROM PAGE 4

ants' concerns sufficiently.

In its decision, the 2nd Circuit panel ruled that the lower court did not apply the correct evidentiary standard and inappropriately classified the supervisor's comments as "stray."

In what attorneys called an unusual admission, the appellate panel assumed some blame for the lower court's reasoning by referring to the panel's earlier rulings on the issue as possibly "somewhat confusing."

"In some instances we have found the evidence legally insufficient notwithstanding the incidence of discriminatory remarks. To explain why the evidence was nonetheless insufficient, we noted that the remarks were 'stray.' That location represented an attempt—perhaps by oversimplified generalization—to explain that the more remote and oblique the remarks are in relation to the employer's adverse action, the less they prove that the action was motivated by discrimination." For example, the court suggested that a discriminatory remark by someone without any authority to terminate an employee could be classified as "stray."

The appellate panel continued: "We did not mean to suggest that remarks should first be categorized either as stray or not stray and then disregarded if they fall into the stray category."

The appellate panel said the lower court also erred by ruling that the evidentiary value of the supervisor's remarks depended on how offensive they were.

For example, while the supervisor's comment about Ms. Tomassi's potential for working well with

seniors was inoffensive, it "had a strong tendency" to show he believed that Ms. Tomassi's age did not make her "well-suited" to interact with Insignia's younger tenants, the court ruled.

Ms. Tomassi is seeking unspecified damages, including back and future pay, punitive damages and other damages allowed by the federal Age Discrimination in Employment Act, said her attorney, Christopher Kelly of Reppert Kelly L.L.C. of Basking Ridge, N.J. Total damages could exceed "seven figures," he said.

Insignia's attorney did not return calls.

The ruling underscores that "even people who think they are being nice could be acting in a discriminatory way," Mr. Bertocchi noted.

Ms. Klein said that risk managers who are aware of supervisors in their organizations who have made similar comments to subordinates might save their organizations costly court awards or settlements by arranging to remove those supervisors from the process of terminating employees.

Companies should turn over termination decisions to their human resources departments and ensure that it does not rely on the records or recommendations of the supervisors, she said.

Mr. Bertocchi recommended that risk managers also ensure that supervisor training programs specifically identify topics that supervisors should avoid discussing with subordinates.

*Patricia McCarthy Tomassi vs. Insignia Financial Group Inc. et al., 2nd U.S. Circuit Court of Appeals, Feb. 16; No. 05-6219-cv.*

## Cash balance: Others consider pension change

CONTINUED FROM PAGE 4

fit program that employees will value.

These changes came at the conclusion of a year-long, in-depth review of its benefit plans, SunTrust President and CEO James M. Wells III wrote in a brochure distributed to employees.

"At the heart of the changes is a new way of thinking about our retirement program," Mr. Wells wrote. "In the past, retirement benefits revolved around planning for an employee's retirement date. Today, retirement planning revolves around building financial resources that employees take with them throughout their careers."

### Plan attraction

For example, one of the attractions of cash balance plans for employees is that they can take their accumulated benefit—regardless of their age—as a cash lump

sum when they leave. By contrast, traditional pension plans typically do not allow employees to collect their benefit until they reach retirement age, with the benefit then paid out as a monthly annuity.

Last year, paper packaging and office products company MeadWestvaco Corp. of Richmond, Va., became the first major employer to convert a traditional pension plan to a cash balance plan after Congress, as part of the Pension Protection Act, gave new cash balance plans the green light so long as they met a few basic conditions (BI, Nov. 13, 2006).

Other major employers also are considering converting traditional plans to cash balance plans, benefit consultants say.

Employers now sponsor somewhere between 1,200 and 1,500 cash balance plans, with nearly all of those plans established between the mid 1980s and the end of the 1990s.

# RSA: Deal approval subject to numerous conditions

CONTINUED FROM PAGE 1

conduct discovery. Ruling otherwise, "we think would have led to a different result," he said.

A statement issued by Janno Lieber, World Trade Center project director for New York-based Silverstein Properties, a major RSA USA policyholder, said, "We are disappointed by today's decision and are reviewing our options."

Royal & SunAlliance said in a statement that the deal's approval is subject to any number of conditions "which require further consideration and may have a bearing on the completion of the transaction."

A spokesman for Royal & SunAl-

endorsement of the business practices of the British parent company. The actions of Royal UK, though legal, are unfortunate and not the actions of fair businesspeople."

Mr. Denn said the proposed \$287.5 million capital infusion "may be barely sufficient to cover all outstanding claims."

However, although major policyholders "would like me to gamble that I can get an even better deal by rejecting the application," there is no evidence to suggest they are correct, and there are a "vast number of other policyholders...who stand to lose everything if I accept the objectors' request to roll the dice and end up being wrong."

Among the conditions presented by Mr. Denn for the deal's approval is that Royal & SunAlliance "submit to personal jurisdiction in the courts of this state for the purpose of resolving any legal claims brought by policyholders."

Mr. Denn also asks that RSA and its relevant units submit to the Delaware Insurance Department's ongoing jurisdiction with respect to its obligations, including making reinsurance claims.

Mr. Denn is also requiring that no dividends be paid to the holding company until "all policyholder claims reasonably capable of resolution have been paid" and that there are additional funds to pay claims that "cannot be resolved in a timely fashion," he said.

He also requires that no member of management receive any compensation beyond base salary until this determination has been made.

In addition, Mr. Denn said he will name a claims monitor to hear all policyholder complaints and to monitor indemnity reserve adequacy, litigation management, claims denial and other aspects of "sound claims practice." The claims monitor will report to the commissioner monthly.

Observers say the condition that RSA submits to personal jurisdiction in Delaware courts is unusual in the United States.

Rachel S. Kronowitz, an attorney with Gilbert Heintz & Randolph L.L.P. in Washington, said it will enable policyholders in the future to pursue lawsuits against RSA in the United States rather than the United Kingdom, "which may not be as hospitable a jurisdiction for them." This "can only be advantageous to policyholders," said Ms. Kronowitz.

Robert M. Horkovich, a partner with Anderson, Kill & Olick P.C. in New York, said the only other place he has seen this provision is in London market policies. "It is unusual and it's very helpful" to policyholders, he said. Without it, "it becomes very difficult to sue foreign insurance companies," he said.

Bruce C. Shulan, managing director at Stamford, Conn.-based Princeton Partnership L.L.C., said, "I think it's the result of specific, underlying factual circumstances, which gave the commissioner good cause to want to make sure that claimants have access to Royal UK in the United States."

# Growing interest in Roth 401(k)s

By JERRY GEISEL

While more U.S. employers intend to offer Roth 401(k) savings plans, only a small percentage of employees now in the plans are making contributions, according to a new survey.

Currently, just 22.4% of employers have added a Roth feature to their 401(k) plans, the Profit Sharing/401k Council of America found in its survey of 429 employers. Such contributions are made on an after-tax basis, but the contributions and investment income are not taxed when distributed so long as certain

conditions are met.

Roth 401(k) plans were authorized under a 2001 law that allowed

**61% of employers are planning or considering to offering a Roth feature in their 401(k) plans**

companies to offer them starting Jan. 1, 2006, but also barring new contributions after Dec. 31, 2010. Initially, companies held back on

adding the feature until Congress made the plans permanent, which legislators did last year as part of a broader pension funding reform bill.

Now, though, 61% of employers that do not offer a Roth feature in their 401(k) plans are either considering or are planning to do so, according to the Chicago-based PSCA.

Among those employers with a Roth feature in their 401(k) plans, just 7.9% of eligible employees made Roth contributions in 2006—the first year such contributions were allowed.

# Punitives: Award limit remains unclear

CONTINUED FROM PAGE 1

"that unnecessarily deprives juries of proper legal guidance," he wrote for the majority.

The case involved a suit brought against Philip Morris by Mrs. Williams, the widow of a longtime smoker. A jury awarded Mrs. Williams \$821,000 in compensatory damages and \$79.5 million in punitive damages after her attorney asked jurors to think about how many other people had been harmed by cigarette smoking in Oregon over 40 years. Punitive damages that were nearly 100 times the amount awarded in compensatory damages appeared to violate an earlier ruling by the Supreme Court that punitive damage awards in excess of single-digit multiples of the underlying compensatory damages were generally unacceptable. But the Oregon Supreme Court disagreed, and reinstated the \$79.5 million in punitive damages.

Philip Morris appealed to the U.S. Supreme Court, asking the justices to decide whether the trial court should have told jurors they could not punish the defendant for injury to people not before the court and whether the nearly 100-to-1 punitive/compensatory ratio was "grossly excessive."

The nation's highest court returned the case to the Oregon Supreme Court. In doing so, it declined to answer the second question and said the Oregon Supreme Court's actions could result in a new trial or change in the amount of punitive damages awarded.

"I think that the bottom line is there's going to be more litigation. This is moderately good news for potential tort defendants, with the emphasis on moderately," said Michael Krauss, a tort law expert and law professor at the George Mason University School of Law in Arlington, Va. "The moderately good news is that court says explicitly for the first time that the amount of punitive awards can only be a function of the harm done to the plaintiff."

"That's new—they've never said that before. That is a pro-defendant statement," Mr. Krauss said.

But "they did qualify this—they reiterated that harm done to other than the plaintiffs is admissible for

the purpose of deciding whether punitives should be awarded, not for the purpose of deciding how much should be awarded," he said.

"This distinction is going to be a very difficult one to make," said Victor Schwartz, general counsel of the American Tort Reform Assn. in Washington. "Once the bell rings, it's hard not to hear it. It could muddy the waters because it's a dis-

**'The bottom line is that this decision should change the way punitive damage cases get tried.'**

Lori Nugent, Cozen O'Connor P.C.

inction in the reality of the jury world that may not make an actual difference."

"How do we know that (jurors have) disregarded it?" asked Mr. Krauss. "How do we know that they've done their job correctly?"

The attorney who argued Mrs. Williams' case before the high court said the court rendered "a very narrow decision that will be quickly forgotten."

The court said "you can consider harm to others for purposes of reprehensibility, but not for punishment," said Robert S. Peck, president of the Center for Constitutional Litigation P.C. in Washington. "That's an undisputed proposition. We said as much in our brief; the Oregon Supreme Court said the same thing. No court has really held otherwise."

"The court was basically slaying dragons that don't exist. As a practical matter, the only thing this means is that you can't multiply the harm by the number of presumed victims," Mr. Peck said.

But other observers disagreed.

"The bottom line is that this decision should change the way punitive damage cases get tried," said Lori Nugent, partner in Philadelphia-based Cozen O'Connor P.C.'s Chicago office. "First, there can be no punishment based on alleged injuries to other parties. Second, speculation about purported injuries to nonparties should be pre-

cluded under this decision; evidence will be required. No more will plaintiffs' counsel be permitted to exhort the jury to send a message that defendants' conduct that purportedly caused injury to entire classes of people must be punished."

Robin Conrad, senior vp at the National Chamber Center Inc. in Washington, called the decision "a short decision with long legs. This issue of punishing for harm to nonparties is a big concern to a number of industries."

"It's really not fair for defendants to litigate these cases with their hands behind their back, to allow the plaintiffs to have all of the benefits of class action without allowing the defendants to have the defenses of class action."

Ms. Conrad said that "really good jury instructions" could help prevent jurors from using information about harm to nonparties permitted in determining reprehensibility of conduct when determining punitive damages. Courts could also exclude "the evidence if it's going to be used for the wrong purposes," she said.

*Philip Morris USA vs. Mayola Williams. U.S. Supreme Court. No. 05-1256. Decided Feb. 20, 2007.*

## ADVERTISER

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## CONDITIONS OF SALE

■ RSA USA's parent, London-based Royal & Sun Alliance Insurance Group P.L.C., must submit to "personal jurisdiction" in Delaware state courts to resolve any legal claims brought by policyholders.

■ A claims monitor—who will report monthly to the insurance commissioner—will be available to receive policyholder complaints and monitor claims payments.

■ Insurers will not pay any dividends until the Delaware Insurance Department concludes all policy claims reasonably capable of resolution have been paid.

■ No management personnel will be paid compensation beyond base salary until the aforementioned determination has been made.

■ RSA must submit to the Delaware Insurance Department's ongoing jurisdiction with respect to obligations, including making reinsurance claims.

liance's U.S. operations said in a statement, "Clearly, the Delaware commissioner has ruled in favor" of the transaction "as being in the best interest of policyholders. However it is a lengthy ruling—we are still working through the decision and have nothing to add at this point."

Charlotte, N.C.-based Arrowpoint Capital Corp., a vehicle established by RSA USA's management team, announced in September 2006 its agreement to acquire Royal Indemnity Co. and other members of RSA USA's insurance pool for \$300 million. RSA said upon completion of the transaction, it would contribute \$287.5 million in capital to U.S. entities.

Major policyholders, which also include Detroit-based General Motors Corp., have protested the deal, contending it would leave RSA USA with inadequate capital.

Earlier this month, following a public hearing, Mr. Hamermesh recommended that Mr. Denn approve the deal.

In issuing his order conditionally approving the deal, Mr. Denn said, it "should not be mistaken for an

## News In Brief

CONTINUED FROM PAGE 1

that certain former executives were being investigated by the Securities and Exchange Commission as part of the SEC's probe into RenaissanceRe's finite-reinsurance related restatement of earnings. Plaintiffs also alleged the defendants—the company and a number of current and former officers—violated federal securities laws by knowingly issuing false and misleading statements regarding the company's financial state, which had the effect of artificially inflating the reinsurer's share price.

### Health care cost hikes holding steady: Study

Average annual health care cost increases for most large U.S. employers are expected to hold at 8% through 2008, according to a forthcoming report by Watson Wyatt Worldwide and the National Business Group on Health. The 8% increase projected for both 2007 and 2008 mirrors that of 2006, but is a decline from 8.5% in 2005, 10.6% in 2004 and 13% in 2003.

### RMS unveils model for flu pandemics

Risk Management Solutions Inc. on Tuesday has released a probabilistic model for assessing the risk of influenza pandemics across multiple countries. The RMS Infectious Disease Model provides nearly 2,000 potential pandemic scenarios from which risk managers and life and health insurers can quantify mortality, the catastrophe modeler said in a statement. The model covers 31 countries and takes into account factors such as the likelihood of a pandemic happening, the location of an outbreak and how deadly an outbreak is likely to prove.

### Calif. comp claimants get good care: Survey

Most California workers injured on the job receive quality medical attention, concludes the state's first comprehensive study of workers compensation health care since reforms took effect in 2004. The workers comp reforms required the introduction of evidence-based medicine and treatment guidelines,

but those measures have not reduced the quality of available care, according to the study that the UCLA Center for Health Policy Research conducted for the California Division of Workers' Compensation. The study, based on a telephone survey of 1,001 employees and responses from 1,096 medical providers, along with 20 payers, found that 82% of injured workers reported having access to quality medical care for their injury.

### Guy Carp Chairman Zaffino retires

Salvatore D. Zaffino has retired as chairman of Guy Carpenter & Co. L.L.C. Mr. Zaffino, 61, will continue in the role of nonexecutive chairman of New York-based Guy Carpenter, working as a consultant with senior management at both Guy Carpenter and parent company Marsh & McLennan Cos. Inc. Mr. Zaffino was named Guy Carpenter chairman in 1999. He previously served as chairman and chief executive officer of Sedgwick Re North America from 1993 to 1998, when it was acquired by MMC. From 1985 to 1993, he was chairman of Crump Re, an organization he created and continued to manage until its merger with Sedgwick Re.

### DOL must answer suit over rule delay: Court

The U.S. Department of Labor must respond by mid-March to a lawsuit filed by labor groups demanding that the agency end its lengthy delay in issuing a final rule requiring employers to pay for employees' personal protective equipment, a federal appeals court ruled. The Occupational Safety and Health Administration proposed the rule in 1999 after the Occupational Safety and Health Review Commission had ruled a few years earlier that OSHA's existing safety equipment standard could not be interpreted to require employees to pay for their own protective gear.

### Noted

Richard Hynes has been named president and chief executive officer of Willis Canada. Mr. Hynes, managing partner of the brokerage firm's Toronto office, will succeed Wole Coaxum, who is leaving the firm to pursue other opportunities....Cisco Systems Inc. and Apple Inc. have settled their trademark dispute, entering into an agreement that allows both companies to use the iPhone brand name on their products worldwide.

## HSA: Complex rules guide transfer of HRAs and FSAs

CONTINUED FROM PAGE 1

- Missing deadlines by as little as one day can result in the transferred balance not only being taxed, with the 10% tax penalty being added as well.

- While transfers to HSAs from grace-period FSAs will receive favorable tax treatment—as long as certain conditions are met—the IRS rules close the door on the same tax treatment when moving from conventional FSAs. Grace-period FSAs allow employees to tap balances

**'We are stuck with some very complicated rules.'**

Jeff Munn, Hewitt Associates Inc.

that remain at the end of a plan year to pay for expenses incurred during the first 2½ months of the next plan year.

Indeed, the rules for FSA transfers lend themselves to confusion. Grace-period FSA balances must be rolled over at the end of the plan year to receive favorable tax treatment. However, if employees in conventional FSAs wait until the end of the plan year to roll over a balance, it will be forfeited.

### Who's to blame?

While the rules are complicated, regulators are not solely to blame, experts say.

In crafting the legislation, which includes other pro-HSA provisions such as allowing larger contributions, Congress created plenty of problems, too. For example, to prevent possible abuse, the law stipulates that the transferred HRA or FSA amount must be either the balance at the end of a plan year or as of Sept. 21, 2006—the date when the House Ways and Means Committee considered the legislation—whichever is less.

For employees who have built up big balances in their HRAs, that could mean losing the bulk of those balances if their employers replace HRAs with HSAs.

There is no requirement that employers replace HRAs, which the IRS authorized in 2002, with HSAs, which became available in 2004. Still, many experts believe HSA-

linked, rather than HRA-linked, plans are the wave of the future for employers moving to CDHPs because their design may give employees stronger financial incentives to be more careful consumers of health care services.

While HRA balances typically are forfeited when employment is terminated, HSAs are owned by employees, who can continue using the HSA to meet their medical expenses, including those incurred in retirement.

At the moment, though, there has been no wholesale movement from HRA-linked CDHPs to HSA-linked plans. Given that many employers only recently added HRAs, they would be reluctant to move to another new design so quickly, said Tom Hrick, national director-HSA product distribution with ACS/Mellon Financial Corp. in Pittsburgh.

Some companies are offering what Towers Perrin's Mr. Savanc described as a "blended" approach in which both HSAs and HRAs are offered and employees can choose either plan.

For employers that make the switch from HRAs to HSAs and allow employees to roll over HRA balances to HSAs, a detailed set of rules must be followed for the transfers to receive favorable tax treatment.

For example, by the end of a plan year, an employer must amend its plan to permit rollovers, an employee must elect the rollover and the balance must be frozen. Additionally, the funds must be transferred by the employer within 2½ months after the end of a plan year and result in a zero HRA balance. Timing is crucial for the transfer to receive favorable tax treatment. Take the case of an employee who enrolls in an HSA-linked high-deductible health plan on the second day of a month in which he or she was first eligible to enroll in the plan.

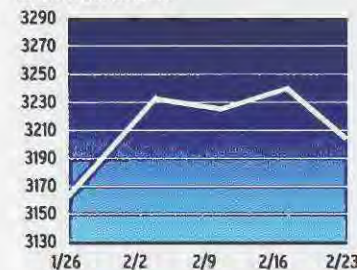
That participant is not considered eligible to make any HRA transfers until the first day of the following month. If the HRA distribution occurs at any time during the month the employee enrolled in the high-deductible plan, the amount would be added to the employee's taxable income plus a 10% penalty. To prevent that result, the distribution could not occur until the start of the following month.

## Stock Index

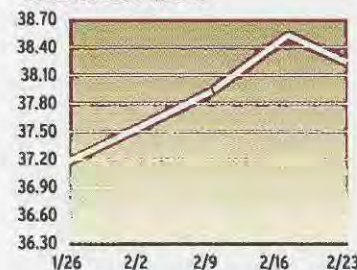
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

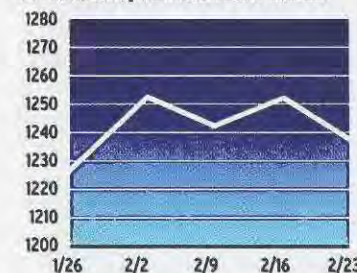
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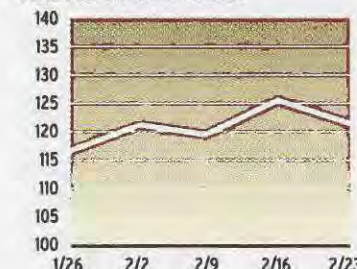
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### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

|                       |          |          |
|-----------------------|----------|----------|
| <b>BI STOCK INDEX</b> | 3207.60  | ↓ -0.99% |
| <b>DOW JONES</b>      | 12647.48 | ↓ -0.94% |
| <b>S&amp;P 500</b>    | 1451.19  | ↓ -0.30% |

### LARGEST GAINS

|                      |       |
|----------------------|-------|
| Fairfax Financial    | 9.44% |
| Hilb Rogal & Hobbs   | 6.71% |
| UNICO American Corp. | 5.39% |
| PMA Capital Corp.    | 4.08% |
| Tower Group Inc.     | 3.70% |

### LARGEST LOSSES

|                            |        |
|----------------------------|--------|
| EMC Insurance Group        | -5.19% |
| Gainsco Inc.               | -4.21% |
| MBIA Inc.                  | -3.23% |
| Willis Group Holdings Ltd. | -2.93% |
| Ohio Casualty Corp.        | -2.40% |

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

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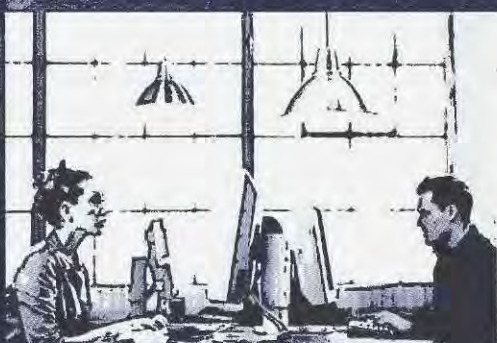
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## Braindead? Sip of cocoa may clear the cobwebs

Chocoholics have another excuse to indulge their passion: Cocoa may make people's brains work better.

Because cocoa is rich in flavanols—an antioxidant also found in red wine, green tea and blueberries—it increases blood flow to the brain and may improve the thought process, say researchers from the University of Nottingham, England.

They also suggest cocoa may be used to treat some forms of dementia and strokes.

The findings, announced in San Francisco at the annual meeting of the American Assn. for the Advancement of Science, add to earlier studies that found certain types of chocolate can lower blood pressure and perhaps prevent some forms of cardiovascular disease.

A year ago, for example, a study in the Netherlands found that older men who ate the equivalent of one-third of a chocolate bar every day had lower blood pressure and a reduced risk of death.

But it might be wise to keep the more recent findings in perspective. The research was partly funded by Mars Inc., the McLean, Va.-based candy maker that began marketing a line of "healthy" chocolate products last year under the CocoaVia brand.

Lead researcher Ian Macdonald also had two cautions: The cognitive skill boost lasted only two to three hours and the cocoa used in the test contained flavanol levels that he said are not available commercially.

# Business Insurance END PAGE

Contributing: Roberto Cenicerros,  
Louise Esola, Joanne Wojcik

## Smart Room targets virtual health services

A scene reminiscent of Ray Bradbury's science fiction classic "The Martian Chronicles," in which the automated house of the future makes breakfast for its absent inhabitants, could be coming to a hospital near you.

The Smart Room, developed by Kansas City, Mo.-based Cerner Corp., will have a computer that connects patients virtually to their health care providers, an electronic medical record instead of an old-fashioned paper chart, and electronic creature comforts of home that include interactive TV, movies on demand and video games.

Smart Room will also have video/audio conferencing capabilities that will serve as the eyes and ears of doctors unable to visit patients in person.

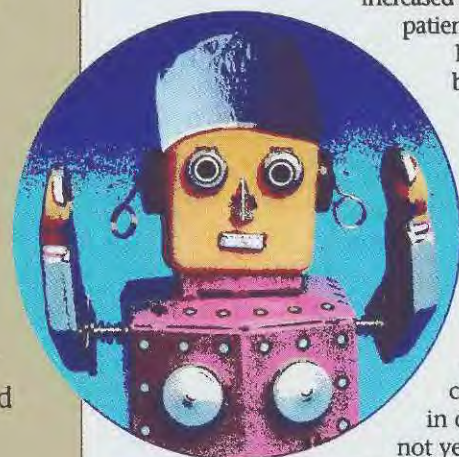
Cerner's hospital room of the future, designed with its CareAware technology, will be showcased at the Healthcare Information and Management Systems Society 2007 conference in New Orleans this week.

"We feel this is a natural development in building the hospital of the future," said Bill Miller, Cerner vp, in a statement. "Cerner's CareAware device connectivity architecture allows for the automation of the health care system, ultimately delivering a greater level of patient safety, increased efficiency and patient experience."

Many features can be added to existing hospital rooms, so there is no need to build a new facility to support Smart Room technology, a Cerner spokesman said. He added, however, that some components are still in development and not yet available. Pricing for existing technology will

be made available at the conference.

For more information, visit [www.cerner.com](http://www.cerner.com).



## Shot backfires on deputy sheriff in comp case

The shooting of a deputy sheriff in McCracken County, Ky., may have been no more than an attempt at workers compensation fraud, according to local authorities.

According to the county Sheriff's Department, former deputy Benny Harding shot himself in the shoulder last October but falsely reported he had been shot by an unknown assailant.

He told investigators after the incident that an unidentified man shot him while he was investigating a suspicious parked car, according to published reports.

Mr. Harding later claimed the incident caused him anxiety. He was placed on disability and was paid \$2,000 a month in workers compensation benefits.

But Mr. Harding's employer didn't think his story added up and the sheriff's office launched an internal investigation. That led to the indictment on several counts, including insurance fraud, filing a false police report, official misconduct and criminal mischief.

Mr. Harding—who has since been fired by the sheriff's department—pleaded not guilty to the charges.



Dallas native Janie, an aspiring country music singer who also has rheumatoid arthritis, is one of the people profiled in "Innerstate," a movie backing the drug Remicade. A Web site, [myinnerstate.com](http://myinnerstate.com), and physician panels also are part of the Centocor Inc. marketing effort.

## Catch a flick, talk to the doc in drug promo

Consumer marketing for prescription drugs has reached the big screen.

Coming to a theater near you—for free and funded entirely by Centocor Inc., which is owned by health-care product giant Johnson & Johnson—is the feature-length documentary "Innerstate." The film addresses everyday battles that come with so-called immune-mediated inflammatory diseases—lifelong ailments that can be treated with the Centocor-produced drug Remicade.

"Innerstate" chronicles the lives of a restaurant manager living with psoriasis, a NASCAR hopeful suffering with Crohn's disease and an aspiring country music singer living with rheumatoid arthritis.

This is not the first time a drug company has funded a film, but it is the first time a pharmaceutical maker has created its own documentary from the ground up, according to a spokesman for Horsham, Pa.-based Centocor.

Ironically, the film never mentions Remicade, he added.

"The intent is not to make this an advertisement or an infomercial," he said. "The goal was to educate the public and sufferers."

The spokesman said the 58-minute film will be shown in 14 major U.S. cities this spring. Following each screening, a panel of physicians will be present to answer questions.

Centocor is also offering free DVD copies of the film to anyone requesting one.



## IS RISK SNEAKING UP ON YOU?



Recent natural catastrophes and the unpredictable U.S. liability system have many rethinking insurance program limits. Yet, many companies buy the same amount of insurance year after year, leaving assets dangerously exposed. To be sure you are adequately insured, talk to your carrier and broker. Understand the full extent of your risk. Then, find the limits and lines of coverage you need at Lexington. We offer everything from catastrophe property and terrorism insurance, to excess casualty, employment practices liability, and medical malpractice coverage. And we have financial stability, capacity and claims expertise to give you peace of mind, even as exposures rise.

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