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Business Insurance

February 5, 2007

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ANOTHER APPEALS COURT RULES CASH BALANCE PLANS DON'T DISCRIMINATE / PAGE 3

FINANCIAL GUARANTEE INSURER PAYS $75 MILLION TO SETTLE FINITE CHARGES / PAGE 3

RADIO STATION RISK MANAGERS TO INCREASE ON-AIR OVERSIGHT AFTER CONTEST TRAGEDY / PAGE 3

In Brief

Mich. court rejects same-sex benefits

Michigan's 2004 marriage amendment prohibits public employers in the state from offering health benefits to employees' same-sex domestic partners, the Michigan Court of Appeals says. In a unanimous opinion issued last week in *National Pride at Work Inc. vs. Governor of Michigan and City of Kalamazoo*, a three-judge panel held that public employer plans that recognize domestic partnership agreements for the purpose of providing benefits "run directly afoul of the plain language of the amendment."

Bias claims up in 2006: EEOC

A total of 75,768 discrimination charges were filed with the U.S. Equal Employment Opportunity Commission in fiscal year 2006,

See **IN BRIEF** page 22

International NEWS

European Court of Justice rules Britain's pension guaranty fund not required

to increase compensation levels; FERMA urges action on developing pollution coverage in light of directive; brokers urge policy limit reviews as E.U. membership brings sharp hike in liability exposure for companies based in Romania, Bulgaria. **Page 17**

U.N. climate report stirs liability fears

Scientific testimony may fuel lawsuits on global warming

By ROBERTO CENICEROS

The publication of a U.N. report last week linking human activity to global warming won't be enough to cause immediate liability problems for industrial companies, but it does increase the chances of more claims filtering through to insurance policies in the future, some experts say.

The report, which links the burning of fossil fuels with more extreme climate conditions, may increase the likelihood that commercial policyholders and their liability insurers will have to fund more defenses against allegations that their activities caused financial losses due to increased storm activity, they say.

Even before the release of last week's report, some policyholders have sought advice about coverage under their commercial general liability policies for potential global warming claims, said Adam M. Cole, an insurance recovery expert at Heller Ehrman L.L.P. in San Francisco.

Already there are a few of lawsuits awaiting trial holding that industrial companies should be held liable for their alleged contributions to global warming, Mr. Cole said.

A class action filed by Mississippi homeowners, for example, targets oil, chemical and utility companies over their emissions.

The suit, *Comer et al. vs. Murphy Oil USA et al.*, which remains alive 14 months after it was filed, claims that global warming played a role in causing Hurricane Katrina, which damaged the homeowners' properties.

The lawsuit, which "everybody thought would get thrown out and didn't," represents a "first shot across the bow," for potential corporate liability for global warming-related losses, said Dave Dybdahl, president of American Risk Management Resources Network L.L.C., a Madison, Wis.-based environmental wholesale brokerage.

In addition, last year then California Attorney General Bill Lockyer sued several Japanese and U.S. auto manufacturers, said G. Andrew Lundberg, a policyholder attorney at Latham & Watkins L.L.P. in Los Angeles.

That lawsuit alleged that the manufactures' automobiles contribute to global warming with negative effects for California's resources and environmental

See **WARMING** page 21

Marsh reaps $3.9B with Putnam deal

Investment firm sale will sharpen focus, boosts war chest

By SALLY ROBERTS

NEW YORK—Marsh & McLennan Cos. Inc.'s sale of Putnam Investments, its investment management unit tarnished by trading scandals, will make the brokerage stronger and more focused, analysts say.

Great-West Lifeco Inc., a Winnipeg, Manitoba-based unit of Montreal-based Power Financial Corp., will purchase Boston-based Putnam in an all-cash $3.9 billion deal announced last week. The sale will enable New York-based MMC to pay down debt, repurchase stock, make acquisitions and focus on building its risk and insurance and consulting businesses, according to analysts.

The sale of Putnam also makes a buyout of MMC more attractive, analysts note, although they disagree as to the likelihood of such a deal.

At the end of 2006, Putnam, which MMC acquired in 1970, had $192 billion in mutual fund and institutional assets under management and generated $1.51 billion in revenues, about 13% of MMC's total revenues in 2005.

MMC has been under pressure, however, to shore up its operations following a host of regulatory and legal issues that have afflicted both Putnam and MMC's brokerage unit, Marsh Inc.

In 2003 and 2004, Putnam entered into agreements with the Securities and Exchange Commission and state authorities in Massachusetts regarding excessive short-term trading by former Putnam employees in Putnam mutual fund shares. Putnam paid a total of

See **PUTNAM** page 6

Buck owner sues execs over attempted sale

Parent ACS charges former managers tried secret deal

By JERRY GEISEL

NEW YORK—Unhappy with the ownership of Buck Consultants L.L.C., two recently departed top Buck executives—without authorization from the benefit consulting firm's parent—allegedly pursued deals with venture capitalists to sell Buck, according to a lawsuit.

The suit brought by Affiliated Computer Services Inc., the Dallas-based technology giant that purchased Buck in 2005, charges that the motivation behind the alleged actions of Howard Fine, then Buck's chairman of the board and an ACS senior managing director, and Christopher Michalak, then an executive managing director, was "simply for the reason that they personally would like to own Buck instead of ACS owning Buck."

Additionally, the suit charges that Messrs. Fine and Michalak communicated with other employees at New York-based Buck, one of the nation's oldest and largest benefit consulting firms, asking them to resign if ACS didn't sell to a venture capital group that included the two executives.

The suit filed last month also charges the two made unauthorized disclosures of confidential and proprietary Buck information to outsiders "as part of their attempt to find venture capital financing for a purchase of Buck."

Through their statements and conduct, Messrs. Fine and Michalak, both of whom left Buck last month, "falsely portrayed to the financial community, Buck

See **BUCK** page 21

INDEX

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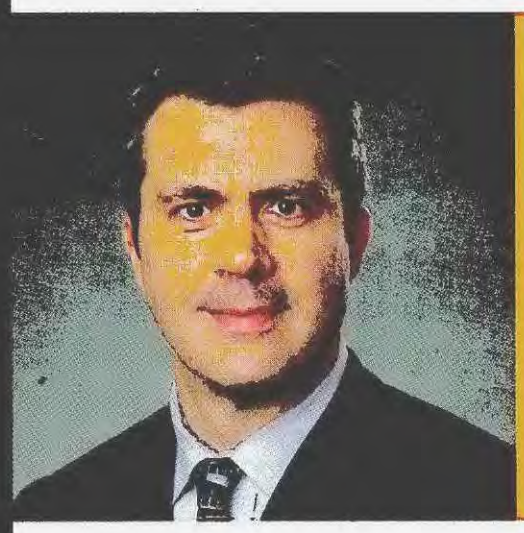

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– **Paul Schultz**, *president, Aon Capital Markets*

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Benefit manager award open for nominations

Business Insurance is accepting nominations for the 2007 Benefit Manager of the Year® award. The deadline is June 1. For information and a nomination form, please visit *www.BusinessInsurance.com/BMOY*.

EMERGING RISK STRATEGIES

A two-part examination of enterprise risks

BI columnist John J. Hampton's upcoming February column will discuss why it's critical to align risk categories with an organization's business model. His March column will cover why an ERM program must have a central risk function that looks for both internal and external exposures. To read all of Mr. Hampton's columns and interviews online, go to *www.BusinessInsurance.com/EmergingRiskStrategies*.

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Business Insurance (ISSN 0007-6864) Vol. 41, No. 06, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $97 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A.

Cash balance plans nondiscriminatory: Court

Other circuits likely to follow suit after second favorable ruling

By JERRY GEISEL

Back-to-back appeals court decisions that cash balance pension plans do not discriminate against older employees significantly increase the likelihood that other appeals courts will follow suit, legal experts say.

Last week, a unanimous three-judge panel of the 3rd U.S. Circuit Court of Appeals became the second appeals court to reject the argument—advanced by the plaintiffs' bar in numerous lawsuits against employers—that the plans are age discriminatory because the same earned benefit will produce a smaller retirement-age annuity for older employees than younger employees.

In its decision, which involved Pittsburgh-based PNC Financial Services Group Inc.'s eight-year-old cash balance plan, the 3rd Circuit joined the 7th U.S. Circuit Court of Appeals in Chicago, which ruled last August in a case involving IBM Corp., that age discrimination should be measured by what an employer puts into employees' accounts, not what employees eventually receive at retirement.

"In evaluating the plan's inputs, PNC does not reduce contributions (in the form of earnings or interest credits) to older employees," the Philadelphia appeals court said.

"The circumstance that the same contribution in the form of interest may result in a more valuable annuity for a younger employee is not discrimination in whole or in part based on age; rather it is the completely appropriate consequence of the application of an age-neutral principle to an accumulating account of the time value of money," the 3rd Circuit concluded.

The strength of the 3rd Circuit ruling, coupled with the unanimous decision by the 7th Circuit in the IBM case, will serve as powerful precedents and increase the likelihood that other appeals courts will rule the same way, said Christopher Rillo, a partner with Groom Law Group in Washington.

"The combined effect of the two rulings will be very powerful," said Jeffrey Huvelle, a partner with Covington & Burling L.L.P. in Washington, who represented IBM before the 7th Circuit. "Now there are six appellate judges who have concluded, based on a very careful examination" of the law, that cash balance plans are not age discriminatory."

The rulings will "make it very difficult for the plaintiffs' bar to convince other appeals courts to go along" with their arguments, said Nancy Ross, a partner with McDermott, Will & Emery L.L.P. in Chicago. "These appear to be airtight decisions, and those are the ones that will prevail at the end of the day."

While encouraged by the latest appeals court ruling, others say the final outcome still is far from certain. "With the score now 2-0, that should make it even more difficult for plaintiffs to prevail in the other

See **CASH** page 6

MBIA pays $75 million to settle finite charges

Consultant to review other suspect deals as part of pact

By RUPAL PAREKH

ARMONK, N.Y.—Another round of finite reinsurance probes came to a close last week with MBIA Inc.'s $75 million settlement of securities fraud and finite risk-related charges leveled by state and federal regulators.

The settlements end investigations into the Armonk, N.Y.-based financial guarantee insurer for allegedly using sham reinsurance transactions to mask a $170 million bond loss incurred in 1998 on its guarantee of bonds issued by a bankrupt unit of Allegheny Health, Education & Research Foundation of Pittsburgh.

Regulators alleged that MBIA avoided taking the $170 million earnings charge by entering into fraudulent contracts with three reinsurers—AXA Re Finance S.A.; Munich Reinsurance Co.; and Converium Re, previously known as Zurich Reinsurance (North America) Inc.—and improperly booking those loans as reinsurance. MBIA restated earnings twice during 2005 in relation to the AHERF deal.

MBIA neither admitted nor denied wrongdoing in separate agreements, one with the U.S. Securities and Exchange Commission and the other with the New York State Insurance Department and New York attorney general.

Independent review

Under the agreements, $60 million will be paid in policyholder restitution and $15 million will be paid as a civil penalty to New York.

In addition, MBIA consented to a cease-and-desist order relating to future violations of securities laws, and agreed to retain an outside consultant to review other questionable accounting issues.

Within six months, the independent consultant must review and provide recommendations for MBIA's accounting and disclosure of its investment in Capital Asset Holdings GP Inc. and its accounting for and disclosure of its exposure to the US Airways 1998-1 Repackaging Trust, among other things.

Mark K. Schonfeld, director of the SEC's Northeast regional office, said: "This case arose out of our industrywide investigation of the abuse of finite insurance and reinsurance policies to burnish the books of public companies. Here, MBIA purchased a sham reinsurance policy to make a $170 million loss disappear from its financial statements. In fact, MBIA was simply reimbursing its reinsurers the full amount of the covered losses."

Investor protection

In a statement, New York Attorney General Andrew Cuomo said his office will continue to "focus on investor protection and on pursuing corporations that spread misleading information to dupe investors and regulators."

"We are pleased that the AHERF-related investigations are finally behind us," said MBIA's chief executive officer, Gary C. Dunton, in a statement.

In the wake of the settlement, rating agencies including Standard & Poor's Corp., Moody's Investors Service Inc. and Fitch Ratings said MBIA's ratings would not be affected.

MBIA accounted for the settlement in November 2005, when it set aside $75 million in reserves for expected settlements of regulatory investigations (*BI*, Nov. 14, 2005).

New York-based Moody's noted

See **MBIA** page 19

AP

Nina Hulst, right, the mother of a woman who died after drinking a large amount of water in a radio station contest, and her attorney, Roger Dreyer, have filed a wrong death lawsuit against the station.

Fatality raises likelihood of radio contest limits

By DAVE LENCKUS

The audience-pulling power of wacky listener contests and other irreverent stunts may no longer be enough to keep risk management out of the broadcast booth after last month's death of a contestant in a radio station's water-drinking contest.

The morning show contest—run by on-air talent who joked during their broadcast about the health risks contestants faced—is raising concerns among the corporate parents about the level of control that they have over their liability exposures, insurance brokers say.

Not only are corporate executives concerned about civil lawsuits and possible additional coverage costs or restrictions if contestants are harmed, but also criminal charges.

In addition, stations that run contests that endanger the public could be shut down permanently by the Federal Communications Commission.

Sacramento radio station KDND-FM, owned by Entercom Communications Corp. of Bala Cynwyd, Pa., faces all of those risks in the aftermath of Jennifer Strange's death on Jan. 12.

Ms. Strange, a 28-year-old mother of three, died shortly after she participated in a water-drinking contest run by the station's morning show team. Contestants competed for a Nintendo Wii gaming system at the station's studio by consuming large quantities of water over the course of three hours without urinating.

During the bit, the morning team on the station that bills itself "107.9 The End" aired calls from listeners who warned that water intoxication could be harmful or deadly to the contestants, according to show tapes subsequently played by news media and a wrongful death lawsuit filed Jan. 25 by Ms. Strange's family. In light-hearted responses to listeners' warnings, the on-air personalities said contestants signed liability waivers and likely would face temporary illness at worst.

Ms. Strange died later that day from what a coroner's initial report

See **RADIO** page 19

Congress set to reconsider surplus lines reform bill

Measure would give some risk managers easier access to market

By MARK A. HOFMANN

WASHINGTON—Supporters of a measure that would streamline surplus lines and reinsurance regulation are optimistic that the bill could receive approval sooner rather than later in the new Congress.

In part, that's because the measure, which was originally introduced in the House last summer, could be reintroduced in that chamber as early as this week.

The House passed the bill—the Nonadmitted and Reinsurance Reform Act—on a 417-0 vote last September, but it never was taken up by the Senate (*BI*, Oct. 2, 2006).

This year's bill is likely to track last year's quite closely, noted Richard Bouhan, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd., which supports the measure.

"We're hearing is that it will be dropped shortly," Mr. Bouhan said, adding that "sponsors may make some minor changes."

Issue to be resolved

At the heart of the measure is the creation of a uniform system for regulating and taxing the surplus lines industry by making nonadmitted insurance subject to regulation only in the policyholder's home state. A policyholder would have to employ a "qualified risk manager" to tap the market directly without first approaching the admitted market. In addition, the bill would streamline reinsurance solvency regulation.

The New York-based Risk & Insurance Management Society Inc., which supported the bill in its original form, withdrew its support after the measure was amended last year to change the definition of a "qualified risk manager" to one that few risk managers could meet, noted Terry Fleming, a member of the RIMS board and director-division of risk management for Montgomery County, Md., in Rockville. Last year's definition could "eliminate virtually all of our members," he said.

Among other things, last year's bill defined a qualified risk manager as one who met at least two of three criteria: holding an "advanced degree" in risk management from accredited college or university, having at least five years' experience in specific areas of insurance and holding at least one of a specified set of professional designations.

CONGRESSIONAL QUARTERLY

U.S. Rep. Virginia Brown-Waite, R-Fla., is seen as a likely sponsor of surplus lines legislation in the House.

Sliding scale a possibility

The original definition was not so rigorous, noted Mr. Fleming. He said the measure placed no such requirements on underwriters, but "they're placing all these education requirements" on the risk manager. RIMS has "been lobbying on Capitol Hill. We asked (that) the bill remove the definition altogether." That does not appear likely, but there is some indication that "some sliding scale" in terms of education and qualifications may emerge, he said.

The bill's likely introduction by Reps. Dennis Moore, D-Kansas, and Virginia Brown-Waite, R-Fla. so ear-

See **SURPLUS** page 22

PICTUREARTS

The City of Richmond, Va., cannot be required to help public schools pay for court-mandated improvements to make them handicapped-accessible, a federal appeals court has ruled.

Schools, not city, liable for complying with ADA

Responsibility to pay rests only on violators of disability legislation

By DAVE LENCKUS

RICHMOND, Va.—A city cannot be ordered to pay for a court-mandated retrofit of public schools to bring them into compliance with the Americans with Disabilities Act if the city has not been found liable for discriminating against the disabled, a federal appeals court has ruled.

In the case, *Christopher Bacon et al. vs. the City of Richmond et al.*, the plaintiffs charged that the 2005 public schools budget for Richmond, Va., contained almost no provisions to finance modifications necessary under ADA at 56 city schools.

The school board settled the litigation out of court in a deal that was contingent on the City of Richmond, Va., providing adequate funding to cover the modification costs. In the settlement, the school board acknowledged it had failed to comply with ADA and state disability laws.

In 2005, Richmond allocated $2 million in capital improvement funds to the school board and committed to $21.6 million over the

See **ADA** page 22

Errors & Omissions

A Products & Services item in the Jan. 29 issue, "USRisk Brokers Covers Parking Operations," listed an incorrect telephone number for the program administrator. To contact Connie Chalayan, call 800-856-7035.

Banking industry faces huge risk in major disasters, insurers tell ABA

Lack of preparedness cited as issue 'nobody wants to talk about'

By LOUISE ESOLA

NAPLES, Fla.—The U.S. banking sector faces one of the biggest exposures of any industry in the event of a major disaster in an affluent, major metropolitan area, but banks do little to protect themselves from such catastrophes, a reinsurance broker says.

In the event of powerful earthquake in Los Angeles or San Francisco, for example, banks could lose more money than insurers and reinsurers, said David TenHoor, Minneapolis-based executive vp for Willis Re Inc.

While the insurance industry protects itself with exclusions and limits, the banking industry is largely unprepared for the possibility of widespread loan defaults in areas with the most expensive housing prices, he said at the American Bankers Assn. Insurance Risk Management Annual Conference & Meetings for the Financial Services Industry held Jan. 21-24 in Naples, Fla.

"We're surprised you're not doing anything about it," Mr. TenHoor said. "This is the 600-pound gorilla in the living room that nobody wants to talk about."

Various industry studies, including those conducted by Lloyd's of London and Swiss Reinsurance Co., have found that a repeat of the 1906 San Francisco earthquake would cause $74 billion to $400 billion in damage.

A similar earthquake today would likely result in a wave of mortgage defaults, which is a risk that the banking industry disregards with a long list of false assumptions, Mr. TenHoor said.

For example, since most California homeowners do not purchase adequate earthquake insurance, the banking industry relies on emergency state and federal programs that could fall short. Residential loans from the Federal Emergency Management Agency are capped at

See **ABA** page 20

58% of employers to add automatic 401(k) enrollment this year: Study

By JOANNE WOJCIK

Employers are re-examining their retirement programs this year in response to recent changes in the financial and legislative environment and out of concern that employees aren't saving enough, a study concludes.

To address these issues, 58% of employers said they will automatically enroll employees into 401(k) plans by year-end, and 19% said they plan to apply automatic enrollment to additional classifications of workers and expand the feature beyond just new hires, according to the study by Hewitt Associates Inc. In addition, 19% of employers that already offer automatic enrollment say they plan to increase the default contribution rate.

Half of employers also say they plan to review their defined contribution fund operations, including fund expenses, revenue sharing and communication to employees, and 48% will conduct a comprehensive review of fund offerings, the study said.

Pamela Hess, director of retirement research at Lincolnshire, Ill.-based Hewitt, attributed the focus on fund operations and expenses to employers' responding to increased attention by governmental agencies on plan fees and disclosures, as well as recent litigation in this area.

While employers are planning significant changes to their defined contribution plans, the majority of companies offering defined benefit plans say they are not likely to make any changes to them in 2007. However, 6% of employers sponsoring open defined benefit pension plans say they are very likely to close participation to new employees, 4% plan to freeze accruals and 11% are very likely to change the design of their plans. An additional 6% plan to switch from a traditional pension plan to either a cash balance or pension equity plan.

In addition, 78% say they plan to make no changes to their company match, while 8% say they plan to increase the company match, and only 1% say they plan to reduce or eliminate the company match.

Hewitt's Web-based survey of 146 large employers was conducted in November and December.

For more details on the survey, visit *www.hewitt.com*.

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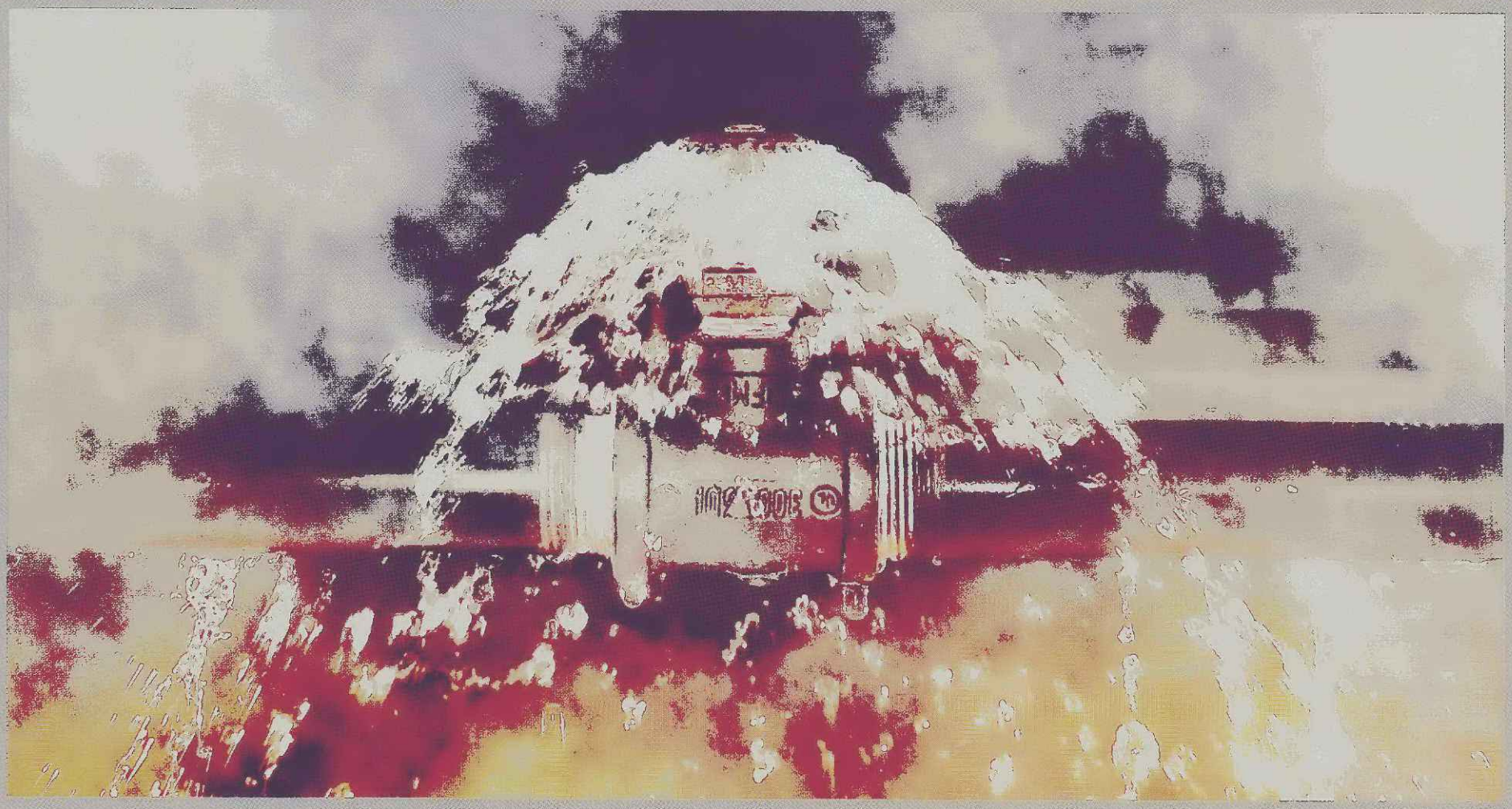

WAUSAU PROPERTY AT WORK. A building material supply customer of ours recently moved into a larger building. Despite the extra space, it still had inventory stacked nearly to the ceiling. This presented a bit of a problem for the existing sprinkler system, which was not designed for high-pile storage. The system didn't have the necessary water and pressure to combat the type of intense fires that could result from the primarily wood materials. Our loss prevention experts estimated the entire $4 million inventory could be lost in a fire. Working together, we found a solution that appealed to both the company and its landlord. The existing system was replaced with one designed for high-pile storage and the building was outfitted with new heaters to prevent the pipes from freezing. In addition to protecting its inventory, the company saved almost $30,000 a year in premiums. It's all part of Wausau TotalValue℠ and our commitment to lowering our customers' total cost of risk. A commitment backed by the financial strength of the Liberty Mutual Group. To learn more, visit wausau.com or contact your Wausau representative.

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Cash: Court says plans nondiscriminatory

CONTINUED FROM PAGE 3

circuits. But, of course, there is by no means a guarantee that the other circuits will all fall in line," said Larry Sher, a principal and director of retirement policy at Buck Consultants L.L.C. in New York.

The growing optimism that other federal appeals courts may join the 3rd and 7th Circuits in ruling that cash balance plan design is not age discriminatory is in stark contrast to the fear that gripped employer ranks following the 2003 decision by a federal judge that cash balance plans, in general and IBM's in particular, violated age discrimination law.

That decision was a catalyst for widespread employer reviews of whether their cash balance plans should be frozen, benefit consultants say. The 7th Circuit subsequently reversed the lower court, and last month the U.S. Supreme Court declined to review the IBM decision.

About 1,200 to 1,500 U.S. employers now sponsor cash balance plans, so named because benefits are expressed as a cash lump sum. Employers, including some of the nation's largest corporations, rapidly added the plans, which were seen as combining the best features of defined benefit and defined contribution plans—until the plans were enveloped by legal controversy.

The rulings mean an end to age discrimination suits in Illinois, Indiana and Wisconsin—the states where the 7th Circuit has jurisdiction—and in Delaware, New Jersey and Pennsylvania—where the 3rd Circuit has jurisdiction.

About 30 cash balance plan age discrimination suits have been filed against plan sponsors since the late 1990s, defense attorneys say, with many of those suits still pending.

Employers setting up new cash balance plans do not face age discrimination litigation worries, however. Congress, as part of pension funding reform legislation passed last year, included a provision that protects new plans from age discrimination suits as long as the plans meet a few basic standards. The most significant requirement is that plans do not decrease benefit credits on the basis of age.

Since that legislation was passed, employer interest in exploring cash balance plans has been picking up, said Kyle Brown, an attorney with Watson Wyatt Worldwide in Arlington, Va.

So far, though, only one major employer—MeadWestvaco Corp., a Richmond, Va.-based paper and packaging products manufacturer—said it is converting a traditional defined benefit plan to a cash balance plan.

Sandra Register et al. vs. PNC Financial Services Group Inc., 3rd U.S. Circuit Court of Appeals; No. 05-5445; Jan. 30, 2007.

ARE CASH BALANCE PLANS AGE DISCRIMINATORY?

How courts have ruled since the IBM decision

DATE:	September 2006
EMPLOYER:	PricewaterhouseCoopers L.L.P.
JUDGE:	Michael Mukasey
COURT:	U.S. District Court for the Southern District of New York
DECISION:	No
DATE:	September 2006
EMPLOYER:	JPMorgan Chase & Co.
JUDGE:	Harold Baer Jr.
COURT:	U.S. District Court for the Southern District of New York
DECISION:	Yes
DATE:	September 2006
EMPLOYER:	Quebecor World (USA) Inc.
JUDGE:	Karl Forester
COURT:	U.S. District Court for the Eastern District of Kentucky
DECISION:	No
DATE:	December 2006
EMPLOYER:	Citigroup Inc.
JUDGE:	Shira A. Scheindlin
COURT:	U.S. District Court for the Southern District of New York
DECISION:	Yes
DATE:	January 2007
EMPLOYER:	Dun & Bradstreet Corp.
JUDGE:	Stanley Chesler
COURT:	U.S. District Court for the District of New Jersey
DECISION:	No
DATE:	January 2007
EMPLOYER:	PNC Financial Services Group Inc.
JUDGE:	Morton Greenberg*
COURT:	3rd U.S. Circuit Court of Appeals
DECISION:	No

**Wrote opinion for appeals court*

Putnam: Sold to Great-West Lifeco Inc.

CONTINUED FROM PAGE 1

$110 million in restitution and civil fines and penalties.

In addition, MMC and Putnam also have received complaints in more than 70 civil actions based on allegations of market timing and, in some cases, late-trading activities, according to SEC filings.

Reversing its previously stated position, MMC said last September that it was exploring possible alternatives for Putnam, citing "repeated inquiries" from interested parties (*BI*, Sept. 25, 2006).

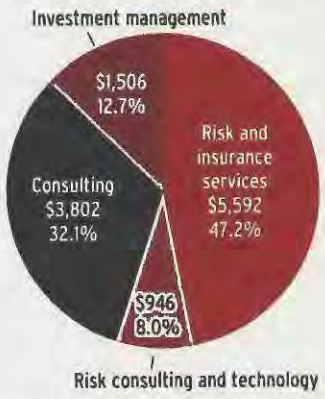
In a statement announcing the deal, Michael G. Cherkasky, MMC's president and chief executive officer, said the deal will strengthen the company's ability to focus on its core businesses and "significantly enhance" its financial flexibility.

"The proceeds to MMC from this sale, combined with our strong cash flow, will give us the flexibility to consider a number of desirable options to further strengthen our company, such as investing in our business, stock repurchases, and debt reduction," he said.

Analysts say that although Putnam provided good cash flow to MMC, it has struggled to rebound following the trading scandals. With the proceeds from the sale, MMC will be more able to focus on strengthening its brokerage operation, which has suffered from its own scandal—namely former-New York Attorney General Eliot Spitzer's fraud and bid-rigging suit and the resulting $850 million settlement.

MMC REVENUES

Based on 2005 total revenue of $11.85 billion from MMC's four core operating segments (in millions of dollars).



Source: Marsh & McLennan Cos. Inc.

"It was a good deal while they had it," said Gretchen Roetzer, a credit analyst with Fitch Ratings' insurance group in Chicago, referring to Putnam as a "cash cow" with a solid reputation and market respect during its heyday.

"It's just never recovered like they hoped it would, and I imagine it's just not worth the time and effort at this point" to continue working on turning it around, she said. "They need someone to come in there and put some time and effort and attention to that, and Marsh" needs to be concentrating on its brokerage business, she said.

"It's nice to see them announce a transaction that's been discussed for so long and get focused back on their core franchise," said Mark Lane, a research analyst with William Blair & Co. in Chicago.

"We think they will definitely use some (of the proceeds) to pay down debt and some to repurchase stock. We do expect them to be acquisitive; maybe not immediately, but within a reasonable period of time of the transaction closing," he said.

With Putnam no longer in the picture, analysts say MMC is a more attractive buyout option, but they have different opinions about whether that is likely to happen.

"There's a lot of private equity money out in the world and Marsh is struggling a bit in terms of lost market share," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York. "If they don't turn that around, I think the pressure grows on the board to do something. And if there is someone else out there who thinks they can pay a higher price on the stock price and squeeze some value out of the broker, at some point, the board has got to explore that option."

"By default, I would think, yes, (MMC) is more attractive because ...something else is gone that doesn't have to be fixed, but that doesn't mean (a buyout) is any more likely to happen," Fitch's Ms. Roetzer said.

Rumors of a buyout of MMC emerged last year following news that Willis Group Holdings Ltd. made an unsolicited, informal offer to acquire MMC over the summer (*BI*, Oct. 23, 2006).

Commentary

Why wait until my day to issue climate report?

PUNXSUTAWNEY PHIL

Punxsutawney Phil hijacks this space once a year to comment on issues important to him. You can reach him at pwinston@businessinsurance.com, in care of Associate Publisher and Editorial Director Paul Winston, whose commentary will return soon.

I think it no coincidence that on Groundhog Day, a plot was hatched by a cabal of international scientists to undermine my influence and prestige earned from more than a century of weather forecasting—nay, weather manipulation (after all, any idiot can read a National Weather Service bulletin, but is there anyone else who, by their actions, can influence whether spring arrives early or winter endures for six more weeks?).

There always have been pretenders to my throne, from groundhogs such as Dunkirk Dave and Wiarton Willie, to crustaceans, including Claude the Crayfish, and countless human interlopers, from David Letterman to Willard Scott.

But when Feb. 2 comes around every year, who do people look to for their weather report? Me, Punxsutawney Phil.

Now, however, in an escalation of this long battle, the Intergovernmental Panel on Climate Change issued a report that contends it is "very likely" that humans are responsible for global climate change, rather than this groundhog.

Of course, this "theory" has been bandied about for years, but it was on Feb. 2 that the IPCC, a group of scientists assessing the risk of "human-induced climate change," reported that it is more than 90% certain that human activity, in the form of greenhouse gas emissions, is the cause of global warming. Furthermore, the IPCC report contends that if human activity continues at its current pace, increasing the amount of carbon dioxide in the atmosphere, world temperatures and sea levels will rise measurably, and there will be more severe weather and greater tropical storm intensity, among other unpleasant developments.

There always have been pretenders to my throne.

I must admit that I will study this report closely to determine the implications not only for my property insurance premiums but also my own climate model. My 2007 forecast, I am proud to say, already takes global warming into account, whatever the cause: After predicting more winter in each of the past six years, this year I called for an early spring.

If it is true that human activity *is* influencing global warming—and I cling like only a burrowing rodent can to the 5% chance that it is not—perhaps my example can offer a solution: If you hibernate 364 days a year, greenhouse emissions are sure to decline.

Subscribe to Baldness Insurance

Have you ever wondered what a groundhog would look like with all of its fur shaved off? Like a potbelly pig with razor burn? Like Mini Me, Vin Diesel or Brian Urlacher?

You can find out by supporting me as I again shave my head to raise funds for curing childhood cancers. Losing my hair is part of the annual St. Baldrick's charity event, in which volunteers shave their heads to raise pledges of financial support for cancer research. The head shaving displays solidarity with kids who have cancer, many of whom lose their hair during chemotherapy treatments.

The St. Baldrick's Foundation, now in its eighth year, was founded by a trio of reinsurance executives and continues to enjoy strong support from the reinsurance and insurance industries, both in terms of contributions and participation.

Add your name to the list of volunteers this year and join me in this fundraising effort. Sign up online, or learn more about this charity at *www.stbaldricks.org*. The "*Business Insurance* Baldies" team in Chicago would welcome you as a member! Your hair *will* grow back (unless it's already in short supply, in which case you might look better with a smooth pate anyway).

If not shaving, please consider a donation on my head by visiting *www.stbaldricks.org* and looking me up among the shavees. Your contribution will make a big difference in the fight against childhood cancer and will be greatly appreciated.

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Business Insurance OPINIONS

Rising temperatures may boost liabilities

ANY LINGERING NOTIONS that global warming is not a risk management issue should be dispelled by last week's U.N. report that closely linked increases in rising temperatures with human activity.

Whether you buy the notion that greenhouse gases cause global warming, the earth is getting hotter and there are both catastrophe management and liability issues facing corporations as a result.

For many years, insurers, reinsurers and policyholders have dealt with the ramifications of increased storm activity, whatever the cause may be. Higher premiums, higher losses and more resources devoted to loss control have all followed in the wake of the storms.

The earth is getting hotter and there are both catastrophe management and liability issues facing corporations as a result.

The liability issue is more recent and, if it goes the wrong way for corporate policyholders, could cause problems in terms of defense costs, compensation payments and coverage disputes.

As we report on page 1, some observers fear that the U.N. report could give new impetus to existing lawsuits that are seeking to hold corporations liable for the property damages that the plaintiffs allege are directly linked to pollutants that the corporations release into the atmosphere.

The potential liability losses should make risk managers scramble to review their policies to see whether they will respond. You only need to look at the silicone implant litigation imbroglio to realize it doesn't take that much scientific evidence—let alone an international panel of scientists—to create huge liabilities.

While it is the job of senior executives and governmental bodies to regulate corporate behavior, global warming clearly extends to the risk management domain and risk managers should fight for a seat at the table to tackle the issue. At the very least, they should make sure that they are ready to deal with what we suspect will be a rapidly increasing number of lawsuits seeking to tap corporate dollars to pay for the consequences of climate change.

Make time to act against potential flu pandemic

THE NEW REPORT on planning for an influenza pandemic from the Centers for Disease Control and Prevention makes for sobering reading indeed.

While the United States has been fortunate in not having to deal with a major flu pandemic for nearly 90 years, the CDC report underscores just how greatly an outbreak along the lines of the 1918 pandemic could disrupt life, including life in the workplace. With schools shut down perhaps for months, and authorities recommending that face-to-face contact be limited—both possible responses suggested in the report—workplace disruptions could be massive.

Fortunately, there is time to plan.

Risk managers and others charged with emergency planning responsibilities would do well to heed the report's recommendations. They should be making arrangements for teleconferencing to replace face-to-face meetings if so required, and modifying work practices to place greater emphasis on telecommuting or staggered work hours to reduce interpersonal contact and thus slow the spread of disease.

The question of whether a flu pandemic will strike may continue to be preceded with an "if" rather than a "when." But that's certainly not a given by any means, and risk managers should make time now to take reasonable steps to assure that their enterprises will be in the best possible position to emerge from the outbreak as quickly as possible.

Letters

Bush plan would aid consumers

TO THE EDITOR: Congratulations to *Business Insurance* on a nice, well-balanced editorial on the Bush proposal. I agree that, although it would equalize the tax treatment of employer-based and nongroup coverage, it wouldn't much change an employer's underlying reasons for offering—or not offering—health coverage.

One thing you missed, though, is that it also would equalize the tax treatment of premiums and out-of-pocket spending.

As your readers know, this is a constant trade-off. Lower premiums mean higher out-of-pocket expenses and vice versa. Bush would make it all tax-advantaged, not just the premium side.

It should encourage people to think more rationally about how much health care should be "covered" and how much should be paid directly.

Greg Scandlen
President
Consumers for Health Care Choices
Hagerstown, Md.

Write us

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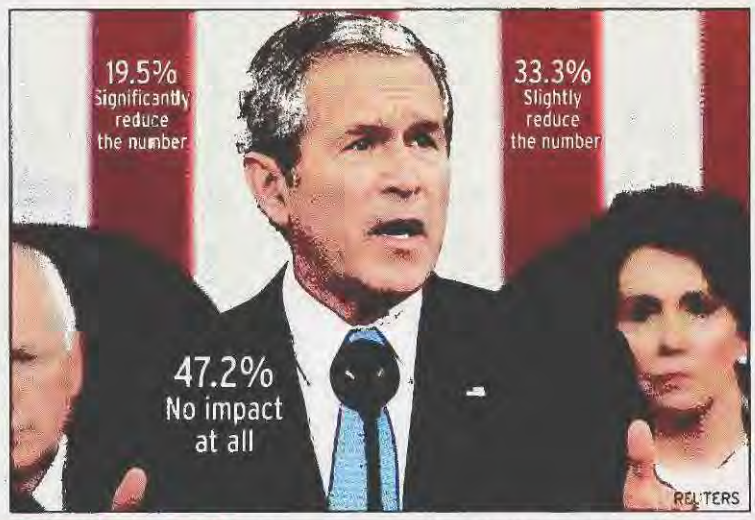
Online Poll at www.businessinsurance.com

What impact would President Bush's proposal to make all health care premiums tax deductible have on the number of uninsured?



NEXT WEEK'S POLL: *How serious is the risk that individuals and businesses can be liable for global warming?*

Business Insurance
PERSPECTIVE

Ask a Benefit Actuary

New accounting rules may affect balance sheet


IRAM MAN PHOTOGRAPHY

This month's column on actuarial questions in the benefits field is written by William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago. Mr. Miner was assisted in the preparation of this column by Christy Mechleis, a consultant in Watson Wyatt's Chicago office.

By William J. Miner

Q: *As a controller of a large, publicly traded manufacturing organization that sponsors both defined benefit pension plans and retiree medical plans, I'm seeking to understand the implications of the Financial Accounting Standards Board-issued Statement No. 158. What does the SFAS 158 mean for us?*

A: On Sept. 29, 2006, the Financial Accounting Standards Board issued Statement No. 158. The goal of SFAS 158 is to address immediate concerns by financial-statement users regarding transparency and understandability of the accounting for pension and retiree medical plans. This statement makes significant changes to the financial accounting for these plans, and these changes have significant implications for the company's balance sheet.

Before SFAS 158, the funded status of an employer's defined benefit or retiree medical plan (i.e., the difference between the plan assets and obligations) was not always completely reported in the balance sheet. Employers reported an asset or liability that almost always differed from the plan's funded status because previous accounting standards allowed employers to delay recognition of certain changes in plan assets and obligations that affected the expense reported on the income statement for providing such benefits. Past standards required only that an employer disclose the complete funded status of its plans in the notes to the financial statements

SFAS 158 has changed that by replacing the pension asset or liability on the balance sheet by the actual funded/unfunded position of the pension plans as measured by the projected benefit obligation This measurement replaces a measurement based on the accumulated benefit obligation.

Under the previous rules, a plan sponsor was required to adjust its balance sheet to include a pension liability at least as great as the unfunded accumulated benefit obligation. This requirement was triggered only when pension assets were less than the ABO. If assets exceeded the ABO, no adjustment to the balance sheet was required.

Financial adjustments

Under SFAS 158, the unfunded projected benefit obligation must be shown on the balance sheet as a liability and the excess of pension assets over the PBO must be shown as an asset. In order to have the balance sheet reflect the plan's funded status, current pension assets and/or liabilities must be increased or decreased. If these changes result in an increase in the pension liability or a decrease in the pension asset, this change increases accumulated other comprehensive income and decreases shareholder's equity. Conversely, any increase in a pension asset or decrease in pension liability decreases AOCI and increases shareholder's equity.

These adjustments generally are made annually at the end of the fiscal year. This means that investment gains or losses on pension assets, changes in pension liabilities due to changes in the discount rate or other changes that flow through to a pension plan's funded status will result in an annual increase or decrease in shareholder equity.

In addition, the actual funded/unfunded position of retiree medical and other post-retirement benefits—as measured by the accumulated post-retirement benefit obligation—also will be placed on the balance sheet. The principles to adjust the balance sheet for a retiree medical or other post-employment benefit plan's funded status are analogous to the principles described above for pension plans.

A Watson Wyatt Worldwide study released in April 2006 found that these post-retirement benefit plan changes are expected to decrease stockholders' equity of the Fortune 1000 companies by 10%. Troubled industries, such as motor vehicle manufacturers and airlines, are expected to be hit particularly hard. But most will argue that there will be minimal impact on stock prices, citing the belief that most stock analysts already adjust the balance sheet for the funded status information currently available in the financial statement footnotes.

However, there may be other concerns for companies. Loan covenants specifying balance sheet metrics related to liabilities or shareholder equity should be reviewed to ensure this likely change to shareholder equity does not send the company inadvertently into default.

A second change is not expected to have a significant financial impact, but it may cause some headaches. Currently, plan sponsors are allowed to measure benefit obligations and assets up to three months prior to their fiscal year-end. This early measurement date has been attractive to employers because it helps ensure that these liabilities will not hold up the fiscal year-end financials. This has been of particular importance to multinational companies because of the amount of time required of headquarters staff to coordinate with multiple overseas local actuaries.

Preparation deadlines

Under SFAS 158, plan sponsors will be required to prepare pension, retiree medical and other post-employment benefit plan financial reporting information as of the last day of the fiscal year. For many organizations currently using an early measurement date, this change will shift the employee benefit accounting work to an already busy time.

SFAS 158 applies to plan sponsors that are public companies, private companies and nongovernmental not-for-profit organizations. The requirement to recognize the funded status of a benefit plan is effective with the completion of a fiscal year ending after Dec. 15, 2006, for entities with publicly traded equity securities; for all other entities, it is effective with the completion of a fiscal year ending after June 15, 2007. The requirement to measure plan assets and benefit obligations as of the date of the employer's fiscal year-end statement is effective for fiscal years ending after Dec. 15, 2008.

SFAS 158 brings to a close the first phase of a two-phase project to overhaul the accounting of pension and other post-employment benefit plans. The second phase will attempt to provide a reporting standard that will apply globally, and is expected to take several years.

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Business Insurance
PERSPECTIVE

Trade is a powerful weapon in the war on terror

Stephen Patrick Cain is a retired British army major and attorney who consults on counterterrorism. He is an adviser to Horsham, Pa.-based global consulting firm NFC Global L.L.C.

By Stephen Patrick Cain

What role can business—particularly within the insurance industry—and we, as individuals, play in the war on terror?

There are two primary fronts to this war, and they are distinct yet intertwined. Before we can begin to eradicate terrorism itself, however, we must understand its nature and causes.

The first front, over which we as individuals have little control, is the Middle Eastern and largely Arab front, centered on the Israeli-Palestinian, Lebanese and Iraqi/Iranian conflicts. Nurtured over generations, these conflicts are irredentist, nationalistic and regional in nature. Taken together, with the separate tribal and political struggle in Afghanistan, they nevertheless still represent a minority of the Muslim world.

These conflicts allow us to see the second front—the vast majority of the Muslim world—and try to bridge the gap to it. And bridge that gap we must. While it is currently true that the most active terrorists are doctrinaire jihadist Muslims, it is also true that the overwhelming majority of Muslims—especially within the second front—are neither terrorist nor inclined to be. From the Caucasus to the Horn of Africa, more than 1 billion Muslims live in nations as strikingly different as those in Europe.

It is through economics and trade that the insurance industry and other financial services organizations can best help address the causes of terrorism.

Briefly, there are three prongs to the global counterterrorist fork:

- Vital and sustained international military and intelligence operations directed against the violence. Civilians cannot participate in these tactics; we must support them.
- Effective international political and diplomatic strategies to improve international relations. National and global interests can no longer be viewed as mutually exclusive.
- An immediate and sustained strategic initiative for global economic reform. For businesses and individuals, this is our theater of operations.

Economic reform is in many ways the most effective and lasting strategy to a situation that has been generations in the making. Economics and trade are major global equalizers, while terrorism is a universal divider.

On whatever platform terrorism stands, it can do so only with grassroots support, or "hearts and minds." This is the key to addressing the causes of terrorism. The Irish Republican Army campaigns of the past are a microcosm of the current global ferment, yet the principle applies. One of the major factors in stopping the sectarian violence was the rise of the "Gaelic Tiger," the emergence of Ireland as an economic power. Who needs violence when you can put bread and beef on the family table?

A colleague and friend, Anton Deiters—a former banking and global development consultant to the United Nations—recently wrote an article praising Muhammad Yunus of Grameen Bank in Bangladesh, who was awarded the Nobel Peace Prize. In recognizing Mr. Yunus' achievements in individual empowerment through microloans, Mr. Deiters wrote: "We know today, or should know, that there is a proven causal link between poverty and violence—the absence of peace." How simple yet profound.

It is through economics and trade that the insurance industry and other financial services organizations can best help address the causes of terrorism. For example, the

See **TERRORISM** page 14

Giving consumers more choice in dental cover

Thomas Dolatowski is vp of marketing for Delta Dental Plans Assn. in Oak Brook, Ill.

By Thomas Dolatowski

The face of dental benefits is changing as market trends spur evolution in employer-sponsored dental plans.

The employer-sponsored model has been dominant for more than 50 years and some view current market influences, such as the rising cost of medical care, with alarm because they see the time-honored employer benefit delivery channel as being in jeopardy. Others see the change as being more benign, just another evolutionary modification. The range of opinions on the future of employer-sponsored dental benefits is widely varied. Yet, most experts agree that current market forces will bring about a fundamental shift in how benefits are viewed by employers and employees.

Tax incentives

From an employer's perspective, dental benefits have been an important part of the overall benefits and compensation mix for decades. According to LIMRA International Inc., which provides research and consulting services to insurers, dental benefits are second only to medical and paid time off in terms of employee popularity. The tax exemption for health care expenditures also doesn't hurt—on average, employers essentially receive a 40% government subsidy for every benefit dollar spent on the cost of providing health care coverage.

For employees, dental coverage has made care more affordable. Dental plans often cover preventive care entirely, and soften the out-of-pocket financial blow when more serious care is required. When offered through work, the economies of scale for group purchasers help keep premiums more reasonable for employees than if they had to shop for plans themselves. The workplace is also a natural risk pool, helping to insulate individual employees from experience-related uncertainty as the costs of care increase over time.

For as long as these elements remain in place, there will continue to be a place for employer-sponsored dental benefits.

While some things are likely to stay the same, there are big changes on the horizon. The prevailing wisdom is that the entire health care industry is moving toward increased consumerism.

Providing choice

As consumers begin assuming a greater responsibility for understanding and financing care, proponents of consumer-driven health care believe that patients will make smarter decisions about utilization, helping to reduce overall costs.

From an insider's perspective, this movement toward consumerism is good news for dental benefits. You could almost say the industry is ahead of the game since dental benefits already incorporate a number of consumer-based incentives.

Because most dental conditions are largely preventable, it makes sense to try to motivate patients to seek preventive care. Besides making good health sense, preventive care also makes financial sense. The Institute of Medicine estimates that for every $1 spent on preventive dental care, restorative treatment expenses are reduced by about $4.

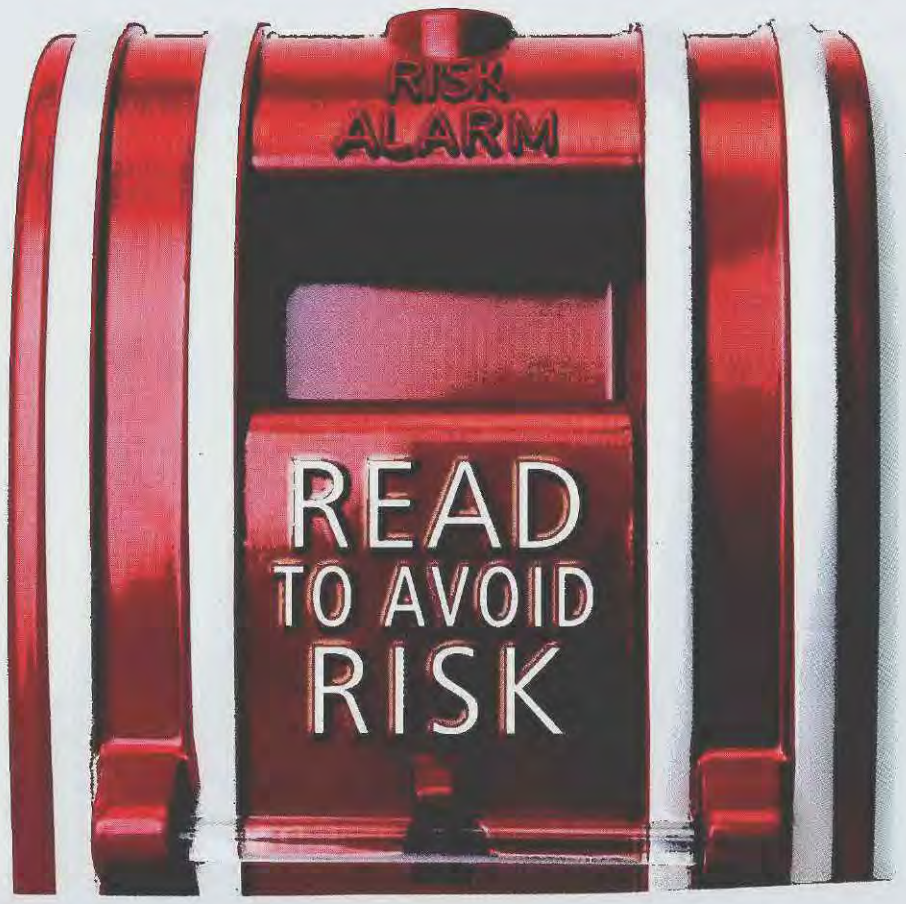
Most dental plans are designed to fund preventive services at 100%, giving consumers a strong incentive to make smart decisions regarding utilization. At the same time, subscribers often are required to assume responsibility for significant out-of-pocket expenses for restorative services. With a greater stake in the process then, many patients these days are willing to take time to learn about different treatment options and their associated costs.

Evolution in progress

All of this is not to say that the dental benefits industry is already equipped to meet all the needs of a consumer-driven marketplace. Instead, dental benefits carriers must customize their offerings to create more choices for consumers.

One of the biggest opportunities is evidence-based plan design.

See **DENTAL PLANS** page 14



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Comings & Goings

INSURERS:

ACE Ltd. has named **Roberto Hidalgo** as president and chief executive officer of ACE Argentina and ACE Chile. He formerly was president and CEO of ACE Puerto Rico and will be based in Buenos Aires, Argentina.

Also at ACE, **Judith Hernandez-Tate**, regional vp, property, for ACE Latin America, will succeed Mr. Hidalgo as president and CEO of ACE Puerto Rico and be based in San Juan. She will continue in her senior commercial property insurance role for ACE Latin America.


Mr. Glaser

New York-based American International Group Inc. named **Daniel S. Glaser** and **Julio Portalatin** each to be AIG senior vp, foreign general insurance. Mr. Glaser also is managing director of AIG Europe (U.K.) Ltd. and AIU regional president, U.K./Ireland division. Mr. Portalatin also is president of the AIU accident and health division.

Harleysville, Pa.-based Harleysville Insurance Cos. has appointed **Ronald Gorman** as regional president of its Mid-Atlantic operation. Previously, he was senior vp of field operations for Zurich Small Business.

Washington-based ULLICO Inc. has named **Gary A. Amelio** president, retirement services. Previously, he was executive director of the Federal Retirement Thrift Investment Board, a defined contribution plan.

Warwick, R.I.-based Beacon Mutual Insurance Co. has named **James V. Rosati** president and CEO. Mr. Rosati had been an investment banker with Providence, R.I.-based Riparian Partners Ltd., which specializes in mergers and acquisitions.

BROKERS:

Anita Verheu has been named executive vp at Boston-based William Gallagher Associates. Before her promotion, she was a senior vp.

Luc Brunet and **Jacques Simard** have both been named senior vp and account executive in the Montreal office of Willis Group Holdings Ltd. Mr. Brunet joins Willis from Essor Assurances Placements Conseil Inc., where he was vp, business development and risk management. Previously, Mr. Simard was a senior vp, brokers services, at Marsh Canada.

Also at Willis in New York, **Rick Elliott**, **Alain Bicqué** and **Chris Mooney** have been named vice chairmen of Willis' global employee benefits practice.

- Mr. Elliott, who most recently served as leader of Willis' North America Employee Benefits Practice, will assume a new role as director of global sales.
- Mr. Bicqué will continue as employee benefits practice leader for Willis' international operations.
- Mr. Mooney joined Willis to take over the North American employee benefits practice leadership role previously held by Mr. Elliott. Previously, Mr. Mooney was a senior vp at Fidelity Investments.

Matthew Gardner has joined Bollinger Inc. as managing director of the commercial lines division in Short Hills, N.J. He joined Bollinger from Commerce Banc Insurance Services, where he was senior vp in charge of the Pennsylvania region and the executive risk and surety practices.

Gary F. Kilburg has joined Redwood City, Calif.-based ABD Insurance & Financial Services as senior vp and chief risk officer. Previously, he was assistant treasurer, risk management at Whirlpool Corp.

Christine DiBona has joined Wachovia Insurance Services as senior vp, managing director of the New York operation, which includes New York, Connecticut and Boston. Before joining Wachovia, she was a managing director and co-leader of Marsh's New York metro zone.

Beecher Carlson has expanded its New York executive liability team with the addition of **Frederick A. Ryder** as managing director. Previously, he was vice chairman and chief operating officer of Marsh Inc.'s FINPRO U.S. practice.

REINSURANCE:

New York-based Guy Carpenter & Co. L.L.C. has named **Garick Zillgitt** as senior vp and Western region business development leader. Previously, Mr. Zillgitt was senior vp of origination at Benfield Group Ltd.

London-based Benfield Group Ltd. has appointed **Jeremy Goodman** as executive vp. Previously, he was a managing director of Cooper Gay Steele.

Replacing Mr. Goodman at Cooper Gay Steele will be **Peter Gorman**. Mr. Gorman will continue to serve as London-based Cooper Gay (Holdings) Ltd.'s North American chief financial officer.

OTHER PROVIDERS:

Strategic Risk Solutions Inc., a provider of captive management and consulting services, has hired **Patrick Pollard** as director-domestic operations in its Burlington, Vt., office. Before joining SRS, Mr. Pollard was vp-operations at Arkwright Mutual Insurance Co.

Terrorism: Businesses can attack its root causes

CONTINUED FROM PAGE 12

microfinance pioneered by Grameen Bank, and taken on by Citigroup Inc. and others, can surely work in tandem with its younger sibling, microinsurance, and in so doing directly attack the poverty, hopelessness and anger from which radicalism—that leads to terrorism—so often arises.

First, we must educate ourselves. There is a saying attributed to Afghans that "to study history, one should look in a mirror." Knowledge is wisdom, and it behooves us to look beyond the broadcast sound bites. In so doing, we shall see who the true enemy is and who is not, and be able to deal with each.

Secondly, we must recognize how insidiously and indiscriminately even the threat of global terror affects individuals and our society. As individuals, we must re-imagine our world, for future generations as much as anything else. There is a saying attributed to the Palestinians that "he who wishes peace must first make war with himself." Rightly or wrongly, the status quo no longer works. As we look in that Afghan mirror, what kind of global citizens should we be? It is a question our children and grandchildren also will have to ask, and they shall be grateful to us for leading the way.

Thirdly, and particularly in the United States, we must trade more with nations outside our traditional markets. This includes Muslim nations, a topic that merits greater consideration than this column allows. For the U.S. insurance industry, this will mean finding a way to create takaful entities with Islamic sponsors; such ventures must be acceptable to both Western business practices and Shari'ah law. Moody's Investors Service Inc. last year estimated that takaful premiums will reach $7.4 billion annually by 2015. Some European insurers and reinsurers are entering this arena, along with banks and other industries. They see opportunity in challenge and are finding a way. Why don't we?

Court progressive nations

Let us trade with the non-Arab nations that comprise 70% of the world's Muslims. Many are progressive and strive to improve despite internal radicalism, which Arabs call "al-Adou al-Qareeb," or the struggle against their "near enemy"—their own rulers. Some successfully pursue democracy. They deserve due recognition and represent a huge market opportunity. Among these are Indonesia, Malaysia, Turkey, Pakistan and India, itself with a population of 100 million Muslims.

Look to smaller Arab nations on the fringe of the Middle Eastern conflict. The United Arab Emirates offers huge opportunity, as will Jordan, Egypt, Tunisia and Morocco—one of the United States' oldest trading partners. As 19th Century British Prime Minister Lord Palmerston stated, "There are no permanent enemies, nor permanent friends. Only permanent interests."

Dental plans: Right choices dependent on education

CONTINUED FROM PAGE 12

Using the latest scientific research and patient treatment data from dental claim databases, some carriers are incorporating new plan designs that offer options that more closely address employees' specific oral health needs.

For example, the relationship between diabetes and oral health, specifically periodontal disease, is well-accepted in the medical and dental communities.

Recognizing that relationship, providing added cleanings and periodontal maintenance visits to patients with diabetes is one way of lowering their dental treatment costs while improving their overall health.

Similar plan designs exist for topical sealants for children's teeth, increased dental visits for pregnant women and a number of other options.

For such plan design changes to be effective, insurers also must provide educational tools for consumers and providers. Consumers need to understand their risks for certain dental diseases and how to mitigate or control those risks. This knowledge will help them use their dental benefits more wisely and, ideally, encourage better oral health outcomes. Dentists also need to be provided with information that helps them make appropriate decisions regarding patient care, supported by the latest data and scientific research.

Individualized care, coupled with education, will help employees make smart choices about their own oral health and dental expenditures.

Agility required

The employer-sponsored model in dental benefits will survive this latest move toward increased consumerism.

The market outlook points to changing products, enhanced options and new ways to present dental benefits to consumers so they better understand their choices.

For dental carriers to remain competitive, they must anticipate these changes and continue finding ways to improve access to care for consumers.

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Washington court upholds duty to warn of asbestos

By ROBERTO CENICEROS

SEATTLE—A manufacturer had a duty to warn a plaintiff of potential asbestos exposure even though the manufacturer's water evaporator used on U.S. Navy ships did not contain asbestos, a Washington state appeals court has ruled.

Last week's ruling in *Joseph A. Simonetta vs. Viad Corp.* stems from a product liability lawsuit brought by Mr. Simonetta, who was diagnosed with lung cancer and asbestos-related disease in 2000.

Mr. Simonetta worked as a Navy machinist mate during the late 1950s, court records show. After he sued, a trial court granted the manufacturer summary judgment, finding that it had no duty to warn because the asbestos exposure did not stem from the evaporator, nor did its evaporator cause the harm.

But the Washington Court of Appeals, Division 1 found that Viad knew asbestos was used to insulate the evaporator and posed a health risk to anyone servicing it.

In a similar ruling in *Vernon Braaten vs. Buffalo Pumps Inc. et al.*, the same appeals court held that four other manufacturers had a duty to warn a naval shipyard worker about asbestos parts or insulation around pipes and machinery they made.

Both cases were remanded for further proceedings.

First captive forms in Alabama

By JERRY GEISEL

MONTGOMERY, Ala.—The first captive insurance company formed under Alabama's 2006 captive statute is now writing business.

The new captive, Chantilly Risk Management Inc., owned by Automotive Aftermarket Assn. Southeast, is writing reinsurance for a self-insured health insurance trust and workers compensation fund that is sponsored by the association and offers coverage to its members.

"Our objective in establishing the captive was to take some of the volatility out of the reinsurance market and to recapture some of the dollars being spent for this coverage," said Randal Ward, president of Montgomery, Ala.-based AAAS, which has about 650 members, including auto parts makers, distributors and auto repair facilities.

Alabama passed captive legislation last year in the wake of Hurricane Ivan, which in 2004 devastated the state and significantly drove up property insurance rates for coastal businesses.

> **'Our objective...was to take some of the volatility of the reinsurance market.'**
>
> Randal Ward
> Automotive Aftermarket Assn. Southeast

While Chantilly is not currently funding property risks, property "is something we will look at down the road," Mr. Ward said.

"We want to start small and get comfortable as we gain more experience," Mr. Ward said.

Mr. Ward said Alabama was appealing as a captive domicile because the association is based there and because of the good cooperation it received from the Alabama Department of Insurance during the captive review and licensing process.

Alabama Insurance Commissioner Walter Bell said the department expects to license several more captives this year, noting that several condominium associations are in the research and planning phase of forming captives.

International NEWS

FERMA urges insurers to speed development of environmental cover

Report queries ability of market to meet E.U. requirements

By RICHARD MILLER

The Federation of European Risk Management Assns. is calling on insurers to be less "risk averse" and develop products that will allow businesses to protect themselves against new environmental liability exposures they could face as of the end of April.

The appeal from FERMA was a reaction to the publication of a white paper on the insurability of environmental liabilities produced by an expert working group at the Comité Européen des Assurances in Brussels, Belgium.

The paper referred to the "significant challenges" in transforming the environmental liability market from being "niche to mainstream."

"We remain a long way from this goal," according to the CEA paper, with the groundwork laid in the white paper signifying "a first step on the journey."

Members of the European Union must transpose the new European Environmental Liability Directive into their national law by April 30. The European Commission has, however, given the insurance industry until 2010 to develop products to cover the liabilities.

To assist in the process, CEA, the organization representing the European insurance and reinsurance industry, formed the 11-member environmental expert working group two years ago to research and identify possible cornerstones for future insurance products.

Pierre Sonigo, a former risk manager at Pechiney Groupe in Paris who represents FERMA on the CEA working group, said in a statement that the gap in timing will leave businesses facing considerable uncertainty with potentially large exposures that they cannot insure.

"At the moment, insurers are risk averse when it comes to environmental liability," said Mr. Sonigo, FERMA's secretary general. "They

See **ENVIRONMENT** next page

PPF not required to increase compensation to 100%: Court

Britain's High Court to determine retirees' level of compensation

By JONATHAN GARDNER

British pension plans dodged a bullet when the European Court of Justice ruled that an industry-financed reserve fund for employees of bankrupt companies is not required to pay benefits equaling 100% of expected pensions.

Even so, industry analysts say the ECJ's decision to send the case back to Britain's High Court to determine retirees' level of compensation in line with European Union directives could mean accelerating payouts from the U.K. Pension Protection Fund. The cost of 100% compensation could be as high as £3 billion ($5.91 billion), according to industry experts

Should the High Court decide that the fund's current 60% to 70% compensation level does not comply with E.U. directives that require adequate protection for retired workers, increasing payouts could drain the fund and force the British government to sharply increase levies on remaining pension plans, which in turn could send more into insolvency.

"I think the odds of a sharp increase have gone down," said Stephen Yeo, a senior consultant in the London office of Arlington, Va.-based Watson Wyatt Worldwide. "There was a fear that the ECJ would say (compensation should be) 100%, and then increases would have been definite."

ZUMA PRESS

A ruling by the European Court of Justice in Luxembourg (above) means that Britain's pension guaranty fund may not have to hike levies on pension plans.

But with the court's decision, "it's definitely possible that the High Court would say that what you have is all right, or as a fallback position, say you need a little change here or there," Mr. Yeo said.

The PPF, established in 2004, provides compensation to members of defined benefit pension plans known as "final salary" schemes that lack sufficient funds to pay their members when a company becomes insolvent.

Based loosely on the U.S. Pension Benefit Guaranty Corp., the guaranty fund is financed by a pension plan levy that is based on a combination of a company's underfunding of its own pension plan, how much risk there is of a company becoming insolvent and contingent assets that have been put in place by the pension plan, capped at 0.5% of liabilities.

See **PENSIONS** next page

New E.U. members face huge increase in liability exposures

Brokers say clients in Bulgaria, Romania need far higher limits

By RICHARD MILLER

The recent accession of Bulgaria and Romania into the European Union means companies in those countries are now facing an increased threat of liability claims—a risk some companies may find financially difficult to fully manage, experts said.

The risks are greater, particularly for companies increasing exports to the E.U. because of exposure to product recalls and liability lawsuits, brokers said.

Domestic companies—which in the past typically purchased only about €100,000 limits ($129,000) for general third-party liability coverage have been told by their brokers to increase that to €500,000 ($645,000) or higher, brokers in both countries said.

"They are starting to consider this, especially all these companies that are going to increase their exports to the European Union," said Dimo Markov, chief executive of Aon Bulgaria in Sofia. He believes a half million euros of coverage is necessary to fall within "good practices" in the European Union.

In the period leading up to E.U. accession, major Bulgarian and Romanian companies were asking for higher liability limits and for more sophisticated insurance products that cover product liability and recalls, brokers noted.

There's also increasing awareness of the need for directors and officers and professional indemnity insurance, brokers and insurers said.

Litigation risk

"It is not only for exporters, but it is also for the local market because people are starting to become more aware about their rights to sue if somebody did something wrong or sold them a product which created problems," said Karina Rosu, CEO

See **EXPANSION** next page

Expansion: New E.U. members face increase in liability exposures

CONTINUED FROM PREVIOUS PAGE

of broker Aon Romania in Bucharest.

"We are already seeing that happening for the last two years in Romania, where claims on liability policies started to become more frequent and larger," she said.

But broker recommendations on managing the increased risks are not always heeded.

When discussing liability risks with risk managers or insurance buyers, Iulia Osman, executive manager of Raiffeisen Insurance Broker in Bucharest, said she's accustomed to hearing, "This could never happen to me."

Turning a blind eye may be perhaps the easiest—and most affordable—option for some. Ms. Osman believes small and midsize companies will have the hardest time bearing the costs of managing these risks.

"If they want to go into business with partners in the rest of the European Union, they will definitely need to have the insurance at the same level as their partners," she said. "I don't think that they will have the financial strength to bear this insurance cost.

"From what I have seen, it is quite a problem for small and medium-sized companies," Ms. Osman added.

In Bulgaria, the local risk management association has also noticed a "wait-and-see attitude" among some local companies.

"Companies are increasingly seeking and hiring expert advice to get them through the vast areas of compliance they have to cover," said Stoian Lilov, chief executive officer of the Bulgarian Risk Management Assn., based in Sofia. However, "some small businesses have declared openly they will not bother and see how things happen for them."

While joining the European Union was heralded with much fanfare, he said both international companies and local businesses are "wary of the changing market situation and new fierce competition is expected."

"Generally, local businesses see the opening of borders as a threat, rather than opportunity for them," he added.

Those who manage financial risks see a host of other challenges, particularly in the banking sector.

"Credit risk is a big challenge in our new E.U. environment," said Sorin Vlad, a risk manager with Finansbank (Romania) S.A. in Bucharest.

The Romanian banking system is not experienced in making credit granting decisions in "new, possibly turbulent economic conditions" influenced by "increased competition, and external macroeconomic shocks of monetary and fiscal policies from other E.U. countries.

"There is not a mature risk management culture in the organizations capable of quantifying the different risks," he continued. A derivatives market needed to hedge risks is also underdeveloped, he added.

"Maybe the biggest risk management issue is the excessive optimism about the growth prospect of the Romanian economy," said Călin Rechea, banking expert, risk management and control, of Banca Comercială Carpatica in Sibiu, Romania.

"There are few domestic companies that have in place proper risk management frameworks in order to evaluate, for example, currency or commodity risk," he said.

As to the ability of local insurance companies to provide adequate coverage, brokers and risk managers noted that product offerings from domestic carriers can be limited.

Directors and officers insurance, up to now barely known in company boardrooms, may be getting more attention, but is not easily attainable from local insurers, brokers and risk experts said.

Andrew Redman, American International Group Inc.'s London-based regional liabilities manager for Central Europe and the Commonwealth of Independent States, said international insurers with domestic operations in Romania and Bulgaria do offer "products and services to prevent the need for clients to seek cover outside local markets."

For major risks, AIG expects "a further drift of business into global programs," Mr. Redman said.

Otherwise, to meet increased general liability limits, the major multinational insurers normally have no problem providing coverage as high as €10 million ($12.9 million), said Orlin Penev, executive director of Allianz Bulgaria, a Sofia-based unit of Allianz A.G. Holding. He said Allianz was has insured the largest local pharmaceutical producer for several years for a very high limit of liability.

"We may say that, in respect of introducing E.U. standards and practices, as well as risk management activities," pharmaceutical companies are one of the most well prepared, he said.

French government minister vows to reintroduce class action measure

By RICK MITCHELL

PARIS—The French government has withdrawn a bill that would have introduced class-action-style lawsuits in France.

In early February, Parliament had been set to consider the bill promised by President Jacques Chirac and championed by Minister of Finance Thierry Breton.

Business leaders, risk managers and insurers had fervently opposed the bill, which contained provisions to introduce French-style class actions, in which consumers would have to go through a four-step process to get compensation for small claims.

Under the proposals, judges would have heard complaints only for consumer goods linked to a contract, and only cases filed by government-approved consumer organizations, with damages capped at €2,000 ($2,583).

The bill is no longer on Parliament's list of items to consider in their current session, said a spokesman for Henri Cuq, the delegate for parliamentary relations under Prime Minister Dominique de Villepin.

The spokesman said that "the bill was withdrawn based on a request by Minister of Health Xavier Bertrand, because he could not be present for the discussion in Parliament."

The spokesman added that the decision was also influenced by Parliament's heavy load this session.

Consumer organizations condemned the withdrawal, while Mr. Breton said the bill would be reintroduced in Parliament following presidential elections scheduled to begin in April.

The bill did not allow for lawyer contingency fees, punitive damages or civil jury trials.

Actions for medical complaints, transportation accidents, or other personal injury or noncommercial disputes would not have been allowed.

At last week's conference of l'Assn. pour le Management des Risques et des Assurances de l'Entreprise in the southern city of Nantes, risk managers warned that the bill could have heavy consequences on business.

Environmental: Meeting E.U. requirements

CONTINUED FROM PREVIOUS PAGE

should be more proactive in providing products now that the directive is being transposed into national law. Our companies need to take risk to survive; insurers should do so, too."

The Environmental Liability Directive, adopted in April 2004, aims to create incentives to avoid environmental damage based on the so-called "polluter pays principle." It ensures that environmental damage is repaired at the expense of the polluter, rather than society.

Under the directive, the environment is considered a legal entity for the first time, and national governments will have the responsibility to bring claims against polluters on behalf of the environment. Some forms of remediation referred to in the directive are not covered under current insurance policies.

FERMA urged insurers to make cover available and at a "reasonable price" for buyers, the Brussels-based group said.

From the insurance industry's perspective, the ability to develop coverage depends largely on whether member states decide to go beyond the scope of the directive when transposing it into law.

Having different regimes across Europe would be a nightmare, said Phil Bell, chairman of CEA's general liability committee and a member of the working group. He is also group casualty director for Royal & Sun Alliance Insurance Group P.L.C. in London.

The paper cited Poland and Spain as examples of countries considering more stringent legislation.

"The key message is the greater the consistency of the application of the directive...the greater the probability of insurance developing," Mr. Bell said.

CEA is also discouraging countries from opting for compulsory insurance or financial security. Several countries are "seriously considering" it, including Spain, Bulgaria and the Czech Republic, Mr. Bell said.

"Insurance is most likely to develop when you have a free market," Mr. Bell said. "If there is no predetermined coverage that the operator has to buy or the insurers need to provide, you can be far more creative and develop what people need and want."

Pensions: British plans dodge bullet

CONTINUED FROM PREVIOUS PAGE

In 2007/2008, the government expects to collect £675 million ($1.33 billion) in levies for the PPF, £540 million ($1.06 billion) of which is risk-based. That is an increase from £575 million ($1.13 billion) in 2005/2006.

Employees younger than retirement age receive 90% of their pension when they retire and, at most, they receive £26,050 ($51,282) annually on retirement at age 65, meaning employees expecting higher pensions receive less protection to ensure that there's enough money in the fund at current levy rates.

Sufficient protection

Employees of steel company ASW Ltd. sued the government and claimed two members received just 20% and 49% of expected benefits from the PPF, and that constituted insufficient protection of retired employees under E.U. directives.

The British High Court referred the case to the European Court in 2005, seeking clarification on what constitutes compliance with E.U. directives.

The European Court ruled that the PPF does not need to increase compensation to 100% of expected benefits. However, it added that 49%, as was the case with one of the ASW workers, "cannot be considered to fall within the definition of the word 'protect'" stated in E.U. directives.

"Companies with defined benefit pension schemes can breathe a sigh of relief that (the) judgment did not rule that accrued benefits must be met in full," said Paul McGlone, a principal and actuary in the London office of Chicago-based Aon Consulting, in a statement. "Such a ruling would have led to enormous hikes in future PPF levies, over and above the increases in levies introduced for 2007/08."

The cap for the industry levy is increasing to 1.25% of liabilities this year. Because of the structure used, some pension plans are seeing their levy increase fourfold this year, Mr. McGlone said.

According to Aon, if every U.K. employer became insolvent, the PPF would have £76 billion ($149.6 billion) in liabilities. Raising the requirement to 100% of benefits would have increased that amount to £440 billion ($866.2 billion).

The remaining question is the High Court's judgment of how well the British law complies with the E.U. directive. If the High Court finds the law to be in "manifest and grave" disregard of the directive, then the PPF will have to increase payments to retirees.

'This is still high-stakes poker. As it stands, the U.K.'s pension system is only sustainable if scheme members continue to accept a degree of risk'

Tim Keogh,
Mercer Human Resource Consulting

"This is still high-stakes poker," Tim Keogh, a worldwide partner in London for New York-based Mercer Human Resource Consulting, said in a statement. "As it stands, the U.K.'s pension system is only sustainable if scheme members continue to accept a degree of risk. If the U.K. High Court finds the PPF still leaves too much risk in the system, the bill for avoiding future claims could run into billions, further accelerating scheme closures."

Radio: Stronger risk management oversight expected

CONTINUED FROM PAGE 3

attributed to complications "consistent" with water poisoning. A final report is pending.

On the same day that the family filed its suit, Sacramento County Sheriff Department homicide detectives began a criminal investigation of Ms. Strange's death.

Also on Jan. 25 in Washington, the FCC launched an investigation of the case in response to complaints filed by the Strange family's attorney and the public, an agency spokesman said. The family has asked the FCC to revoke the station's license.

According to market sources, Entercom's general liability coverage should respond to any civil claims (see related story).

Entercom as well as Clear Channel Communications Inc., Cumulus Broadcasting Inc., Ennis Communications and Viacom—all of which own numerous radio stations nationwide—would not comment on their risk management practices.

But insurance market executives and a media attorney said they were not surprised that a radio station would allow its on-air talent to conduct a contest that posed health risks to contestants.

Karen Baldwin, the Newtown, Conn.-based vp of business development for Media/Professional, said corporate risk management oversight of local stations varies widely, depending on the organization. "We always spend a lot of time on procedures at the companies we insure," Ms. Baldwin said.

At many corporate owners of radio stations, "I think you'll find there's a disconnect between risk management" and local station management "in controlling the talent," said Chad Milton, a senior vp at Marsh Inc. in Kansas City, Mo.

The problem is that risk managers do not want to restrain creativity that makes an on-air personality popular with audiences and attracts advertisers, brokers said. As a result, risk management often has been left to local station managers, they noted.

Stephen Patterson, president of media insurance broker Preston-Patterson Co. Inc. of Conshohocken, Pa., said that even when risk manager clients have wanted to nix a contest, they often have called him to obtain an insurance-related excuse rather than unilaterally reject a proposal.

For Entercom executives named in the Strange family's lawsuit, an argument that there was limited communication with the local station could minimize executives' personal liability, said attorney Jon Blake, a partner with Covington & Burling L.L.P. in Washington.

But in any FCC license review, that defense would hurt Entercom because it would show the company did not exercise its station oversight responsibility, Mr. Blake said.

As for future corporate risk management oversight of radio contests, "I think that may change," Mr. Milton said. He noted that some stations unilaterally reassessed their decency standards after the syndicated morning show "Opie and Anthony" in 2002 broadcast a couple having sex in New York's St. Patrick's Cathedral. The broadcast resulted in a $357,000 FCC fine against station owner Viacom Inc.

"Our radio clients were embarrassed (for their industry) and felt they had a need to tighten up controls on indecency" after that broadcast, Mr. Milton said.

Referring to risky listener contests, Mr. Milton said Ms. Strange's death "may have a similar impact in bringing a sense (to corporate risk management) that these kinds of stunts have to be controlled, too."

Based on recent calls from corporate risk managers, Mr. Patterson said he already is seeing that beginning to occur. Ms. Strange's death "certainly is causing broadcasters to pause and question whether they're covered for something like this."

Coverage changes for the radio industry also could encourage stronger risk management oversight of such contests, brokers said.

Some brokers suggested that insurers might require prior notification of all contests. Others said major radio station owners instead might face larger retentions or a separate retention for each contest they run.

CGL policy to cover damages

SACRAMENTO, Calif.—Entercom Communications Corp.'s commercial general liability coverage, which was written by Chubb Corp., may respond to any damages the company must pay the family of a woman who died after participating in a water-drinking radio contest, market sources say.

Jennifer Strange's family filed a wrongful death lawsuit Jan. 25 in California state court in Sacramento. The suit seeks unspecified punitive as well as compensatory damages from Entercom; various individuals employed by the company; and its Sacramento radio station, KDND-FM, billed as "107.9, The End." Ms. Strange died shortly after participating in the station's Jan. 12 water-drinking contest.

Entercom's general liability coverage is written by Warren, N.J.-based Chubb, according to sources. Simkiss Cos. of Paoli, Pa., placed the coverage.

Punitive damages, however, generally are not insurable in California, unless liability is vicariously imposed on the defendants, according to attorneys.

The Strange family's suit asserts that contestants did not sign liability waivers, were not informed about the contest's health risks and were not offered any medical help after showing signs of physical distress while at the station's studio.

Even if criminal charges are filed against the station or Entercom personnel, the company's general liability coverage still should respond in the civil case, brokers agree. The Sacramento County Sheriff's Department has launched a criminal investigation into Ms. Strange's death.

General liability policies typically cover losses caused by "rogue employees," because "that's part of the risk we take," noted Robert Lystad, a vp and claims attorney in Kansas City, Mo., with managing general underwriter Media/Professional Insurance, a unit of Aon Corp. Media/Professional is not involved in Entercom's coverage.

Coverage in such a case could spark a variety of insurance-related questions, experts say.

"There's going to be some very complex legal issues" in the case, predicted Stephen Patterson, president of media insurance broker Preston-Patterson Co. Inc. of Conshohocken, Pa.

—By Dave Lenckus

MBIA: Other issues open to review

CONTINUED FROM PAGE 3

in a statement, however, that while MBIA's settlements conclude several issues under investigation, they still leave "others open to further review by an independent consultant."

"Specifically, the settlements do not mention Channel Reinsurance Ltd., nontraditional reinsurance agreements (beyond those related to AHERF), MBIA's sale of credit default swaps on its main insurance company, and the firm's methodology for determining loss and case reserves, all of which were the subject of subpoenas," Moody's said.

Channel Re, a Bermuda company formed by MBIA, along with RenaissanceRe Holdings Ltd., Partner Re Ltd. and Koch Financial Corp., had been a subject of regulators' scrutiny of MBIA.

In earlier settlements since widespread regulator investigations began in 2004, a number of other insurers—including American International Group Inc., ACE Ltd. and Zurich American Insurance Co.—shelled out millions to resolve allegations of finite insurance-related wrongdoing.

Pembroke, Bermuda-based RenaissanceRe has yet to finalize a proposed $15 million settlement, while Max Re Capital Ltd., also of Bermuda, in November reopened a probe into its accounting of certain finite contracts.

Data protection, pandemic planning among top banker concerns at ABA conference

By LOUISE ESOLA

NAPLES, Fla.—Identity theft and the possibility of a pandemic are among the major evolving risks facing banks, experts say.

Michael Flanagan, Chicago-based managing director with the Gallagher CyberRisk Services unit of Arthur J. Gallagher & Co., said the banking industry's increasing dependence on Internet-based services also increases its exposure to liabilities stemming from identity theft and hacking.

"Since 2000, the online banking community has doubled," he said at a session during the American Bankers Assn.'s Insurance Risk Management Annual Conference in Naples, Fla., from Jan. 21-24. "Forty percent of Americans now bank online."

Since the practice is so widespread, Mr. Flanagan said banks are left with more to protect and insure than just dollar bills. "(Personal information) is a currency out in the marketplace today," he added.

According to a presentation by Mr. Flanagan and Michael Lamprecht, a Chicago-based national practice leader also with Gallagher CyberRisk Services, 70% of online banking consumers reported security problems in 2005. Nationwide, there were 8.9 million victims of identity theft in 2006.

To help protect themselves and mitigate breaches in online security, the brokers said banks should investigate all of their exposures, which include those stemming from computer networks; professional services offered; vendors, partners and outside contractors performing work for banks; and a bank's own multimedia practices, from online advertising to broadcasting.

Developing a risk management strategy isn't simple, according to Mr. Flanagan, adding that there are few models to consider when creating an effective plan. "There's not enough loss information at any one company for the most part to do a lot of accurate trending in these areas, so you are going to find that there is a wide variety of techniques being used," he said.

Jim Bollman, an Omaha, Neb.-based corporate risk officer with TD Ameritrade Inc., said the company took six years to develop its plan, which crossed into all aspects of business for the online securities brokerage firm and has been deemed successful.

'Don't buy what (insurers) are offering off the shelf because those policies are created for manufacturing, retailers and all different kinds of businesses.'

Michael Flanagan, Gallagher CyberRisk Services

For example, changes were made to the company's human resources practices after Ameritrade found that new employees could breach security.

"These are people who social engineer their way into an organization," Mr. Bollman said. "Anybody who works there has to be fingerprinted and we do a background check on them. The problem was they could be working with us for two or three weeks before all the results are back. We've had to re-engineer how that process works now and actually have all those background checks out of the way before letting them come to work."

As for specialty insurance products that cover such cyber risks, Mr. Flanagan urged banks and companies to be careful when selecting a program and find one that caters to the specific needs of the company.

"If you are choosing to go out and buy a program, don't buy what (insurers) are offering off the shelf because those policies are created for manufacturing, retailers and all different kinds of businesses," he said. "Custom and tailor it to meet your bank's needs."

Addressing another evolving risk affecting banks, Julie McCashin, Houston-based vp of the health service department with health care consulting firm International SOS, said organizations need to pay attention to the possibility of an avian flu outbreak, which could affect all aspects of the business world.

Banks, because of public concerns and regulations, have been at least six months ahead of the business world in creating pandemic preparedness plans in the event of an outbreak, said Ms. McCashin, who has helped create pandemic plans for several corporations, including Merrill Lynch & Co. Inc. and Citigroup Inc.

"By far the financial sector is ahead of the game in pandemic planning," she said.

Among some of the best practices for pandemic planning include: providing employees with accurate information regarding a pandemic, having a corporate communications plan in place and employing a crisis management team.

Companies also are stockpiling items such as breathing masks and antiviral medications to help quell an outbreak, she said.

AMERICAN BANKERS ASSN. DRAWS 400 TO ANNUAL GATHERING

More than 400 bankers, brokers and insurers attended the 2007 American Bankers Assn. Insurance Risk Management Annual Conference in Naples, Fla., from Jan. 21-24.

The conference featured workshops for both large and small banks, offering risk managers insights on a wide range of topics, including directors and officers insurance, catastrophic coverage, enterprise risk management and international insurance plans.

The keynote speaker was Juval Aviv, president and chief executive officer for Interfor Inc., a New York-based firm that provides domestic and international intelligence services. Mr. Aviv has more than 30 years of experience in corporate and terrorism investigations and helped lead investigations into the Enron scandal. Mr. Aviv talked about corporate fraud, identity theft and terrorism.

ABA's 2008 conference is Jan. 27-30 in Indian Wells, Calif. For information, visit *www.aba.com*.

—By Louise Esola

Controlled master program includes best of both worlds

By LOUISE ESOLA

NAPLES, Fla.—Directors and officers insurance coverage is gaining popularity overseas as more countries begin zeroing in on corporate governance and fraud, an industry expert told the American Bankers Assn. during its annual conference.

Carol Zacharias, New York-based senior vp and chief counsel at ACE USA, said D&O coverage is gaining momentum outside the United States mainly because more countries are passing laws that allow class action suits. Spain and the Netherlands are recent examples, and more are in the works, she said

The laws, however, vary, and bring another variable to overseas risk management, she said.

"There is no one answer that fits all countries," she said at ABA's Insurance Risk Management Annual Conference Jan. 21-24 in Naples, Fla., during a workshop for bank risk managers with operations overseas or those planning to acquire international banks. "You need to know your local law."

As for an increase in foreign D&O claims, Ms. Zacharias said, "The sky is not falling yet (but) the overseas cases are there and they're growing."

D&O coverage was one focus of the workshop, in which the most attention was given to insuring overseas liabilities.

Bankers were advised that if their businesses want to operate abroad, a combination of foreign and domestic insurance products is their best bet.

"There are a lot of considerations you have to think about," said Bonnie Preston, Duluth, Ga.-based vp for global accounts at St. Paul Travelers Cos. Inc., who warned banking industry risk managers to pay special attention to overseas regulations to avoid holes in their risk management plans. "The structure of international (insurance) programs is one of the key things that makes going international different."

She said there are three types of insurance programs for companies with operations overseas: admitted, nonadmitted and a controlled master program.

Admitted programs feature policies originating in the foreign country by locally licensed carriers with coverage that is compulsory in the country. Nonadmitted programs feature policies established and run in the United States, providing coverage for locations abroad.

Each has many advantages and disadvantages. An admitted program is advantageous since the policy and terms are in the local language and currency, and are backed by local laws that govern limits and legally required specialty products. But U.S. companies may have trouble overseeing policies abroad especially with varying policies from an array of insurers. "Too many different insurers and policy dates may be hard to keep track of," Ms. Preston added.

Meanwhile, nonadmitted programs are easily understood by U.S.-based risk managers and can be cheaper when purchased alongside coverage for domestic operations. But the chief concern is they don't always meet the demands of foreign regulations and are illegal in some nations, she said.

"The best of all worlds is to have a combination of both (admitted and nonadmitted) in what we call a controlled master program," Ms. Preston said.

This hybrid combines advantages of admitted and nonadmitted programs and seals the cracks where either falls short. Controlled master plans are easier to facilitate and control, and can be purchased in bulk without duplication, as with most U.S. plans, she said. This approach, which involves local management and U.S.-based risk managers, is favored among companies because it addresses domestic and foreign concerns in operating overseas.

"It really does help when you have the carrier, the producer and the U.S. risk manager in sync," Ms. Preston said.

ABA: Banks at great risk in major disaster

CONTINUED FROM PAGE 4

200,000—far short of most California home values, he said.

And the costliest disaster in U.S. history, Hurricane Katrina, does not serve as a model for what could happen in the event of an earthquake in one of California's major cities, Mr. TenHoor said.

The fallout from Hurricane Katrina's devastation doesn't compare to what could happen to banks if an earthquake in California causes the same amount of damage, he said.

The risk is seen in the disparity between property values and lending practices: Louisiana, Mississippi and Alabama represent less than 2% of the total U.S. residential mortgage market, with the average home valued between $85,000 and $125,000; the states also represent less than 1% of commercial mortgage backed securities; and the region features a limited use of exotic mortgages.

'We have capped our coverage. We know the risk and we're shoveling it over to you.'

David TenHoor, Willis Re Inc.

A Katrina-sized disaster in more expensive areas in the nation could be devastating to the lending industry given the "sheer dollar size of property values," Mr. TenHoor said, adding that California median home prices typically exceed $500,000.

Exotic financing and second mortgages for such needs as repairs are much more common in high priced areas and in some cases homeowners can owe more than their home is worth, he said.

"We (in the insurance industry) see huge amounts of losses for banks," Mr. TenHoor said. "We have capped our coverage. We know the risk and we're shoveling it over to you."

Warming: U.N. report stirs liability fears

CONTINUED FROM PAGE 1

health. Current Attorney General Edmond G. Brown Jr. said last week he would continue to pursue the action, although he also said he would seek a settlement.

"I think insurance companies will have a very, very hard time avoiding having to defend some of these cases," Mr. Lundberg said.

For now, a standard for holding corporations negligible for global-warming related losses does not exist, Mr. Dybdahl noted.

But events such as the Mississippi suit and the release of the report by the United Nation's Intergovernmental Panel on Climate Change, can help create liability where it previously didn't exist, he said.

The report, written by scientists and officials from 113 countries, says that recent global warming was very likely caused by human activity. The report also says that increased hurricane strength is more likely than not linked to global warming.

As the notion that emitting greenhouse gases is detrimental to the environment takes a firm hold, companies are more likely to be held responsible for damage linked to global warning, Mr. Dybdahl said.

Insurers could face substantial liability exposures under occurrence-based CGL policies that they sold over the past decades, he said.

Brokers compare potential global warming liability claims to the emergence of asbestos and toxic tort pollution losses in the past. Both asbestos and pollution losses resulted from business practices once considered standard and the damages they caused mounted before the liabilities were fully understood.

According to Mr. Dybdahl, pollution exclusions in some CGL policies may not apply to gases linked to global warming, so insurers may have to pay defense costs and court judgments that are related to damage allegedly caused by global warming.

"If you are a risk manager and you are concerned about global warming, you should load up on occurrence-based general liability policies today because you are buying subsidized insurance that has no rate component for that risk," he said.

Rod Taylor, managing director for Aon Environmental Services Group in New York, agreed that policyholders should find ample coverage under existing CGL contracts.

Claims for global warming losses would extend back to before insurers inserted pollution exclusions into their liability policies, Mr. Taylor said. Additionally, many utility companies have purchased policies with broad pollution coverage, he added.

"I think you would find there is going to be carrier involvement if there are claims...a lot like we have had with asbestos and toxic torts," Mr. Taylor said. "We are talking about an aggregation of liabilities that span years...and the emissions have been going on literally since the start of the industrial revolution."

Several insurers contacted declined to discuss the issue.

However, Ivo Menzinger, head of sustainability at Swiss Reinsurance Co. in Zurich, said the report has not materially changed the issue of causation, so there is still a huge challenge in terms of proving a specific company contributed to a loss.

Laura A. Foggan at Wiley Rein Fielding L.L.P. in Washington, a defense attorney and pollution liability expert, said global warming does not present a "near-term coverage issue" for insurers. Even assuming that global warming contributes to climate change, plaintiffs in an underlying liability lawsuit would still have to prove that a company's specific activities caused a particular event such as a hurricane, she said.

Then they would have to link that event to a specific bodily injury or economic loss that could be compensable under an insurance policy, said Ms. Foggan, who believes CGL pollution exclusions would stand.

Policyholder attorneys and brokers agree that proving the merits of underlying global warming lawsuits would be difficult for plaintiffs.

Even if such lawsuits survived motions to dismiss, plaintiffs would still need scientific testimony to help pin responsibility for damages on a specific corporation's practices, Mr. Cole said.

LONG-TERM IMPACT

The impact of climate change detailed by United Nation's Intergovernmental Panel on Climate Change will occur over the long term and won't immediately impact property insurance rates, Swiss Reinsurance Co. says.

But without taking measures to mitigate greenhouse gas emissions or make buildings more resilient to storms, rates eventually would have to rise to cover increased claims activity due to weather changes, said Ivo Menzinger, head of sustainability for Swiss Re in Zurich, Switzerland.

More claims are likely. A recent Swiss Re study found that more severe and frequent winter storms across Europe will impact the insurance industry. The study predicts that claims will rise 16% to 68% annually until the end of the century, Mr. Menzinger said.

The good news, he said, is that it's not too late for mitigation efforts.

–By Roberto Ceniceros

Companies not disclosing climate liabilities: Survey

BOSTON—Despite the financial risks associated with climate change, more than half of the nation's 500 largest publicly held companies are doing a poor job of disclosing those risks to investors, according to a new report.

Not only are companies at risk of future greenhouse gas emission restrictions and more intense weather events, they also could be at risk of shareholder lawsuits for nondisclosure, one expert warns.

According to the report released last week by Boston-based investor coalition Ceres Inc. and Bethesda, Md.-based asset management firm Calvert Group, only 47% of Standard & Poor's 500 companies responded to a global survey last year by the Carbon Disclosure Project requesting information about their climate risks and strategies. Those that did respond to the London-based investor collaboration's annual questionnaire failed to provide much of the information investors are seeking, the report said.

"Many U.S. companies are still downplaying climate change and its far-reaching business impacts," said Mindy S. Lubber, president of Ceres, in a statement. "More extreme weather events, regulatory changes and growing global demand for climate-friendly technologies are just a few of the ways that climate change will ripple across all sectors of the economy," she said. "Yet, many U.S. companies are not addressing these trends and are leaving investors in the dark about their strategies for mitigating those risks."

That could lead to shareholder lawsuits, said Andrew Logan, insurance program director at Ceres.

If the lack of disclosure reflects lack of action by the company in mitigating its climate change risks and a climate change event occurs that leads to a stock drop, "then the lack of disclosure will be powerful evidence for shareholders in terms of pushing for accountability," Mr. Logan said.

According to the report, investors are looking for analysis that identifies a company's present and future challenges and opportunities associated with climate change. This strategic analysis should include a climate change statement; an explanation of all significant actions the company is taking to minimize its climate risk and to identify opportunities; and a description of the company's corporate governance actions, including the names of the executives in charge of addressing climate risk.

A copy of the full report, "Climate Risk Disclosure by the S&P 500," is available at *www.calvert.com/pdf/Ceres_Calvert_SandP_500.pdf*.

—By Sally Roberts

Buck: Suit filed in alleged sale attempt

CONTINUED FROM PAGE 1

employees and potentially, Buck customers and prospects that Buck 'is on the auction block,'" according to the suit filed in state court in New York.

The suit says the defendants' false statements will likely damage Buck's relationships with current and prospective clients, who might hesitate to do business if they believed Buck was for sale.

An ACS spokesman said the company will "pursue every available remedy we deem appropriate to address this situation."

ACS named David Bywater, formerly chief operating officer for ACS human resources outsourcing, as senior managing director—human capital management solutions to replace Mr. Fine. Jan Grude, previously managing director of ACS/Buck's Canadian operations and now executive managing director at Buck Consultants, replaced Mr. Michalak. Both will be based in New York.

Mr. Fine's attorney, Susan Brune, a partner at Brune & Richard L.L.P. in New York, said: "The allegations are untrue and without merit. Mr. Fine strongly denies any wrongdoing. This lawsuit is about attacking the good reputation of a man who worked tirelessly to grow Buck and ACS, and to ensure that Buck was well-managed and viable in the long term."

Mr. Michalak, who lives in a Chicago area suburb, declined comment.

The suit comes nearly two years after ACS, a $5 billion business process and information technology outsourcing company, announced it was purchasing Mellon Financial Corp.'s HR consulting and services unit for $465 million. The Mellon unit was comprised largely of Buck Consultants, which it purchased in 1997 for $225 million, and Unifi Network, a benefit consulting and outsourcing arm of PricewaterhouseCoopers L.L.P., which Mellon bought in 2002 for $275 million.

ACS does not disclose Buck's revenue, though its suit against the ex-Buck executives describes Buck is the sixth-largest U.S. HR consulting company.

Filling a need

When the purchase was announced, ACS executives described it as one that would fill a key need for the company. While ACS was a giant in the business process and information technology outsourcing sectors, traditional benefit consulting and employee benefit plan administration was a hole that it believed its purchase of the Mellon unit would fill.

"We will gain significant expertise in benefit consulting and retirement plan administration," said Lesley Pool, ACS' chief marketing officer at the time.

Mr. Fine, then managing director-retirement at Mellon Human Resources & Investor Solutions in New York, at the time of the purchase said the Mellon unit would bring critical benefit consulting and administrative services that ACS lacked.

"Clients are looking for more integrated solutions," Mr. Fine said, referring to employer interest in securing benefit consulting, benefit administration and business process outsourcing services from a single vendor (*BI*, March 21, 2005).

Mr. Fine also said he expected the integration of the Mellon unit to go smoothly due to the overlap in services provided by ACS and Mellon.

Others, though, say there have been strains in the relationship.

"There are cultural differences between an outsourcing firm and a consulting firm and that can make a smooth integration difficult, especially when the consulting firm had a legacy of being independent," said Donn Bleau, national practice leader for benefits and outsourcing at Solomon-Page Group L.L.C., a retained executive search firm in San Diego.

ACS, in its suit says its intention always has been to retain ownership in Buck and grow the business. "We are committed to this business," an ACS spokesman said.

THE HISTORY

How New York-based Buck Consultants has evolved

1916: Founded by George B. Buck.

1994: Buck Consultants offers to acquire much larger rival Towers Perrin. Offer is rejected.

1996: Buck Consultants buys W.F. Corroon benefit consulting unit from broker Willis Corroon Group P.L.C.

1997: Mellon Bank Corp. acquires Buck Consultants for $225 million.

2002: Mellon Financial Corp. acquires Unifi Network from PricewaterhouseCoopers. L.L.P. for $275 million and combines Unifi with its Buck Consulting unit.

2005: Affiliated Computer Services Inc. buys Mellon's benefit consulting and services unit for $465 million. It later renames the unit Buck Consultants.

ADVERTISER INDEX

Issue of February 5

News In Brief

CONTINUED FROM PAGE 1

a nearly 0.5% increase from the previous year and the first rise since fiscal 2002, the agency said last week. The EEOC reported that–as in past years–charges based on race were the most frequent. The 27,238 race-based charges were followed by 23,247 complaints based on sex and 22,555 based on retaliation. Other frequently cited complaints were disability, at 15,625; national origin, at 8,327; and religion, at 2,541.

P/C profit forecast in 2007: III survey

The property/casualty insurance industry could enjoy an underwriting profit for the second year in a row in 2007, according to an average of precictions made by analysts participating in the Insurance Information Institute's annual Groundhog survey. According to the forecast, the analysts predict that insurers will have a combined ratio of 96.6% this year, a slight deterioration from last year's estimated 93.2%, but still only the third annual underwriting profit since 1978. The average forecast calls for an increase in net written premiums of only 1.8% in 2007, slightly better than half of the 3.3% increase projected for 2006.

CDC releases pandemic index

Closing large public gatherings and asking infected workers to stay home for at least a week are part of the Centers for Disease Control and Prevention's new set of guidelines for dealing with a potential influenza epidemic. The CDC released its "pandemic severity index," which is modeled on the five-category index used to classify hurricanes. For example, a Category 1 pandemic would be as harmful as a severe seasonal influenza season with fewer than 90,000 deaths, while a Category 5 could kill more than 1.8 million.

Bank of America forms Lloyd's syndicate

Bank of America Corp.'s insurance group has set up a syndicate at Lloyd's of London. The syndicate–to be known as the Pembrace Casualty Insurance Syndicate–will have initial stamp capacity of £33 million ($64.5 million) and will underwrite specialty liability, casualty and reinsurance business. The syndicate will be managed by Spectrum Syndicate Management Ltd.

Brown & Brown notes succession plan

J. Powell Brown has been elected president of brokerage Brown & Brown Inc., succeeding Jim W. Henderson, who has been promoted to the new position of vice chairman. The moves are the first steps in the brokerage's executive succession plan, which anticipates Mr. Brown also assuming the office of chief executive officer in July 2009. That's the date his father, J. Hyatt Brown, has indicated he will retire as CEO but remain chairman. J. Powell Brown, previously a regional executive vp, will continue to report to Mr. Henderson, who will retain his position as chief operating officer.

Noted

Thomas L. Elliott III, a longtime executive at Arthur Andersen L.L.P. and later at Unisys Corp., has been named to the newly created position of chief operating officer, consulting practices, at **Mercer Human Resource Consulting**. Before joining Mercer, Mr. Elliott served as president of Unisys' Global Commercial Industries business unit....**AIR Worldwide Corp.** Executive Vp S. Ming Lee will succeed Karen Clark as president and chief executive officer of the catastrophe modeler on April 15. Ms. Clark, who founded the unit of Insurance Services Office Inc. in 1987, will assume the job of vice chairman of AIR's board....Carla D'Andre has been named executive vp of global sales and marketing for **Willis Group Holdings Ltd.**'s newly formed global corporate practice unit, focused on providing risk solutions to multinational corporations. Ms. D'Andre, who will be based in New York, most recently served as a managing director at Aon Risk Services....**Aon Corp.** said Doug Wendt will succeed Richard Ravin as chief executive officer of underwriting unit Combined Insurance Co. of America. The transition will occur July 1, and Mr. Ravin will remain chairman of CICA through 2007. Mr. Wendt currently serves as CICA's president and chief operating officer....**Aon** has formed a new unit focusing on the insurance and risk management needs of the renewable fuels industry. The Agri-Fuels Risk Management Group will be based in Kansas City, Mo.

Surplus: Backers optimistic

CONTINUED FROM PAGE 4

ly in the session is increasing the optimism of supporters that it will become law.

"We're hopeful that we can pick up where we left off last year, and we're especially pleased that Reps. Moore and Brown-Waite have been working hard to see to it that we can push this through the House again, leaving us much more time to get a Senate process completed," said Joel Wood, senior vp of the Council of Insurance Agents and Brokers in Washington.

Mr. Wood also praised the Kansas City, Mo.-based National Assn. of Insurance Commissioners for its "highly constructive" role in the process. "That is a critical element of building the kind of consensus that can get this bill to the president's desk," he said.

"We're optimistic that it will pass again in the House," said NAPSLO's Mr. Bouhan.

"The leadership apparently is willing to move this forward," he said. "It gets us to a point where we were back in September."

Moving the measure through the Senate could be more difficult, he said in noting that the Senate has not has been as involved in insurance regulatory reform as the House.

"We're encouraged by the interest in the House in regulatory reform for reinsurance," said Frank Nutter, president of the Washington-based Reinsurance Assn. of America. "Given the unanimous passage last year of the bill, you have to be encouraged by the prospects for passage of this bill or this bill being used as a basis for regulatory reform."

> **'You have to be encouraged by the prospects for passage of this bill or this bill being used as a basis for regulatory reform.'**
>
> Frank Nutter
> Reinsurance Assn. of America

ADA: Court rules for city

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next five years.

Last year, in a summary judgment, a federal judge ordered the city to "ensure that the Richmond City Public Schools become ADA-compliant" within five years. The court, however, found that the city had not violated the ADA, because the school board had sole responsibility for bringing the schools into compliance with the act.

Failure to act

While the public schools argued that city funding was essential to the settlement, the city responded that the school board had failed since 1992 to implement modifications it knew were necessary and that the board had ample surplus funds to finance the improvements it wanted to complete the first year of a five-year plan to come into compliance with the ADA.

In its 3-0 decision on Jan. 23, a panel of the 4th U.S. Circuit Court of Appeals panel overturned the district court for several reasons.

Citing a U.S. Supreme Court ruling, the appeals panel noted that remedies for plaintiffs "do not exist in the abstract; rather, they flow from and are the consequence of some wrong. At its most basic, this principle limits the reach of judicial decrees to parties found liable for a legal violation."

The appeals court noted that, under Virginia law, the city has no control over how the school board spends the funds it receives from the city. Indeed, directing the school board how to spend funds would violate state law, the appeals panel noted.

The appeals panel also noted that the lower court "overlooked the fact" that state and federal agencies provide additional funding to the school board. Imposing funding requirements on Richmond alone not only "raises serious equitable concerns" but also misreads the intent of the ADA to impose liability only on those that violate the act, the federal appeals panel ruled.

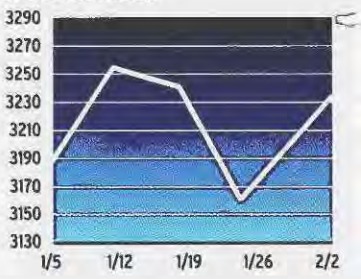
Christopher Bacon et al. vs. the City of Richmond et al.; 4th U.S. Circuit Court of Appeals, Richmond, Va.; No. 06-1347; Jan. 23, 2007.

Stock Index

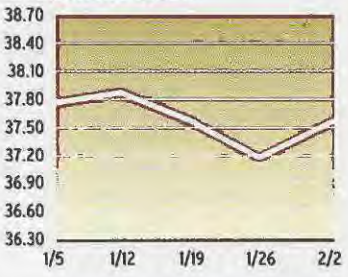
[1/29- 2/2]

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

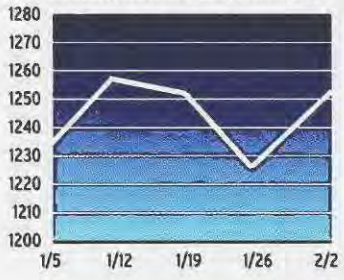
BI STOCK INDEX



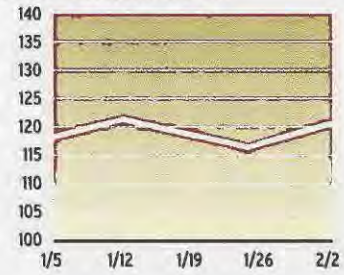
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI *Stock Index vs. key indicators*

BI STOCK INDEX	3234.50	▲ 2.27%
DOW JONES	12653.49	▲ 1.33%
S&P 500	1448.39	▲ 1.84%

LARGEST GAINS

Sierra Health Services	14.91%
UnumProvident Corp.	10.38%
NYMAGIC Inc.	7.53%
Humana Inc.	7.22%
SAFECO Corp.	6.83%

LARGEST LOSSES

Selective Insurance	-3.63%
Allstate Corp.	-3.59%
PXRE Group Ltd.	-2.50%
Everest Re Group	-2.22%
Gainsco Inc.	-1.86%

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

Business Insurance END PAGE

Contributing: Roberto Ceniceros, Louise Esola, Mark A. Hofmann, Sally Roberts, Matt Scroggins

Ex-Broncos star settles insurer suit

Former Denver Broncos running back Terrell Davis has settled a lawsuit he brought against his homeowner insurer, Liberty Mutual Fire Insurance Co., which refused to defend him in a 2005 scuffle at an exclusive post-Emmy Awards party in Hollywood.

The 1998 Super Bowl MVP says a bouncer roughed him up at the Tropicana bar, capping a "rude encounter" between a black acquaintance and a bar employee who "condescendingly" told the acquaintance not to speak to a white waitress at the party, court papers say.

Mr. Davis alleges he confronted the employee and a scuffle ensued in which Tropicana bouncers wrestled him to the floor—leaving Mr. Davis and a bouncer injured.

Mr. Davis sued multiple parties after the incident including the Tropicana and bouncer Gus Chacon on battery and emotional distress, among other charges. Court records do not specify injuries, but one press report said Mr. Davis suffered a bruised neck and damage to his surgically repaired hip.

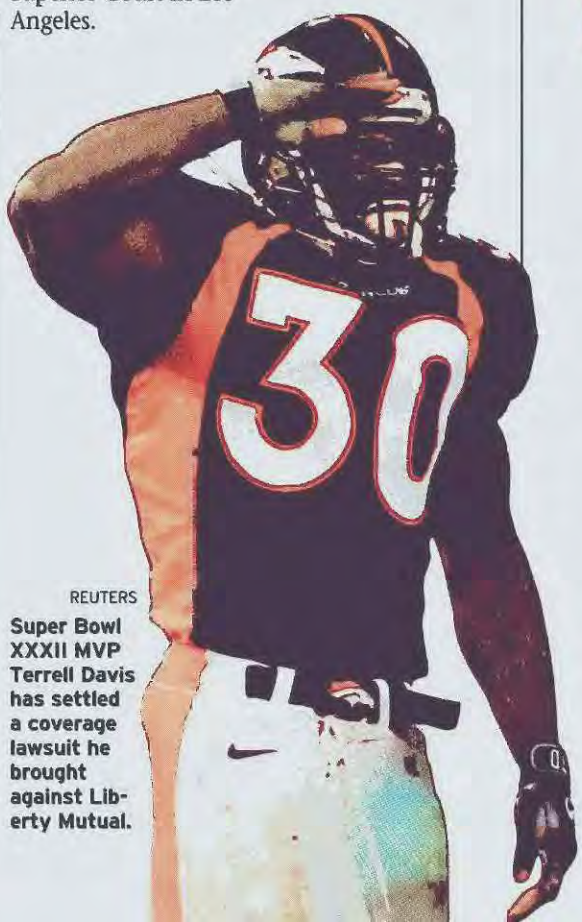
Mr. Chacon countersued, claiming that Mr. Davis struck him multiple times and that he suffered a severe cut to his wrist.

Boston-based Liberty Mutual denied coverage on the cross-complaint against Mr. Davis, claiming the policy excluded bodily injury or damage "expected or intended by the insured."

Mr. Davis, arguing his actions "were nothing more than a use of reasonable force to protect himself from (Mr.) Chacon's surprise physical and forceful attack," sued Liberty Mutual last year for breach of contract and other claims.

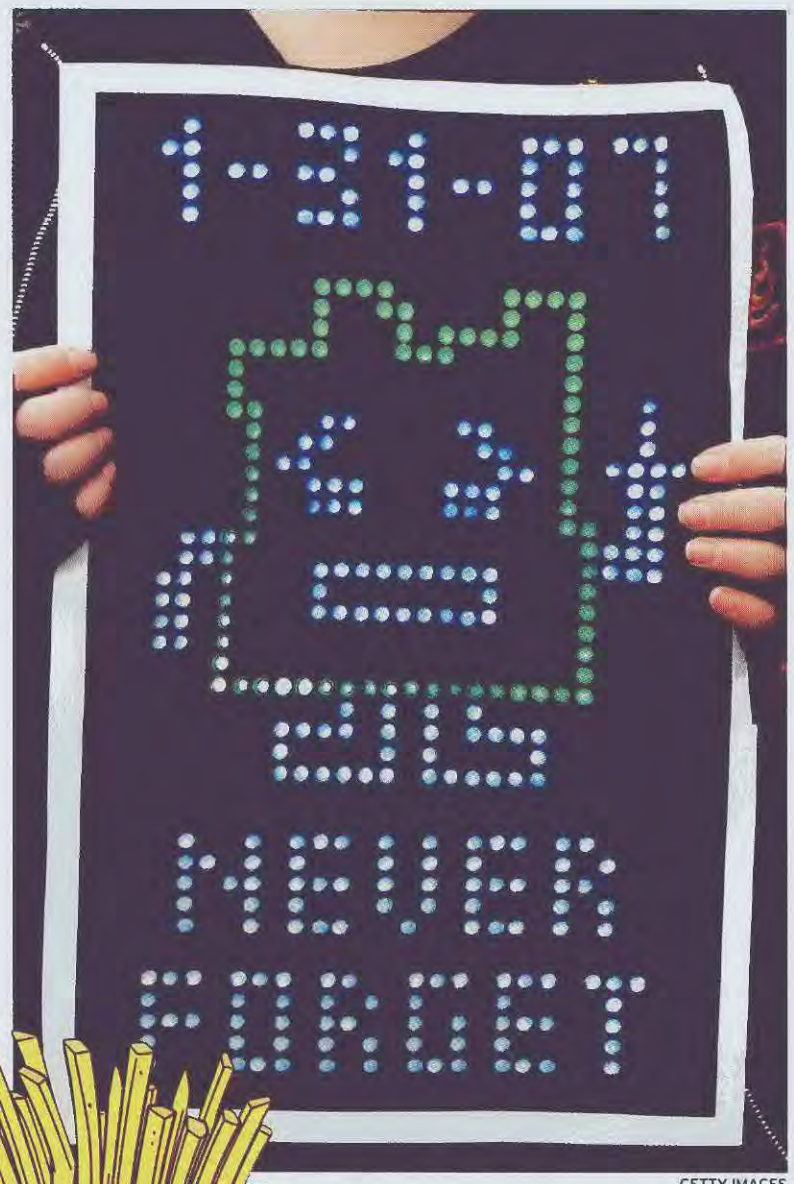
He and the insurer reached a confidential settlement last month, confirmed Mr. Davis' attorney, Kirk A. Pasich of Dickstein Shapiro L.L.P., and Liberty Mutual.

A hearing in Mr. Davis' assault and battery lawsuit was set for Feb. 5 in California Superior Court in Los Angeles.



REUTERS

Super Bowl XXXII MVP Terrell Davis has settled a coverage lawsuit he brought against Liberty Mutual.



GETTY IMAGES

ADULT SWIM/ CARTOON NETWORK

Uproar in Boston over the 'Aqua Teen Hunger Force' guerrilla marketing campaign prompted mock protests.

Mooninites put Boston in a panic

A guerrilla marketing campaign for an upcoming film based on the Cartoon Network show "Aqua Teen Hunger Force" sparked terrorism fears—and significant transportation disruptions—in Boston last week when citizens reported suspicious devices attached to bridges and other structures.

It turned out the devices were electronic light boards featuring one of the series characters—extraterrestrial miscreants known as Mooninites—giving passersby the middle finger.

Boston officials replied in kind.

In a statement, Mayor Thomas M. Menino said: "It is outrageous, in a post-9/11 world, that a company would use this type of marketing scheme. I am prepared to take any and all legal action against (Cartoon Network parent) Turner Broadcasting and its affiliates" for city expense to respond in the case.

Two people responsible for installing the ads pleaded not guilty to charges that they intended to create panic by placing hoax devices, according to media reports.

As for recouping the estimated $1 million bill for the city's response to the scare, the Massachusetts Attorney General's office issued a statement Friday noting that Turner has offered to pay some costs incurred by Boston and surrounding areas. A Turner Broadcasting spokeswoman had no comment.

Interference Inc., the New York marketing firm Turner hired to create the ad campaign, issued a statement on its Web site apologizing for the incident.

Similar devices placed in other cities caused no disruptions.

REUTERS

Second Life, a 3-D metaverse, is a reasonable facsimile of the real world, with businesses, a convertible currency and soon a virtual embassy–Sweden.

Virtual world could pack real-life biz

One intriguing aspect of the Internet has been the creation of so-called "metaverses"—interactive virtual worlds where real people assume virtual identities and carry out parallel lives.

The name derives from Neal Stephenson's 1992 science fiction novel "Snow Crash," in which real people live cyber lives in a cyber world larger than earth.

Probably the best known of today's offerings is Second Life, a 3-D metaverse with more than 3 million residents who act through animated "avatars."

Second Life plays up its commercial potential. Part of its Web site notes that "business opportunities do not stop at the virtual world. In Second Life, all Residents retain Intellectual Property rights over everything they convert in-world—in Second Life, and offline."

For example, "turn a series of screenshots into a graphic novel, and sell the rights to a real life comic publisher," the site says. After providing several examples, the site notes "not only is all this permitted—it's encouraged."

As virtual commerce explodes across the metaverse, a situation could arise like that of late 17th century England. After all, it was that period's commercial boom that gave rise to commercial insurance, notably Lloyd's of London.

In fact, if Second Life continues to grow at the pace it has since its 2003 start, the demand for commercial insurance may help assure that there will be great opportunities for virtual insurance agencies on just about every other virtual street corner in the metaverse.

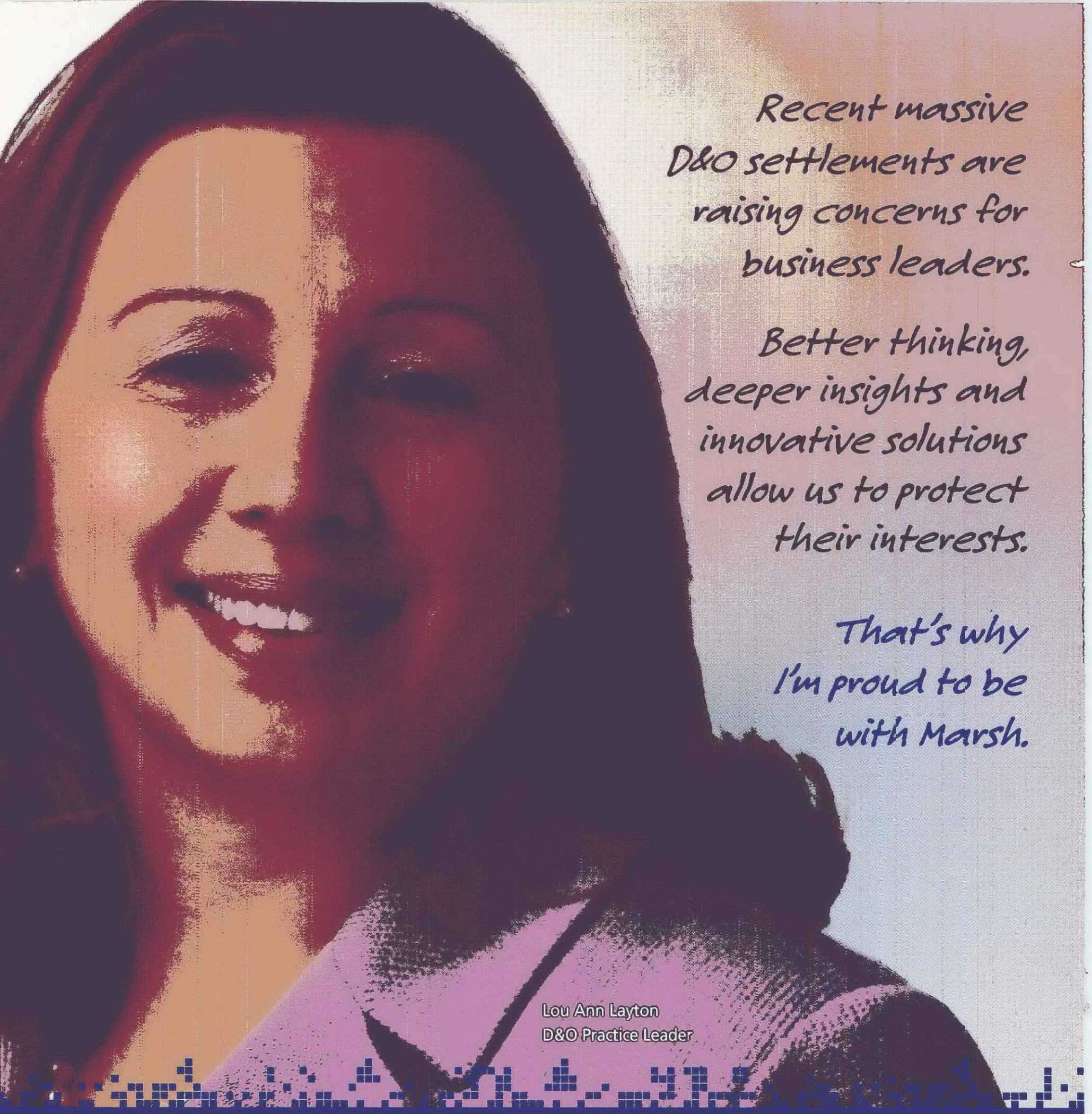
Deal drugs, lose workers comp

Dealing cocaine may be illegal, but it is a form of employment just like working in a department store, Ohio's 10th District Court of Appeals has ruled.

The court last month determined that someone who is employed—even in an illegal endeavor—may not collect workers compensation permanent total disability benefits.

Henry Lynch, now 74, was convicted of drug trafficking in 1994 and 1997. He had been collecting benefits from a 1967 work injury, but following his 1997 conviction, the Industrial Commission of Ohio halted his disability compensation saying he was engaged in a continuing criminal enterprise that was "sustained remunerative employment." Mr. Lynch, hoping to continue collecting benefits while jailed, had argued that sustained remunerative employment does not include continuing criminal activity for profit in workers comp cases.

The appeals court, however, disagreed. "The department store employee who sells products offered by the employer is no different in terms of sustained activity from the employee of a drug dealer who sells crack cocaine on the dealer's behalf," the court ruled.



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