

# Business Insurance

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**SUPREME COURT TO DECIDE WHO MUST PAY FOR VOLUNTARY POLLUTION CLEANUPS / PAGE 3**

**FLA. GOVERNOR SIGNS LAW THAT MAY SQUEEZE REINSURERS / PAGE 3**

**SEXUAL HARASSMENT ENTITLES MINER WITH PTSD TO WORKERS COMPENSATION / PAGE 4**



## In Brief

### New Aon Global unit to serve large clients

Aon Corp. has formed an entity, Aon Global, to consolidate several of its global business units. The Chicago-based unit comprises Aon's former Global Large Corporate business unit, Captives Services Group, International Risk Management Group, the Risk Consulting and Risk Engineering business units, among others. Dennis Mahoney, chairman and chief executive of Aon Ltd. in London, will assume the role of chairman of Aon Global and relocate to Bermuda.

### Barrette again CEO of White Mountains

Raymond Barrette has been named chairman and chief executive officer of White Mountains Insurance Group Ltd. Mr. Barrette succeeds Steven E. Fass as CEO of White Mountains

See **IN BRIEF** page 26

## BENEFITS MANAGEMENT

### RETIREE BENEFITS: HEALTH CARE

Employers shifting more costs to retirees, although

pre-65 workers add the largest load; more companies offer, but workers

are slow to adopt long-term care; continued funding for Medicare Advantage raises concerns; boosting retiree health and the bottom line. **Page 11**

## Bush health plan faces uphill battle

*Administration says proposal could reduce number of uninsured*

By **JERRY GEISEL**

**WASHINGTON**—The Bush administration's proposal to tax employees on the cost of group health insurance premiums could impose challenging administrative burdens on employers and would result in geographical inequalities in workers' health care-related taxes.

At the same time, employees would have a new financial incentive—a reduction in their federal tax liability—to enroll in health care plans that cost less—but also expose employees to more costs—such as high-deductible plans linked to health savings accounts (see story, page 25).

That, along with other provisions in the proposal outlined by President Bush last week in his State of the Union address, could reduce the number of uninsured Americans—now about 47 million—by several million, the administration says.

Although the full details of the proposal are not yet out, the administration's plan broadly calls for

See **HEALTH CARE** page 25

### COMPARE AND CONTRAST

*How President Bush would change the taxation of health care coverage*

#### CURRENT LAW

■ Employees not taxed on the cost of group health care premiums paid by employers

■ Individuals who buy their own health insurance coverage and who itemize their tax deductions allowed to deduct premiums and other out-of-pocket costs that exceed 7.5% of adjusted gross income

■ Contributions paid to health savings accounts tax-deductible

■ Pretax contributions allowed to health care flexible spending accounts

#### BUSH PLAN

■ Everyone covered by a health plan entitled to a tax deduction of \$15,000 for family coverage and \$7,500 for individual coverage

■ Employer-paid health insurance premiums become taxable income for the employee.

■ Annual premiums less than \$7,500 for individuals and \$15,000 for families not subject to income or payroll taxes

■ FSA pretax contributions eliminated

■ HSA contributions retain tax-favored status



Winds as high as 120 mph from Winter Storm Kyrill battered much of Europe, with the worst damage reported in Germany.

## Kyrill slams Europe, may drive rates higher

*Insured loss estimates reach beyond \$10 billion*

By **RICHARD MILLER**

The up to €8 billion (\$10.37 billion) in insured losses from the windstorm that tore through several European countries earlier this month, may push up property reinsurance rates in Europe, some experts say.

If the insured loss estimates produced by modeling firms are "only remotely reflecting reality, then I imagine it would have a profound impact on reinsurance rates at the next renewal," said Wilhelm Zeller,

chairman of the executive board at German reinsurer Hannover Re.

"This, all the more so, as property cat rates in the major continental markets are not really on the high side—nothing in comparison to the U.S.," Mr. Zeller said.

"Definitely, if there are claims, the reinsurers will ask for higher premiums," added Holger Gaserow, chief executive officer of Aon Re in Frankfurt, Germany, a unit of broker Aon Corp. The outcome, how-

See **KYRILL** page 24

## RSA not liable for GM asbestos claims: Court

*Policyholder group still opposes sale, citing worries about insurer's claims reserves*

By **JUDY GREENWALD**

**PONTIAC, Mich.**—A court ruling that Royal & SunAlliance USA Inc. is not on the hook for massive asbestos

and environmental claims filed by General Motors Corp. has not allayed the fears of major policyholders that say the insurer's sale to a management group still would

leave RSA USA inadequately reserved to pay their claims.

RSA USA's parent, London-based Royal & Sun Alliance Insurance Group P.L.C., scored a victory last Tuesday when a Michigan state court said GM waited too long to seek coverage for its asbestos and environmental liabilities.

Judge John J. McDonald of the 6th Circuit Court in Pontiac, Mich., granted RSA USA's pretrial motion for summary dismissal of the case. A coverage trial had been expected to be held within the next few months.

"The crux of Royal's motion is that there are no genuine issues of

material fact that GM's claims are time-barred under the breach of contract limitations period of six years," Judge McDonald said in his ruling.

"GM had six years in which to bring this suit for a determination of coverage under its policies," the judge said. "GM failed to act within the prescribed time period, and thus its action is time-barred."

A spokeswoman said Detroit-based GM intends to appeal the decision but had no further comment.

The suit, filed by GM two years

See **RSA** page 25

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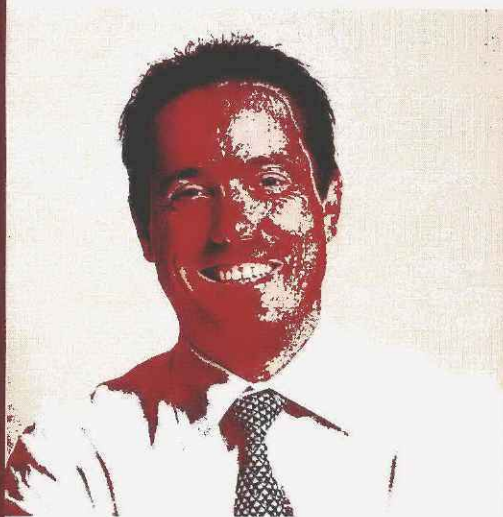
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## On the Web

### BENEFIT MANAGER OF THE YEAR®

#### Benefit manager award open for nominations

*Business Insurance* launched the Benefit Manager of the Year® award in 2005 to salute outstanding performance in the field of benefits management. Nominations are now being accepted for this year's award. The deadline for complete nominations is June 1. For rules and a nomination form, go to [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY).

### BI DIRECTORIES

#### New long-term care providers directory

*Business Insurance* has updated its long-term care providers directory for 2007. The most current versions of all risk and benefits management directories are available online in spreadsheet format at [www.BusinessInsurance.com/Directories](http://www.BusinessInsurance.com/Directories). Prices vary by listing.

### BI RANKINGS

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## Business Insurance.

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

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# High Court to rule in pollution cleanup case

## Company seeks federal help to fund voluntary remediation

By MARK A. HOFMANN

WASHINGTON—How the U.S. Supreme Court decides a case involving what entities can be made to pay for environmental cleanups mandated by the Superfund law could impact the bottom lines of some companies.

The high court agreed last week to hear arguments in *United States vs. Atlantic Research Corp.* At issue is whether Atlantic Research, which is based in Gainesville, Va., can seek a

contribution from the U.S. government to cover part of Atlantic Research's costs in a voluntary cleanup of a Camden, Ark., facility at which it retrofitted rocket motors for the government in the 1980s.

In 2004, the Supreme Court held in *Cooper Industries Inc. vs. Avall Services Inc.* that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980—which created the Superfund—allowed such contributions only if the party seeking them had itself been sued under CERCLA.

Federal appeals courts, however, have been split over the right to seek contributions for voluntary

environmental cleanups.

The 8th U.S. Circuit Court of Appeals, which heard the Atlantic Research case, last year ruled that parties voluntarily cleaning up a contaminated site have the right to seek compensation from other potentially responsible parties—in this case the U.S. government. Earlier, the 2nd Circuit, like the 8th, ruled that a CERCLA suit is not required for the party in a voluntary cleanup to seek compensation from pollution contributors.

However, the 3rd Circuit has also ruled that the voluntary remediator must be sued before it is allowed to sue for compensation.

"We discern nothing in CER-

CLA's words, suggesting Congress intended to establish a comprehensive contribution and cost recovery scheme encouraging private cleanup of contaminated sites, while simultaneously excepting—indeed, penalizing—those who voluntarily assume such duties," a three-judge panel of the 8th Circuit Court of Appeals ruled last August.

In fact, the panel added that "a contrary ruling, barring Atlantic from recovering a portion of its costs, is not only contrary to CERCLA's purpose, but results in an absurd and unjust outcome. Consider: in this, of all cases, the United

See **SUPERFUND** page 9

# Canadian tax change sparks D&O concerns

## Liabilities may rise amid corporate efforts to restructure trusts

By GLORIA GONZALEZ

OTTAWA—A proposal to revamp tax rules for Canadian income trusts could the directors and officers liability exposure of companies that have adopted trust structures to reduce their tax burden.

The federal government's proposed tax rules likely will initiate a trend of conversions of income trusts to corporate structures and increase merger and acquisition activity in the sector, thus creating new D&O exposures.

Minister of Finance Jim Flaherty proposed a comprehensive tax rule overhaul for income trusts in an effort to curb what administration officials view as tax avoidance by Canadian corporations converting to income trusts (see box).

An income trust holds income-producing assets and passes the income on to its investors. Under Canada's current system, income trusts pay little or no corporate taxes because most income is distributed to investors. In contrast, Canadian companies pay corporate taxes at very high rates.

The favorable tax treatment has led to significant growth in income trusts, 253 of which are traded on the Toronto Stock Exchange.

Announcements of planned conversions to income trusts by several corporations—including two of Canada's largest telecommunications companies, Vancouver, British Columbia-based TELUS Corp. and Montreal-based BCE Inc.—provided the impetus for the government's proposal.

"I think the federal government got more and more concerned that there was going to be tax leakage and other problems in the economy," said Garth Pepper, a senior associate and the national management risk practice leader for Integro

(Canada) Ltd. in Toronto.

In response to the proposal, TELUS and BCE said they will not move forward with their planned conversions, a decision other companies likely will follow, observers say. "Many trust conversions are probably not going to happen anymore because of this," said Raymond Hupfer, an Edmonton, Alberta-based partner with McLennan Ross L.L.P. with expertise on taxation and trust issues.

The tax rules are in a consultation scheduled to end Jan. 31. The House of Commons Finance Committee this week will begin review.

### TAX REFORM

Canada's federal government proposes income trust tax rule changes that include:

Taxing distributions from publicly traded income trusts

Imposing the distribution tax with the 2007 taxation year for income trusts that began trading after Oct. 31, 2006

Imposing the distribution tax with the 2011 taxation year on income trusts existing on or before Oct. 31, 2006

Source: Department of Finance Canada

ing the federal government's proposal amid lobbying efforts by the income trust sector that includes allegations that the government overstated the lost tax revenue created by income trust conversions.

Although the market value of these income trusts declined about \$20 billion Canadian (\$17.8 billion) in the days following the government's announcement last October, insurance market sources doubt there will be a spate of securities lawsuits because the decline was not based on any actions taken by the income trusts themselves.

While a tax structure change was

See **CANADA** page 22

### HIGHLIGHTS OF FLORIDA BILL:

- Increases available capacity of the state catastrophe fund to nearly \$33 billion from \$16 billion, mandating direct insurers to pass savings on to customers
- Cancels a planned rate hike of 56% by Citizens Property Insurance Corp.
- Lifts collateral rules for non-U.S.-based reinsurers, at discretion of Florida regulator
- Requires insurers to resolve of claims within 90 days
- Mandates insurance discounts for customers that mitigate storm risk

Gov. Charlie Crist signs the landmark reform bill.



GETTY

# Florida cat fund reforms seen as blow to reinsurers

## Added state capacity expected to cut need for private coverage

By RUPAL PAREKH

TALLAHASSEE, Fla.—Florida Gov. Charlie Crist dealt a blow to the reinsurance market last week in signing legislation to add up to \$17 billion in state-backed capacity for buyers of property catastrophe reinsurance, among other sweeping changes.

The law could significantly reduce profits for the worldwide reinsurance market and halt the recent spate of start-up reinsurance vehicles that have targeted catastrophe risks, industry observers say.

Florida House Bill 1A—designed to curb rising homeowners property rates and promote private-market competition—boosts the state's subsidy of insurance rates through two state-backed vehicles: the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corp., traditionally the state's insurer of last resort.

Among other changes, the law doubles available limits under Florida's cat fund to about \$33 billion. It also allows private insurers to buy state-backed reinsurance at below-market prices.

The legislation, which Gov. Crist signed into law last Thursday, includes other sweeping changes such as canceling rate increases by Citizens, freezing rate increases during 2007, lifting collateral requirements for non-U.S.-based reinsurers at the discretion of the Florida Office of Insurance Regulation, and requiring insurers to resolve claims within 90 days.

"With this legislation, the powerless have become the powerful," Gov. Crist said in a statement.

The law's expansion of the Florida cat fund "will help offset the massive increase in unregulated global reinsurance costs that have put immense upward pressure on insurance rates in Florida," said Insurance Commissioner Kevin McCarty in a statement.

However, insurance industry reaction was less positive.

See **FLORIDA** page 26

# Judge rejects State Farm settlement of Katrina claims

*Decision cites lack of information to determine fairness*

By SALLY ROBERTS

**GULFPORT, Miss.**—A federal judge last week rejected State Farm Fire & Casualty Co.'s broad Hurricane Katrina settlement with Mississippi Attorney General Jim Hood, just three days after the insurer agreed to reopen claims from thousands of policyholders and pay at least \$50 million toward their property damages.

The settlement resolved a civil suit filed by Mr. Hood that sought to compel Bloomington, Ill.-based State Farm to cover Katrina-related storm surge damage and a criminal investigation into the insurer's

claims handling practices.

Among other settlement provisions, State Farm had agreed to re-evaluate Katrina-related claims for about 35,000 policyholders in three coastal counties and to pay a minimum of \$50 million, with no cap on the total payout.

"In the absence of substantially more information than I now have before me, I am unable to say, even preliminarily, that the proposed settlement establishes a procedure that is fair, just, balanced or reasonable," Judge L.T. Senter Jr. said in his order denying approval.

In particular, he noted that although State Farm has made a commitment to pay at least \$50 million, he could not ascertain how that sum compares with the total claims of the members of the pro-

See **SETTLEMENT** page 24



Mr. Hood

## UNSETTLED

Under its proposed settlement, State Farm agreed to:

- Provide full disclosure of all documents in policyholders' claim files, including multiple engineering reports, upon request of the policyholder.
- Independently re-evaluate claims based on terms on the agreement without using previous adjusters and engineers, upon request of the policyholder.
- Make a minimum offer equivalent to 50% of the structural policy limits, less payments previously made, in approximately 1,000 claims where buildings were destroyed down to the slab.
- Pay the costs of arbitration conducted by arbiters chosen by both sides.
- Provide annual notice to policyholders that clearly explains that storm surge is not covered by homeowner or windstorm residential policies.

Source: Mississippi Attorney General Jim Hood

## Policyholder wins Calif. pollution cover ruling

*Thousands of buyers advised to stay tuned for more court action*

By DAVE LENCKUS

**RIVERSIDE, Calif.**—A policyholder victory in a pollution coverage case in California gives the state Supreme Court the opportunity to resolve conflicting case law that has created huge problems for policyholders trying to tap their insurance policies for partially covered losses, attorneys in the case agree.

In the coverage litigation over the infamous Stringfellow hazardous waste site near Glen Avon, Calif., a California appellate court in Riverside on Jan. 12 published its earlier ruling that a policyholder does not lose all of its coverage if it cannot distinguish between the covered and noncovered portions of a loss. That burden of proof rests with insurers, which must cover a loss fully if they cannot distinguish which part of the loss is covered, the court ruled.

The decision, which the court originally issued Dec. 28, 2006, overturns a lower court's 2004 summary judgment that cited two rulings by a Los Angeles-based appellate court.

The Riverside appellate court's publication of its ruling in the Stringfellow case means the decision is precedent case law in the district. The court last week denied the insurers' motion for a rehearing and beefed up its earlier decisions against the insurers.

The coverage litigation, which

has wended through California's trial and appellate courts on various issues for years, stems from the state's operation of the Stringfellow hazardous waste site for 16 years, beginning in 1956.

A federal judge in 1998 determined that the state was 100% liable for environmental damage the site caused, because the state

### STRINGFELLOW CASE FINDINGS

Key points of a California appellate court ruling concerning hazardous waste insurance coverage

- Policyholders do not lose any coverage for a partially insured loss when they cannot show the portion of the loss that is attributable to a covered risk.
- The "relevant discharge" in determining a covered environmental contamination incident is when pollutants leak into the environment—not when they are deposited at a waste site.
- Groundwater contamination is not an excluded loss under the commercial general liability policy's watercourse exclusion, because watercourses—unlike groundwater—have defined boundaries.

had negligently designed and operated the site. Environmental contamination occurred when pollutants leaked into groundwater; when heavy rains washed waste into the environment; and when a deteriorating dam wall at the site forced the state to release 1 million gallons of contaminants to prevent

See **STRINGFELLOW** page 24

## Bermuda insurance incorporations increase in 2006, regulator reports

By RUPAL PAREKH

**HAMILTON, Bermuda**—Insurer and reinsurer incorporations hit a three-year high in Bermuda in 2006, with 82 new companies opening their doors there, newly released statistics from the Bermuda Monetary Authority show.

In addition, the number of new insurers and reinsurers that formed in Bermuda last year represented a 10% jump over the number of incorporations in 2005, the BMA—the regulatory



Mr. Cox

body overseeing insurance companies on the island—said in a state-

ment last week.

In 2005, the latest year for which statistics are available, the Bermuda market wrote a total of \$100.7 billion in gross written premiums, up from \$95.3 billion the previous year, the BMA said.

"It is good to see that overall Bermuda continues to be a very attractive domicile and good business choice for large commercial reinsurers and captives, as well as the primary market," Jeremy Cox, supervisor of insurance at the BMA, said in the statement.

## Sexually harassed miner due comp

*Comments aggravated stress-related disorder, Pa. high court rules*

By JUDY GREENWALD

**HARRISBURG, Pa.**—Repeated sexually harassing comments made by a supervisor to a miner already suffering post-traumatic stress disorder constitute "abnormal working conditions" that qualify the miner for workers compensation benefits, the Pennsylvania Supreme Court has ruled.

The unanimous Jan. 11 decision overturned a lower court ruling that had concluded the comments made to Ronald A. Hopton were normal in the "rough and tumble" mining industry.

According to the ruling in *RAG (Cyprus) Emerald Resources L.P. vs. Workers' Compensation Appeal Board*, Mr. Hopton suffered from PTSD because of his experiences as a U.S. soldier, including a solicitation for homosexual sex from his commanding officer in Vietnam. When he returned from Vietnam in 1967, he experienced flashbacks from his

experiences there.

Mr. Hopton said he became disabled as a result of three incidents involving sexually harassing comments allegedly made by his mine supervisor, Dominic Rossi, including one in which Mr. Rossi said Mr. Hopton had a "real nice looking butt."

A workers comp judge ruled "the incidents in question were not normal joking or merely uncivil behavior, but rather constituted a 'course of conduct' that was 'clearly calculated to cause severe emotional distress,'" according to the high court's opinion.

The judge also found that Mr. Rossi's comments constituted "abnormal working conditions," and that Mr. Hopton established he was disabled as a result of them and thus was entitled to benefits. The Workers' Compensation Appeals Board affirmed the decision.

Subsequently, though, a state court "determined that Mr. Rossi's comments did not create abnormal working conditions because the evidence revealed that those comments, while 'crude and unacceptable' were nevertheless 'normal' in the 'rough and tumble' mining

industry, disregarding the (workers comp judge's) numerous findings of fact based on the testimony that these statements were unusual in the mines," the Pennsylvania high court said.

The state Supreme Court said the lower court "abused its discretion by not limiting its review to determining whether (the workers comp judge's) factual findings were supported by the record and, instead, focusing on a brief section of testimony not included in the (judge's) factual findings to support its own conclusion that Rossi's comments were 'normal in the mining industry.'"

In classifying work conditions, the court said it considers "the specific work environment of the claimant, for we recognize that what may be normal for a police officer will not be normal for an office worker." In this case, the workers comp judge "followed our dictates and considered what was normal for the mine" in its ruling, the state Supreme court ruled.

The court said the workers comp judge correctly determined that Mr.

See **HARASSMENT** page 22

## Errors & Omissions

• A Jan. 15 story on the formation of a sidecar vehicle by Marsh Inc., ACE Ltd. and Morgan Stanley omitted the name of the law firm that served as one of the advisers in the transaction. Cadwalader, Wickersham & Taft L.L.P. advised Morgan Stanley, while Willkie Farr & Gallagher L.L.P. advised Marsh.



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GROUP BENEFITS

# Electronic Rx program helps cut health care costs at General Motors

*Increased generic use, greater drug control drive savings*

By JOANNE WOJCIK

**DAYTON, Ohio**—A joint insurer-employer initiative is providing incentives to physicians in two Ohio areas to use electronic prescribing technology.

The project by Detroit-based General Motors Corp. and Indianapolis-based Anthem Blue Cross & Blue Shield is an extension of a pilot program GM conducted last year in southeast Michigan with Blue Cross & Blue Shield of Michigan.

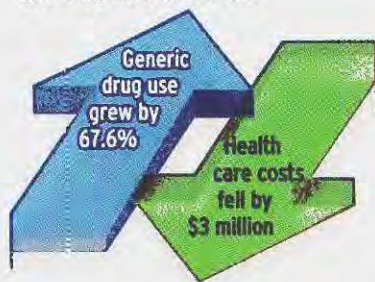
E-prescribing reduced GM's health care costs by about \$3 million in 2006 by boosting generic drug use from 56.7% to 67.6% among its Detroit-area plan members, said Marsha Manning, manager of GM's Southeast Michigan Community Health Care Initiatives project, which promotes greater use of health information technology.

The savings resulted from changing more than 70,000 of the 1.7 million prescriptions written for GM employees in southeast Michigan after providers received formulary warnings through their e-prescribing equipment about lower cost generic equivalents, Ms. Manning said.

In addition, the pilot also

improved patient care by lowering adverse drug reactions and hospitalizations that may occur when patients are prescribed drugs that interact negatively, Ms. Manning added.

## SAVINGS ADD UP AT GM



Though "it's hard to calculate the cost avoidance of someone having an adverse drug event," she said doctors with access to the e-prescribing technology changed about 150,000 prescriptions due to drug-to-drug interactions and more than 11,000 prescriptions due to allergy warnings.

GM expects to achieve similar results in Dayton as well as the Warren/Youngstown area, Ms. Manning said.

Other employers where the Ohio pilot is taking place also stand to benefit since participating doctors will be allowed use the e-prescribing technology with all patients—not just GM employees or Anthem plan participants, said Sam Shalaby, director of GM Community Health

Care Initiatives in Dayton.

"We believe that if we improve the quality of care and reduce the cost of care, it will improve the value to the entire community," Mr. Shalaby said.

"Our mission is to improve the health of communities we are in. All boats will rise with the tide," agreed Rich Gunza, executive director of Anthem in Dayton.

Under the program, Anthem initially will supply 100 doctors—200 more will be added later this year—with e-prescribing equipment from St. Paul, Minn.-based vendor RxHub L.L.C. Doctors will decide what type of hardware to use with software connecting them online with pharmacies and other patient data, including formularies.

Anthem also will pay each physician's \$40 monthly online connection fee for 12 months. Doctors who positively alter their prescribing habits will be eligible for increases in their scheduled fees of up to 12% in the Dayton market and up to 5% in northeast Ohio, Mr. Gunza said.

Other health information technology advocates praised GM's and Anthem's efforts.

"It is a fabulous idea. If ineffective processes are also re-engineered, quality will be improved, errors will be reduced, and all will save time, money and demoralizing hassle," said Helen Darling, president of the Washington-based National Business Group on Health.

## Questions Answers

*In the past nine years as head of worldwide markets at Lloyd's of London, Julian James has traveled the globe to expand the presence of the world's oldest insurance marketplace. But he has decided it's time for new challenges. At the end of April, Mr. James, 43, will leave Lloyd's to become executive chairman of Lockton International, a division of Kansas City, Mo.-based Lockton Cos. In an interview with Business Insurance Editor Regis Coccia, Mr. James reflected on his time at Lloyd's, improvements that*



*have taken place in the market and lessons learned during his 25-year career in insurance.*

## Lloyd's ambassador has global perspective

**Q: What are the most significant changes at Lloyd's during your tenure there?**

Over time, we've witnessed a transformation in the market. Lloyd's was just emerging from financial crisis in the early '90s. Lloyd's has re-established itself and its reputation globally, and the quality of the market is the highest it's ever been.

**Q: What are you proudest of about that period?**

I'm proudest of the market's re-establishing its position globally. Being a part of that has been a wonderful experience. It's had its challenges along the way—9/11, some very soft underwriting years, events like Hurricane Katrina. Despite these, this market is in the strongest position in recent memory.

**Q: What lessons have you learned about doing business in markets around the world?**

People and cultures are different, and we need to understand and respect people's attitudes and wishes. One size doesn't fit all. Without a relentless focus on your customer, you'll never succeed. Honesty, integrity (and client focus)...it's a very powerful combination. Anybody doing any business should respect those principles.

**Q: Why has Lloyd's been so resilient?**

Its adaptability, coupled with a willingness to change and, in recent years, a willingness to improve. People looked at some of the practices and processes at Lloyd's and realized they could be improved. Lloyd's has improved underwriting standards, it has better modeling tools. Every single aspect of this market has improved over the last 10 years.

There's still a lot of work to get done, but it's been a constant upgrading.

**Q: Many insurance industry executives admit they entered the business by accident. How did you begin your career?**

I was at Sedgwick Group for 15 years on the marine and energy side, both in the U.S. and internationally. In many ways, I'm going back to my roots. One of my uncles worked for Minet (Group, now part of Aon Corp.) and I was talking with him about what to do with my life. He said, "Come up and have a look at what I do." It sounded like quite an interesting job. Sedgwick seemed an obvious place to start—that was 25 years ago.

**Q: Did you ever expect your career to take you where it has?**

Absolutely not. Anybody who says they can plan their career is either lying or raving mad. Life is full of unexpected twists and turns. If you're not enjoying it, then go do something else.

**Q: How do you relax when you're not having to think about work?**

Family life is important. Having 10-year-old and 8-year-old boys will bring you back to reality. They don't care if you just stepped off a flight from China; they expect the same treatment. Family support, they're great levelers.

**Q: What will you miss when you leave Lloyd's?**

If there's one aspect I really enjoy about coming to work every day, it's the people. I've been fortunate enough to work with some fantastic people. The team I work with at Lloyd's has been through a lot, so I'll probably miss them the most.

## Call for Nominations

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RANKING OF LEADING  
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# Business Insurance OPINIONS

## Faulty Bush proposal still may spark reform

**W**E BELIEVE President Bush's plan to tax employees on health care premiums would neither be as damaging as critics say nor do what the administration says it would.

As we report on page 1, employees would be taxed on the cost of their health insurance above a stipulated amount. If the cost were less, employees would end up with a lower tax liability.

And for individuals, such as those working for employers not offering coverage, they could fully deduct the cost of premiums, significantly reducing the policy's cost.

Some congressional Democrats make no bones about what they think: They hate it. Take House Ways and Means Health Subcommittee Chairman Pete Stark, D-Calif. He says the proposal "would eliminate employer-provided coverage, through which 160 million Americans are covered."

*Some Democrats are clear on what they think of the proposal: They hate it.*

That's absurd. Most employees wouldn't be subject to new taxes under the proposal. For those who would, the increased tax bite would be relatively small—hardly reason for an employer to terminate coverage and force employees to find their own coverage.

At the same time, we are not convinced of the underlying premise of the proposal: that letting employers offer tax-free health insurance encourages employees to opt for the most generous plans, making them poor health care consumers and leading to higher prices charged by providers.

Such a belief ignores the real world. Gold-plated plans are a thing of the past. Employers cannot afford them and have opted for plans with more cost sharing. Whether tax law is changed or not, that is the direction that employers—to stay competitive—are going.

Having said that, we support the administration's plan to give the same tax breaks to those who buy health insurance on their own as those who receive it through their employers. The tax-favored status of coverage shouldn't rest on whether the coverage is purchased by an individual or by an employer.

Perhaps the most important point in the proposal is that it shows the administration is interested in working to reduce the number of uninsured. We hope its proposal is a catalyst for federal action—now sorely missing—in that area.

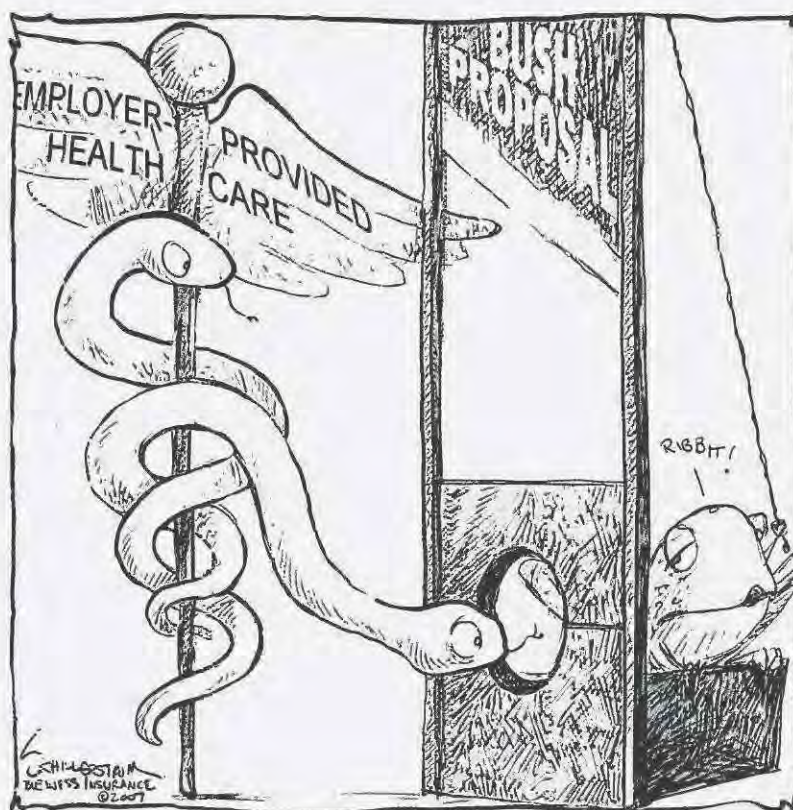
## State Farm settlement a chance to repair image

**W**E APPLAUD State Farm Fire & Casualty Co.'s agreement to settle a closely watched lawsuit over Hurricane Katrina claims, even though a federal judge rejected the settlement last Friday.

Mississippi Attorney General Jim Hood sued State Farm and other insurers, seeking to compel them to pay for damage from Katrina's huge storm surge. Insurers balked, citing policy exclusions. For the thousands of homeowners who lost their homes, the distinction between wind and water as the proximate cause of loss was meaningless, if they even understood it.

Without insurance recoveries, most of these unfortunate people could never hope to rebuild. While denying surge claims, the industry earned fierce criticism. Unfairly so, as most of the storm claims were paid quickly and fully, enabling the majority of insured Katrina victims to begin the long recovery process.

While we do not support rewriting insurance contracts, disasters such as Katrina afford the industry a chance to help repair its image and educate policyholders. No matter what happens with State Farm's settlement, we hope insurers have learned a lesson.



## Letters

### Beware misnomers in captive references

**TO THE EDITOR:** Just like many dangerous products require warning labels, all future columns in *Business Insurance* about captives should have their own "insurance consumer protection" labels ("Property Captives' Greatest Risk is in First Three Years", *BI* Jan. 15). I think it's fair to assume that the vast majority of your readers work for publicly owned companies and are subject to FASB accounting and IRS tax rules; as such, they should be aware of the following:

While you may accumulate premiums in your captive by writing property "insurance," from a parental balance sheet perspective, you are not transferring risk. A captive's underwriting profits and retained losses flow through the company (by way of accounting consolidation) exactly as they would if you took a deductible or were self-insured. Unless a captive qualifies as a risk transfer vehicle, I suggest that the use of the word "insuring" be banned from future

captive articles.

Any capital that accrues in the captive is money that would have remained in the parent company's coffers absent captive use. One would expect the parent to be better at utilizing its funds to generate a higher rate of return than can be had by captive investments. (Otherwise, why not liquidate the company's assets and mirror the captive investment portfolio, thus providing a better return for shareholders?) There is almost always a marginal cost associated with funds remaining in a captive.

No one year in a captive is more volatile than another. The underlying volatility of a property program has nothing to do with whether it is financed by a captive, retained on the parent company's balance sheet or funded with gold coins buried in a cave. The first years might be more risky (from a captive-centric funding

See **LETTERS** page 25

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

How committed is your organization's upper management to creating a safety culture?



**NEXT WEEK'S POLL:** What impact would President Bush's proposal to make all health care premiums tax deductible have on the number of uninsured?

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# Superfund: High court to consider environmental cleanup payments

CONTINUED FROM PAGE 3

States is a liable party (who else has rocket motors to clean?)."

Reacting to the Supreme Court's decision to hear the case, Laura Foggan, a partner at Wiley Rein & Fielding L.L.P. in Washington, described it as a "very interesting case...that's going to be closely watched."

"We've maybe lost track of the fact that Superfund is a draconian remedy that imposes very substantial liability, but it does. As a result, any of these cases over sharing Superfund costs tend to be high-stakes, high-dollar matters," Ms. Foggan said.

"Certainly, the ability to force the government when it's a responsible party to share cleanup is an important issue," she said.

"The trick is that if there weren't a means for the responsible party who incurs the cost" to recover it, "the government could hold all the cards," she said. "It could decline to sue, decline to settle, kind of play

the game so the party that had to undertake the cleanup' would have no right to force the government in its responsible party role to pay its share.

Not all companies will see the issue the same way, and "different companies could quite reasonably come down on different sides of that issue, and in fact have," said Russ Eggert, a partner in Mayer Brown Rowe & Maw L.L.P. in Chicago. "The circuits have split," and from the Environmental Protection Agency's "perspective, I suppose, it's more important that the issue be decided uniformly on a national basis, rather than any

## APPEALS COURTS SPLIT

Despite the Supreme Court's 2004 ruling in *Cooper Industries vs. Avial Services Inc.*, U.S. courts of appeal have split over the question of whether a party that conducts a voluntary cleanup of a contaminated site may seek compensation from other parties that contributed to the contamination.



The 8th U.S. Circuit Court of Appeals, which heard *Atlantic Research Corp. vs. United States*, and the 2nd U.S. Circuit Court of Appeals, which heard *Consolidated Edison vs. UGI Utilities*, both have said such action is permitted.

However, the 3rd U.S. Circuit Court of Appeals, which heard *E.I. DuPont de Nemours vs. United States*, has held that a party itself must first be sued by the government before it can sue for compensation from other parties.

institutional concern on which way the issue does get decided," said Mr. Eggert.

The situation presents a dilemma for regulators, he said.

"Forcing companies to wait until they have been sued or settled with EPA would encourage more federal oversight of cleanups. On the other hand, EPA has finite resources, and if the court decided that a party could not sue to recover its contribution until it itself had been sued by EPA, fewer parties would take the initiative and start a cleanup because they would then not be able to get contribution from anyone else," Mr. Eggert said.

## Tort reform possible in new Congress, advocate says

By MARK A. HOFMANN

**WASHINGTON**—A leading tort reform advocate says concerns about frivolous lawsuits among members of both political parties may lead to discussions about reform despite Democratic control of both houses of Congress.

"We have no illusions about the difficulties of getting legal reform through the new Congress," said Sherman Joyce, president of the Washington-based American Tort Reform Assn. during a discussion of civil justice reform at the Washington Legal Foundation last week.



Mr. Joyce

He noted, though, that both President Bush and Sen. John Kerry, D-

Mass., had talked about curbing frivolous lawsuits, although in different contexts, during the 2004 presidential campaign. Given some bipartisan concern over frivolous lawsuits, reformers may take the issue to Capitol Hill yet again.

A measure that would have sanctioned lawyers who brought lawsuits deemed groundless in federal courts—the Lawsuit Abuse Reduction Act—passed the House in the last Congress but faltered in the Senate. "We're anxious to see what the political marketplace will bear," said Mr. Joyce.

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## RETIREE BENEFITS: HEALTH CARE

More companies offer long-term care, but worker adoption still slow / **Page 16**

Continued federal funding among Medicare Advantage concerns / **Page 16**

HSAs have long way to go to become major retiree savings vehicle / **Page 18**

# BENEFITS MANAGEMENT

## RETIREE HEALTH CARE

# UNDER PRESSURE

## Employers shifting more health care expenses to retirees

*Premium increases combine with greater use of HSAs, HRAs*

By JOANNE WOJCIK

The majority of retirees who currently enjoy post-retirement health benefits will likely continue to do so, but they will have to pay more for them.

As employers seek to slow, or in

some cases stop, the rate of growth of retiree medical costs, they are freezing their contributions and shifting any annual cost increases to retirees by hiking premium contributions, increasing copayments or raising deductibles.

While retirees of all ages are being asked to shoulder a greater share of their own health care burden, it's the pre-65 group that is adding the largest load.

According to the 2006 National Survey of Employer-Spon-

sored Health Plans, published by Washington-based Mercer Health & Benefits, 29% of large U.S. employers offered coverage to pre-65 retirees in 2006—the same as in 2005, while just 19% provided such coverage to Medicare-eligible retirees—a decline from 21% in

**RETIREE WELLNESS:** Programs result in healthier individuals and save money for employers. **Page 15.**

2005.

Retiree health benefits have been eroding steadily since 1988, when an estimated 66% of large employers—those with 200 or more employees—offered them, according to a Kaiser Family Foundation/Hewitt Associates retiree benefits study published in December.

Today, an estimated 3.8 million early retirees between 55 and 65 and their dependents are receiving post-retirement health care cover-

age either from their former employer or via a union plan, according to the Kaiser/Hewitt survey, which was published jointly by the Menlo Park, Calif.-based Kaiser Family Foundation and Lincolnshire, Ill.-based Hewitt Associates Inc. Employer plans also provide supplemental benefits to more than 12 million Medicare-eligible retirees, the survey found.

"Most of the employers who

See **COSTS** page 14

## LTC INSURANCE PREMIUMS

Ranked by 2006 total gross premiums from long-term care policies

|                                             |                 |
|---------------------------------------------|-----------------|
| Genworth Financial Services                 | \$1,740,864,049 |
| Bankers Life & Casualty Co.                 | \$540,000,000   |
| UnumProvident Corp.                         | \$480,000,000   |
| Allianz Life Insurance Co. of North America | \$213,000,000   |
| MedAmerica Insurance Co.                    | \$135,000,000   |

Source: BI survey

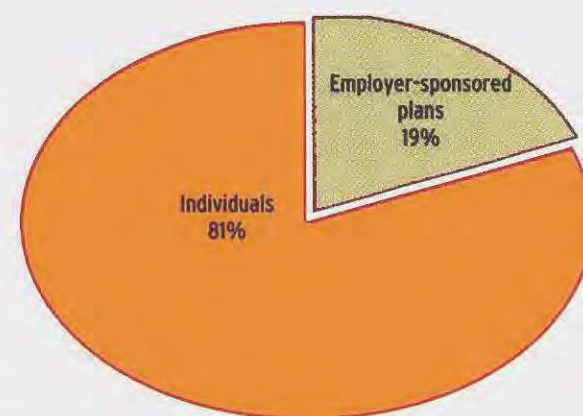
## LOADED WITH OPTIONS

Ranked by number of long-term care policy offerings

|                                         |    |
|-----------------------------------------|----|
| Mutual of Omaha Insurance Co.           | 14 |
| Bankers Life & Casualty Co.             | 8  |
| MetLife Inc.                            | 5  |
| Equitable Life & Casualty Insurance Co. | 3  |
| COUNTRY Life Insurance Co.              | 3  |

Source: BI survey

## EMPLOYER-SPONSORED VS. INDIVIDUAL POLICYHOLDERS



Source: BI survey

## BI Ranking

## Largest long-term care insurance providers

Ranked by number of total long-term care policyholders in 2006

| Rank | Company/Address                                                                                        | Phone/Fax/Web site                                         | Total policyholders | Number of policy types | Total gross premiums | Policy issue age range                                                                      | Daily benefit range                                                                               | Principal officer                                                           |
|------|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------|---------------------|------------------------|----------------------|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1    | Genworth Financial Services<br>6620 W. Broad St.,<br>Richmond, Va. 23230                               | 800-281-6000<br>Fax: 804-484-3999<br>www.genworth.com      | 943,896             | 2                      | \$1,740,864,049      | 18 to 79                                                                                    | \$50 to \$400                                                                                     | Buck Stinson,<br>president-long-term care                                   |
| 2    | UnumProvident Corp.<br>1 Fountain Square,<br>Chattanooga, Tenn. 37402                                  | 800-633-7490<br>Fax: 207-575-1689<br>www.unumprovident.com | 750,000             | NA                     | \$480,000,000        | 18 to 80                                                                                    | \$1,000 to \$9,000<br>per month                                                                   | Thomas R. Watjen,<br>president/CEO                                          |
| 3    | MetLife Inc.<br>57 Greens Farms Road,<br>Westport, Conn. 06880                                         | 888-799-0902<br>www.metlife.com                            | 667,600             | 5                      | NA                   | 18 to 84 for individual<br>policyholders; no age<br>limit for employer-<br>sponsored groups | \$50 to \$400                                                                                     | David Acselrod,<br>vp                                                       |
| 4    | Bankers Life & Casualty Co.<br>222 Merchandise Mart Plaza,<br>Chicago, Ill. 60654-2001                 | 312-396-6000<br>Fax: 312-396-5906<br>www.bankerslife.com   | 435,000             | 8                      | \$540,000,000        | 18 to 89                                                                                    | ages 18 to 79, \$40 to<br>\$400; ages 80 to 84,<br>\$40 to \$250; ages 85<br>to 89, \$40 to \$200 | Jim Prieur,<br>CEO                                                          |
| 5    | Allianz Life Insurance Co.<br>of North America<br>5701 Golden Hills Drive,<br>Minneapolis, Minn. 55416 | 763-582-6500<br>Fax: 763-582-6407<br>www.allianzlife.com   | 121,000             | NA                     | \$213,000,000        | 18 to 84                                                                                    | \$50 to \$500                                                                                     | Charles Kavitsky,<br>interim CEO                                            |
| 6    | MedAmerica Insurance Co.<br>165 Court St.,<br>Rochester, N.Y. 14647                                    | 800-544-0327<br>Fax: 585-238-3642<br>www.medamericaltc.com | 110,000             | 1                      | \$135,000,000        | 18 to 85                                                                                    | \$2,100 to \$12,000<br>per month                                                                  | Chris Perna,<br>president                                                   |
| 7    | Prudential Financial Inc.<br>290 W. Mount Pleasant Ave.,<br>Livingston, N.J. 07039                     | 973-548-6676<br>Fax: 973-548-6609<br>www.prudential.com    | 96,075              | 2                      | NA                   | 18 to 88                                                                                    | \$50 to \$500                                                                                     | Andy Mako,<br>senior vp                                                     |
| 8    | Mutual of Omaha Insurance Co.<br>Mutual of Omaha Plaza,<br>Omaha, Neb. 68175                           | 402-342-7600<br>Fax: 402-351-2775<br>www.mutualofomaha.com | 80,000              | 14                     | \$128,000,000        | 18 to 79                                                                                    | \$50 to \$400 (\$50 to<br>\$500 in New York)                                                      | Dan Neary,<br>chairman/CEO                                                  |
| 9    | MassMutual Life Insurance Co.<br>1295 State St.,<br>Springfield, Mass. 01111-0001                      | 800-767-1000<br>Fax: 860-562-6137<br>www.massmutual.com    | 49,500              | 1                      | \$112,000,000        | 40 to 84                                                                                    | \$50 to \$300 (\$350 in<br>Alaska; Fairfield<br>County, Conn.; and<br>metro-area N.Y.)            | Melissa Millan,<br>senior vp-<br>U.S. Insurance Group<br>product management |
| 10   | Equitable Life & Casualty Insurance Co.<br>3 Triad Center,<br>Salt Lake City, Utah 84180-1200          | 800-352-5150<br>Fax: 801-579-3745<br>www.equilife.com      | 31,200              | 3                      | \$58,000,000         | 18 to 84                                                                                    | \$50 to \$500                                                                                     | E. Rod Ross,<br>chairman/president/CEO                                      |

NA=Not available.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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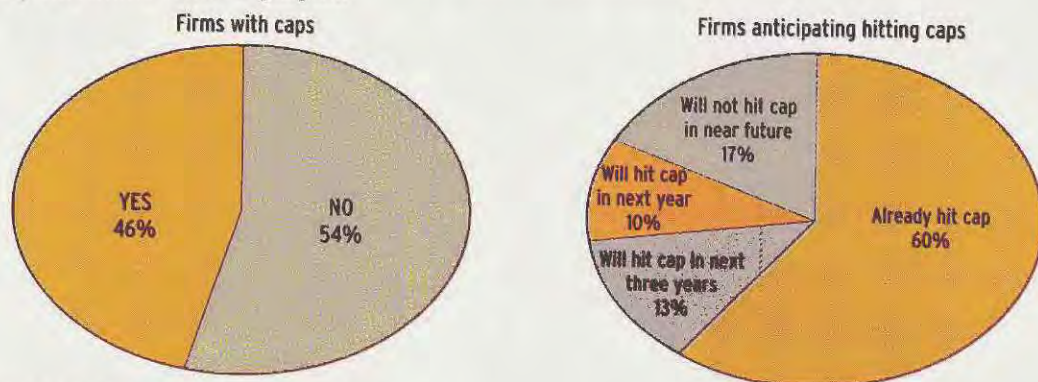


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## CONTRIBUTION CAPS

Percentage of large private-sector employers with a cap on their firm's contributions to retiree health benefits for pre-65 retirees in their largest plan.



Source: Kaiser Family Foundation and Hewitt Associates Inc.

## Costs: Retirees pay more for health care benefits

CONTINUED FROM PAGE 11

could get out of providing retiree health benefits have left," said Helen Darling, president of the National Business Group on Health, a Washington-based consortium of the nation's largest employers. "So those that are left are those without flexibility," such as those employees subject to labor contracts.

But terminations did occur during 2006. The Kaiser/Hewitt survey found that 1% of employers eliminated benefits for a group of current

retirees age 65 or older, and 11% did so for future retirees. Though no employers reported terminating benefits for a current group of Medicare-eligible retirees, 9% eliminated them for a group of future retirees age 65 or older.

Companies seeking to cap their retiree health liabilities are more likely to drop coverage for future retirees, such as active employees younger than a certain age, said Mike Morfe, senior vp in Aon Consulting's Somerset, N.J., office.

New hires are also being cut out, said Cara Jareb, director of retiree medical at Watson Wyatt Worldwide in Washington.

A significant number of employers that have maintained retiree health benefits are freezing their annual contributions to the plans.

General Motors Corp., for example, has frozen its retiree health benefit contribution for salaried employees at 2006 levels, a company spokeswoman said.

**'Outside of cost-shifting, we're seeing increased use of account-based programs such as consumer-driven health plans with high deductibles.'**

Rick McGill, Hewitt Associates Inc.

Columbia, S.C.-based utility SCANA Corp. also put a cap on its contributions to its retiree medical plan, said Chris McSwain, director of compensation and benefits.

Such caps, which have been put in place by about half of all employers that provide retiree health benefits, are forcing retirees to pick up more of their health care tab, either through increased premium contributions or other forms of sharing costs.

The Kaiser/Hewitt survey found that 74% of employers raised retiree contributions to premiums in 2006 vs. 2005 for pre-65 retirees, while 58% did so for post-65 retirees. Moreover, 80% said they are very likely to increase retiree premium contributions in 2007.

"It's easy in the short run to control costs by putting caps on benefits. The problem is, if you don't do anything to manage the underlying problem, the cost pressures are always there. It's like putting a cap on a bottle that's trying to expand," said Ronald J. Ozminkowski, director of health and productivity research at actuary and consultant Thomson Medstat in Ann Arbor, Mich.

Mr. Ozminkowski predicts that "eventually, the market's not going to allow for those caps to work any-

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See **COSTS** next page

# Efforts to boost retiree health ultimately reduce corporate spending

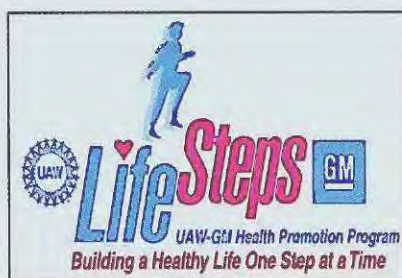
General Motors Corp. recently discovered that wellness works—not just for active employees, but for retirees as well.

The world's largest automaker shaved hundreds of dollars off the annual bills of each retiree who participated in a targeted wellness program that started with a health risk assessment.

Both an electronic and a paper version of the risk assessment were made available to participants. Retirees were informed about the Lifesteps wellness program through health fairs and communication with various union halls.

"There was a little over \$400 in savings for each individual who just takes the (health reimbursement arrangement), but it's \$570 if they take the HRA and engage in two or more programs," said Dr. Joel Bender, corporate medical director at GM in Detroit. "The use of the HRA helps direct individuals as well as providers."

GM's Lifesteps program was part of a larger study sponsored by the Centers for Medicare and Medicaid Services and conducted by Ann Arbor, Mich.-based Thomson Medstat. Researchers assessed nearly 60,000 participants' use of health



care services from 1996 through 2002. The findings were published in the November issue of the Journal of Occupational and Environmental Medicine.

GM is among a select group of

employers that are introducing wellness programs to retirees with the hope that teaching them to adopt healthier lifestyles will lower their future medical costs.

At the start of 2007, Columbia, S.C.-based utility SCANA Inc. extended to retirees all of the health improvement and management programs it offers to its active employees, according to Chris McSwain, director of compensation and benefits. "We're caring about these people just like we do the actives. We want them to improve their lifestyle and

health because their claims still hit us," he said.

Moreover, "we're trying to create culture and expectation around health so that people who retire will continue to use the benefits they used while (they were) active employees," Mr. McSwain said.

Indeed, "individuals who participate in Lifesteps while active employees are far more likely to continue with healthier habits as retirees," said Dr. Bender. "That reduces our long-term liability and improves the health of these individuals as well."

—By Joanne Wojcik

## Costs: Most at dollar caps

CONTINUED FROM PREVIOUS PAGE

more. They are going to have to remove them."

So far, 61% of employers have reached their caps for post-65 retirees, while 60% have done so for pre-65 retirees, according to the Kaiser/Hewitt survey. Another 9% expect to reach their cap for post-65 retiree benefits this year, while 10% expect to do so for pre-65 retirees.

Another way employers are limiting retiree health liabilities is by using "account plans," such as health reimbursement arrangements and health savings accounts. With these accounts, employers usually deposit a preset amount that employees can use to pay for post-retirement health benefits.

For example, Daimler-Chrysler Corp. is giving its post-65 nonunion employees a fixed amount and encouraging them to shop for coverage, said Derek Guyton, a principal at Mercer Health & Benefits in Chicago.

At SCANA, post-65 retirees who retired after 1993 can stay in their employer-sponsored plan or use SCANA's annual benefit contribution to purchase coverage on their own, Mr. McSwain said.

And at GM, in lieu of providing retiree medical benefits to employees hired after 1993, the automaker is putting an additional 1% contribution into their 401(k) plans to use toward paying their post-retirement health care needs, a company spokeswoman said.

"Outside of cost-shifting, we're seeing increased use of account-based programs such as consumer-driven health plans with high deductibles and HRAs or HSAs, incorporating consumerism," said Rick McGill, a consultant and part of the national team on retiree health care at Hewitt in Atlanta.



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# Price stands in way of participation in long-term care plans

LTC insurance  
offered by only  
12% of companies

By LOUISE ESOLA

If saving money for retirement is on the back burner for many U.S. residents, planning for long-term care expenses hasn't even made it to the stovetop. Experts say few employers offer long-term care insurance and, when they do, few employees sign up for the costly benefit that employers rarely subsidize.

Dennis Healy, vp of new business development for the long-term care division of John Hancock Financial Services Inc., calls the market "virtually untapped."

"It's perceived as an expensive product," said Mr. Healy. "If people aren't saving for retirement, they are not going to sign up for this."

Long-term care is the spectrum of services and assistance provided for aging adults who need help performing their daily functions. Levels of care range from more affordable home visits by trained caregivers to dramatically more expensive nursing home stays.

With an average nursing home costing \$75,190 a year, according to a 2006 study by the Westport, Conn.-based MetLife Mature Market Institute, and an increasing "sandwich generation" burdened with caring for their aging parents, it's becoming more apparent that people need to plan for the possibility of long-term care, experts say.

According to the Washington-based American Council of Life Insurers, 55% of people 85 and older require some form of long-term care and 19% of all seniors suffer from some chronic impairment. By 2050,

ACLI estimates up to 5.4 million seniors will require nursing home care and another 2.4 million will need home health care.

But few workers are rushing to sign up for long-term care coverage and companies are just starting to catch on to the offering.

"Long-term care and that message and the urgency just hasn't hit home," said Frank Fimmano, a New York-based senior vp for Aon Consulting who works in the elective benefits practice. "Not many understand that the government is not going to pay for your nursing home."

Long-term care insurance emerged in the 1970s as a simple plan to eventually help individuals pay for ever more costly nursing home stays. Since then, the coverage has evolved. Insurers began offering group plans in the 1980s. Today, policies provide a myriad of options, including those that pay for all levels of care—from a nursing home stay to regular home visits from a licensed caretaker—and those that factor in inflation when plans eventually are tapped to pay expenses.

Gradually, experts say, interest in long-term care insurance is increasing, but not to the level that is necessary.

According to the U.S. Bureau of Labor Statistics, 12% of private companies offered long-term care insurance to employees in 2006, up from 11% in 2005.

"Long-term care over the last five to six years has become a popular request among our corporate clients," said Rich Reda, a Kansas City, Mo.-based producer at Lockton Insurance and Risk Management Specialists. "People are starting to get more educated that there is not much there in the government to cover long-term care."

White-collar workers are more likely than blue collar workers to be offered long-term care insurance—17% vs. 7%, respectively, the Bureau of Labor Statistics reported.

However, even when companies offer the benefit, most are voluntary payroll-deduction programs with low participation rates. While figures vary, most experts say employee participation in employer-sponsored long-term care insurance programs tends to be in the 5% to 8% range. Even companies that extend the benefit to an employee's family members—including aging parents who may need the care sooner rather than later—see low participation rates, Mr. Fimmano said.

Company-paid long-term care insurance is seldom offered except to top-level executives as part of their compensation packages, experts said.

Although premiums vary according to age and policy specifics, Aon's Mr. Fimmano cited a recent example of a 1,000-employee company that was seeking long-term care coverage, under which group plan premiums are based on age and expenses per day.

For a policy that would provide \$200 per day for nursing home costs, premiums from three insurers ranged from \$28 to \$36 per month for a 40-year-old employee, and from \$95 to \$113 per month for a 60-year-old employee.

Although other brokers said \$200 a day often is the starting point for most policies, Mr. Fimmano that could be too little given today's costs. The average nursing home now charges \$206 a day for a private room with some locales charging twice that, according to the MetLife study.

Plans that would provide coverage of more than \$200 per day cost

## THE COST

Average U.S. charges for long-term care

|                                       | 2006    | 2005    |
|---------------------------------------|---------|---------|
| Nursing home private room per day     | \$206   | \$203   |
| Nursing home semiprivate room per day | \$183   | \$176   |
| Home health aide per hour             | \$19    | \$19    |
| Homemaker/companion per hour          | \$17    | \$17    |
| Assisted living facility per month    | \$2,968 | \$2,905 |

Source: MetLife Mature Market Institute

significantly more, and also do not include inflation—an option purchasers may want to consider, Mr. Fimmano said.

Premiums for plans that consider inflation—such as one that increases the \$200 a day benefit automatically by 5% annually—range between \$100 and \$295 a month, depending on age and policy conditions.

Long-term care is not always an affordable option for many blue collar, rank and file employees, said Randall Abbott, a Wellesley Hills, Mass.-based senior consultant with Watson Wyatt Worldwide. "Long-term care is competing with a scarce payroll deduction dollar. People are already contributing to their health care, their (retirement) savings plan, their life insurance."

Mr. Abbott said lack of employee awareness often contributes to low participation rates. "If there is a program available it is probably dormant and employers haven't promoted it," he said.

Other issues, such as younger workforces, also affect participation in long-term care insurance offered by employers.

Such is the case at Fannie Mae,

the federal mortgage lender with 5,700 employees. According to a spokeswoman, Fannie Mae has offered voluntary long-term care insurance for years, but just 5% of its employees participate.

"We think that part of the reason (for low participation) is the average age of our workers is 40, and we don't think the younger workers are thinking about long-term care insurance," the Fannie Mae spokeswoman said.

Meanwhile, companies with an older workforce tend to offer coverage at higher premiums—leading back to the No. 1 reason for low participation among companies offering coverage: too expensive, Mr. Abbott said.

"Typically people don't recognize the need for long-term care insurance until they are in their mid-40s," he said. "Because (premiums are) age-based, the premium costs at those ages are higher. When folks do realize there is a concern, they find the rates high and they look at what they are already contributing to their health care, their 401(k) plans and 'they find that they just can't afford (long-term care insurance).'"

## Employers take another look at Medicare Advantage plans for retirees

Employers are understandably skittish about encouraging retirees to enroll in Medicare Advantage plans since so many of the predecessor Medicare+Choice plans withdrew from the market in the late 1990s in response to federal funding cuts.

But because the Medicare Prescription Drug Improvement and Modernization Act of 2003, which created the Medicare Advantage program, also provided for creation of Medicare fee-for-service plans and regional preferred provider networks—two options previously unavailable to Medicare beneficiaries—some U.S. employers are giving this option another look.

"Employers are using Medicare Advantage plans more, but cautiously more," said Mike Morfe, senior vp in Aon Consulting's Somerset, N.J., office. "They're not jumping in with both feet like in the '90s."

"The concern is that the government will cut back on funding," said Derek Guyton, a principal at Mercer Health & Benefits in

Chicago.

The 2003 Medicare law not only raised the amount of subsidies the federal government pays to health plans to enroll Medicare beneficiaries, but also provided for annual increases tied to the medical inflation rate.

"The big ones—Humana, UnitedHealth—believe they can make this work. The hard part will be managing the payment so that insurers aren't getting more than they need, but they're still getting enough," said Mr. Guyton.

The addition of Medicare fee-for-service plans makes administration easier for large, multistate employers with retirees scattered around the country because they no longer have to contract with multiple health plans, he said.

"It also allows employers to have experience rating across the country," Mr. Guyton said. In fact, "because of the availability of Medicare fee-for-service plans, we've had some employers who went full replacement."

For the most part, however, when employers offer a Medicare Advantage plan, it usually is as an additional option and not as the sole plan available to retirees, said Cara Jareb, director of retiree medical consulting at Watson Wyatt Worldwide in Washington.

"The good news is—for the first time—an employer could almost guarantee that they could cover all retirees with some form of Medicare Advantage plan. The problem is, employers are very concerned about the long-term viability," said Rick McGill, a consultant at Hewitt Associates Inc. in Atlanta.

According to a 2006 Kaiser Family Foundation/Hewitt Associates survey on retiree health benefits, 38% of U.S. employers offered some type of Medicare Advantage plan in 2006 and 45% said they are likely to do so in 2007. But the percentage dropped to 40% when employers were asked about the likelihood that they will offer a Medicare Advantage plan by 2010.

"You're not sensing there's a

huge degree of confidence," Mr. McGill said. "There is a lot of distrust as the government tries to balance its budget."

"The government can provide funding and the government can take it away," said Ms. Jareb.

—By Joanne Wojcik

## MEDICARE ADVANTAGE PROGRAM STATUS

Tracking participation in Medicare health and prescription drug plans

| PLANS                                     | ENROLLMENT |
|-------------------------------------------|------------|
| Total stand-alone prescription drug plans | 16,693,416 |
| Total Medicare Advantage                  | 7,591,051  |
| Medicare Advantage Prescription Drugs     | 6,572,159  |
| Medicare Advantage only                   | 1,018,892  |
| <b>MEDICARE ADVANTAGE BY TYPE</b>         |            |
| Local coordinated care plans              | 6,007,625  |
| Health maintenance organizations          | 5,572,480  |
| Provider sponsored organizations          | 92,726     |
| Preferred provider organizations          | 342,418    |
| Regional PPOs                             | 98,385     |
| Private fee for service                   | 864,100    |
| Cost*                                     | 318,274    |
| Other                                     | 302,667    |

\*Cost plans are HMOs that are reimbursed on a cost basis, rather than a capitated amount like other private health plans.

Source: The Kaiser Family Foundation



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THE BENEFITS OF BETTER COVERAGE.

# Legislation not enough to boost HSA appeal to retirees

## HSA savings potential is 'questionable' despite changes

By PATTY L. KUJAWA

**WASHINGTON**—Legislation that President Bush has signed into law will boost the appeal of health savings accounts, but the welcome changes still aren't enough to turn HSAs into a widely used retiree health care savings vehicle, experts say.

"I don't think HSAs are necessarily the solution" for retiree health savings, said Paul Fronstin, research director at the Employee Benefit Research Institute in Washington. "There are too many strings attached and the savings potential is questionable."

The most significant HSA-related change in the Tax Relief and Health Care Act of 2006, which President Bush signed in December, affects the maximum annual contributions that can be made to HSAs.

Previously, the maximum HSA contribution was either the lesser of the deductible of the health insurance plan linked to the HSA or an indexed amount set by law. Under the new law, 2007 contribution limits are set at an indexed amount, which is \$2,850 for employees with single coverage and \$5,650 for those with family coverage, and health insurance plan deductibles are disregarded.

In some cases, that could mean hundreds of additional dollars could be contributed to employees' HSAs each year, resulting in bigger account balances that employees could draw on to meet future health

care expenses, including those incurred during retirement.

The new law also allows the maximum contribution regardless of when during a year an individual becomes eligible. Previously, contributions were prorated to reflect a new employee's starting date.

Additionally, the new law allows a one-time tax-free transfer of balances from health reimbursement arrangements and flexible spending accounts to HSAs. The amount transferred can't exceed the balance in the HRA or FSA at the time of the transfer or as of Sept. 21, 2006—whichever is less.

A one-time transfer from an individual retirement account also is allowed, with the amount capped at the annual HSA contribution limit.

All such transfers to HSAs must be completed before Jan. 1, 2012.

"These changes make it easy for people to accumulate dollars in a tax-free account," said John C. Goodman, president and chief executive officer of the National Center for Policy Analysis in Dallas and a strong HSA advocate.

While it may appear that a lot of money can be contributed to the accounts, skeptics see participants using the HSA dollars to cover current health care costs with little left to pay for such costs during retirement.

Over an employee's 20-year career, "they're unlikely to have a huge HSA account because there will be needs along the way," said Bill Sharon, senior vp at Aon Consulting in Tampa, Fla. HSAs will give workers "additional protection in working years—not retiree years."

"It is likely that HSA owners will tap their accounts to a significant

extent for medical expenses incurred during their working years," Mr. Fronstin said in last summer's EBRI study.

Even if current health care bills don't eat up employees' HSA balances, the accumulated money in HSAs may fall well short of post-retirement needs.

## 'These changes make it easy for people to accumulate dollars in a tax-free account.'

John C. Goodman,  
National Center for Policy Analysis

If an individual contributed \$2,700 annually to an HSA, contributions were indexed for inflation and assuming a 5% rate of return, the account would have only \$34,700 after 10 years, EBRI's analysis concludes.

That wouldn't come close to the \$115,000 that EBRI estimates would be needed each year to pay health insurance premiums and out-of-pocket medical expenses for a 65-year-old retiring in 2006 who lives to age 80.

In addition, a good chunk of HSA contributions likely would be eaten up by uncovered medical expenses prior to retirement, experts say.

"HSAs are marginally helpful in saving for retiree health care," said Tom Billet, a senior consultant at Watson Wyatt Worldwide in Stamford, Conn.

Still, experts say that HSAs should not entirely be discounted at a retiree health care savings vehicle. Employees who start to contribute—to the arrangements early in their working careers and who incur few medical expenses will amass fairly hefty balances.

Then at retirement, enrollees will be able—on a tax-free basis—to withdraw funds from their HSAs to pay for retiree health care expenses, such as Medicare premiums. By contrast, distributions from other employment-linked savings plans, such as 401(k) plans, are taxed when withdrawn, regardless of how they are used.

At the same time, HSAs are portable and controlled by employees. If, for example, an employee changes jobs and his or her new employer doesn't offer health insurance, that person can continue to contribute to the HSA.

That makes HSAs very different from HRAs or FSAs, which employees lose when they end employment with a given company.

"We want very low hurdles for people to get access to health care," said Gregg Larson, national product leader of ACS/Mellon HSA Solution in Minneapolis, which offers HSAs to about 6,000 of its employees.

HSAs tied to high-deductible health plans often reduce employers' health care costs by about one-third, Mr. Larson said. That savings often is passed onto the employee through a company contribution that can help cover the employee's deductible. About two-thirds of companies offering HSAs through ACS/Mellon contribute to the HSA, Mr. Larson said.

According to a December 2006 EBRI survey on health care use, 43% of people in family or individual employer-sponsored, consumer-driven health plans said employers contributed \$1,000 or more.

Meanwhile, HSA investment options are becoming more sophisticated, advocates say.

Last summer, Golden Rule Insurance Co., a unit of UnitedHealthcare Insurance Co., started offering mutual fund investment options to HSA customers with balances of more than \$2,000. Assets under \$2,000 earn 4% to 5%, while assets in the mutual funds could expect a higher rate of return, a spokeswoman for the company said.

"The mutual fund options greatly enhance the long-term savings potential for our HSA customers," Golden Rule CEO Rich Collins, who is based in Indianapolis, said in a statement.

Even with the changes in federal law, several observers don't expect usage to increase dramatically, mostly because HSAs still are relatively new and employers traditionally have been slow to adopt new benefit arrangements. Congress authorized HSAs, effective in 2004, as part of a 2003 law that largely involved expanding Medicare to cover prescription drug expenses.

While HSAs may be the best retiree health savings vehicle now available, Congress has a long way to go in addressing the retiree health needs of the baby boom generation, experts say.

"None of the current (health care savings) programs offer real savings," Mr. Goodman of the NCPA said. The "HSA is a vehicle that could be used to solve a lot of problems."

## Products & Services



### CIGNA expands dental PPO options

**PLANTATION, Fla.**—CIGNA Dental has expanded its dental preferred provider organization product to include three new CIGNA Dental WellnessPlus features that reward members who receive preventive dental care by increasing their benefits.

The WellnessPlus features, which are available as part of CIGNA Dental's DPPO and indemnity product offerings, allow employers to choose from dental plan modules that offer a varying incentive levels to employees for receiving

preventive dental care. When members receive preventive services such as cleanings, oral exams and X-rays in the first year, their benefits increase in the following plan year. The three modules include:

- **Progressive Maximum.** Members receiving preventive care in any year earn a higher dollar maximum the next year, up to a certain level set by the employer.

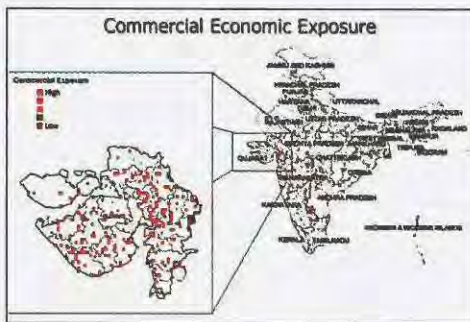
- **Progressive Benefit.** Members are rewarded for receiving preventive care in any year by earning higher benefit levels for certain services in the following year.

Depending on the plan design selected by the employer, increased benefits could apply to basic dental care services that include fillings and basic restorative services and/or major dental care services such as crowns, bridges and root canals. Each year members remain enrolled in these plans and continue to receive preventive care, their benefit levels increase the following plan year until they reach a predetermined level set by the employer.

- **Progressive/Regressive Benefit.** Members who receive preventive care are rewarded with increased benefit levels in the following year. If after attaining an increased benefit level, members do not receive preventive care, their benefit level

will decrease in the following year; however, the benefit level will never fall below the original benefit level.

For more information, contact Karen Wever, vp, national accounts sales, at 312-648-7579 or [karen.wever@cigna.com](mailto:karen.wever@cigna.com).



### RMS releases India quake model

**NEWARK, Calif.**—Risk modeling firm Risk Management Solutions Inc. has released the RMS India Earthquake Model.

The model was developed for use in the RMS RiskLink catastrophe modeling system, and was built in partnership with Aon Re Asia and RMS geospatial and information technology unit RMSI. The model provides access to detailed data on insured exposure, soil composition and local building standards.

The model underlying the new RMS release contains nearly 100 seismic sources subdivided into thousands of faults in India and is capable of generating more than 40,000 different earthquake scenarios, the risk modeling firm said.

Newark, Calif.-based RMS said a detailed loss module intended for more refined modeling of individual locations, accounts and portfolios will be included in version 7.0 of the RiskLink and RiskBrowser catastrophe modeling platforms, scheduled for release this spring.

For more information, contact Bill Keogh, group executive of client development, at [bill.keogh@rms.com](mailto:bill.keogh@rms.com).

### USRisk Brokers covers parking operations

**IRVINE, Calif.**—USRisk Brokers, a subsidiary of U.S. Risk Insurance Group, has introduced a parking and valet operators program designed for businesses engaged in operations related to parking customers' cars, such as self-parking garages and lots, assisted parking, valet parking and parking for special events.

Covered exposures extend to incidental operations in conjunc-

tion with parking, such as car washing, detailing and minor repairs; moving a customer's vehicle to a facility for minor repairs; and basic concierge-type services such as luggage assistance or bellman operations.

The program provides commercial general liability and garagekeepers legal liability. General liability limits include a general aggregate of \$2 million that applies per location. The garagekeepers legal liability carries a per-vehicle limit of up to \$250,000, with \$1 million per location and policy aggregate limits of \$5 million.

Excess limits of \$50 million or more are available, including coverage for airport shuttle vehicles and other people movers.

For more information, contact Connie Chalayan, program administrator, by telephone at 800-856-7025 or by e-mail at [conniec@usrisk.com](mailto:conniec@usrisk.com).

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## In Brief

ING unit settles  
kickback charge

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

UnitedHealth loses  
bid to block probe

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

See **IN BRIEF** page 30

## Benefits Management Technology & Online Solutions

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

## IRS rules create problems for firms launching HSAs

By JERRY GEISEL

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

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

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

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

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

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

IRS rules, though, say that, wit

See **HSAs** page 6

## Drug pricing system nixed by pact

Class settlement may  
lead to reduced  
prescription costs

By JOANNE WOJCIK

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

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



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## LEGAL NOTICE

### UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re: Europäische Rückversicherungs-Gesellschaft in Zürich Chapter 15  
(European Reinsurance Company of Zurich), Case No.  
Debtor in a Foreign Proceeding 06-13061 (REG)

#### PERMANENT INJUNCTION AND ORDER GRANTING RECOGNITION OF FOREIGN NONMAIN PROCEEDING OF EUROPEAN REINSURANCE COMPANY OF ZÜRICH PURSUANT TO 11 U.S.C. §§ 1507, 1517, 1521

This matter having come before the Court upon the petition for recognition of a foreign nonmain proceeding (the "Verified Petition") commencing this chapter 15 case, the Verified Chapter 15 Petition For Recognition Of A Foreign Nonmain Proceeding And Motion For Permanent Injunction And Related Relief (the "Petition and Motion"), the Memorandum of Law in Support of the Petition and Motion (the "Memorandum of Law"), the Declaration of Kevin McAtee in Support of the Petition and Motion (the "McAtee Declaration"), the Statement of Foreign Representative Pursuant to 11 U.S.C. § 1515(c) Identifying Foreign Proceedings (the "Section 1515(c) Statement") and the List Filed Pursuant to Fed. R. Bankr. P. 1007(a)(4) (the "List") and together with the Verified Petition, the Petition and Motion, the Memorandum of Law, the McAtee Declaration and the Section 1515(c) Statement, the "Chapter 15 Pleadings") each filed on December 21, 2006 by Kevin McAtee (the "Petitioner") as the duly appointed foreign representative of Europäische Rückversicherungs-Gesellschaft in Zürich (European Reinsurance Company of Zurich) ("ERZ"), a debtor in a proceeding relating to the adjustment of debts under section 425 of the Companies Act of 1985 of Great Britain (the "English Proceeding") before the High Court of Justice, Chancery Division (the "English Court") with respect to the Solvent Scheme of Arrangement Between ERZ And Its Scheme Creditors In Respect Of Insurance And Reinsurance Business Written Through And Related To The Agency Of Reinsurance Group Managers Limited (the "Scheme of Arrangement") and the English Court having approved the Scheme of Arrangement by an order dated January 15, 2007 (the "Sanction Order"); and the Court having reviewed and considered the Chapter 15 Pleadings; and the Court having held a hearing on January 22, 2007 (the "Hearing"); and due and timely notice of the filing of the Chapter 15 Pleadings and the Hearing having been given pursuant to the Order Scheduling Hearing and Specifying the Form and Manner of Service and Notice, dated December 22, 2006, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given; and no objections or other responses having been filed thereto that have not been overruled, withdrawn or otherwise resolved; and all interested parties having had due and proper notice and an opportunity to be heard; and upon the record of the Hearing; and after due deliberation and sufficient cause appearing therefor, and for the reasons stated by the Court on the record of the Hearing, the Court hereby **FINDS AND CONCLUDES THAT:**

- This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Standing Order of referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984.
- This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).
- Venue is proper in this District pursuant to 28 U.S.C. § 1410.
- This case was properly commenced pursuant to 11 U.S.C. §§ 1504 and 1515.
- The Verified Petition meets the requirements of 11 U.S.C. § 1515.
- The English Proceeding is a foreign proceeding within the meaning of 11 U.S.C. § 101(23).
- The English Proceeding is entitled to recognition by this Court as a foreign proceeding pursuant to 11 U.S.C. §§ 1515 and 1517(a).
- The English Proceeding is pending in the United Kingdom and ERZ has an establishment within the meaning of § 1502(2) in the United Kingdom, and the English Proceeding therefore is entitled to recognition as a foreign nonmain proceeding pursuant to 11 U.S.C. §§ 1502(5) and 1517(b)(2).
- The Petitioner is a person within the meaning of 11 U.S.C. § 101(41) and the duly appointed foreign representative of ERZ (the "Foreign Representative") within the meaning of 11 U.S.C. § 101(24).
- Absent permanent injunctive relief, it appears to this Court that one or more parties in interest may commence or continue the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against ERZ or its property that is related to the Scheme Business<sup>1</sup> and located within the territorial jurisdiction of the U.S., thereby interfering with and causing harm to the English Proceeding and as a result, the Petitioner, ERZ, its creditors and its estate would suffer immediate and irreparable injury for which there is no adequate remedy at law.
- Absent injunctive relief, the English Proceeding and ERZ's efforts in consummating the Scheme of Arrangement may be thwarted by the actions of certain Scheme Creditors, a result contrary to the purposes of chapter 15 as reflected, *inter alia*, in section 1501(a). Such actions may threaten, frustrate, delay and ultimately jeopardize the English Proceeding and the implementation of the Scheme of Arrangement.

L. The relief sought in the Petition and Motion will not cause undue hardship or inconvenience to parties-in-interest and, to the extent that any hardship or inconvenience may result, such hardship or inconvenience will be outweighed by the benefits to ERZ, its estate and its Scheme Creditors, as well as to the interests of co-operation between the courts of the U.S. and those of foreign jurisdictions.

M. The relief sought in the Petition and Motion is necessary to effectuate the purposes of chapter 15, to protect ERZ and the interests of its Scheme Creditors, and is not manifestly contrary to the public policy of the U.S.

N. The relief requested in the Petition and Motion is consistent with the principles of comity and will reasonably assure:

- just treatment of all holders of claims against or interests in ERZ's property that are related to or arise from Scheme Business;
- protection of Scheme Creditors in the U.S. against prejudice and inconvenience in the processing of claims in the English Proceeding;
- prevention of preferential or fraudulent dispositions of property of ERZ that is related to the Scheme Business; and
- distribution of proceeds of ERZ's property that relates to Scheme Business substantially in accordance with the distributive principles embraced by title 11 of the United States Code (the "Bankruptcy Code").

O. The relief sought in the Petition and Motion relates to assets that, under the laws of the United States, should be administered in the English Proceeding and concerns information required in that proceeding.

P. The Petitioner is entitled to the relief set forth herein under 11 U.S.C. §§ 1507 and 1521.

Q. On January 15, 2007, the English Court issued the Sanction Order sanctioning the Scheme of Arrangement. Pursuant to the terms of the Scheme of Arrangement, the Sanction Order will become effective on the date on which an office copy of the Sanction Order is delivered for registration to the Registrar of Companies in England and Wales (the "Effective Date").

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT, UPON THE EFFECTIVE DATE:**

- The English Proceeding is granted recognition as a foreign proceeding pursuant to 11 U.S.C. §§ 101(23) and 1517(a); and
- The English Proceeding is granted recognition as a foreign nonmain proceeding pursuant to 11 U.S.C. § 1517(b)(2); and
- The Scheme of Arrangement shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.; and
- All claims of the Scheme Creditors shall be adjudicated pursuant to the terms of the Scheme of Arrangement; and
- Except as provided in the Scheme of Arrangement, and except as prohibited by section 1521 of the Bankruptcy Code, all Scheme Creditors are permanently enjoined and restrained from:

(a) taking or continuing any act to obtain possession of, or exercise control over, ERZ or any of its property that is related to the Scheme Business and located within the territorial jurisdiction of the U.S. or any proceeds thereof;

(b) transferring any property of ERZ that is related to the Scheme Business and located within the territorial jurisdiction of the U.S. or any proceeds thereof, to any person other than the Scheme Manager;

(c) commencing or continuing any action or legal proceeding in connection with any claim arising out of the Scheme Business (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against ERZ or any of its property that is related to the Scheme Business and located within the

territorial jurisdiction of the U.S. or any proceeds thereof, or seeking discovery of any nature against ERZ;

(d) commencing or continuing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award or commencing or continuing any act or any action or other proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) to create, perfect or enforce any lien, set-off or other claim against ERZ arising from the Scheme Business, or any of its property that is related to the Scheme Business and located within the territorial jurisdiction of the U.S. or any proceeds thereof, including without limitation, rights under insurance, reinsurance or retrocession contracts underwritten by ERZ in its capacity as a member of the RGM Pool;

(e) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring ERZ to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) arising from the Scheme Business, and such statute, rule or requirement shall not apply to ERZ as a party to proceedings; provided, however, that nothing in this Order shall in any respect affect any Security in existence at the Effective Date or the replacements for such Security;

(f) drawing down any letter of credit established by, on behalf of or at the request of ERZ in connection with Scheme Business, unless expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;

(g) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement that is related to Scheme Business and in which ERZ has an interest, in excess of amounts expressly authorized by the terms of the contract or any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established; and

(h) declaring or treating the filing of this Petition and Motion or any pleadings, declarations, memoranda or statements in support thereof, or the Scheme of Arrangement, a default or event of default under any agreement, contract or arrangement; and

6. Except as provided in the Scheme of Arrangement, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement arising out of the Scheme Business, in which ERZ has an interest, are required to:

(a) provide notice to the Petitioner's U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Jennifer C. DeMarco), of any withdrawal from, setoff against, or other application of property located within the territorial jurisdiction of the U.S. that is the subject of any such trust or escrow agreement or similar arrangement in which ERZ has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such withdrawal, setoff or other application, including, without limitation, the date and amount of such withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, setoff or other application was made, and provide such notice and other information contemporaneously; and

(b) turn over and account to the Scheme Manager for all funds resulting from such withdrawal, setoff or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established; and

7. Except as provided in the Scheme of Arrangement, all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf of, or at the request of, ERZ that relate to Scheme Business are required to:

(a) provide notice to the Petitioner's U.S. counsel of any drawdown (without the express written consent of ERZ or the Scheme Manager and/or in contravention of the Scheme of Arrangement) of any such letter of credit, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, a copy of any letter of credit pursuant to which any such drawdown was made, and provide such notice and other information contemporaneously; and

(b) turnover and account to the Scheme Manager for all funds resulting from such drawdown in excess of amounts expressly authorized by the terms of the letter of credit; and

8. Except as provided in the Scheme of Arrangement, all Scheme Creditors are required to:

(a) turn over and account to the Scheme Manager for any property of ERZ that is related to the Scheme Business and located within the territorial jurisdiction of the U.S. or any proceeds thereof, of which they have possession, custody or control;

(b) deliver to the Scheme Manager any books, papers or records of ERZ that relate to the Scheme Business, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Scheme Manager or the Scheme Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme of Arrangement shall preserve them and submit them to the Scheme Manager or the Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(c) to the extent that they have a claim of any nature or source against ERZ or its property arising out of the Scheme Business, or are a party to any proceeding involving the Scheme Business, in which ERZ is or was named as a party, or as a result of which a liability of ERZ may be established, notify the Scheme Manager, in accordance with the terms of the Scheme of Arrangement, and put the Petitioner's U.S. counsel on the master service list (or similar common notice mechanism) of any such proceeding and to take such other steps as may be necessary to ensure that they receive (i) copies of any and all documents sent by the parties to such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (ii) any and all correspondence on other documents circulated to parties named in the master service list (or similar common notice mechanism); and

9. Subject to the terms and provisions of the Scheme of Arrangement, all Scheme Creditors shall be permanently enjoined and restrained from commencing or continuing any act or proceeding against the provider of any letter of credit that has been released by the execution of ERZ of a deed of release in accordance with the terms of the Scheme of Arrangement; and

10. Nothing in the Order would prevent the continuance or commencement of proceedings against ERZ that do not arise out of, involve or relate to the Scheme Business, or that involve any insurer other than ERZ, provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than ERZ, such settlement or judgment shall not be binding on or enforceable against ERZ to the extent that such settlement or judgment relates to Scheme Business; and

11. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order or requests for any additional relief in this case filed under chapter 15 of the Bankruptcy Code and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and

12. No action taken by the Petitioner, the Scheme Manager, their successors, agents or representatives, or any of their counsel in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme of Arrangement, this Order, this chapter 15 case, any further order for additional relief in this chapter 15 case, or any adversary proceedings in connection therewith shall be deemed to constitute a waiver of the immunity afforded to the Petitioner, the Scheme Manager, the Scheme Adviser, the Scheme Adjudicator, or their successors, agents, attorneys or representatives pursuant to section 1510 of the Bankruptcy Code; and

13. This Order shall be served:

(a) by United States mail, first class postage prepaid, upon all known Scheme Creditors (or their counsel, if known to ERZ) on January 24, 2007;

(b) by publication in *Business Insurance*, *Insurance Day*, *The Financial Times* (UK and international editions), and *The Wall Street Journal* (national edition) in all cases, by February 6, 2007 (or as soon as reasonably practicable thereafter); and

(c) by posting on ERZ's website at [www.rgmportal.com](http://www.rgmportal.com); and such service will be good and sufficient service and adequate notice for all purposes;

14. The Chapter 15 Pleadings shall be made available by the Foreign Representative upon request to ERZ's United States counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Jennifer C. DeMarco); and

15. This case is hereby closed without prejudice to the rights of the Petitioner or any other party in interest to reopen such case should the need arise pursuant to 11 U.S.C. § 350(b).

Dated: New York, New York January 22, 2007 **S/ Robert E. Gerber**  
United States Bankruptcy Judge

<sup>1</sup> Capitalized terms used but not defined herein shall be given the meaning ascribed to such terms in the Scheme of Arrangement.



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# International NEWS

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## LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
IN RE PETITION OF JOHN C. GIBBONS,  
AS LIQUIDATOR OF NEW CAP  
REINSURANCE CORPORATION LIMITED,  
DEBTOR IN FOREIGN PROCEEDINGS  
CASE NO. 99-B-42752 (SMB)

NOTICE IS HEREBY GIVEN THAT ON JANUARY 19, 2007, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON MAY 7, 1999. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON JULY 12, 2007 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON COUNSEL FOR THE PETITIONER LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONER.

CHADBOURNE & PARKE LLP  
ATTORNEYS FOR THE PETITIONER  
30 ROCKEFELLER PLAZA  
NEW YORK, NEW YORK 10112  
(212) 408-5100  
ATTN: HOWARD SEIFE, ESQ.  
FRANCISCO VAZQUEZ, ESQ.

## REQUEST FOR PROPOSALS

### NOTICE TO PROSPECTIVE PROPOSERS RFP 07-01

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The Santa Clara Valley Transportation Authority (VTA) seeks separate (unbundled) proposals from qualified firms to perform all work necessary to provide the two following services: (a) Third Party Claims Administration (TPA) services for VTA's Workers Compensation (WC) self-insured program. The WC TPA shall be responsible for the administration, investigation, adjustment and resolution of litigated and non-litigated WC claims arising out of, but not limited to, bus and light rail operations in Santa Clara County. (b) Managed Care Services. The Managed Care Services Provider shall be responsible for all bill review auditing/re-pricing, utilization review services, and medical case management to include field and telephonic case management. **Note:** A proposer may submit a proposal for either of the above two services, or may submit separate proposals for each of the two services. Separate firms, however, will be selected by VTA to provide the two respective services.

Parties interested in obtaining a copy of this Request for Proposals may do so by accessing the VTA website at [www.VTA.org](http://www.VTA.org) and clicking on Procurement (preferred method). Requests for a hard copy of the RFP may be e-mailed to [don.kimerer@vta.org](mailto:don.kimerer@vta.org) or may be faxed to (408) 955-9729. Please include the following information

- Name and Address of Firm
- Contact Person
- Telephone AND Fax Numbers
- Ref: Request For Proposal (RFP) 07-01

A pre-proposal conference is scheduled for Friday, February 9, 2007 at 10:00 AM in the Auditorium located in Building No. A at the Santa Clara Valley Transportation Offices, 3331 N. First Street, San Jose, CA. Proposals are due by close of business, on February 28, 2007.

**To place your  
legal notice or RFP  
Contact Tina at 312-649-5340.**

## Emerging markets hold strong growth, potential

By ETTIE SCHMITT

**ZURICH, Switzerland**—Growth in insurance business in emerging markets continued to perform strongly in 2005, according to a report from Swiss Reinsurance Co.

Life and nonlife insurance premiums recorded gains of 7.5% and 6.0%, respectively, the Zurich, Switzerland-based reinsurer said in its latest sigma report.

This growth happened in spite of rising global interest rates and commodity prices.

And the prospects for 2006 and 2007 remain strong, despite persisting geopolitical tensions, "shrinking global liquidity," and the unpredictability of the global interest rate cycle, according to the "sigma No 1/2007" report.

The report highlighted a possible weak link in the emerging markets insurance business: the agricultural insurance sector, where total premiums were estimated at around \$1.1

billion in 2005.

This is less than 20% of the global total, despite emerging markets accounting for nearly 70% of the world's food production.

Swiss Re estimates that the volume of emerging market agricultural insurance has the potential to reach \$10 billion "if governments and insurers become more proactive."

"Agriculture is one of the most important economic sectors of emerging markets. A properly designed risk management system is essential for protecting farm operators and reinforcing rural development. Existing agricultural insurance regimes in emerging economies, however, show a mixed record: Some schemes suffer from low insurance penetration and weak underwriting performance, due to high administration costs or adverse selection," said the report.

More information on the report is available at [www.swissre.com](http://www.swissre.com).

## Marsh granted license to open unit in China

*Approval lets broker  
provide full services  
throughout country*

By STUART COLLINS

**BEIJING**—Marsh Inc. has been granted a license to open a wholly owned insurance broking company in China.

The broker will operate in China as Marsh (Beijing) Insurance Brokers Co. Ltd.

The approval, which Marsh claims is the first wholly owned license awarded by the China Insurance Regulatory Commission to a broker, allows the company to offer brokerage services to buyers of large commercial insurance and reinsurance, as well as international aviation, marine and transport.

Paul Wilkins, Marsh's head of Greater China region based in Beijing, has seen increasing demand for more sophisticated risk and insurance solutions from local Chinese companies.

"We see great interest in areas such as directors and officers liability, environmental issues, pandemic preparedness and product liability. We are actively recruiting and train-

ing colleagues in China in support of our clients' growth and our firm's expansion of services," Mr. Wilkins said.

"Because we had a presence in the market for such a long time, we've stuck with our strategy of wanting a wholly owned business here, so we've never entered into a joint venture" with a domestic insurance brokerage, except when needed on a project-by-project basis, Mr. Wilkins said.

"Now...we are free to operate the same way we operate in the United States or anywhere else and do broking or risk management work as a wholly owned company," he said.

Marsh's chief competitors, Aon Corp. and Willis Group Holdings Ltd., operate in China through joint ventures with local brokerages.

Marsh first opened a representative office in China in 1982 and had been operating only as a risk consultancy practice in the region until the license was granted. The company, which already operates out of three offices in the region, Beijing, Shanghai and Guangzhou, already plans to expand into Chengdu in western China.

Sally Roberts contributed to this report.

## European Commission outlines concerns on contingent payments

*Report spotlights  
brokers' potential  
conflict of interest*

By MICHAEL BRADFORD  
and ADRIAN LADBURY

**BRUSSELS, Belgium**—Potential conflicts of interest among insurance brokerages, a lack of transparency of broker compensation and market fragmentation are among the problem areas the European Commission has identified in its examination of the commercial insurance sector.

The Commission last week published a 164-page interim report detailing initial findings of its broad, ongoing study into whether the structure of the business of insurance in Europe is distorting competition.

The Commission said it will hold a public hearing in Brussels, Belgium, on Feb. 9 to present and discuss the findings. Following a consultation period, the Commission will publish its final conclusions in September.

A key concern outlined in the report is the potential for conflicts of interest among insurance brokers, in part because of the dual role that such intermediaries play.

"Brokers act both as an adviser to their clients and as a distribution channel for the underwriter, often with underwriting powers and binding authorities. This dual role could be a source of conflict of interest between the objectivity of the advice they provide to their clients and their own commercial considerations," states the report.

The report also notes that the Commission will continue to examine the use of contingent commissions—those tied to the volume or profitability of business—and concerns that they can create conflicts of interest. Many of the world's largest brokers have ceased accepting such commissions in the wake of former New York Attorney General Eliot Spitzer's probe into broker compensation practices.

"The results of the sector inquiry confirm that contingent commission agreements were widespread in many member states in the past.... Some intermediaries have derived considerable revenues from contingent commissions, highlighting the potential for conflicts of interest."

"It appears that the investigation in the U.S. and the increased public attention have led some market participants to change their policy concerning contingent commissions. Other market participants have made no changes to their practices. The Commission intends to further examine this issue," states the report.

The survey said insurers indicated

a "high prevalence of contingent commission agreements in Belgium, Germany, Denmark, Spain, France, Hungary, the Netherlands and the United Kingdom, where at least 50% and in some cases up to 100% of respondents" indicated they used the arrangements for the period surveyed.



REUTERS

**The report 'identified factors on all levels of the supply chain that may prevent the markets from working as well as they should.'**

Neelie Kroes,  
European Commission

In addition, the Commission pointed to a lack of transparency over remuneration among most brokers and said that it will look for advice on how to address this, particularly from the European insurance buying community.

"Insurance clients are critical of the lack of transparency of intermediaries' remuneration. The survey shows that intermediaries across the E.U. tend not to declare to their clients spontaneously how they are remunerated for the placement of insurance through commissions.... The overall lack of transparency of intermediaries remuneration reduces the potential for price competition in relation to mediation services," the report states.

### Other concerns

The report "identified factors on all levels of the supply chain that may prevent the markets from working as well as they should," said Neelie Kroes, the E.C.'s competition commissioner.

The Commission asserted that buyers in European Union member states operate in a market that is fragmented by sustained and not easily explained differences in insurer profitability, making the

See **REPORT** next page

## Commentary

# A fast-forward look to top stories of 2007

It's the end of January, the holidays are receding in the rearview mirror and I've already got a pretty good idea what my 2008 New Year's resolutions will be. They're curiously similar to my 2007 New Year's resolutions.

So it doesn't seem too early to start drawing up a list of the top risk management and employee benefit stories of 2007. Sure, we still have more than 11 months to go until the end of the year, but why wait until the last minute?

Broker compensation will continue to be a hot topic. More insurers will follow the lead of Chubb Corp. and St. Paul Travelers Cos. Inc. and offer "supplemental" payments that are not—repeat, ARE NOT—contingent commissions. Brokers that have given up contingents will quietly accept the payments and hope that nobody raises a fuss. New York Gov. Eliot Spitzer's three daughters—only one of whom has reached her teens, but all of whom are considered future front-runners for the state attorney general's job—will be following the issue closely.

The trial of former General Re Corp. CEO Ronald Ferguson and other Gen Re and American International Group Inc. officials accused of manipulating AIG's financial results—recently delayed until the end of 2007—will be postponed again until 2010, by which time everyone will have forgotten what it was about. The case will be dropped.

The heavily Republican Idaho Legislature will enact a universal health care initiative, becoming the latest state to deal with the growing problem of the uninsured. State lawmakers will reject an initial proposal to fund the plan with a tax on registered Democrats. Instead, after years of complaining about unfunded mandates from Washington, lawmakers will decide to require all Idaho residents to buy health insurance and pay for it themselves.

Former AIG Chairman Maurice R. Greenberg will finish his memoirs and sell the movie rights to noted shark enthusiast Steven Spielberg.

After the Bush administration's decision to declare polar bears a threatened species because of vanishing polar ice, insurance industry groups will press the administration to act on global climate change. Initially encouraged by a White House concession that the problem exists, insurers will be disappointed when a presidential commission of former Tobacco Institute scientists concludes



**DOUGLAS McLEOD**

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that there is no clear link between carbon dioxide emissions and global warming.

Geologists will discover that Bermuda is gradually sinking under the weight of money contributed to new catastrophe reinsurers.

Insurers will win rulings that most Hurricane Katrina-related damages in New Orleans are flood losses excluded by their policies. Federal and state recovery

**Brokers that have given up contingents will quietly accept the payments and hope that nobody raises a fuss.**

efforts will continue until no one is left in New Orleans at all.

The National Assn. of Insurance Commissioners will succeed in streamlining its quarterly meetings, substantially reducing the number of committee meetings. The reduction will be partially offset by meetings of the new Executive Committee to Reduce the Number of Committee Meetings. The pace of the NAIC's progress on issues will remain unchanged.

In an effort to appease critics of its high-fat, high-salt menu, McDonalds Corp. will announce that all of its new restaurants will be built as three-story structures with counters at the top of a flight of 45 steps. The company calculates that customers will burn off 20% of a Big Mac's 540 calories before even ordering. Medevac helicopters will be standing by at all restaurants.

Those are the likely top stories of 2007. I'll check back in early next year to see how accurate my forecast was. If I'm half-right most of the time, I may have a future as a casualty actuary.

## Canada: Proposal may affect D&O liability

CONTINUED FROM PAGE 3

a widely acknowledged risk factor for income trust conversions, how well companies prepared for and respond to such a change could be the basis for D&O suits, insurers and brokers say.

The loss of tax-favored status diminishes the value of income trusts and will likely initiate a trend of income trusts converting to corporations, which creates potential liability in terms of how efficiently directors and officers manage the transition, Mr. Pepper said.

At least one income trust—Calgary, Alberta-based True Energy Trust—has announced plans to convert back to a corporate structure in light of the government's tax proposal.

M&A activity—a key risk factor for increased D&O liability—may also rise as undervalued trusts become takeover targets, brokers and insurers say.

Disclosure becomes very important and can be closely scrutinized when a company is in the process of or considering a sale, said Jordan Solway, regional vp, claims and legal, for Arch Insurance Canada in Toronto. The quality of disclosure has become particularly important in light of amendments to securities legislation in Alberta, Manitoba and Ontario that establish liability for incomplete or inaccurate disclosure in the secondary markets, he said (*BI*, Jan. 8). "It makes risk management a very challenging issue," Mr. Solway said.

Despite the tax proposal, the mar-

kets are unlikely to have a knee-jerk reaction to these potential exposures and focus instead on discussing with policyholders and brokers how their policies will respond to specific situations, brokers and insurers say.

"It's not a doomsday scenario at all," said Adam Briklyn, senior vp, financial lines, for Toronto-based Executive Risk Services Ltd. "It's more a reflection of having to adjust."

The pricing for D&O coverage for income trusts became very competitive as more insurers grew comfortable with the risk, a trend that is unlikely to change despite the government's proposal, Mr. Pepper said. "I don't think there will be any great change in the pricing," he said. "I think we'll see an aggressive marketplace and competitive pricing."

## Changes to income trusts may favor captives

The proposed changes in tax rules for Canadian income trusts could spark increased interest in captives as many income trusts will likely convert to corporate structures, which are more conducive to captive formations.

Due to the tax-favored status of Canadian income trusts, captive insurance companies held few tax advantages for trusts although a number of energy income trusts set up captives for risk management reasons.

The tax change proposal is a

positive development for captive formations, though, because captives can be a tax-efficient vehicle for Canadian corporations, said Colin Mitchell, senior associate in the risk financing group of Integro (Canada) Ltd. in Toronto.

"To the extent that some of those trusts will convert back to corporations, you'll probably see interest in some of those in establishing a captive corporation," Mr. Mitchell said.

The captive domicile most likely to benefit from any new forma-

tions is the offshore domicile long favored by Canadian companies—Barbados, Mr. Mitchell said.

If the tax changes stall the trend of corporations converting to income trusts, Canadian companies may reconsider forming captives, said Winston Hampden, managing director of Aon Insurance Managers (Barbados) Ltd. "Indirectly, I guess it could be positive for captives," he said. "I would not classify this as being big for captives."

—By Gloria Gonzalez

## Harassment: Miner wins workers comp

CONTINUED FROM PAGE 4

Hopton established that Mr. Rossi's comments constituted the required "abnormal working conditions" to receive benefits.

Patrick Vitullo, a plaintiff workers compensation attorney with Plymouth Meeting, Pa.-based Clemens & Vitullo P.C., said to be awarded workers comp benefits under Pennsylvania law, the plaintiff must establish there was "objective evidence" of these abnormal condi-

tions, not just a "subjective impression."

The court concluded there was sufficient evidence of abnormal working conditions in Mr. Hopton's case, "which I believe most people would agree is the right decision," said Mr. Vitullo.

Andrew E. Greenberg, a defense attorney with Chartwell Law Offices L.L.P. in Norristown, Pa., said the decision stresses the importance of the workers comp judge's "role as the ultimate fact finder" in these

cases.

It is also a reminder that when a supervisor "undertakes to cause severe emotional distress to a subordinate," it can create abnormal working conditions, Mr. Greenberg said.

*RAG (Cyprus) Emerald Resources L.P. vs. Workers Compensation Appeal Board (Hopton), appeal of: Ronald A. Hopton, Supreme Court of Pennsylvania, No. 1 WAP 2005, Jan. 11, 2007.*

## Report: Use of contingents draws concern

CONTINUED FROM PREVIOUS PAGE

market ripe for price cuts.

It also said that long-term insurance contracts and distribution structures in some member states—notably Austria, Italy, the Netherlands and Slovenia—may limit the scope for competition.

And the Commission said it is troubled by, among other things, the degree and nature of information sharing in the business insurance market across the continent.

David Strang, competition partner at Barlow Lyde & Gilbert, said that the role of the broker was clearly the highlight of the report.

"While the first phase of the inquiry has looked at a wide range of

issues, the role of the brokers seems to feature most prominently. The Commission is concerned not only about the continuing use of the contingent commissions, but also about the significant lack of transparency in broker remuneration, particularly in the U.K.," said Mr. Strang.

The only major broker to have issued a formal response to the E.C. report by the end of last week was Marsh Ltd., a London-based unit of Marsh & McLennan Cos. Inc.

"What this report makes plain is that insurance intermediaries should be putting clients at the core of everything they do," Toby Foster, a director of Marsh, said in a statement.

"However, like the Commission,

we share considerable reservations about the continued accepting of contingent commissions by some brokers. We will continue to make the case strongly that, in the interest of clients, this practice should end," said Mr. Foster.

Marsh stopped collecting contingent commissions in 2004 after Mr. Spitzer sued the brokerage, charging it with bid-rigging and client-steering schemes designed to maximize such commissions. Many smaller brokerages, though, continue to collect such compensation.

For more information on the report, visit [http://ec.europa.eu/comm/competition/antitrust/others/sector\\_inquiries/financial\\_services/](http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/)

# Business Insurance PERSPECTIVE

## Figure in cost of capital and appetite for risk

By Alex Wittenberg

Many organizations base their current insurance program on a series of independent decisions made over time. Each single coverage decision is rational, but the aggregate result, when viewed as a portfolio, may not be cost effective or coherent.

An increased focus on creating shareholder value and capital efficiency causes the senior management in many firms to re-examine their insurance programs. Specifically, firms are beginning to use a capital efficiency approach that considers an organization's cost of capital and its overall appetite for risk in evaluating the economic efficiency of insurance purchases.

Challenging the natural presumption that it is cheaper to buy insurance to finance risk than to use the organization's own capital, insurance optimization identifies how much capital the organization places at risk and estimates its cost. Essentially, if the insurer's price—based on its risk-adjusted return for providing coverage—costs less than if the organization self-insures, then the risk should be ceded. If not, the risk should be retained. The risk adjusted return is the difference between the economic cost of risk before and after insurance.

The economic cost of risk is the sum of three components: insurance premiums, expected retained losses and the capital charges for retained risk. The inclusion of a capital charge puts a value on the capital that is exposed to unexpected retained losses, and corresponds to an organization's cost of finance. If the ECOR is lower with insurance coverage than without coverage, then insurance is economically justified. While simple in concept, insurance optimization raises many broad questions that tie directly into the core concepts of enterprise risk management and risk appetite, and it blurs traditional distinctions between insurable and noninsurable risk.

Risk appetite refers to the variability in results that an organization and its senior executives are prepared to accept in pursuit of a stated strategy, coupled with an assessment of which risks are aligned with the strategies of the organization and which are not. Reconciling the overall risk appetite of the organization—defined as the amount of variability in results that an organization is willing to accept in the pursuit of stated strategies—with the various viewpoints of internal and external stakeholders, enhances decision-making across the organization and provides a

framework that defines what "too much" or "too little" risk really means for the organization.

The insurance optimization approach effectively incorporates the firm's risk appetite into the overall risk management program. It also balances the use of insurance against the retention of risks, maximizing the value of firm's capital. The basic premise of insurance optimization can be simplified into five steps.

### Steps to take

**1. Deconstruct the current program and develop a list of possible alternative.** Each component must be analyzed fully and understood in terms of individual claim retentions, aggregate retention and policy limits—along with the attachment point of umbrella programs and the limits of those programs. Multiple alternative "straw man" insurance programs are then developed that consider the needs of the organization as a whole, as well as each division of the organization and each division's alignment to the organiza-

tion's risk appetite. Any insurance program that cannot reasonably be placed should be eliminated.

**2. Build an integrated loss model.** An integrated loss model must include simulated gross claims for all risks an organization wishes to cover with its insurance program. The risk model must be comprehensive and integrated to reflect reality. An organization as a whole does not face risks from each potential occurrence individually, but rather, all the risks, taken together can threaten the organization.

**3. Estimate premiums for each type of coverage in each program structure.** The premium for each potential insurance program structure must be determined. This has to be done without going to market as the market will typically use price to steer the decision to the coverage it wants to sell.

**4. Develop the optimal program from a risk/return perspective for each program structure.** The economic cost of risk and risk-adjusted return numbers for each program under consideration are then calculated using

the loss model. Once the structures have been modeled, each alternative program's ECOR is plotted against its RAR to yield a clear picture of the risk-return payoff for each alternative.

**5. Go to market.** To select which insurance program structure to take to market, the organization must define an amount of capital to place at risk to cover the retained losses. As noted above, the decision should be consistent with an organization's risk appetite. This process will provide the information necessary to better understand the organization's desired coverage to allow it to negotiate the best possible deal in the marketplace.

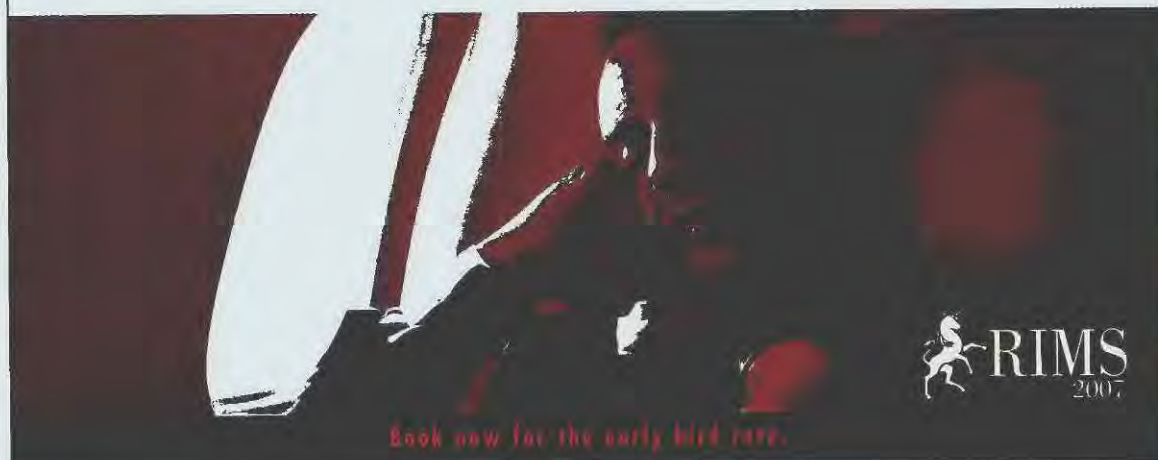
Traditionally, it has been practical for most organizations to manage risks by sharing them with established insurers. However, in today's volatile and highly competitive markets, that approach may not necessarily be the optimal one. Insurance optimization is an emerging technique any organization can use to identify the most efficient program for managing its risks and maximizing its capital.



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# Kyrill: Losses may increase property reinsurance rates

CONTINUED FROM PAGE 1

ever, depends on the amount of losses, as well as supply and demand, he added.

The Jan. 18 storm, which struck Europe with hurricane-force winds over two days, killed 47. Kyrill hit the United Kingdom and Germany the hardest, but also affected Austria, Belgium, the Czech Republic, Luxembourg, the Netherlands, Poland and, to a lesser degree, Switzerland.

Risk Management Solutions Inc., in Newark, Calif., gave an initial estimate last week of €3 billion to €5 billion (\$3.89 billion to \$6.48 bil-



REUTERS  
The MSC Napoli was abandoned by its crew in the English Channel after it ran aground during Windstorm Kyrill.

lion) for insured losses.

AIR Worldwide Corp. in Boston estimated insured losses between €4 billion and €8 billion (\$5.19 billion and \$10.37 billion), which would include insured losses in Germany of about €2 billion (\$2.59 billion).

John Moore, the co-head of reinsurance brokerage Benfield Group Ltd.'s International ReMetrics Team in London, viewed some of those projections as high. Benfield estimates the total insured loss across the whole of Europe as €1.75 billion (\$2.27 billion) to €2 billion.

Mr. Moore does not expect to see large cat losses to reinsurers from the storm.

"Should the estimate of a €1 billion (\$1.3 billion) loss in Germany be realized, generally the lowest layers of the reinsurance programs will be affected, although there might be regional exceptions," he said.

Swiss Reinsurance Co. estimated that the Kyrill caused total insured losses of up to €3.5 billion (\$4.54 billion). The Zurich-based reinsurer said it faced €140 million (\$181.5 million) in net losses from the storm.

Tony Melia, London-based managing director at Willis Re, a unit of Willis Group Holdings Ltd. in London, said: "The initial loss estimates look reasonably low, with Germany being the most affected, but the impact on reinsurance programs, even in Germany, is not expected to be major. This means the event should have no material impact on rates or capacity."

Kyrill was less intense than past windstorms; however, its swath was large, and its ultimate cost could be significant, said Claire Souch, RMS' director for international model

management.

"We could see this as the 'Hurricane Wilma of Europe'—with losses initially seeming to be very light, but accumulating substantially," she said.

"While the level of damage to individual properties is expected to be relatively low, the sheer number of claims will drive up the total insured losses," said AIR's Peter Dailley, director of atmospheric science for research and modeling.

Kyrill battered Europe with wind speeds exceeding 60 mph on a widespread scale, with wind gusts peaking at more than 120 mph.

In Germany, Berlin's recently constructed central train station, the biggest in Europe, had to close when high winds tore a two-ton steel girder from its façade. For the first time in its history, the Deutsche Bahn national railway suspended all services across the country because of downed trees on train tracks.

In the English Channel, 26 crew members of a container ship, the MSC Napoli, that started sinking off the coast of southwest England had to be rescued. Some of the ship's contents, valued in news reports at \$2.5 million, washed ashore, with looters reportedly making off with a variety of expensive goods, from tractors to motorcycles. Oil leaking from the grounded ship also washed ashore. The ship's third-party liability insurer is the London Steam-Ship Owners Mutual Insurance Assn. Ltd.

The majority of losses from Kyrill relate to residential property damage, with moderate damage to commercial property and auto, according to Ms. Souch of RMS. Power outages to hundreds of thousands across Europe will contribute to those losses, as will forestry damages, she added.

Kyrill has been compared by insurers and modelers to Windstorm Daria in 1990, which caused insured losses amounting at that time to €4.4 billion (\$5.7 billion). If Daria followed the same path today, RMS predicts the loss would be in the order of €10 billion (\$12.97 billion).

Windstorm Jeannette in 2002 struck a smaller area with lower winds than Kyrill, and caused nearly €1.5 billion (\$1.94 billion) in damage.

Munich, Germany-based Munich Re Group said Kyrill was "a typical storm for a warm winter." And, with winters tending to get warmer because of climate change, the probability of more Kyrill-like storms is steadily increasing in Europe, the reinsurer said.

"Kyrill has confirmed our recent forecast that this year's unusually warm winter will go hand in hand with a particularly high windstorm risk," Peter Höppe, head of Geo Risks Research at Munich Re, said in a statement.

"It fits into the pattern of climate change, which, in the long term, will intensify weather extremes in Europe, too. Winter storms in particular will probably tend to be stronger," he said.

# Stringfellow: Court rules for policyholders

CONTINUED FROM PAGE 4

the wall from collapsing.

Between 1972 and 1978, the state purchased comprehensive general liability coverage from about 30 insurers. The policies contained pollution exclusions that did not bar coverage for sudden and accidental pollution incidents.

But citing a third Los Angeles appellate court decision, the state trial court ruled in its 2004 decision that the so-called "relevant discharge" of the pollutants occurred when they were deposited into the evaporation ponds, which was not a sudden or accidental incident.

In overturning that portion of the underlying decision, the Riverside appellate court noted that the state was not held liable for allowing hazardous waste at the site. The state was held liable for negligently designing and operating the Stringfellow site, the appellate court said.

In addition, the Riverside court noted that the Los Angeles appellate court ruled in another case that insurers are liable for sudden and accidental pollution events that occur after wastes are deposited at a hazardous waste site.

But, criticizing other Los Angeles appellate court rulings, the Riverside court said policyholders do not have to show how much those covered pollution events contributed to the overall pollution to tap their insurance. The court said that state Supreme Court rulings in 1973 and 1989 establish that principle.

The appellate court, quoting the state's policy language, further explained that the state's policies guarantee that the insurers will pay "all sums which the insured shall become legally obligated to pay as damages."

"Since coverage is measured by the extent of the insured's liability to the injured party, this means that there is coverage for the entire injury, even if it is not possible to prove the insured's covered act caused the same injury or the total injury," the court ruled.

The court also found that the watercourse pollution exclusion in the state's policies does not refer to

## PREVIOUS KEY DECISIONS CITED IN STRINGFELLOW CASE

*State Farm Mutual Automobile Insurance Co. vs. Partridge, California Supreme Court, 1973*

■ A homeowner's insurance policy must cover a loss that was caused in part by an insured event, because another contributing cause was covered.

*Aydin vs. First State Insurance Co., California Supreme Court, 1998*

■ A policyholder bears the burden of proving why the sudden and accidental exception in its commercial general liability policy's pollution exclusion should apply to a loss.

*Travelers Casualty & Surety Co. vs. Superior Court, California Appellate Court, 1998*

■ The initial dumping of pollutants is not covered by the CGL policy, but coverage for subsequent sudden and accidental environmental contamination is not automatically barred.

*Golden Eagle Refinery Co. vs. Associate International Insurance Co., California Appellate Court, 2001*

ground water.

The four remaining insurers in the case are: Allstate Corp. of Northbrook, Ill.; Columbia Casualty Co. of Chicago; Century Indemnity Co. of Philadelphia; and Westport Insurance Corp. of Overland Park, Kan.

Insurer attorney Laura A. Foggan, who filed an amicus brief in the case for the Washington-based Complex Insurance Claims Litigation Assn., said the Stringfellow case has a better chance of being reheard than most other cases.

Ms. Foggan, a partner at Wiley, Rein & Fielding L.L.P. in Washington, said the appellate court overlooked a 1999 state Supreme Court decision that burdens policyholders with showing that a pollution incident is covered under the sudden and accidental exception to the pollution exclusion.

But Roger Simpson, an attorney for the state, said the appellate court did consider that ruling but determined it was not helpful. In its 1999 ruling, the state Supreme Court did not require a policyholder to show which percentage of its loss is covered, said Mr. Simpson, a partner with Cotkin, Collins & Ginsburg in

Los Angeles.

Robert M. Horkovich, another attorney for the state, says the ruling is welcome precedent for numerous policyholders that are appealing coverage decisions in similar types of cases. Mr. Horkovich is a partner with Anderson, Kill & Olick P.C. of New York.

"If I were litigating in another case, I'd ask for a stay" until the Stringfellow case is reheard or is dealt with by the state Supreme Court, said Darryl L. Doke, the deputy California attorney general in charge of the case.

Because of how bluntly the Riverside court criticized another appellate court, "that's the situation where the Supreme Court should come into play and resolve the conflict," Mr. Doke said.

The insurers' attorney, Steven M. Crane of Berkes Crane Robinson & Seal L.L.P. in Los Angeles said he could not comment on the case.

*State of California vs. Underwriters at Lloyd's of London et al., California Court of Appeal—4th District, Division Two, Jan. 12; EO37627.*

# Settlement: Judge rejects State Farm pact

CONTINUED FROM PAGE 4

posed class. "Nor can I fairly estimate, with even a minimum degree of accuracy, how thinly this large sum may be spread among the class members."

Judge Senter also said that for it to be a "true global settlement," any proposed deal should take into consideration all State Farm claims, including those that are currently in litigation.

It was unclear what impact the judge's eight-page order would have on a separate proposed class action lawsuit involving 640 policyholders who sued State Farm, alleging their Katrina-related claims were not adequately resolved. State Farm will pay about \$80 million to that class of policyholders as part of the settlement reached last Tuesday, accord-



AP PHOTOS

**It is impossible to estimate 'how thinly this large sum may be spread among the class members.'**

Judge L.T. Senter Jr.

ing to a source close to the matter.

"I am confident that Judge Senter will make the plaintiffs and State Farm fix the problems he has raised in his order," Mr. Hood said in a statement.

A spokesman for State Farm said in a statement: "We look forward to addressing Judge Senter's concerns. We believe, given the opportunity,

he will come to view the proposed settlement as fair, just, balanced and reasonable."

The settlement with Mr. Hood comes on the heels of State Farm being

ordered to pay \$2.5 million in punitive damages to a Biloxi, Miss., couple in connection with a Katrina-related homeowners claim it denied, citing storm surge exclusions.

State Farm, which is appealing the verdict, also was ordered to pay the couple's full \$233,292 claim (BI, Jan. 15).

# Health care: Bush plan would boost employers' administrative work

CONTINUED FROM PAGE 1

allowing employees to take a \$7,500 tax deduction if they have single coverage and \$15,000 for family coverage. Those amounts, though, would be offset by the cost of the plan in which employees were enrolled. If the cost exceeded the deduction, employees would be taxed on the difference.

The proposal already has drawn a frosty reception from several top Democratic legislators on Capitol Hill, raising doubts about the chances of enactment.

"This faces a stiff, uphill challenge," said Amy Bergner, a principal with Mercer Human Resource Consulting in Washington.

But others, while not endorsing the proposal, welcome it as a catalyst for the administration and Congress to begin serious discussions about comprehensive ways to reduce the number of uninsured. In the absence of action from Washington, individual states have tackled the problem, which could produce a hodgepodge of laws and requirements for employers.

"This is the starting point for discussions...to get the dialogue going" in Washington, said Paul Dennett, vp-health policy at the American Benefits Council in Washington.

## Administrative burdens

For employers, the most significant impact of the proposal would be administrative. They would have to calculate the cost of each

health care plan offered, for both family and individual coverage.

For each employee, the employer would have to come up with a figure—presumably to be put on the employee's W-2 wage statement—on the cost of coverage for health care plans the employee was enrolled.

"Many administrative changes would be required," Ms. Bergner said.

The proposal offers no details on how "health care" would be defined, such as whether the cost of health care-related programs, such as wellness and disease management, also would be included in valuing coverage for tax purposes.

"There could be some significant reporting issues for employers. It would not be a pretty picture," said Tom Billet, a senior consultant in the Stamford, Conn., office of Watson Wyatt Worldwide.

The administration says when the proposal would take effect in 2009, about 80% of those in group health care plans would see their taxes decrease. The tax bill for those who purchase coverage on their own on an after-tax basis would decline by an average of \$3,650.

Over time, though, many employees' tax decreases would gradually fall, unless current health care cost trends radically reverse course. That is because the standard deduction amounts would rise in tandem with increases in the Consumer Price Index, while health care inflation historically has increased

significantly faster than CPI, said Michael Langan, a principal with Towers Perrin in Valhalla, N.Y.

## Fairness concerns

The proposal likely would result in significant inequities. For example, employees working in areas of the country with high health care costs would be more likely to be taxed on their health care benefits because the cost of coverage would exceed the permitted deduction, while employees in lower-cost areas would not.

"There would be some real equity and fairness issues," Mr. Billet said.

Even employees in low-cost areas could be affected. That could occur if the overwhelming majority of employees in a health care plan live in areas with high health care costs, which would increase the plan's per capita cost.

Similarly, all employees would be impacted if a company employed a

disproportionate number of older employees, whose health care costs tend to be above average.

Experts note that the proposal neatly fits with the administration's belief that high health care costs are the result, at least in part, of overly generous corporate health care plans that give employees little incentive to use health care services carefully. That drives up costs and ultimately premiums, making coverage less affordable for all, the administration says.

While experts don't entirely disagree with that assessment, they also say the level of health care coverage is only one factor in the high cost of health care.

Other factors—not addressed in the administration's proposal—include the ability of hospitals, in areas where there isn't competition, to charge high rates and the lack of information to enable consumers to

compare the price and quality of providers.

"There still isn't enough price comparison and quality information," said J.D. Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates Inc.

Some observers say that the proposal simply doesn't have enough support to go forward.

"Basic political science says you need to reach out with proposals that have a chance of passage. I don't see the political climate where this proposal will be taken seriously," said Andrew Webber, president of the National Business Coalition on Health in Washington.

"Based on what Democrats and even some Republicans are saying, this whole thing seems dead on arrival," said Barry Barnett, a principal with the human resources unit of PricewaterhouseCoopers L.L.P. in New York.

## Winners, losers depend on health plan's richness

**WASHINGTON**—Like most tax plans, the Bush administration's plan to change the tax treatment of health insurance premiums would result in winners, losers and those not much affected.

How employees fare would depend on their income and the cost of their group health insurance plan.

Under the plan, employees with group health insurance coverage would be entitled to an automatic tax deduction of \$15,000 for family coverage and \$7,500 for individual coverage.

However, the proposal also would add to employees' taxable income the cost of a health insurance plan in which they have enrolled.

In effect, any tax break would be based on how much lower the cost of the health insurance plan was compared with the \$15,000 and \$7,500 health insurance premium deduction.

And, if the cost of the plan

exceeded \$15,000 for family coverage and \$7,500 for individual coverage, the difference would be taxed, with the employee paying taxes on the difference and the employer liable for payroll taxes on the difference.

In short, the big winners would be employees covered under low-cost plans and losers would be those covered under high-cost plans. There would be no impact—regardless of income—for employees in plans with costs equal to the deduction amounts.

A few examples illustrate the tax impact—by income level—of the Bush plan.

Take the case of an employee with taxable income of \$80,000 and family coverage that costs \$10,000. Under current law, based on Internal Revenue Service tax tables for 2006, that individual's income tax would be \$13,121.

Assuming the Bush plan was in effect for 2006, the individual's federal income tax liability would

be \$11,871, a savings of \$1,250.

On the other hand, take the example of an employee with taxable income of \$40,000 a year, also with family coverage costing \$10,000. Under current law, his federal income tax bill would be \$5,249. Under the Bush plan, he would face taxes of \$4,499, a savings of \$750.

But the Bush plan would hike income taxes if the cost of coverage exceeded the \$7,500 and \$15,000 caps. Assume the employee with a taxable income of \$80,000 was covered under a family plan that cost \$20,000 a year. The employee's federal income tax would be \$14,371, an increase of \$1,250.

For the employee with a taxable income of \$40,000 and covered under a family plan costing \$20,000, the employee's income tax liability would be \$5,999, an increase of \$750 compared with current law.

—By Jerry Geisel

## Letters

CONTINUED FROM PAGE 8

perspective), but they are not more volatile.

A captive might be useful in accessing reinsurance and in allocating premiums to divisions, but it certainly doesn't provide any intrinsic risk management benefit. The author states that "if you are willing to assume a significant amount of risk (and volatility) in the early years, a property captive can bestow significant benefits downstream." I challenge him to name a single significant benefit that would accrete to the majority of captive owners under this scenario that wouldn't otherwise result from a well-

planned deductible program.

Finally, I'm not sure how reducing the "number of coverage disputes" is useful. Disputes with whom? Is the risk management department going to argue with finance over whether a claim is covered or not? Either the company suffered a loss or it didn't; whether it's paid by the captive is moot (unless your broker has cleverly managed to obtain reinsurance that follows the captive's exotic primary policy, in which case I'd like their phone number and e-mail address.)

My proposed captive warning label would include, "Danger: Use of risk financing vehicles can be harmful to your career. Be sure you have a basic understanding of accounting and tax principles, or consult a professional before using. Side effects of captive use can include an irrational belief you are transferring risk, and potentially career-limiting decisions."

By the way, I have been an enthusiastic proponent and user of captives. Like any financial tool, they can be useful in the appropriate circumstances (such as accessing otherwise inaccessible reinsurance or accelerating tax deductions in certain cases). Please don't make them out, however, to be something they aren't.

John Bell  
Senior Vp-Insurance  
and Risk Management  
Union Bank of California  
San Francisco

## RSA: Environmental ruling to be appealed

CONTINUED FROM PAGE 1

ago, does not specify the amount GM sought to recover. However, it has been estimated that GM's claim could amount to \$1 billion.

GM sought payment for claims it said were covered under primary, umbrella and excess comprehensive general liability and comprehensive product liability insurance policies issued from 1954 through 1971.

Commenting on the Michigan court's decision, an RSA spokesman said the ruling "supports our view that the GM case is without foundation."

Separately, GM, along with other major policyholders of RSA's U.S. operations, are protesting efforts by RSA to sell those operations to Charlotte, N.C.-based Arrowpoint

Capital Corp., a vehicle established by RSA USA's management team, for \$300 million in a deferred compensation arrangement.

The policyholders have contended that RSA's U.S. operation could be left with a nearly \$1 billion reserve shortfall. That estimate, though, was based on the expectation of GM's success in the Michigan litigation.

The Delaware Insurance Department held a public hearing on the proposed Arrowpoint deal Jan. 19. A hearing officer is expected to make a recommendation to Delaware Insurance Department Commissioner Matthew Venn in about three weeks. Mr. Venn will then issue his decision.

The RSA spokesman said the insurer considers the Arrowpoint deal "the right transaction for poli-

cyholders, and the GM decision (last week) doesn't change that."

However, David E. Wilks, a Wilmington, Del.-based partner with Reed Smith L.L.P. who represents RSA USA policyholders in the Delaware hearing, said that while he had not yet read the Michigan decision, "I think that its impact is really minimal, because the same defects that we see in the transaction remain even in the absence of the GM claim."

A spokesman for Silverstein Properties Inc. and its affiliates—which include RSA USA policyholder World Trade Center Properties L.L.C. in New York—said in a statement, "We think Royal USA is undercapitalized with or without the GM claim, so it does not affect our position in opposition to the proposed transaction."

## ADVERTISER

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## News In Brief

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and industry veteran Jack Byrne as chairman of the company's board. Mr. Fass, who is retiring from active management, will continue as an adviser and member of the company's board. Mr. Byrne is retiring from the board. Mr. Barrette, currently a director, is a previous CEO of the insurer and reinsurer.

### Wal-Mart pays \$33M for overtime violations

Wal-Mart Stores Inc. has agreed to pay more than \$33 million in back wages, plus a still-undetermined amount of interest, owed as overtime pay to about 87,000 employees nationwide, according to the U.S. Department of Labor. A consent judgment ordering the retailer to pay the back wages, which also orders Wal-Mart to correct its practices, was filed last week with the U.S. District Court in Fort Smith, Ark., said Steven Mandel, associate solicitor in the Labor Department's Fair Labor Standards division.

### UnumProvident to sell GENEX

UnumProvident Corp. is selling its workers compensation and medical cost containment services provider subsidiary GENEX Services Inc. to a global private equity firm for an undisclosed sum. Though terms of the transaction involving Trident IV L.P., a fund managed by Stone Point Capital L.L.C. in Greenwich, Conn., were not disclosed, UnumProvident said it will result in a "small net gain" for the Chattanooga, Tenn.-based disability insurer. The sale is expected to close in the first half of this year.

### Broadspire names Replegle as CEO

Dennis Replegle will once again lead Broadspire Services Inc., the third-party administrator announced. Mr. Replegle—who served as president and chief executive officer of Plantation, Fla.-based Broadspire prior to its sale to parent Crawford & Co. of Atlanta in October 2006—succeeds former CEO Robert R. Kulbick, who resigned from the company last week. Mr. Kulbick's resignation comes less than three

months after his appointment to CEO of the unit, which coincided with the Broadspire-Crawford merger.

### Swiss Re finalizes GE Reinsurance integration

Swiss Reinsurance Co. last week finalized and received regulatory approval for the integration of GE Reinsurance Corp. into its Armonk, N.Y.-based Swiss Reinsurance America Corp. unit. For cedents who had their coverage formerly provided by the GE Reinsurance, all past claims obligations are being transferred to Swiss Reinsurance America Corp. In addition, all renewal business will be written, or quickly moved, to Swiss Reinsurance America Corp. paper, according to Swiss Re.

### House group revives genetic discrimination bill

A bipartisan group of members of the U.S. House of Representatives has reintroduced legislation that would ban discrimination based solely on a person's genetic predisposition to specific illnesses. The measure would make it illegal for group health plans and health insurers to deny coverage to otherwise healthy individuals—or to charge those people higher health insurance premiums—solely because of genetic predisposition to a specific disease. The legislation also would prohibit employers from using individuals' genetic information when making hiring, firing, job placement or promotion decisions.

### Willis names Margrett head of U.K. unit

Willis Group Holdings Ltd. said David Margrett, chief executive officer of the broker's Global Specialties unit, will take on the additional roles of chairman and CEO of U.K. unit Willis Ltd. upon the retirement of Richard Bucknall at the end of March. Mr. Bucknall, who also serves as vice chairman of Willis Group, will remain with broker in an advisory role until the end of the year.

### Nevada captive licenses increase

The Nevada Division of Insurance licensed a record 35 captive insurance companies last year. Last year's 35 formations, brings the total number of licensed captives to 96 at year-end 2006, compared with 20 captives licensed in 2005. Of the new captives, 25 were single-parent, nine were risk retention groups and one was an association captive.

## Florida: Law alters market

CONTINUED FROM PAGE 3

"We remain concerned about the expanded role that this legislation provides for state government in the business of insurance," said a spokesman for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America in a statement. "This reform package transfers the cost of paying for future hurricanes to generations of taxpayers, mortgaging our economic future on the hope that a major storm won't strike anytime soon."

"The new law puts the burden of these potential losses squarely on the shoulders of the citizens of Florida instead of spreading the risk to the worldwide insurance and reinsurance market," said Frank Nutter, president of the Washington-based Reinsurance Assn. of America, in a statement.

While the law's impact on commercial lines insurers is expected to be limited, the reinsurance sector will be greatly affected, industry observers say.

"This bill is most detrimental to the reinsurers, as it adds significant, low-priced capacity to the (Florida) market," said David Small, an analyst at Bear, Stearns & Co., in a research note. "Reinsurers who were planning on a stable pricing environment at (July 1 renewals) are likely to see prices fall in many zones."

Bryon Ehrhart, president and chief executive officer of Aon Re Services in Chicago, said the law "certainly changes the metrics in the reinsurance market."

Observers say insurers will be lured from the private market to tap the billions in new low-cost capacity

provided by Florida's cat fund.

In terms of the property catastrophe reinsurance industry, "we would argue that there is \$1.5 to \$2 billion of reinsurance premium which will come out of the market, and that market worldwide is probably \$10 billion to \$12 billion," said Vincent J. Dowling Jr., managing partner of Dowling & Partners L.L.C. in Farmington, Conn.

"However, the impact as far as profitability is higher, because the expected profit from Florida is higher than any other market in the world," Mr. Dowling said. "It is not inconceivable to be talking about 25% to 30% of the expected profitability of the worldwide property cat market (being) eliminated."

Companies with excess capital likely will either redeploy it to other parts of the reinsurance market or return it to shareholders through hefty dividends and share repurchases, observers say.

In addition, they say, the recent popularity of sidecars may wane in light of Florida's new legislation.

Florida's law could also mean more price volatility for insurance buyers, Aon's Mr. Ehrhart said.

"If one major season wipes out the capital...presumably that external capital will need to once again be located in the private marketplace," and the cost of acquiring that capital will increase, he said.

A provision that lifts collateral requirements for non-U.S. based reinsurers, could, however, benefit some non-U.S. companies, said Mark Rouck, senior director at Fitch Ratings in Chicago. The law will "make it easier for (foreign) reinsurers to provide capacity."

## Bermuda reinsurers affected

Florida's new hurricane insurance law will most affect Bermuda reinsurers and Lloyd's of London—"the biggest players" in the state's homeowners reinsurance market, said Jim Henderson, president and chief operating officer of Daytona Beach, Fla.-based broker Brown & Brown Inc.

Bermuda provides about 35% of reinsurance capacity for homeowners in Florida, said Bradley L. Kading, president and executive director of the Assn. of Bermuda Insurers & Reinsurers.

"We are still in the process of determining what potential effects the legislation may have on the industry in Florida," a

spokesman for Bermuda-based AXIS Capital Holdings Ltd. said.

Particularly for Bermuda's newest reinsurers, the law could "constrain their growth, could cramp their business plans somewhat," said Mark Rouck, senior director at Fitch Ratings in Chicago.

"Lloyd's is always concerned with any new legislation that may have the unintended consequence of limiting the risks that go to the private insurance market," a spokesman for Lloyd's America said. "Lloyd's believes the private market is best equipped to handle natural cat risk."

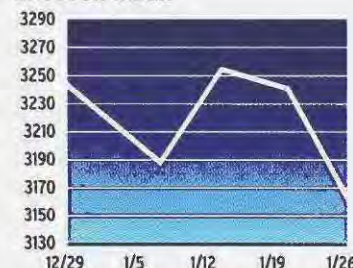
—By Rupal Parekh

## Stock Index

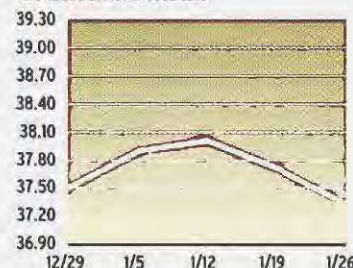
[ 1/22- 1/26 ]

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

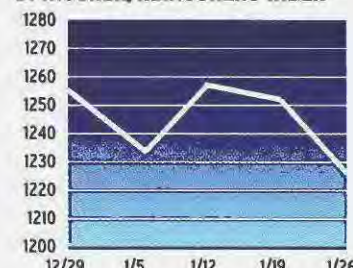
### BI STOCK INDEX



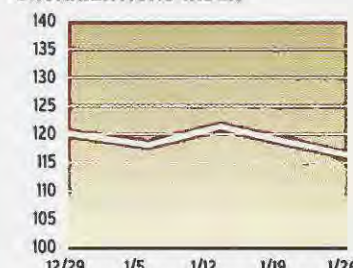
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

|                       |        |
|-----------------------|--------|
| <b>BI STOCK INDEX</b> | ↓      |
| 3162.67               | -2.26% |
| <b>DOW JONES</b>      | ↓      |
| 12487.02              | -0.62% |
| <b>S&amp;P 500</b>    | ↓      |
| 1422.18               | -0.58% |

### LARGEST GAINS

|                        |       |
|------------------------|-------|
| RLI Corp.              | 8.22% |
| Tower Group Inc.       | 6.91% |
| Hub International Ltd. | 5.35% |
| Meadowbrook Insurance  | 2.86% |
| PMA Capital Corp.      | 2.56% |

### LARGEST LOSSES

|                |        |
|----------------|--------|
| SCOR S.A.      | -7.22% |
| RenaissanceRe. | -4.95% |
| AIG            | -3.90% |
| AXA            | -3.33% |
| Markel Corp.   | -3.21% |

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



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# Business Insurance END PAGE

Contributing: Mark A. Hofmann, Rupal Parekh,  
Sally Roberts, Joanne Wojcik

## Oh, baby! Maternity stores settle bias suit over pregnancy

A retailer that caters to expectant mothers has settled a lawsuit accusing it of discrimination and retaliation in firing an employee who was pregnant.

Philadelphia-based Mothers Work Inc. recently agreed to pay \$375,000 to settle a suit brought by the U.S. Equal Employment Opportunity Commission. The Miami EEOC office had accused the retailer of illegally disciplining and firing an assistant manager because the chain believed she was pregnant, and in retaliation for her complaints.

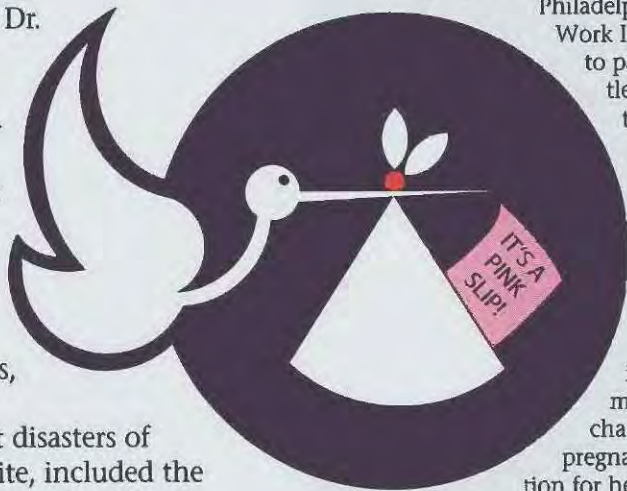
The settlement will be shared among the assistant manager, her attorney and three women denied jobs because of their pregnancy, according to the EEOC.

Rebecca Matthias, president of Mothers Work Inc.—which includes specialty brands A Pea in the Pod, Mimi Maternity and Motherhood—said the settlement avoided the high cost of litigation.

"I was shocked and upset at the allegations raised in this lawsuit and we vehemently deny the implication that as a company we have a policy to discriminate against pregnant women," Ms. Matthias said in a statement.

"Our business revolves around serving the apparel needs of pregnant women and we encourage having team members who are also pregnant and can provide firsthand product knowledge to our customers," she said. "It is ridiculous to think we would discriminate against pregnant women."

Mothers Work also said it will retrain its staff nationwide and use "secret applicant" interviews to monitor compliance.



## UnitedHealth ranks among biggest business blunderers

UnitedHealth Group Inc. and its former chief executive officer, Dr. William W. McGuire, made headlines again last week in connection with alleged backdating of stock options.

This time, though, it was as part of CNNMoney.com's "101 Dumbest Moments in Business" during 2006. Now in its seventh year, the list ranks "the year's biggest boors, buffoons and blunderers."

Other top risk management disasters of 2006, according to the Web site, included the nationwide spinach recall triggered by E. coli-contaminated salad bags from San Juan Bautista, Calif.-based supplier Natural Selection Foods, and casino mogul Steve Wynn's careless handling of Pablo Picasso's work "Le Rêve," which cut the painting's value by millions and landed him in the middle of a legal battle with underwriters at Lloyd's of London.

Former CEO of UnitedHealth Group Inc.,  
Dr. William W. McGuire

### DUMB, DUMBER & DUMBERER

Insurance and risk management-related blunders included in CNNMoney.com's "101 Dumbest Moments in Business."

| RANK | BLUNDERER               | BLUNDER             |
|------|-------------------------|---------------------|
| 6    | Steve Wynn              | Ripped painting     |
| 40   | Natural Selection Foods | Sold tainted salad  |
| 46   | UnitedHealth            | CEO options scandal |

Source: Business 2.0



ZUMA PRESS

## Intimate knowledge of investing underlies Berkshire lingerie deal

Warren Buffett, the chairman of Omaha-based Berkshire Hathaway Inc., earned the sobriquet "Oracle of Omaha" for his investment expertise.

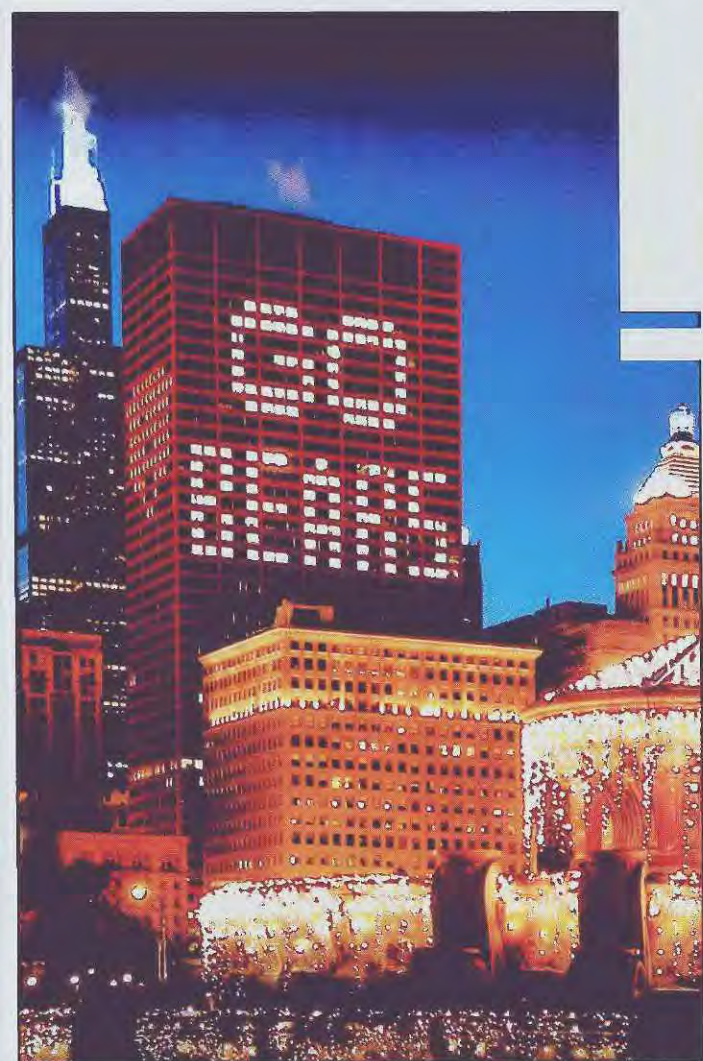
But while Mr. Buffett's well-known for his insurance and reinsurance operations, the Berkshire Hathaway family of businesses also includes Fruit of the Loom Inc. Last week, Greensboro, N.C.-based VF Corp. announced that it was selling its global intimate apparel business to Fruit of the Loom for \$350 million in cash. Fruit of the Loom intends to operate the seven U.S. and European intimate apparel lines under the Vanity Fair Brands banner, VF said.

Mr. Buffett's Berkshire Hathaway also includes building materials, candy and jewelry. But with the acquisition of the VF business, the Oracle of Omaha appears to be demonstrating that no matter what your insurance or intimate apparel needs might be, he's quite willing to provide underlying coverage.

LANDOV  
Mr. Buffett



Berkshire Hathaway Inc. is expanding its investments in the clothing industry with the acquisition of VF Corp.'s intimate apparel business, which includes the "Lily of France" brand.



BUSINESS WIRE

## Chicago's CNA shows its colors in light display

CNA Financial Corp. is rooting for the Chicago Bears to win next week's Super Bowl and it wants all of Chicago to know it.

Using its red 44-story corporate headquarters as its canvass during two playoff weekends, the Chicago-based insurer lit up the upper half of all four sides of its South Loop building with either "Go Bears" or the NFL team's bear head logo.

And the insurer again will light the Chicago skyline with a message for its beloved football team during Super Bowl weekend Feb. 3 and 4.

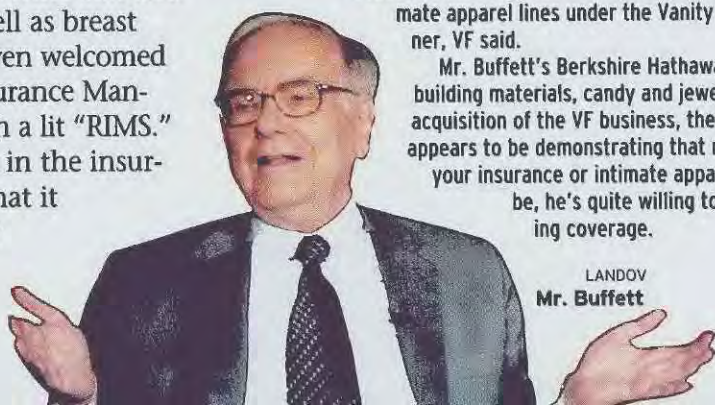
To make its message clear, every window and floor are numbered and plugged into a computer for a design team to figure out which blinds to close and which ones to keep open, he explained.

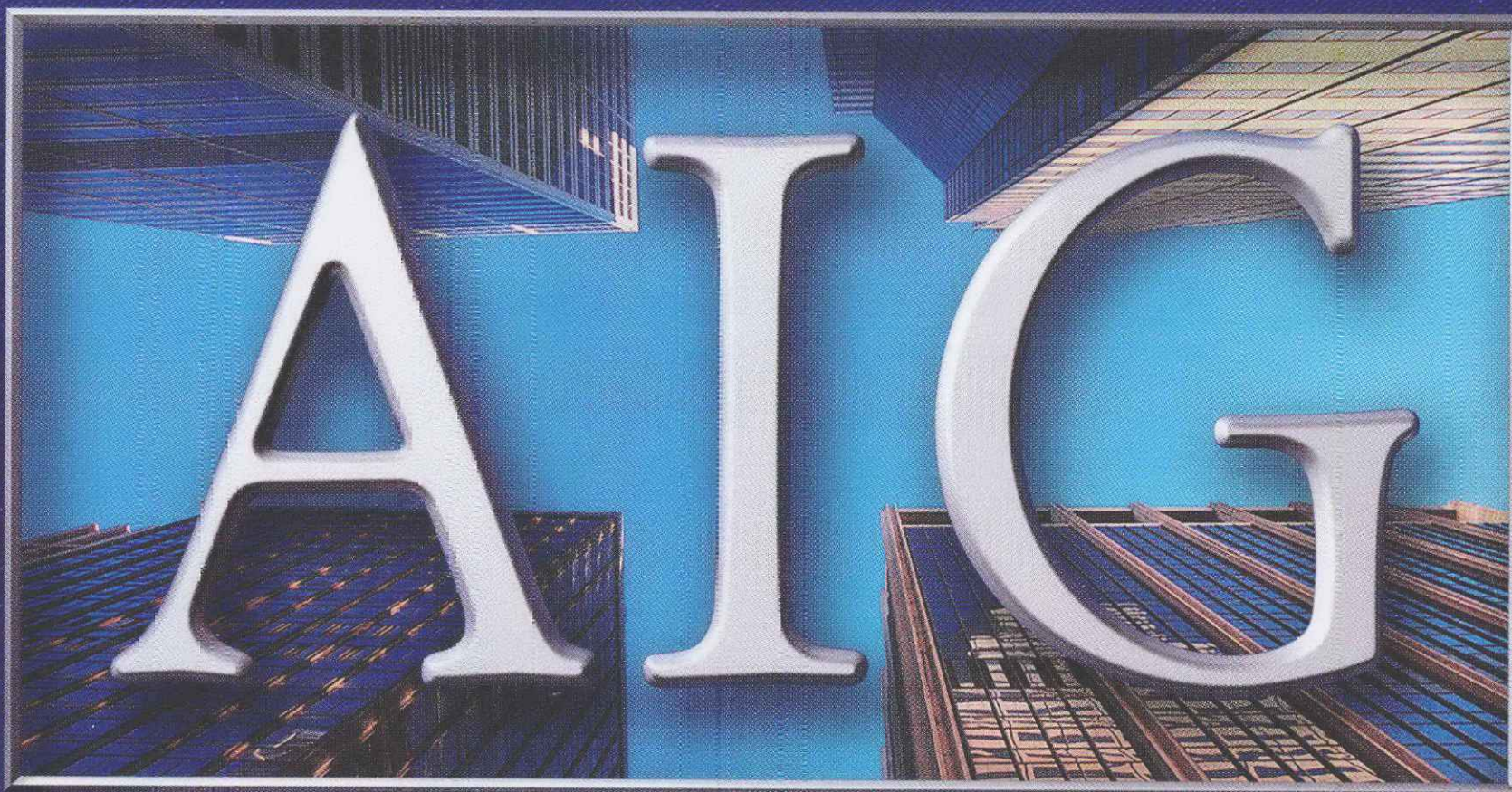
"Everyone thinks we have an Easy Button to push and (the blinds) all kind of close at one time," he said in referring to Staples' longtime ad campaign. "That's in Hollywood. We're in Chicago and we're an insurance company, so it's a little more labor-intensive."

A five-person facilities team then spends four hours to make sure the right window blinds are open and closed, he said.

CNA first used the system about 10 years ago with the Chicago Bulls, the spokesman said. Since then, it has rooted on the Chicago White Sox and donned ribbons for Christmas as well as breast cancer and AIDS awareness. CNA even welcomed those attending the 2003 Risk & Insurance Management Society Inc. conference with a lit "RIMS."

"I'm sure everybody who was not in the insurance industry really didn't know what it meant," the spokesman said. "They probably thought it was for the Bulls again with basketball."





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