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\$5

Late News

HRH to buy broker Thilman & Filippini

Hilb Rogal & Hobbs Co. has signed a definitive agreement to acquire most of the assets of Chicago-based brokerage Thilman & Filippini L.L.C. for an undisclosed amount. Thilman & Filippini, which generated about \$24 million in 2005 revenues, provides a range of property/casualty and employee benefits insurance products and services across a broad spectrum of industries that include construction, energy, health care and professional sports teams, HRH said.

Two executives quit Liberty Syndicates

Two senior figures have left Lloyd's of London managing agency Liberty Syndicates, which manages multiline syndicate 4472. Sean Dalton, managing director, and Andrew Elliott, head of underwriting, left the Liberty Mutual Group Inc. unit last week. The reason for the resignations was not disclosed. Brian Fitzgerald, chairman of Liberty Syndicates, said the company was saddened by the departure of Messrs. Dalton and Elliott.

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JLT in talks to buy rival U.K. brokerage

Purchase of Heath Lambert would boost retail operation

By SARAH VEYSEY

LONDON—After weeks of speculation, Jardine Lloyd Thompson Group P.L.C. last week announced that it was in preliminary discussions about a possible takeover of rival brokerage Heath Lambert Group.

JLT, ranked the world's sixth largest broker in 2005 in *Business Insurance's* annual ranking based on brokerage revenues, announced to the London Stock Exchange last week that discussions between the two London-based brokerages are "at an early stage and may or may not lead to a transaction."

JLT said that any transaction would not require it to raise equity capital.

A spokesman for the brokerage declined to comment further on the possible takeover, but said that JLT would update the stock exchange on any developments in due course.

A spokesman for Heath Lambert confirmed that preliminary talks between the two brokerages are taking place, but would not comment further.

JLT reported fees and commissions from risk and insurance broking of £395.3 million (\$679.1

A tale of two brokers

- JLT generated revenue of £395.3 million from risk and insurance brokerage in 2005.
- Heath Lambert had £110.5 million in revenue from brokerage operations in 2005.
- Both brokers derive smaller amounts of revenue from benefits business.

million) and £87.7 million (\$150.7 million) from employee benefits consulting in 2005. Heath Lambert reported insurance broking fees and commissions of £110.5 million (\$189.9 million) in 2005. The bro-

kerage also offers some employee benefits consulting services but it does not disclose those revenues in its annual report.

JLT posted a profit of £73.8 million (\$126.8 million) in 2005, down 9.5% from 2004—a drop the brokerage blamed largely on adverse currency movements and reduced contingent commis-

sion income. Heath Lambert, meanwhile, posted profits before exceptional items of £9.3 million (\$16 million) for

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Canadian firm liable under Superfund law for non-U.S. dumping

By DAVE LENCKUS

SAN FRANCISCO—A first-of-its-kind federal appellate court ruling not only puts foreign companies at risk of being held liable under the Superfund law for waste disposals outside of U.S. borders but also could lead to foreign liability problems for U.S. companies, according to legal and business interests.

In the closely watched case, a 9th U.S. Circuit Court of Appeals panel on July 3 unanimously ruled that a Canadian company that disposed of hazardous wastes in British Columbia is subject to the U.S. pollution law, because the pollutants migrated south and contaminated the Upper Columbia River in north-eastern Washington.

Upholding a lower court's decision in a lawsuit filed by two private U.S. litigants, the appellate court—often highly critical of what it described as the Superfund law's ambiguous and ungrammatical language—dissected several provisions

Expanding Superfund?

- 9th Circuit rules Superfund law can apply to non-U.S. operations if pollutants migrate into U.S. territory.
- Critics fear ruling could increase exposure of U.S. companies if other countries follow suit.

of the law in explaining why the court's ruling is not an extraterritorial application of the statute.

The case marks the first time that a non-U.S. operation has faced pollution liability under U.S. law for operations conducted outside of the United States, attorneys agree.

With both business and environmental issues at stake, the case has drawn wide attention on both sides of the border. Nine amicus briefs were filed by business associations in both countries, Canada's national

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The maker of cholesterol drug Zocor plans to discount the drug now that a generic version has been approved.

Zocor move muddles generics strategies

By GLORIA GONZALEZ

Pharmaceutical manufacturer Merck & Co.'s decision to offer pricing incentives to encourage insurers and pharmacy benefit managers to favor its brand-name drug Zocor over recently introduced generic versions has initiated a dialogue about when and if companies should deviate from their efforts to encourage employees to use generic drugs.

Last month, the U.S. Food and Drug Administration approved the first generic version of Zocor, which is known as simvastatin by its chemical name and is used to treat patients with high cholesterol. A unit of Jerusalem-based Teva Pharmaceuticals Industries Ltd. was approved to produce 5 to 40 milligram doses of the drug while a unit of Gurgaon, India-

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ROTH OF 401(k)

Few employers adopting tax-favored version of popular retirement plan.

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HAS ENVIRONMENTAL RISK BECOME A BOARD-LEVEL CONCERN?



David Bennink is the managing director of Aon's Environmental Risk Services.

It used to be that companies only reserved what was estimable and probable for environmental exposures. "Don't ask, don't tell" was the rule of the day. The new accounting rule, FIN 47, changes all that. Now companies are required to report all likely environmental cleanup and disposal costs. What's more, many existing assets may be under-reserved in the millions of dollars, making environmental liability a board-level concern. Visit www.aon.com/ask to learn how to comply with FIN 47 in the most strategic and cost-effective way possible.

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Employers may face lawsuits with "change behavior or else" types of programs. **Page 4**

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Few Californians are taking advantage of the nation's first Paid Family Leave program. **Page 6**

Disaster preparations are never wasted

Even if avian flu never becomes a pandemic, emergency planning is positive, an editorial says. **Page 8**

Pension rulings favor Canadian employers

Plan sponsors concerned about a court decision from earlier in the year. **Page 21**

Online poll [7/3-7/7]

How many brokers do you use to place your insurance coverage?



Participate in BI's online polls at www.businessinsurance.com.

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Reporting on corporate risk and employee benefit management news

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Liberty Mutual to contest charges filed by Illinois AG

Suit is third to allege insurer rigged bids

By RUPAL PAREKH

CHICAGO—Liberty Mutual Group Inc. is facing bid-rigging and steering allegations from a third state, after Illinois Attorney General Lisa Madigan filed a lawsuit Thursday against the insurer over alleged wrongful business practices.

Charges in the complaint, filed in Cook County Circuit Court, largely mirror those contained in separate lawsuits brought against Liberty Mutual in May by attorneys general in New York and Connecticut (*BI*, May 8).

The suits claim that Boston-based Liberty Mutual and certain subsidiaries engaged in unlawful behavior by paying undisclosed contingent commissions to agents and brokers to encourage them to steer business to Liberty Mutual; engaging in so-called "reinsurance tying" agreements; and colluding with several other insurers in a scheme led by New York-based Marsh & McLennan Cos. Inc. to rig bids for excess casualty insurance.

Marsh in February 2005 paid \$850 million in client restitution to settle bid-rigging and steering charges brought by New York Attorney General Eliot Spitzer (*BI*, Feb. 7, 2005).

Ms. Madigan in 2005 participated in settlements reached with Itasca, Ill.-based Arthur J. Gallagher & Co. Inc. and Chicago-based Aon Corp. to resolve allegations that those

brokers steered clients.

Ms. Madigan's suit against Liberty Mutual specifically charges the insurer with violating state laws protecting consumers from fraud and deceptive business practices due to its failure to disclose the alleged bid-rigging practices to clients of the insurer's Liberty International Underwriters unit.

In a statement, the Illinois attorney general's office said its lawsuit seeks restitution for injured policyholders, civil penalties for breaching consumer fraud laws, and an injunction barring Liberty Mutual from engaging in the alleged conduct in the future.



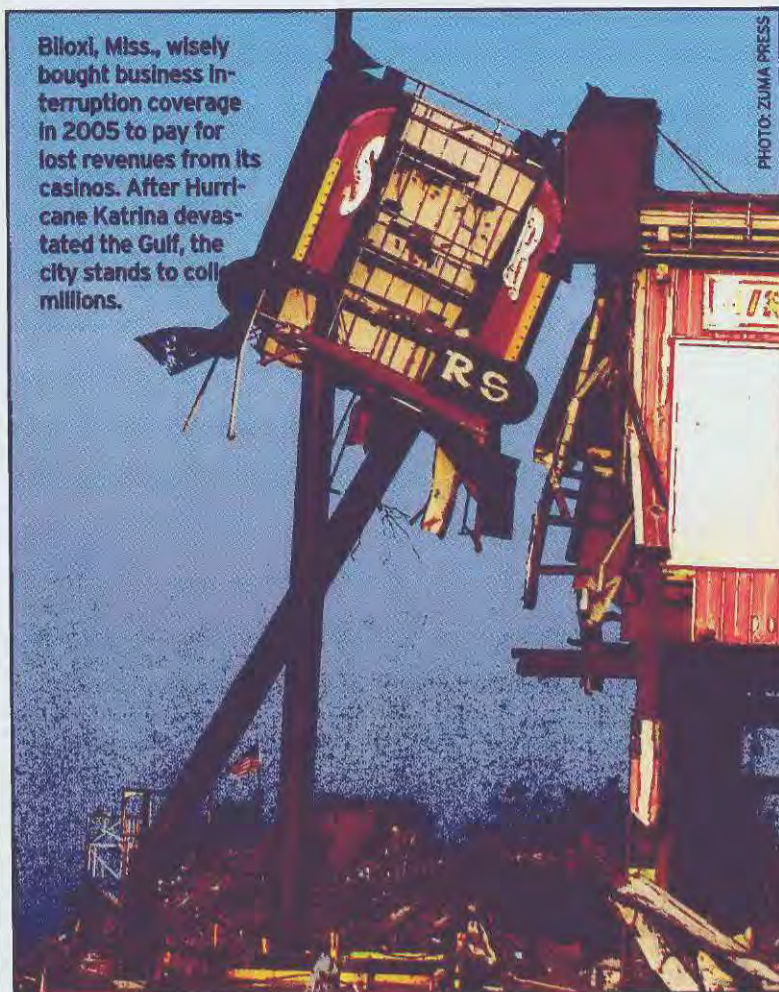
Illinois Attorney General Lisa Madigan is suing Liberty Mutual, but the insurer vows to fight.

"It is of great concern that one of the country's largest insurance companies would rig bids and induce brokers and agents to breach their duties to their clients in the ways we have alleged in this lawsuit," Ms. Madigan said in the statement.

In response to the lawsuit, Liberty Mutual in a statement said that it was "disappointed" that Ms. Madigan decided to file suit against the company over commission payments.

The company—which denies the allegations of wrongdoing and said its practices regarding commission payments and reinsurance brokering have been "appropriate and lawful"—has vowed to battle all charges in court.

"Despite cooperating with the attorney general's investigation, we have been unable to reach a reasonable consensual resolution. Thus it is in the best interest of our policyholders and employees that we vigorously defend these allegations and allow the judicial process to work," Liberty Mutual said in its statement.



Biloxi, Miss., wisely bought business interruption coverage in 2005 to pay for lost revenues from its casinos. After Hurricane Katrina devastated the Gulf, the city stands to collect millions.

PHOTO: ZUMA PRESS

Biloxi's '05 bet pays off in covering casino taxes

By MICHAEL BRADFORD

BILOXI, Miss.—The city of Biloxi, Miss., is coming up dry during the current hurricane season after making a shrewd insurance play last year that will repay the town nearly \$10 million in lost revenue.

The Mississippi Gulf Coast town's mayor, A.J. Holloway, convinced city leaders two months before Hurricane Katrina struck last August to purchase \$10 million in business interruption coverage that would pay to replace taxes lost if casinos were forced to shut down because of a storm.

It was a smart bet.

Katrina devastated the coastal gaming industry when it heavily damaged or destroyed many of the casinos that dot the coastline. Municipalities in the region have suffered from the loss of hefty tax payments generated by gaming.

Biloxi was able to protect \$10 million—half of its yearly revenue from the casinos—with the business interruption coverage written by syndicates at Lloyd's of London and RSUI Group Inc. The policy cost \$92,000 and carried a deductible of 15 days of lost revenue. So far, the city has collected \$7.5 million under the coverage and expects to receive the remainder of the policy limits, a spokesman for the city confirmed.

However, skittish insurers are not willing to back that risk again.

The city "got a really good deal last year and you know what happened," said Wayne Tisdale, executive vp at Stewart Sneed Hewes, a Gulfport, Miss. broker that places Biloxi's insurance.

"They made a good decision last year," he said of the city's move to

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Mass. issues health care reform regulations

By JERRY GEISEL

BOSTON—Proposed regulations provide clear and easily passed tests for Massachusetts employers to determine whether they will be subject to a special assessment mandated by the state's landmark health care reform law.

Under a provision in the law, companies with at least 11 employees in the state are subject to an annual assessment of up to \$295 per employee if they do not provide a "fair and reasonable" health insurance premium contribution. Revenues raised by the assessment will be directed into a fund used to sub-

What is 'fair and reasonable'?

A Massachusetts employer would be exempt from a \$295 per employee annual fee under the state's health care reform law if:

- At least 25% of its full-time workers are enrolled in the company's group health plan; or
- The employer offers to pay at least 33% of the premium for employees' coverage.

sidize health insurance premiums for lower-income individuals and thus expand the number of state residents with coverage.

The law, which Gov. Mitt Romney signed in April, though, did not define what would be considered a

fair and reasonable premium contribution, leaving that work to state regulators (*BI*, April 10).

Under the regulations issued last month by the state's Division of Health Care Finance and Policy, employers that pass either of two

tests would be considered to have made a fair and reasonable contribution and would thus be exempt from the assessment.

Under the primary test, if at least 25% of an employer's full-time employees are enrolled in its group health insurance plans, that employer would pass the fair and reasonable test.

In computing the percentage of its employees enrolled, employers would be allowed to exclude part-time employees, defined as those working fewer than 35 hours a week. Temporary employees—those

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Wellness program growth brings risks for employers

By MARK A. HOFMANN

WASHINGTON—Employers seeking to control health care benefit costs by instituting employee wellness programs may be voyaging into “totally uncharted legal waters,” according to an employment law expert.

Wellness programs and the law “is a subject I think is just about to hit full force in the HR community,” Francis P. Alvarez said during a discussion titled “Eat Your Veggies or Else? The Emerging Law of Workplace Wellness Programs” at the annual conference of the Alexandria, Va.-based Society for Human Resource Management in Washington late last month.

“I think the workplace is going to be a laboratory yet again for how we deal with very important issues of public policy,” said Mr. Alvarez, who is a partner in the White Plains, N.Y., office of law firm Jackson Lewis L.L.P.

“This is going to touch all of you and, more importantly, all your employees in coming years,” Mr. Alvarez told the audience of human resource professionals.

Traditional methods of health cost controls haven’t worked during a time when the workforce is changing, he said. Having older workers means more ailments, while “we’re about to inherit” an increasing workforce population that needs health care—today’s obese children.

The emerging wellness model recognizes that “health care costs follow health risks,” he said. Employers attempt to manage employee behavior to reduce risk by either offering incentives to adopt healthier lifestyles or insisting that employees “change behavior or else,” he said.

“There’s going to be a lot of pressure to move in this direction,” said Mr. Alvarez, adding that such a move is likely to generate lawsuits and morale problems.

Employers will strive to create a “culture of health” that includes work/life balance, he said. But many “shrewd plaintiffs’ lawyers” will say

that, while employers talk about creating culture of health, they aren’t really promoting work/life balance because employees are being handed enough work to keep them busy 16 hours a day, six days a week. “You’ve got to have a credible story to tell,” he said.

“This is going to be the laboratory we’re going to work through,” he said, calling the environment “totally uncharted legal waters.”

A central question is whether health care coverage is a right or a privilege, he said. “If it’s a right, you can’t take it away.” That ties into the question of how far employers should go in attempting to control employee behavior, and how far employees should go “in saying they want to live their own lives,” he said.

The goal of a wellness program is to have 70% of employees manifesting two or fewer specific serious risk factors, which include obesity, high cholesterol, high blood pressure, tobacco use, low physical activity, high stress and depression, said Mr. Alvarez. To achieve success, the program needs to focus on healthy workers and keeping them healthy, he said.

Employers need to develop a health profile of participants. This includes using health risk appraisals, in which employees answer a series of questions designed to give a picture of their health and lifestyle. Then employers assist employees in improving their health. For this model to work, high participation is a must, and employers want both carrots and sticks to achieve that, Mr. Alvarez said.

“The level of risk” for employers depends greatly upon a wellness program’s nature, including how intrusive it is. A variety of laws, both federal and state, can come into play, Mr. Alvarez pointed out. These include the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Health Insurance Portability and Accountability Act and a myriad of state disability

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Clear work policies necessary in electronic communication age

By MARK A. HOFMANN

WASHINGTON—Employers seeking a single workplace privacy law to guide them through the Internet age are in for a disappointment, according to a prominent employment attorney.

“I’m basically here to tell you that there is no privacy law,” said Christopher Wolf, a partner in the Washington office of Proskauer Rose L.L.P., during a session at last month’s annual convention of the Alexandria, Va.-based Society for Human Resource Management in Washington. Instead, there are myriad laws employers must obey as they attempt to define what is and what is not acceptable in the workplace.

That doesn’t mean that employers are defenseless, even if employees believe otherwise, said Mr. Wolf.

For example, the federal Electronic Communications Privacy Act governs e-mail and other electronic communications but has a “gigantic exception” regarding workplace use of those communication devices, he said. “You own the computer, you own the e-mail system,” so under the law,

the employer is deemed to be the user, he said.

Employees may attempt to assert a right to privacy when using company e-mail, but “in almost every instance,” such an assertion can be refuted if the employee does not have a “reasonable expectation of privacy,” said Anthony J. Oncidi, a partner in Proskauer Rose’s Los Angeles office.

Employers can remove such an expectation by clearly giving notice to employees that they don’t have a right to privacy when using workplace equipment, he said. Notice can be given through an agreement the employee must sign, as a policy spelled out in the employee handbook or even as part of software used in the company’s information technology system. Some courts have gone so far as to hold that the “mere use” of the employer’s e-mail system means that the employee has surrendered any expectation of privacy, said Mr. Oncidi.

Employers “should be very up front and open” about their policies, he said.

In addition, “every company today” needs to

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Pennsylvania lets ACE complete sale of runoff reinsurers

Several cedents fought move

By JUDY GREENWALD

HAMILTON, Bermuda—ACE Ltd. last week completed the sale of three runoff reinsurance subsidiaries to a London investment firm, closing a deal that drew objections from some cedents when it was announced last year.

ACE on Wednesday announced that it had sold ACE American Reinsurance Co., Brandywine Reinsurance Co. S.A.-N.V. and Brandywine Reinsurance Co. (UK) Ltd.—units that are running off asbestos and environmental claims—to Randall & Quilter Investment Holdings Ltd. The agreement to sell the units, which are part of Brandywine Holdings Corp., was announced in January 2005.

The deal puts Hamilton, Bermuda-based ACE in stronger financial shape and may serve as a model for comparable future deals by the company, observers say.

The sale’s completion follows approvals by the U.K. Financial Services Authority and the Pennsylvania Insurance Department, according to ACE. Pennsylvania Insurance Commissioner M. Diane Koken on July 3 issued a 63-page decision and order approving the deal.

ACE said as a result of the sale, it has reduced its exposure to legacy liabilities, including asbestos, by about \$900 million, and has reduced its reinsurance recoverables by about \$400 million.

ACE acquired the runoff business in July 1999, when it bought CIGNA Corp.’s property/casualty and runoff operations in a \$3.5 billion deal.

The sale of the Brandywine operations drew opposition from some insurers that had ceded business to

Brandywine’s history

OCTOBER 1995: A restructuring plan calling for the reorganization of CIGNA Corp. into active operations and inactive runoff operations is filed with the Pennsylvania Insurance Department.

FEBRUARY 1996: Former Pennsylvania Insurance Commissioner Linda S. Kaiser approves the plan, which creates runoff company Brandywine Holdings Corp.

JULY 1999: ACE Ltd. buys CIGNA’s property/casualty and runoff operations in a \$3.5 billion deal.

JANUARY 2005: ACE announces it has agreed to sell its assumed reinsurance runoff businesses within Brandywine to London-based Randall & Quilter Investment Holdings Ltd. Several insurers subsequently seek to block the sale, claiming it will harm policyholders.

JULY 2006: Pennsylvania Insurance Commissioner M. Diane Koken approves the sale, concluding that it “is not likely to be hazardous or prejudicial to the insurance buying public.” ACE announces completion of the deal.

the units. They argued that the transaction would enable ACE to dodge its obligations to policyholders (*BI*, April 11, 2005).

In April 2005, three insurers—Allstate Corp., American International Group Inc. and Chubb Corp.—wrote to the Pennsylvania department seeking to block the sale of

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Agent/broker directory available in Excel form

Business Insurance’s 35th Annual Agent/Broker Profiles issue will list the top 10 brokers worldwide based on brokerage revenue. Interested in knowing the next 50 largest? Or a comprehensive ranking of all the brokers in the directory? Or a ranking of firms by percentage of business from employee benefits?

For 2006, *Business Insurance* is making the annual Directory of Insurance Agents and Brokers, as well as all other directories,

available online as either an Excel file or as a PDF.

The Excel spreadsheet format will allow users to sort the information and provide reports that will be valuable to research, sales and marketing efforts. The information is now adaptable to users’ individual needs.

The Directory of Insurance Agents and Brokers will be available for purchase in the directories area of www.businessinsurance.com beginning July 17.

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Paid family leave growth relatively slow

By JUDY GREENWALD

Employers in Massachusetts and other states that may ultimately follow California's lead in introducing a paid family leave law are unlikely to have much to worry about, if California's experience to date is any indication, suggest most observers.

Almost two years after California's Paid Family Leave program took effect—and four years after its approval—the PFL program has had low participation rates and created few, if any, problems for companies, although it may require juggling duties to accommodate absent workers and additional paperwork (see sidebar).

Meanwhile, a move towards paid family leave elsewhere may be gaining momentum. According to the Washington-based National Partnership for Women & Families, paid leave bills were introduced in at least 26 U.S. states last year.

In Massachusetts, Senate President Robert E. Travaglini, D-Boston, has introduced legislation, S.B. 2535, that would guarantee a worker in the state 12 weeks of full pay, subject to a \$750 per week cap, if he or she needs time off to care for a newborn or adopted child.

It would be far more generous than California's program, which entitles employees to 55% of weekly pay, up to a weekly maximum of \$840, for up to six weeks.

Observers say California participation is low in part because the program is still relatively unknown. Furthermore, the program's relatively low percentage of guaranteed pay means many still cannot afford to take the time off, say observers.

Another discouraging factor for employees is that California's Paid Family Leave program does not guarantee workers at firms with fewer than 50 employees a job upon their return. Workers at larger firms already have job protection under the federal Family and Medical Leave Act and the California Family Rights Act.

But employers say it presents relatively few problems when employ-

California aims at work/life balance

California employers regard the state's Paid Family Leave program with equanimity and even a degree of enthusiasm.

The United States "does not provide as much time as many other countries do" for events such as childbirth and helping other family members, said David South, vp of human resources for the Christian Community Credit Union in Covina, Calif.

"From an administrative point of view from the employer's side, it's a challenge to both administer as well as cover job responsibilities," he said. But, "it's a long time overdue" in helping employees balance their work and family lives, said Mr. South.

"I don't necessarily have a problem with it," said Marilyn Sherman, director of human resources and risk management for El Segundo, Calif.-based Otis College of Art & Design. "You find that if a person has to take the time off, they're going to take it, and this way they can go take care of their business and come back."

"Very few issues have come up concerning that particular new entitlement," said Nestor Barrero, employment counsel for NBC Universal Inc. in Los Angeles. On balance, it is "even a bit of a non-event, at least here at NBC Universal," said Mr. Barrero.

Mr. South said credit union employees are making use of the program. Between July 2003 and June 2004, before California's PFL program took effect, four people used vacation and sick leave in order to be paid for time off for family leave, while nine took advantage of the program: once it was launched between July 2004 and June 2005. He said he expects utilization to increase further in the future.

"It's going to substantially help a person make it through their bills and take the time for what's important for them," said Mr. South, whose firm has 125 employees.

Ms. Sherman said the program "hasn't had much of an impact at all except in a positive way for the employees" of the college. "I haven't really seen a big difference at all in usage" as a result of the program, she said.

Fears that the program would be confusing and difficult to administer have not materialized, nor have people tried to take advantage of it unless they have a legitimate need, said NBC Universal's Mr. Barrero.

He referred to the fact that while employees must work 1,250 hours over the most recent 12-month period to take leave under the federal Family and Medical Leave Act and the California Family Rights Act, there is no such minimum eligibility requirement for the state PFL program.

"Even though somebody could take this leave on the second day here and create a hardship for the employer, that has not been our experience," Mr. Barrero said. People are taking it when they have a legitimate need and "that tends to happen after they've been here for a while" and are already eligible for the federal Family and Medical Leave Act, he said.

"We already have a process and procedures in place for FMLA leave and so this is just a way for people to get paid, sometimes more than they would have under the normal employer policies," Mr. Barrero said.

—By Judy Greenwald



ees do take advantage of the program, which has become just one more item in the stack of paperwork they have to fill out.

First in the nation

California's Paid Family Leave program, the nation's first, guarantees time off for employees if they need to care for an ill child, parent, spouse, registered domestic partner, or to bond with a newborn or adopted child.

There is no direct cost to employ-

ers. Benefits are funded through employee payroll deductions of 0.08% as part of the State Disability Insurance program, and are subject to federal, but not state, tax. Workers can take off the permitted six weeks consecutively or divide the leave into smaller increments.

Employees are required to take the leave under the FMLA and the CFRA at the same time they are receiving PFL insurance benefits.

To date, few employees have participated in the program, but the numbers have been steady. Accord-

ing to a spokesman for the California Employment Development Department, which administers the program, there were 74,405 claims in 2004, when the program was in operation for half the year, and 154,425 in 2005, or about double the 2004 numbers, during the program's first full year of operation. Through March of this year, there were 38,368 claims, which indicates the participation level has remained about the same.

The EDD originally had expected 300,000 participants during the

program's first year. "This was the first program of its type," said an EDD spokesman. "We didn't have any hard data to base it on. It's just hard to predict when people are going to take advantage of the benefits."

Joseph L. Beachboard, an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Los Angeles, said it may take another three to five years before the public widely understands the benefit is available. "I think it has been less of an issue, perhaps, than people expected it to be, but I think it still has the potential to be a pretty significant issue in the future," he said.

Ruth Milkman, professor of sociology and director of the Institute of Industrial Relations at the University of California at Los Angeles, said a study she conducted last August found that only 29.5% of employees were aware of the law, compared to 57.1% who knew about the federal Family and Medical Leave Act. The survey found "the people who need it the most are the least likely to know about it," Ms. Milkman said.

To address this issue, the Sacramento-based First 5 California Children and Families Commission—which was established by voters in 1998 to fund education, health, child care and other programs for expectant parents and children up to age 5, and is financed by a 50 cent per pack cigarette tax—is funding a three-year, \$3 million advertising campaign to increase awareness of the program, said a commission spokeswoman.

"Employers aren't telling employees about it like they should, and people don't know about it, and if people do find out about it, they're not finding out about it in time to be able to plan" so they can take the time off, said Kim Kruckel, San Francisco-based education coordinator for the Family Leave Coalition. Employees usually are not informed of the program by the EDD until the last week of their pregnancy disability, said

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Europe offers generous but widely varying leave

By JONATHAN GARDNER

LONDON—With a new push by several U.S. states to mandate that employees taking family leave receive supplementary pay, U.S. companies may find themselves, like their European counterparts, confronted by a maze of diverging benefits across the continent.

While Europe's least generous benefits are more expansive than anything considered so far in U.S. state legislatures, the notion of states acting independently to add pay to family leave requirements raises the possibility that companies with employees spread across the

United States will face similar variance in employee benefits as their counterparts in Europe.

The wide-ranging national mandates in Europe—where Denmark and Norway offer a maternity leave benefit twice as generous as the United Kingdom, for example—show what can happen when governments go their own way on family leave policy.

"It's very confusing for employers," says Robin Chater, secretary general of the Federation of European Employers, which represents 2,000 multinational companies.

"You've got all these different requirements in different countries.

(Employers) would like to have consistency across Europe," Mr. Chater said.

To achieve harmony, the European Union in 1992 issued a directive calling on its member states to mandate maternity leave of at least 14 weeks, but provided no insight on compensation during the leave period. It was followed up in 1996 by a directive calling for countries to require three months of parental leave to care for children up to 8 years old.

It's clear that countries view the EU directives as a minimum, both in terms of time off and compensation. A recent survey of 13 Euro-

pean countries by Mercer Human Resource Consulting shows Germany providing the EU minimum for time off, with Sweden, the most generous country, at 96 weeks of paid leave.

As for pay, at the end of 12 months, a Danish employee whose salary is \$27,500 a year and takes her allotted 50 weeks of maternity leave receives the equivalent salary. Danish employees on such leave receive full salary—the first 18 weeks paid by their employer and the remaining 32 weeks paid by the national government—up to a maximum of \$565 per week.

German, British and Irish work-

ers, meanwhile, have less generous leave benefits. Although Germans are entitled to just the EU minimum leave of 14 weeks, they get full salary, meaning the same employee who receives \$27,500 a year will obtain a benefit worth \$7,403.

British workers can take more time—26 weeks of paid leave, 52 weeks of unpaid. But the monetary value of the benefit is small. That same employee paid \$27,500 a year receives \$6,657 if she takes a whole year of maternity leave.

In between, there are a wide range of benefits and payment

See EURO LEAVE / next page

Euro leave: Generous social policy enhances retention of employees

Continued from previous page

schemes that require varying amounts of commitment from employers and national governments.

For example, Polish employees are entitled to 16 weeks of maternity leave, but at no greater direct cost to the employer than the 12 weeks of leave granted to U.S. workers because the salary is paid from the country's social security system.

"Labor law is very country-specific," said Mark Sullivan, a partner at Mercer Human Resource Consulting, who also conducted the European research. "Quite often, (companies) want to have a common level of benefits. You can't really do that across Europe. Each country has its own social system."

Pressure is on in some countries to expand the benefit. In the United Kingdom, for example, the government has proposed doubling its maternity pay period to 52 weeks, which would make it one of the more generous in Europe, and increasing the paid paternity leave period from two to 26 weeks in the first year after a child's birth if the mother returns to work before her leave benefit has expired. Legislation to achieve those expansions is now working through Parliament.

Elsewhere, Russian President Vladimir Putin recently proposed that the government pay 40% of the wages of women who take maternity leave for the first 18 months after birth. No action on the proposal has been taken so far.

For companies with employees spread around Europe, the game sometimes is finding the countries with the least costly employment policies, of which maternity leave is just one. But in some cases, employers choose to "gold plate" their maternity leave policies to give a common benefit across Europe and make it easier to move employees from one location to another. This is more common among U.S. employers trying to navigate the "alien world" of European employment law, said FedEE's Mr. Chater.

However, Mr. Sullivan added: "Very few companies are prepared to harmonize up (to the most generous benefit.) I think they try to pitch it as, 'What are we comfortable with?' and go with that, supplementing that in certain locations."

Microsoft Corp., which employs 13,000 people in 60 countries in its European, Middle East and Africa region, has employee leave policies that are tailored to compete with high-tech companies attracting the same workers, said Audrey Low, a Reading, England-based regional benefits manager for the software maker.

"When designing benefit programs, we target to achieve at least a market-median position relative to other leading competitors in each local market," Ms. Low wrote in response to e-mailed questions. "In Europe, legislation varies from country to country in respect of the amount of leave or time off a company must provide and how much, if any, of that time must be provided on a paid basis. Microsoft provides paid maternity leave accord-

ing to the local high-tech market practice in each country."

Beyond the questions of discrimination and employee retention, the expansive European benefits are driven in part by social policy. For example, some studies suggest that generous maternity policies yield healthier babies.

A study published in The Economic Journal in 2005 found that extending job-protected paid leave by 10 weeks could reduce infant mortality by 2.6%. The study, by Columbia University researcher Sakiko Tanaka, found a positive effect of paid maternity leave on in-

fant health even if cash benefits and other government assistance that go beyond the paid leave are taken into account. Unpaid and nonjob-protected leave had no significant impact.

Birth-rate support

In addition, many governments are seeing the need to encourage higher birth rates to prop up social welfare systems. The EU estimates birth rates at around 1.5 children per woman in the 25 countries of the European Union, well below the 2.1 rate that's necessary to keep

the population stable in developed countries and the 2.09 rate of the United States.

As a result, demographers expect the aging of the population to be more pronounced in European countries than in the United States, threatening the viability of pension systems in those countries. Governments view maternity leave as a way of reversing that trend.

Indeed, the birth rate in the 25 EU countries is experiencing an uptick, rising from 1.42 per woman in 1999 to 1.5 in 2004. Norway, which offers 53 weeks of maternity leave at 80% of salary, has one of

the higher birth rates at 1.81 children per woman, although Ireland has a still higher rate of 1.99 with less generous maternity leave policies.

"It may be because you can have your cake and eat it," Mr. Chater said of European working mothers offered maternity leave. "There's a hard-nosed social and business case for (generous maternity leave). As a business case, it's about retention, and as a social case it's about retention of the workforce and growing the workforce so we're not going to have a collapsing pension system."



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Editorial

Massachusetts merits praise for health care reform effort

HOW OFTEN DO federal or state regulators issue key rules a little more than two months after comprehensive legislation is passed?

The short answer is hardly ever, and that is one reason we are impressed with the speed at which Massachusetts regulators have published proposed rules dealing with a part of the state's landmark health care reform law of vital interest to employers.

The law subjects employers that do not make a fair and reasonable health insurance premium contribution to an annual assessment of up to \$295 per employee.

But what is fair and reasonable? The legislators left it to regulators to define. Massachusetts health care regulators, after conducting hearings and meetings with interested parties, have done just that and only two months after the legislation—intended to achieve near-universal coverage for state residents—was signed into law.

That, in itself, is a major achievement. But even more important is that the regulations meet what we think is the spirit of the law.

Lawmakers believed it was only fair that employers that do not offer health insurance coverage pay—through the \$295 per employee assessment—some of the state's cost in subsidizing premiums for the uninsured.

But lawmakers also wanted to ensure the fee would apply where employers offered coverage considered to be so skimpy, it's useless. That is why they left to regulators to determine what is fair and reasonable.

Regulators' tests comply with that intent. Under a primary test, for example, an employer would be considered to have made a fair and reasonable premium contribution if its group health care program enrolled at least 25% of full-time employees.

Typically about 80% of eligible employees opt for coverage. If less than 25% of them opt for coverage, a health insurance plan in nearly all cases would be insurance in name only.

That said, an employer might not meet that 25% test but still offers decent coverage. That could occur if a large percentage of employees enrolled in plans offered by their spouses' employers. The proposed rules recognize that possibility and exempt employers from the assessment if they pay at least 33% of the premium for individual coverage. That too is a threshold that any employer offering decent coverage would easily meet.

We applaud regulators for their fast action and for sound rules. We hope that is a good harbinger as they move on to address other issues and implement the law.

Everybody must consider threat of flu pandemic

THE AVIAN INFLUENZA pandemic that has been feared for years has yet to materialize. That's certainly good news.

But as we report on page 4, the fact that the pandemic may come later rather than sooner, if it comes at all, has not led to complacency on the part of employers. In fact, more and more employers around the world either have in place plans for dealing with a pandemic or are in the process of doing so. That's even better news.

While larger employers that responded to a Conference Board survey appear to be taking the lead on pandemic preparedness, a majority of all but the smallest employers surveyed seem to be taking the threat seriously. They're looking at multiple aspects of their operations—from employee health to the mechanics of having a large portion of the

workforce working from home—and drafting plans accordingly. They aren't taking chances.

As we learned with the Y2K computer glitch that never materialized on anywhere near the scale initially feared, contingency planning shouldn't be viewed as wasted time even if the threat never becomes reality. Critical thinking about one threat can lead to improved risk management approaches to deal with other threats; it's as simple as that.

We certainly hope that the avian flu pandemic turns out to be as big a bust as Y2K. But even if it does, the preparations undertaken by the world's businesses will not be in vain, but rather welcome steps to defend against the next threat, whatever that threat may ultimately prove to be. The less left to chance, the better.

Schillerstrom



Community Forums

Readers are invited to take advantage of a new online feature that allows risk and benefits management professionals to connect and exchange information at www.BusinessInsurance.com.

The Community Forums is an easy-to-use discussion board that lets readers of *Business Insurance* ask questions, exchange ideas and voice opinions on a wide variety of topics.

The discussion board offers topic-focused categories, including:

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- **Benefits Managers Forum.** A forum for exchanging ideas and asking questions related to general employee benefits management issues, concerns and trends.

- **In the News.** For every news article in *BI*, there is an angle for the buyer of risk and benefit services. This forum is intended for the *BI.com* community to express opinions and comments on current issues and news.

- **Industry Focus Forum.** Discuss insurance industry issues, ranging from probes, to mergers and acquisitions, to quality improvement. Industry participants are invited to offer views on these and other topics.

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risk and benefits management success, as well as your tales of business bloopers and blunders.

- **General Forum.** Discuss general insurance market issues and conditions, risk or benefits management trends, current events and developments and other topics.

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

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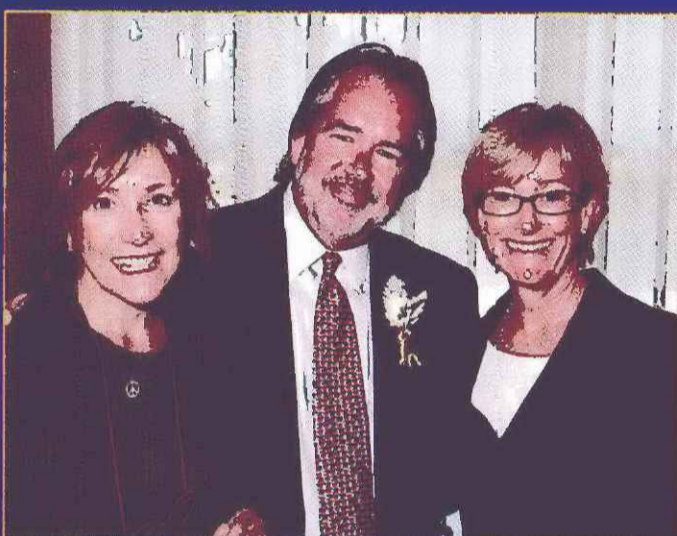
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2006 Benefit Manager OF THE YEAR®

2006 Benefit Manager of the Year- Paul Hackleman, Benefits Manager, San Mateo County, CA, with Business Insurance (left to right) Associate Publisher/Editorial Director Paul Winston, Senior Editor Joanne Wojcik, and Editor Regis Coccia.



Joining honoree Paul Hackleman (center), from San Mateo County, CA, are Steve Rossi, EEO Manager, Tim Sullivan, Assistant EPS Director, Mary Welch, EPS Director, Nancy Shockley, Budget Manager (retired), and Steve Boles, Assistant EPS Director (retired)



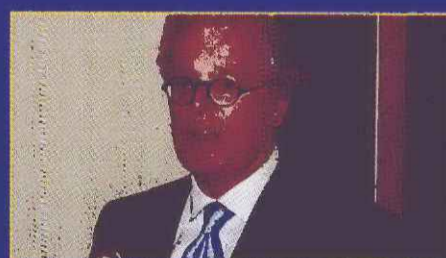
Directors of the Meritt Day Schools/Bright Horizons, Lynn Kanter Levy (left) and Pat Burns (right) join honoree Paul Hackleman.



Cathy Zacher (left), Director, Educational Programs, International Foundation of Employee Benefit Plans, with Darrell Spellman, foster son of honoree and Laurel Hackleman, daughter of honoree.



Honoree Paul Hackleman with Bill Hembree, Director, Health Research Institute. Mr. Hembree submitted this year's award winning Benefit Manager of the Year® nomination.



Top row left to right from San Mateo County, CA: Jerry Hill, President of the Board of Supervisors; John Maltbie, County Manager; Mary Welch, EPS Director. Bottom row left to right: Bruce Bodaken, CEO, Chairman of the Board, Blue Shield of California; Cora Tellez, President, Sterling HSA; guests at the reception.

On June 26th, at The Sofitel San Francisco Bay Hotel, in Redwood City, California, Business Insurance presented its prestigious Benefit Manager of the Year® award, which recognizes excellence and innovation in employee benefits management. This year's honoree, Paul Hackleman, Benefits Manager for The County of San Mateo, was chosen by an independent panel of judges representing leading employee benefit consulting firms, brokerage firms, health insurance/managed care organizations and benefits industry vendors.

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BENEFITS MANAGEMENT

BENEFITS MARKET FORECAST

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Costs of care prompt Mass. to pass reform

In April, Massachusetts enacted what is widely considered to be landmark health care legislation.

The new law is intended to achieve near-universal coverage of state residents within a few years.

To reach that goal, the law provides state health insurance premiums for lower-income individuals, establishes a new program to make it easier for employers and individuals to obtain insurance and requires residents to obtain insurance or face significant financial penalties, making Massachusetts the first state to impose an individual health care mandate.

Perhaps the most significant aspect of the law is that it represents a sea change in how health care coverage for the uninsured is financed, with state revenues that have been used to reimburse hospitals for uncompensated care used instead to subsidize insurance coverage for the uninsured.

Timothy Murphy, the secretary of the Massachusetts Executive Office of Health and Human Services, was deeply involved in the negotiations with state lawmakers that led to passage of the legislation and now is working to help implement the law.

Mr. Murphy, in an interview with Jerry Geisel, *Business Insurance* editor-at-large, discussed a wide range of issues related to the law, including the factors that led to its passage, as well as what it means to employers and individuals.



"We recognized that the costs would continue to escalate, that small businesses were continuing to struggle to offer health insurance."

Timothy Murphy
Massachusetts Executive Office of Health and Human Services



Health care critical issue for employers

Frustrated by the federal government's failure to address the nation's uninsured problem, state legislatures and labor organizations have begun targeting employers. Their theory is that if more employers are required to provide health benefits to their workers, there will be fewer uninsured people in America.

But employers do not have the wherewithal to provide coverage to all of the nation's working uninsured, according to Helen Darling, president of the National Business Group on Health, a Washington-based coalition of large employers. Employers, basically, are caught between a rock and a hard place, she says. They are feeling pressure from government and labor to do more, yet, at the same time, they have been grappling with escalating health care costs themselves.

In an interview with *Business Insurance* Senior Editor Joanne Wojcik, Ms. Darling discusses the issues employers face in today's political climate, including the Massachusetts and Maryland laws that were recently enacted, organized labor's Fair Share for Health Care campaign as well as what employers themselves are doing to address the affordability of health care coverage.



"What I see the most of these days are: much greater use of data warehouses, evidence-based care guidelines and analysis to identify patients who are not getting best-practice care..."

Helen Darling
National Business Group on Health

Q: Where are employers headed with benefits design? What major changes are in the offing, and why?

A: Employers are turning more to a long list of cost-control methods: specialty drug management, prescription drug tiers (for generics, formulary brand and brand); reimbursement at mail-order level for chronic meds; no coverage for over-the-counter drugs; prior approval and step therapy especially for much more expensive drugs, and even pill splitting. Employers are doing dependent eligibility audits and using health plans or specialty firms to identify likely high-cost claimants to offer disease management or case management programs.

What I see the most of these days are: much greater use of data warehouses, evidence-based care guidelines and analysis to identify patients who are not getting best-practice care and intervening; growth in using health coaching and professionals to assess needs and encourage patients to be more active

See **DARLING** / page 16

Q: What were the factors that enabled you to get comprehensive health care reform legislation passed?

A: There were several reasons why we were able to get legislation passed. First, we recognized that the costs would continue to escalate, that small businesses were continuing to struggle to offer health insurance. We were concerned that we would see a fraying of that risk pool and that ultimately, we would end up seeing more uninsured in the state. That was one of the prime reasons we got health care reform done.

Additionally, in the upcoming November elections, there are two ballot initiatives about health care. One of them is about changing the law of our state and putting in place a classic "play or pay" scheme. We looked at that and recognized that as

See **MURPHY** / page 19

Employers slow to add Roth 401(k) plans

Tax-free savings' permanence an important issue

By JERRY GEISEL

Employer adoption of Roth 401(k) plans remains slow as many companies are holding off until federal lawmakers decide on the future of the newest type of retirement savings plan.

A small but steady stream of employers are adding the plans, however, and if Congress takes action to make Roth 401(k) plans permanent, they eventually will become a near-universal retirement plan feature, experts say.

Named after William Roth, a one-time chairman of the Senate Finance Committee and created by Congress as part of a 2001 tax law, Roth 401(k) plans, which have been allowed since Jan. 1, 2006, require participants to make aftertax contributions.

Unlike traditional 401(k) contributions, which are made with pretax dollars, Roth 401(k) contributions and investment earnings can be withdrawn tax-free. Investment earnings, though, cannot be withdrawn tax-free until five years after an employee first began to make the contributions and after he or she reaches age 59½.

Tax advantages

For some employees, the tax advantages of Roth 401(k) contributions may be far greater than pretax 401(k) contributions.

For example, young employees could accumulate decades of investment gains on their Roth contributions and never be taxed on those gains. Other winners would be employees now in a low tax bracket who move to a much higher tax bracket when they retire.

Those individuals would reap bigger tax savings by making an aftertax Roth contribution while in a low tax bracket compared with making pretax contributions and being taxed on the contributions at retirement while in a higher tax bracket.

Despite those advantages, em-

ployer adoption of the plan has been slow. Several major mutual fund providers, who also are 401(k) plan recordkeepers, say only a small percentage—roughly 5% to 8%—of their clients have added or are in the process of adding the feature to their 401(k) plans.

The biggest reason by far for the relatively slow adoption rate is uncertainty on whether Congress will make Roth contributions a permanent part of tax law. The part of the 2001 law—the Economic Growth and Tax Relief Reconciliation Act—that authorized Roth contributions

side payroll departments weren't ready to separate Roth and traditional 401(k) plan contributions.

"They weren't sure they could administer it and that raised a flag with me," Ms. Dupree said.

Pent-up demand

Additionally, many employers have focused on higher-priority retirement plan issues, such as whether they should add an automatic enrollment feature to their 401(k) plans or freeze their defined benefit plans, said Amy Reynolds, a

months.

Many employers that have amended their plans have been small- to medium-sized companies. Larger employers, Mr. Callahan said, always take a little longer to make a decision when it comes to making a benefit plan change.

One smaller employer that recently amended its 401(k) plan to allow Roth contributions is Associated Agencies, a 120-employee insurance agency in Rolling Meadows, Ill.

Associated Agencies President Robert Schroyer said adding the feature gives employees an extra contribution option. "It is the modern thing to do," he said.

Still, it isn't only smaller employers that have given their employees the option to contribute to Roth 401(k) accounts. New York, for example, did so in March, and the University of North Carolina at Chapel Hill added the feature in June.

Some employers that have added Roth 401(k) accounts downplay concerns that Congress won't permit contributions after 2010.

"Most laws of this type are extended," Associated Agencies' Mr. Schroyer said.

If that happens, some predict that a Roth feature will be included with all 401(k) plans. "Eventually all plans will offer Roth accounts. It is a wonderful enhancement for participants to diversify their tax liability," said Gerry Mullane, director of retirement plan sales for mutual fund provider The Vanguard Group in Malvern, Pa.

Education, tools key

Indeed, Roth account advocates say tax diversification is a key reason why employers will want to add the feature to their 401(k) plans.

Since employees' future tax brackets as well as future tax rates are big unknowns, Roth advocates say adding Roth accounts lets employees hedge their tax bets, enabling them to allocate their contri-

butions with a portion made on a pretax basis to the traditional 401(k) plan and a portion made on an aftertax basis to Roth accounts.

"It becomes a tax diversification strategy. Just as you diversify your investments, you diversify your future tax liability," said Vanguard's Mr. Mullane.

To aid employees in evaluating the tax value of pretax 401(k) contributions vs. Roth account contributions, most 401(k) providers now have online calculators that enable employees to plug in certain assumptions, such as current income and expected income at retirement, to determine which type of contribution will produce the biggest tax breaks.

"You need an online tool so employees can see which contribution will be more valuable," said Lori Lucas, director of participant research at Hewitt Associates Inc. in Lincolnshire, Ill.

"The education piece is very important," said Rich Koski, a managing director with Buck Consultants Inc. in Secaucus, N.J.

Meanwhile, preliminary research conducted by Hewitt Associates suggests that concerns that adding Roth accounts to a 401(k) plan would reduce employees' total plan contributions may be unfounded.

Such concerns have surfaced, Hewitt notes, because adding another contribution option could confuse employees and reduce contributions.

But in an analysis of three unnamed employers who added Roth accounts to their 401(k) plans, Hewitt found that those contributing to Roth accounts through March put an average 11.6% of salary to the plan.

That compares with an average deferral rate of 10.5% for those employees through the first 11 months of 2005 when Roth accounts were not available.

By contrast, the average contribution rate of employees not contributing to Roth accounts remained unchanged at 8.8% in comparing the two periods.

Basics of Roth 401(k) accounts

Must be offered as part of a traditional 401(k) plan

- \$15,000 maximum annual contribution
- Contributions are aftertax
- Contributions aggregated with traditional 401(k) contributions for non-discrimination testing
- Investment earnings on contributions are tax-free so long as contributions are in the plan at least five years and an employee is at least age 59½

sunset at the end of 2010.

While contributions and investments made before then would continue to receive their tax-favored status, many employers say it isn't worth the time and effort to add the Roth feature if employees can make contributions only for a few years, experts say.

"If you put something in, you want it to have staying power. You don't want to be in a position to have to tell employees" after a few years that the benefit is over, said Kathy Dupree, insurance risk/benefits manager in the Orlando, Fla., office of Ocwen Financial Corp., a loan servicing company.

"There are a lot of concerns about the sunset provision," said Linda Wauson, a consultant in the Houston office of Watson Wyatt Worldwide.

While employer concern over whether Congress will lift the sunset provision is the dominant reason for the slow adoption rate, it isn't the only one.

Employers also have held back because, in some cases, their out-

consultant in the Richmond, Va., office of Mercer Human Resource Consulting.

Still, in the past few months hundreds, if not thousands, of employers have amended their 401(k) plans to permit Roth contributions.

"There is a lot of pent-up demand," said Catherine Collinson, senior vp at TransAmerica Retirement Services in Los Angeles.

"It is a slow, but steady takeover," said Chris Bowman, vp-retirement and investor services at The Principal Financial Group in Des Moines, Iowa.

For example, John W. Callahan, president of Fidelity Institutional Retirement Services Co. in Marlborough, Mass., reports that about 300 Fidelity clients with 401(k) plans have added a Roth contribution feature since January with another 450 clients in the process of adding the feature within the next few

Employees set contribution levels

By JERRY GEISEL

In a way, the term Roth 401(k) plan is a misnomer.

A provision in tax legislation passed five years ago by Congress, which went into effect on Jan. 1, 2006, created what the law calls Roth contributions.

Roth contributions, which can generate big tax breaks for participants, can be made only when that feature is included in a traditional pretax 401(k) plan or a 403(b) plan, the nonprofit sector's equivalent of a 401(k) plan.

Federal law and Internal Revenue Service regulations make clear that Roth and traditional 401(k) plan contributions must be kept separate.

Additionally, before a contribution is made, an employee must designate whether it is for the

Roth portion or the traditional portion of the 401(k) plan.

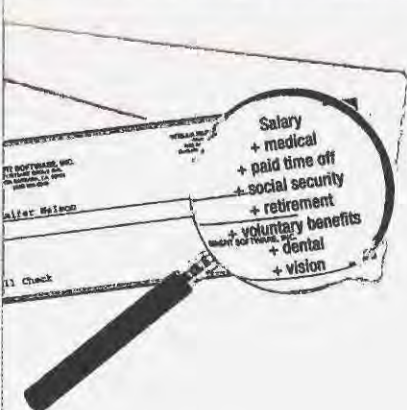
An employee decides how much of his or her contribution will go into the Roth account and how much into the traditional 401(k) plan. Any combination is allowed, so long as the total contribution doesn't exceed the overall 401(k) limit, which is \$15,000 a year.

However, Roth contributions and traditional 401(k) plan contributions are combined when employers run the basic non-discrimination test that compares contributions made by highly compensated employees with rank-and-file employees.

To pass that test, the average deferrals of higher-paid employees, as a group, generally cannot exceed the deferrals of lower-paid employees by more than two percentage points.

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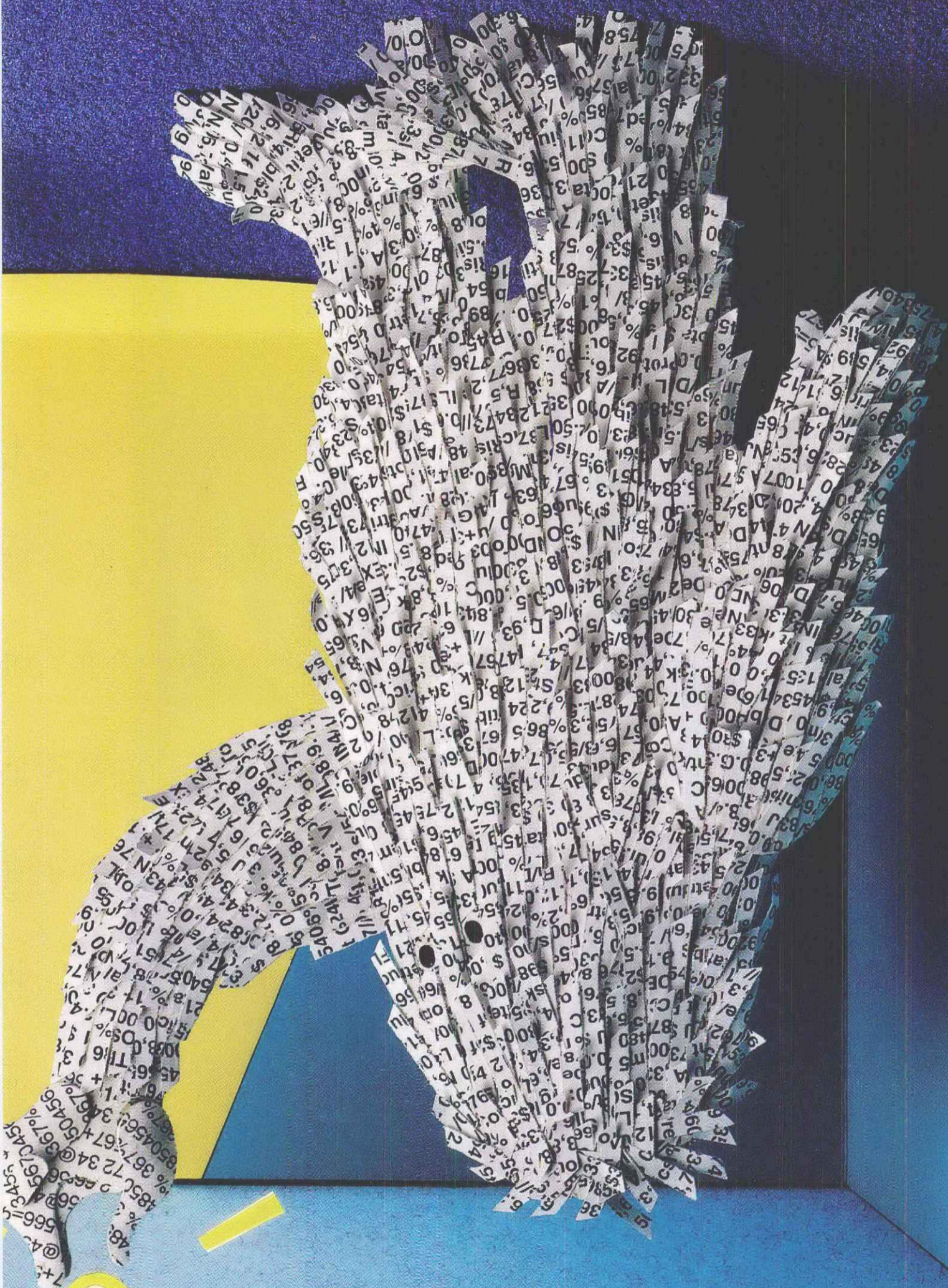
Now there's proof that what's in the best interests of your employees is also in the best interests of your business. A new study shows that the rate of premature births by high-risk members enrolled in Aetna's Moms-to-Babies® program was 40% lower than that of members who were not enrolled.* And for every dollar your company invests per employee, it saves \$1.20. By offering information, online tools and care coordination from trained obstetrical nurses, the program more than pays for itself. To find out more, call your broker or consultant, Aetna representative or visit aetna.com.

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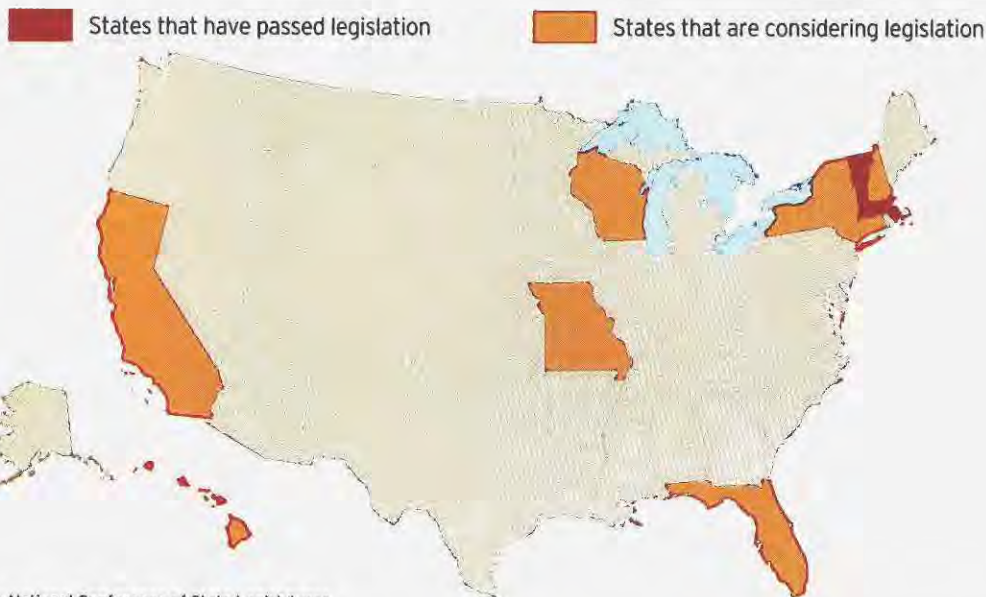


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GUY CARPENTER



Universal health care coverage



Source: National Conference of State Legislatures

States moving ahead while national health reform stalls

By LOUISE KERTESZ

Any hopes for comprehensive health care reform at the national level have been put on hold as an increasing number of states enact legislation to expand health care coverage.

That is a major change from the Clinton era, the last time there was a major push for national health care reform, and the switch in focus could cause significant problems for employers as they face the prospect of complying with numerous different state mandates, observers say.

While, so far, only Massachusetts and Vermont have enacted legislation aimed at achieving near-universal health care coverage for state residents, other states, such as Maryland, have taken a more targeted approach to reform and several other states are studying the issues, the states say.

Such moves could create problems of inconsistency that the aborted Clinton reforms of 13 years ago sought to minimize by providing a national framework that only allowed a limited amount of flexibility for state variations.

Today's version of health care reform "has the potential to be a nightmare for employers because there will not be consistency," said

Ted Nussbaum, director of Group and Health Care Consulting for Watson Wyatt Worldwide in Stamford, Conn.

"What we may be faced with is a state-by-state compliance requirement and perhaps all kinds of variable penalties," he said.

Impending problems

A state-by-state approach could be problematic for employers that have operations in multiple states, said Helen Darling, president of the National Business Group on Health in Washington.

"If you have to deal with each state differently...it could become a nightmare, like workers comp," she said.

"There hasn't been a lot of damage yet," Ms. Darling added. For example, the Massachusetts law imposes only "modest penalties" on employers that do not provide coverage, she said. "A lot of large employers would say, if we have to have something, this kind of reform would help us," since it could reduce the number of uninsured and cost-shifting. "But the biggest fear in Massachusetts is that the camel's nose is under the tent," she said.

Several forces are driving states' efforts to achieve universal health

care coverage.

Many believe that national health reform became a political third rail in Washington following the collapse of the Clinton reform effort, and the current political environment in the capital does not hold promise for consensus on a national health plan. "It's gotten so much worse in the last few years," Ms. Darling said. "It's much more partisan than it's ever been."

At the same time, underlying problems in the health care system have worsened.

"States are being dramatically affected by increases in the number of uninsured" and rising costs in their Medicaid programs, Mr. Nussbaum said.

As a result, several states have moved ahead with their own reforms.

"We're trying to contain costs and get folks insured, and if national developments occur, that's great. But we thought it was prudent to move ahead without waiting for national initiatives," said Herbert Olson, general counsel of the Vermont Department of Banking, Insurance, Securities and Health Care Administration in Montpelier.

States experiment

In 1993, the National Governors Assn. supported a national solution which would give states flexibility. Today, said Matt Salo, director of the association's Health and Human Services Committee in Washington, "we strongly encourage individual states to pursue health care reforms relevant for those states."

Mr. Salo added, "The political reality of the situation is that a national solution is in the distant future and until then states have no time to wait."

The federal government has been encouraging states to experiment with methods of expanding access to coverage by obtaining section 1115 Medicaid waivers, which suspend certain Medicaid rules.

The Deficit Reduction Act, which President Bush signed in February, has given states even more flexibility in the use of Medicaid funds, for example, by allowing states to leverage the funds to subsidize premium payments for working Medicaid recipients with access to employer health insurance. Federal Medicaid funds "are required if you're going to move to any kind of universal coverage," Mr. Salo said.

Some of the recent reforms have developed out of state experiments with Medicaid waivers. In Massachusetts, the issue moved in the legislature from preserving \$385 million in federal Medicaid matching funds to debating proposals to cover everyone in the state.

In Vermont, former Gov. Howard Dean aggressively expanded coverage to more residents through Medicaid waivers, said John McClaughry, president of The Ethan Allen Institute, a free market think tank in Concord, Vt. The current universal coverage law in the state relies on yet another Medicaid waiver as "part of the mix to get different segments of the uninsured covered," Mr. Olson said.

Michigan Gov. Jennifer Granholm is requesting a Medicaid waiver to implement a proposal similar to the Massachusetts plan, but without the mandate for individuals to purchase coverage.

But she hasn't given up on national reform. "I continue to seek a 'uniquely American solution' to the problem of providing national universal health care coverage and am supportive of efforts to begin discussion of national health reform. (However), the current climate in Washington—especially with the Centers for Medicare and Medicaid Services—has been more conducive in recent months to states seeking Medicaid waivers to address health insurance coverage for the uninsured," Gov. Granholm said in an e-mail response.

"Thirteen years ago the federal push collapsed magnificently, and now it's a question of going where the money is," said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

"States are going after free riders, (the employers) that don't provide insurance but whose employees get state-provided insurance. Maryland, Vermont, Massachusetts—they've all taken different approaches to going after these free riders," he said.

Employers and employer associations are beginning to respond to the rash of state-based reforms.

The Washington-based National Assn. of Manufacturers continues to support ERISA and other mechanisms to preserve a single set of rules for health care across the states, said Sandra Boyd, the association's vp of human resources policy. The association's intent 13 years ago would have been to make any national reform "as palatable as possible," she said.

While the NAM doesn't usually take a position on state matters, it made an exception and issued a statement critical of the Maryland Assembly's override of the governor's veto of the state's so-called "Wal-Mart bill"—or Fair Share legislation—because it set "a potential precedent," Ms. Boyd said.

That measure requires larger employers in the state to spend a minimum amount of payroll on health care. The way the law is written, it now only applies to Wal-Mart Stores Inc. The Retail Industry Leaders Assn., of which Wal-Mart is a member, is challenging the Maryland law in court.

All companies targeted

But such opposition may have come late. "The business community sat on the sidelines and thought it was a Wal-Mart problem. They didn't realize it would be theirs when other states lowered the threshold" in bills that targeted employers of all sizes, said Christie Herrera, health and human services task force director at the American Legislative Exchange Council in Washington.

The National Federation of Independent Business "clearly has opposed and continues to oppose" all Fair Share legislation and employer mandates, said Steve Woods, vp of state public policy in Washington. But in general, the inconsistency of various state plans does not pose a problem to most small businesses, because they only operate in one state and the NFIB finds some "positive" provisions in state bills.

Jeanne Keller, president of Keller and Fuller Inc., a Burlington, Vt.-based consulting company that works on health care policy with businesses, including Business Resource Services, a small employer group association in Vermont, said employers won quality and cost control provisions in that state's legislation, which requires employers over a certain size that do not offer coverage to pay an assessment to the state. But, she said, the assessment and reporting requirements are not limited to employers that don't provide coverage but also "ropes in" those that provide coverage to some workers but not to others and those whose employees do not take the coverage offered, she said.

The language was crafted to avoid an ERISA challenge, she said, and "companies from General Dynamics and Wal-Mart down to the little bed and breakfast" will be affected.

"I don't see that the larger employers in the state saw themselves as impacted by this at all. They thought they were immune because of ERISA protections," Ms. Keller said.

"There has not yet been a significant, organized movement by employers to affect state actions," Mr. Nussbaum said.

"Companies will need to get more actively involved to eliminate or at least shape legislation" to recognize that large employers are spending "significant money, energy and resources to get to the underlying causes of health care inflation and implement programs for health improvement," he said.

Michigan's Gov. Granholm said her plan is taking employer initiatives into account. "We continue to conduct discussions with businesses...on how (our) plan can be expected to be flexible and not interfere with current efforts to insure employees."

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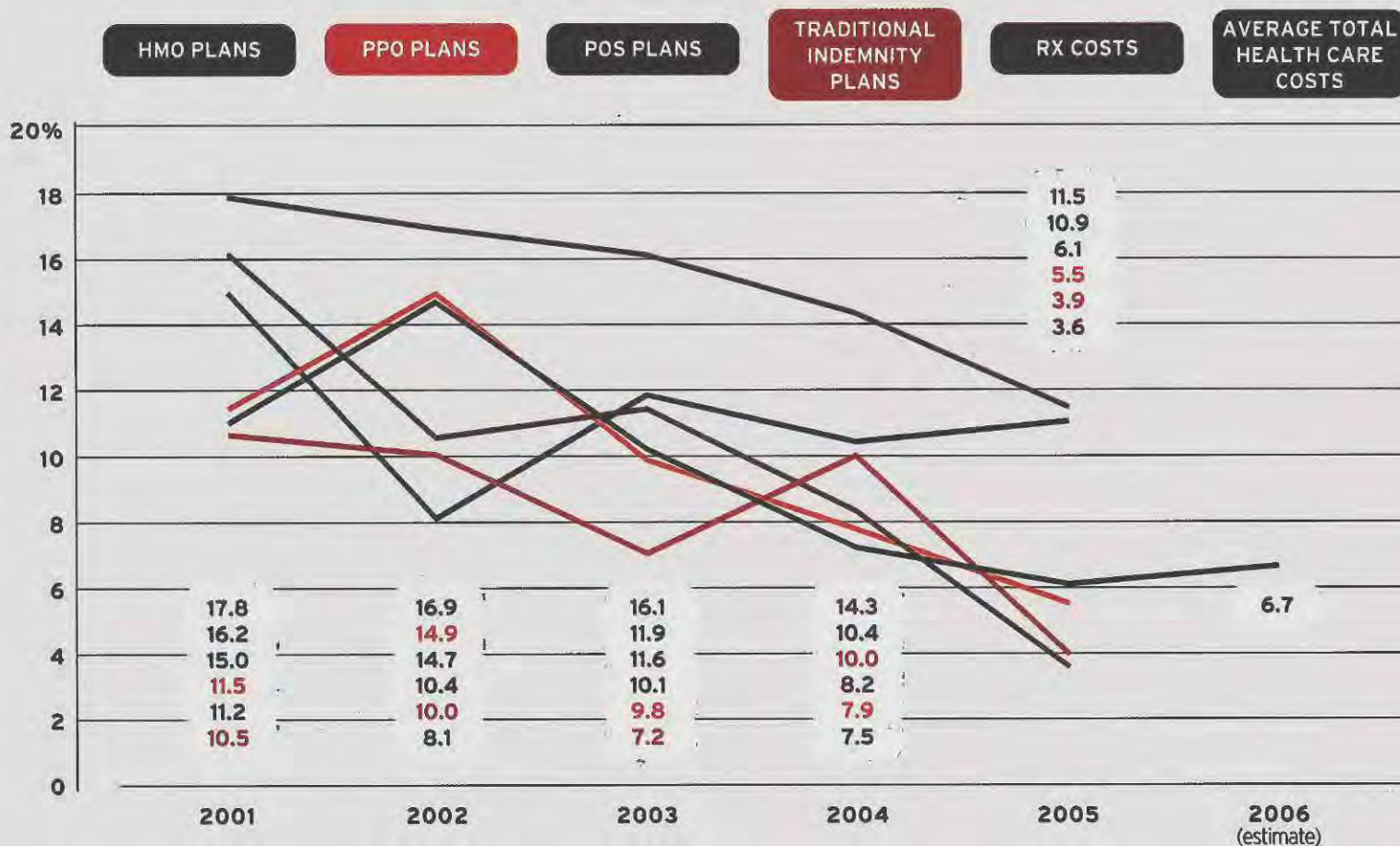
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Where medical costs are headed

Percentage increase in large plan sponsors' per employee costs, by year.

Employers with at least 500 workers estimate that their health benefit costs will rise 6.7% this year, on average, though they could not break down their projections by plan type because of the difficulty of predicting utilization of care per plan. Large employers typically sponsor several plans. Employers have cut their cost increases in recent years by shifting more medical expenses to employees who seek care.

But Mercer Principal Blaine Bos says that because wage increases have lagged medical inflation for years, additional cost-shifting would make care unaffordable. So most employers now plan to control costs through more robust health management and consumerism efforts.



Source: Mercer Health & Benefits L.L.C.

Murphy: Competitive, social concerns forced health care reform move

Continued from page 11

primarily anti-competitive for the Commonwealth. We were looking to attract businesses, not keep them away from the state. Another ballot initiative would have made health care a right under the constitution.

When you add all those together...or really multiply them, what you can see, all of these were putting us on a path towards health care reform. That brought Republicans and Democrats, liberals and conservatives together to a point where we could negotiate.

Q: Massachusetts has pools in which providers are reimbursed for uncompensated care costs. Was that a factor in getting legislation passed?

A: The pools have been in effect for about 20 years. When people show up at hospitals and don't have insurance and don't have the means to pay, we allow hospitals in the state to submit bills to the state, and we provide partial reimbursement for their services. It made it a little easier for us to say: "Why don't we take that pool of money and instead of paying for services after the fact, which is typically occurring in an inappropriate place and at inappropriate time, why don't we take that money and redirect it to help them purchase private health insurance?" Having that money available helped us to redirect those funds to this new health care reform law.

Q: It is obvious that lower-income individuals, whose health insurance premiums will be subsidized by Mas-

sachusetts, will benefit from the new law. How, though, will large employers, already offering health insurance, benefit?

A: They will absolutely benefit in several ways.... First, employers are already offering health insurance to full-time employees, but may not do the same for part-time employees. By virtue of the state setting up a Connector Commonwealth Health Authority, we are enabling companies to set up Section 125 plans for their part-time employees and have those part-time

"By changing our laws to allow (health maintenance organizations) to offer (health savings accounts), we are creating more opportunities for employers to offer more affordable insurance options that previously were unavailable in the state."

Timothy Murphy
Massachusetts Executive Office of Health and Human Services

employees come to the Connector and purchase health insurance on a pretax basis. We have helped large employers to deal with a changing workforce.

Additionally, by changing our laws to allow (health maintenance organizations) to offer (health savings accounts), we are creating more opportunities for employers to offer more affordable insurance options that previously were unavailable in the state.

There also is a part of the law that is rarely talked about but also is very important. That is a real focus on

providing transparency on the cost and quality of health care services in Massachusetts. When you do that, you provide to companies a greater ability to how they can do value purchasing.

Q: Could you elaborate?

A: I could show you various cost and quality information by procedures across Massachusetts. It is startling. Quality is in a tight band, but the prices that hospitals charge are not. Whether you are a state buying health care services for

copayments and deductibles depending on which providers individuals choose to frequent.

Q: Do you mean quality information will become public?

A: We already provide cost and quality information on nine procedures at Massachusetts hospitals. Under the new law, it gives us a greater ability to get more information not only from hospitals, but all the way down to doctors' offices.

A new council, created as part of the new law, is to provide that information and have that information available easily to the public.

Q: So, as this information became more available, employers could redesign their health care plans to encourage employees to use high quality but also perhaps equal cost facilities?

A: That is the goal.

Q: A large employer with lots of low-income employees might say the law will heavily subsidize health insurance premiums for low-wage workers. What would prevent large employers from encouraging employees, such as by raising their premiums, to get out of the corporate plan and instead obtain coverage through the state?

A: It is great question and one that we have given a great deal of consideration. We were very focused on making sure that we did

not have the private market crowded out by lower wage employees moving into state (premium assistance) programs. Our financial model would not withstand that kind of dumping. We changed our insurance laws to prevent (premium payment) discrimination between higher and lower wage employees.

Q: If an employer does not make a "fair and reasonable contribution" towards employees' health insurance coverage, it would be subject to an annual assessment of up to \$295 a year per employee. When will regulations come out specifying what is fair and reasonable?

A: The law empowers the Division of Health Care Finance and Policy to make the decision on what is fair and reasonable. That agency has been conducting informational hearings to get input from consumers and employers as to how they would define fair and reasonable. Regulations have to be in place by Sept. 1.

Q: Is there logic in our current system in which we pay for health care by reimbursing hospitals for treating the uninsured? Would a better, more cost-efficient system be one in which most everyone would have health insurance coverage and could take care of medical problems before those problems became much more expensive to treat?

A: We absolutely believe that to be the case.



Between the Lines

Compiled by Joanne Wojcik

Serious uses for 'lifestyle' drugs

Two popular "lifestyle" drugs may soon be used to treat two serious medical conditions.

While Viagra may improve a man's love life, the little blue pill also may reduce the incidence of heart disease by blocking adrenaline-induced stress that can lead to an enlarged heart, according to researchers at the Johns Hopkins School of Medicine.

And botulinum toxin A injections, a popular treatment for facial wrinkles, were found to cure major depression by making frowning impossible, according to a study reported in the May issue of *Dermatologic Surgery*.

Nine of 10 patients diagnosed with major depression who received botox injections were no longer depressed after just two months, while the 10th patient reported an improvement in mood.

"Previous research conducted by Charles Darwin suggested that facial muscle and skin movement may contribute to our moods and emotions," said Dr. Alastair Carruthers, president-elect of the American Society for Dermatologic Surgery, in a commentary accompanying the report.

"Therefore, by relaxing those muscles, it is possible to alleviate depressive disorders," he said.



Big-ticket philanthropy

The Oracle of Omaha seems determined to disprove the Bible passage that says it's easier for a camel to pass through the eye of a needle than for a rich man to enter heaven.

"There is more than one way to get to heaven, but this is a great way," 75-year-old Berkshire Hathaway Chairman Warren Buffett was quoted as saying last month after announcing he was giving away \$37 billion—85% of his fortune. Some \$31 billion of that total will go to the Bill & Melinda Gates Foundation.

A week later, the investment guru raised \$620,100 for another charity by auctioning off a power lunch with himself for up to eight people, something he has done every year since 2000 to generate money for the Glide Foundation, a San Francisco non-profit that helps the poor, hungry and homeless. This year's bid outdid last year's record donation of \$351,100.

And in May, Mr. Buffett garnered \$11,211.11 for the Omaha, Neb., Children's Hospital by auctioning off his custom-made white ukulele.

Sleepless in cubicle

While it may seem that some of your co-workers are sleeping on the job, it may actually be a lack of a good night's rest that's affecting their job performance.

So say researchers at Temple University in Philadelphia who conducted a study of how much people who snore or have sleep apnea are costing employers in lost productivity and health care costs.

The study, which examined 5,600 patients, found that snoring and sleep apnea cost more than \$88.4 billion annually in poor job performance, increased accident claims and higher health care costs. More than 48% of the patients examined had trouble concentrating at work and were easily fatigued.

Researchers also found that snoring and/or apnea affected driver safety: Eighteen percent of study participants reported they had dozed off at least once while driving over the last few years, and 7% said they were involved in accidents causing injuries to themselves and others.

Tips and feedback from readers are welcome. Please send information to jwojcik@businessinsurance.com

COMINGS & GOINGS - INDUSTRY

Brokers:

Dallas-based Apex Global Partners has named **K. Brian McLaughlin** as president and chief operating officer, and director and vice chairman of the board of directors. He will continue as president and chief executive officer of Granite Group Benefits, a company he founded in 1992.

New York-based Integro Ltd. has named **Carl C. MacCartee III** as managing principal in Washington. Previously, he was senior vp with Marsh Private Equity and M&A Services.

Jan Rose has been promoted to executive vp of the Chicago office of Colemont Insurance Brokers. Previously, he was a wholesale insurance broker.

Charlotte, N.C.-based Wachovia Insurance Services has named **Marvin J. Sobodash II** as senior vp and national property practice leader. Formerly, he was senior vp of the Charlotte management team of Marsh Inc.

Julian E. Smiley Sr. has been named senior vp of the Southeast region for Chicago-based Acordia Inc. Previously, he was a commercial client practice leader for Marsh Inc.

Richard Huntington has been named senior vp of Beecher Carlson's risk services/captive operations in Denver. Previously, he was senior vp, Southwest health care practice leader for Palmer & Cay.

Calabasas, Calif.-based Countrywide Insurance Group has named **Myron Hendry** as executive vp and chief operations officer. Before joining Countrywide, he was senior vp of SAFECO Insurance Co.

Marsh Inc. has named **Jonathan Groves** as leader of its U.K. captive consulting practice in London. Before joining Marsh, he was a development manager for ACE Risk Management International.



Mr. Rose



Mr. Smiley



Mr. Lyons



Mr. Hughes



Mr. Schmalz



Mr. Brand

Insurers:

New York-based Arch Insurance Group has made several senior-level appointments.

• **Mark Lyons** has been named president and chief operating officer. Previously, he was executive vp of group operations and chief actuary.

• **Brian Hughes**, a former chief pricing actuary, has been promoted to senior vp and chief actuary.

• **Charles B. Schmalz** has been promoted to executive vp, surety, from senior vp, surety.

• **Dennis Brand**, a former senior vp and chief reinsurance officer, has been promoted to executive vp, corporate underwriting and risk management.

Reinsurance:

Farmington, Conn.-based Discover Re has named **Brian D. First** as

president of the specialty market group. Before his promotion, he was a senior vp, marketing.

Benfield Inc. has named **Mohammed Ashab** as senior vp in its financial consulting practice in Philadelphia. Previously, Mr. Ashab was a director at Standard & Poor's Corp.

Other providers:

Howrey L.L.P. has added **Jill B. Berkeley**, **David H. Anderson** and **Seth D. Larden** as partners in the Chicago-based law firm's insurance recovery practice. All were previously partners at Schiff Hardin L.L.P. Ms. Berkeley will serve as co-chair of the Midwest insurance recovery group.

John Sopoci has joined the Chicago office of Buck Consultants as a director in the HR management consulting practice. Previously, he was a consultant with Towers Perrin.

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Canadian pension rulings favor employers

Supreme Court leaves open chance for more litigation

By GLORIA GONZALEZ

Two recent Supreme Court of Canada rulings in pension cases have been seen as generally favorable to employers although they leave room for future pension litigation.

Pension experts and plan sponsors, though, are more concerned about an Ontario lower court ruling in March that has challenged two long-standing practices in managing pensions in Canada.

In *Rogers Communications Inc. vs. Buschau*, the Supreme Court of Canada on June 22 overturned a ruling by the British Columbia Court of Appeal that said members of one of the company's pension plans could invoke a common law rule that would have allowed them to force a termination of the trust that held the pension's assets and access the plan's surplus.

In its decision, the Supreme Court held that the context and



purpose of pension plans do not generally lend themselves to the common law rule—law evolved from decisions of English Courts—cited by members in attempting to force a termination of the trust, according to a bulletin on the case issued by Blake, Cassels & Graydon L.L.P. in Toronto.

The highlight of the case is the Supreme Court's recognition that courts have to be careful in applying common-law principles governing trusts to pension plans, said

Paul Litner, chair of the funding issues task force of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada.

In the past, courts have generally taken strict trust law principles and applied them to modern pension plans, which may not be conducive to defined benefit plans, said Mr. Litner, who is a partner with Osler, Hoskin & Harcourt L.L.P. in Toronto. For example, trust law creates barriers to merging pension plans, which many plan sponsors—including Rogers Communications in this case—attempt to do. When courts apply these strict principles and tell employers they cannot merge their plans, employers respond by saying they will terminate the plans, Mr. Litner said.

A potentially problematic aspect of the case is that the Supreme Court left open the possibility that the common law rule might apply to very small pension plans, but failed to elaborate on why small plans would be vulnerable and what it considered to be a small plan. Under this reasoning, plaintiff members of small plans could still use common law rule as the basis

for a lawsuit, said Mark Newton, a partner in the pensions and benefits group with Heenan Blaikie L.L.P. in Toronto. "To me, that was intellectually inconsistent," Mr. Newton said.

Class action

In a separate case, the Supreme Court decided on May 18 in *Bisailon vs. Concordia University* that a unionized member of a pension plan could not institute a class action to challenge amendments to the pension plan. The university wrongfully used the pension surplus to take contribution holidays, cover administrative expenses and finance early retirement packages, according to the lawsuit.

The Ontario Superior Court found that only a grievance arbitrator would have jurisdiction to hear the case since the pension plan was a benefit provided for in the collective bargaining agreement and since the dispute resulted from the application of that agreement. The Ontario Court of Appeal set aside this decision, holding that the law-

See PENSIONS / next page

Former HIH manager plans to plead guilty to fraud charges

SYDNEY, Australia—Another former employee of insolvent Australian insurer HIH Insurance Ltd. has indicated that he will plead guilty to fraud charges next month when arraigned on charges relating to his role in the insurer's collapse.

Robert Kelly, former assistant company secretary of HIH, appeared July 4 at the Downing Centre Local Court in Sydney, Australia. Mr. Kelly told the court that he would plead guilty to charges under the New South Wales Crimes Act that, on or about May 26, 2000, he concurred with FAI Group's management in the making of a false or misleading statement to Westpac Banking Corp.

Mr. Kelly is charged with concurring with the false statement that the management of HIH was unable to produce consolidated accounts for its FAI Group subsidiary for the financial period ending June 30, 1999, when in fact management could have produced those accounts. The accounts were required to comply with a covenant under a \$150 million Australian (\$99 million) medium-term note program between FAI Insurances

Ltd. and noteholders—including overseas financial institutions—that Westpac managed.

The program also contained a covenant that specified shareholder funds in FAI should not drop below \$200 million Australian (\$132 million). At June 30, 1999, those funds totaled just \$80.9 million Australian (\$53.4 million).

The Commonwealth Director of Prosecutions, which is bringing the case to court, alleges that Mr. Kelly, in concurring with the erroneous statement, helped FAI avoid the risk of the noteholders calling in the money they were owed under the notes program.

Mr. Kelly was granted unconditional bail and the matter was transferred to the Supreme Court in Sydney for arraignment on Aug. 4.

HIH became Australia's largest ever corporate collapse when it failed in 2001. Several officers of the company have been jailed for their role in the collapse, while many other former employees have been banned by the Australian insurance regulator.

—By Sarah Veysey

SCOR to purchase life reinsurance unit in \$773 million deal

By SARAH VEYSEY

PARIS—SCOR S.A. announced last week that it would buy German life reinsurer Revios Rückversicherung A.G. for €605 million (\$773.1 million).

Paris-based SCOR said the deal, which is to be retroactive to Jan. 1, would make its life reinsurance subsidiary, SCOR Global Life, the fourth-largest life reinsurer in the world.

Cologne, Germany-based Revios is the former life reinsurance unit of Gerling Global Re Group, from which it has operated separately since 2002 when Gerling suffered heavy losses and stopped writing property/casualty reinsurance.

Revios, which has offices in 17 countries, underwrote premium volume of €1.24 billion (\$1.47 billion) in 2005.

SCOR said its life reinsurance unit recorded premium volume of €2.27 billion (\$2.69 billion) in 2005.

The newly enlarged SCOR Global Life unit will have three business units, based in Cologne, Germany, Paris and the United States, SCOR said.

The Paris-based reinsurer said in

a statement that life reinsurance is a "central element" in its strategy to maintain a balance between life and property/casualty business.

"This business mix enables the group to lower its risk profile thanks to the diversity of its portfolio, to reduce the volatility of its results and to optimize the use of its capital depending on the development of the respective markets," it said.

Standard & Poor's Corp. affirmed its A-rating of SCOR and its A-rating of Revios in the wake of the announcement.

In a statement, S&P said "the acquisition will add greater diversity to SCOR's business profile and will significantly strengthen its competitive position in a number of key European markets—particularly Germany, Scandinavia and the United Kingdom."

"Furthermore," S&P added, "it will enable SCOR to protect its already strong competitive position in France, Spain and Italy."

London-based investment bank Keefe, Bruyette & Woods Ltd., said in a research note that the acquisition is "a sensible strategic step on (SCOR's) path to recovery."



Updates

European insurers report growth in 2005

The European insurance industry recorded increased premium volume in 2005, totaling €978 billion (\$1.16 trillion), up from €927 billion (\$1.26 trillion) in 2004, according to provisional figures from the European insurance and reinsurance federation, Comité Européen des Assurances. The Brussels, Belgium-based CEA said total investments of the European insurance industry passed €6 trillion for the first time, to total €6.37 trillion (\$8.14 trillion)—up from €5.86 trillion (\$7.93 trillion) in 2004.

Dismissed banker appeals ruling

A former senior investment banker at London-based HSBC Bank P.L.C. is appealing an employment tribunal ruling that the bank did not discriminate against him on the grounds of his sexual orientation (*BI*, May 15). Peter Lewis, who was fired by the bank for gross misconduct, claimed he was sacked because he was gay and sought about £5 million (\$9.23 million) in compensation. An employment tribunal found in May that HSBC did not discriminate against Mr. Lewis on the grounds of his sexual orientation, though it did fault HSBC's investigatory process into the alleged incident that led to Mr. Lewis being dismissed. HSBC is appealing the four claims on which the tribunal found fault with its process.

Former Lloyd's names file suit against U.K.

A group of former individual investors in Lloyd's of London sought a group litigation order—or class-action-style lawsuit—against the U.K. government's Treasury department, which regulated Lloyd's until 2001. The individual investors, or names, claim that the Treasury ministry failed correctly to implement a European Union directive on the regulation of nonlife insurance. A spokesman for the Treasury said the governmental department "strongly denies it failed to regulate the Lloyd's market in proper accordance with its obligations under the first nonlife insurance directive."

Australian insurers see asset growth

Assets of the Australian nonlife insurance industry grew 6.5% in the year ending March 31, to total \$83.5 billion Australian (\$59.8 billion), according to statistics from the country's insurance regulator, the Australian Prudential Regulation Authority. Net premium revenue during the period grew 0.8% to \$21.1 billion Australian (\$15.1 billion).

Pensions: Rulings on key issues not all favorable for plan sponsors

Continued from page 21

suit had nothing to do with the collective bargaining agreement because the pension plan existed independently of the agreement. The Supreme Court in overturning the decision sided with the Superior Court's ruling that these matters should be contested via the grievance arbitration system, not the courts.

Plan sponsors with unionized workforces would benefit from the Supreme Court's decision because the timeframe for filing a grievance is much shorter than the one applicable to civil procedures such as class actions, said Natalie Bussiere, a Montreal-based attorney with the pensions and benefits practice of Blake, Cassels & Graydon. In Quebec, for example, the timeframe for filing a grievance is generally 15 to 30 days, while the timeframe for filing a class action is three years. So requiring these disputes to go through the grievance process lowers the risk that a legal action will be instigated a long time after a decision is implemented, she said.

"For employers, I think it's very good news," Ms. Bussiere said. "It creates more stability."

The impact, though, on companies with both unionized and non-unionized employees remains to be seen, because the decision only applies to unionized employees, meaning non-union employees retain the right to sue. If non-union members institute a class action, any decisions in their favor would benefit all eligible members of the

pension plan, regardless of whether they are in a union or not, Ms. Bussiere said. Union members "could benefit from it at the end of the day," she said.

Nolan vs. Kerry

Despite mostly favorable rulings from the Supreme Court on these pension cases, the case that has plan sponsors bewildered and concerned is a March decision by the Ontario Divisional Court involving Woodstock, Ontario-based Kerry (Canada) Inc.

In administering its defined benefit pension plan, the company paid administrative expenses from the pension fund and also took contribution holidays after taking into account the actuarial surplus of the plan. In 2000, the plan was amended to add a defined contribution component for new hires and existing members who took the option of converting their past service entitlements to the DC plan. Part of this amendment allowed the company to use funds from the DB plan to fund its contributions to the DC plan.

Former employees who were members of the plan objected to the change and asked the Ontario Superintendent of Financial Services to order the company to reimburse the plan for the administrative expenses and contribution holidays and to deny registration of the amendment.

These issues were debated by regulatory officials and eventually by

Applying trust law to Canadian pensions

Several recent court rulings in Canada have addressed key pension issues:

■ **Rogers Communications Inc. vs. Buschau** (June 2006), Supreme Court of Canada: A common-law rule governing traditional trusts can not be invoked to force the termination of a trust holding the assets of a pension plan because termination of pension plans and distribution of their assets are governed by pension standards legislation.

■ **Bisailon vs. Concordia University** (May 2006), Supreme Court of Canada: Unionized members of a pension plan must go through the grievance arbitration process rather than the courts to resolve any disputes over pension plan amendments.

■ **Nolan vs. Superintendent of Financial Institutions and Kerry (Canada) Inc.** (March 2006), Ontario Superior Court of Justice Divisional Court: An employer was not entitled to pay administrative expenses out of the pension fund because historical plan documents and trust agreement language prohibited it from doing so, and it could not use the surplus in its defined benefit plan to fund contributions to its defined contribution plan.

Source: Court documents

the divisional court, which ruled that Kerry was not allowed to pay administrative expenses out of the fund because the historical plan documents and trust agreement language prohibited it from doing so. The divisional court also ruled that Kerry could not use the surplus in the defined benefit plan to fund its defined contribution plan contributions because the amendment created two pension funds and the DC members had no connection to

the DB plan and could not be legitimately given a beneficial interest in the funds from the DB side.

The court's decision in *Nolan vs. Superintendent of Financial Institutions and Kerry (Canada) Inc.* on the payment of expenses is the most troublesome for plan sponsors because the vast majority of them pay administrative expenses directly from the pension plan, said Stephen Pibworth, legal consultant for Hewitt Associates Canada in

Toronto. The ruling on Kerry's use of the surplus to fund DC contributions is also problematic because many plan sponsors have converted from DB to DC plans and have used DB surplus to fund DC contributions, he said.

A small number of employers are already looking at their historical documents to assess potential liability, but the majority of plan sponsors are taking a wait and see attitude, Mr. Pibworth said. The *Kerry* decision is being appealed to the Ontario Court of Appeal and plan sponsors are hopeful that the higher court will hear and overturn the decision, he said. "I think it's fair to say that plan sponsors are very aware of this case and very concerned about the implications for their own plans," he said.

Viewing the *Kerry* decision in light of the Supreme Court's decision in *Buschau*, ACPM's Mr. Litner wondered if the Ontario divisional court would have reached the same decision. *Kerry* has similarities to *Buschau* in that it tackles how classic trust law principles apply, he noted.

"I don't think a judge would be inclined to take as harsh or strict a view in light of *Buschau* or would be careful to say the facts are limited to this case," Mr. Litner said. The *Buschau* decision could impact an appeal of the *Kerry* case "because I think the Supreme Court is signaling that courts have to take a less strict view on how to apply classic trust law to pension plans," he added.

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Emerging Risk Strategies

Career moves: A risk pro's story

By John J. Hampton

Lance Ewing is hardly an unknown individual in the world of risk management. In addition to a high-profile position as vp of risk management at Harrah's Entertainment Inc., Mr. Ewing was the president of the Risk & Insurance Management Society Inc. during 2003-2004. He traveled domestically and internationally as a representative of the society. He also has been an active advocate of risk management education, serving as an instructor for the Austin, Texas-based National Alliance for Insurance Education & Research.

I knew Mr. Ewing when we worked together at RIMS. He was always a role model for the successful risk manager. Even more important, his story shows how an individual can grow from a small to a prominent role in an organization by mastering the skills of modern risk management. With his cooperation, I would like to tell his story.

Education is close to the heart of Lance Ewing. Suffice it to say, he is likely to be a perpetual student. He has two master's degrees—one in law and justice and another in occupational safety engineering. Who needs two master's degrees, much less also an Associate in Risk Management designation, an International Certified Risk Manager designation and currently pursuing the Chartered Property Casualty Underwriter and Enterprise Risk Management Professional designations? He always said, "The world is changing. We have to keep up with it." He does exactly that by staying on top of risk management developments.

If education provides the tools to be a risk manager, experience gives you the knowledge of how to apply those tools. Mr. Ewing started, as do many risk managers, working in insurance companies. It is difficult to picture Mr. Ewing—a flamboyant personality by any measure—in a traditional insurance environment. Once, I was asked to pay tribute to Mr. Ewing in a ceremony honoring him. I told the audience that "not everyone is annoyed by Lance Ewing. Some people do not mind him at all." The audi-

ence recognized the banter as praise for an individual who accompanies his skills with the enthusiastic personality of a motivational speaker.

The early days in the insurance companies shaped Mr. Ewing's thinking about his career. He helped assess risks in high-hazard industries such as sawmills, logging companies, hospitals, trucking companies and mobile home manufacturers. As he says, "My experience with the carriers forced me to stay away from the insurance technical jargon that merely baffled the business owner or corporate CFO. They really were interested in activity, not words." He quickly learned the risk management side. His customers did not want insurance. Their goal was to bring down the losses and consequential costs. "In the case of sawmills," he once noted, "it is not a question of if it will burn but when it will burn." He found himself working as an engineer dealing with highly protected risks. Prevention and loss are part of his DNA.

Mr. Ewing must have done all right in insurance—he worked at three companies for a total of five years. His next move was to the Philadelphia School District where, over six years, he dramatically reduced myriad exposures, resulting in significant financial savings for the government agency.

In Philadelphia, he applied the loss control aspect of risk management. The system had 300 schools and facilities, many never fully inspected. He initiated a rooftop-to-boiler room inspection of every building. His team documented conditions and made recommendations and corrections. They discovered unknown assets, such as fine arts, that needed to be secured. They identified previously unknown exposures, such as storage tanks without overflow shutoff valves. The strategy paid off. By correcting deficiencies, the system reduced losses. By providing accurate data to insurers, the system reduced premiums.

In the late '90s, he got restless. Those who know him wouldn't be surprised. He sought to broaden his exposure to risk and use knowledge from his graduate courses. GES Exposition Services (a VIAD Co.) opened that door. He did it all as senior director of risk management for a company that provides logistical support to

hundreds of major exhibitions annually. Here was risk: Forklifts racing around convention centers, unloading hundreds of trucks in hours and reloading them a few days later.

The real story at GES was that Mr. Ewing recognized insurance was a piece of the pie but risk management was more than just loss control on insurable risk. He built an internal consulting team, which advised managers on everything from environmental hazards to contract reviews and even compliance issues. The team conducted training for managers and union workers. The goal was to find ways to say "yes" when risk conditions seemed to say "no."

It all paid off many times, and particularly in 1999, when a tornado struck the convention center in Salt Lake City during a GES exhibition. Damage was extensive but was mitigated by the strong relationships between the risk management department and managers, workers, insurers and brokers. Losses could easily have been much higher.

Then he faced his own risk when GES downsized and reorganized functions. He landed at Park Place Entertainment (later Caesar's Entertainment) after an interesting negotiation. Offered the job of director of risk management, he pressed for the title of executive director. He argued for an expanded role for risk management and pledged to bring

bottom-line results to the gaming company. He got the title and the job in November 2002 and worked to prove himself. He quickly realized the need to build a strong risk management department to identify opportunities to reduce liability claims. Operating units worked with the new team to implement changes. Results were immediate, saving millions of dollars in months. Do companies recognize performance? Park Place did. In July 2003, eight months after starting, Lance Ewing was promoted to vp of risk management.

John J. Hampton is the KPMG Professor of Business and Director of Graduate Business Programs at St. Peter's College in Jersey City, N.J. He is a former executive director of the Risk & Insurance Management Society Inc. His columns and interviews can be found at www.businessinsurance.com/EmergingRiskStrategies.



Harrah's Lance Ewing is a case study in career development.

Leave: Low utilization rate

Continued from page 6
Ms. Kruckel.

Victoria J. Schweitzer, senior vp in Aon Consulting's health and productivity practice in San Francisco, said "the hassle factor has been high" for employers.

"Even though the utilization is low, the people that are utilizing the family leave tend to have a relatively high number of performance-related issues. They are people who are looking for ways to get paid and not work" and typically tend to be the more difficult-to-manage employees, said Ms. Schweitzer.

No complaints

Others, though, disagree, and say employers have had few problems with the program to date.

"I haven't heard a single complaint from any of my clients" about the PFL program, said Jonathan M. Turner, an attorney with Epstein, Turner & Song in Los Angeles.

Employers initially feared employees would take advantage of it "probably too enthusiastically," but they have not reported any abuse of the program, or more absenteeism than normal because of it, Mr. Turner said.

"It really hasn't burdened" employers, said Nancy A. Bertrando, an attorney with Greenberg Glusker in Los Angeles.

Employees who are taking advantage of it are "going to miss some time from work probably anyway, and because this is something funded entirely by employees and because employers don't have the obligation to hold their job open, my experience is people are not really taking advantage of this law," she said.

"It's a minor issue," said Terry Garrison, senior consultant, absence and productivity, for Watson Wyatt Worldwide in San Francisco. "It's just one more set of forms and things that (employers) have to track" although "it may be kind of the straw on the camel's back, a little bit, in terms of all the different things that have to be done."

Massachusetts: Standards not difficult to meet

Continued from page 3

whose work is explicitly temporary in nature and does not exceed 90 days a year—also would be excluded, as would seasonal employees.

If the 25% enrollment threshold is not met, employers that offer to pay at least 33% of the premium for individual coverage would pass the fair and reasonable test.

That secondary test "recognizes that many employers offer premium assistance to their employees, but their employees turn down this offer in favor of a spouse's or parent's health plan or to enroll in a government health program," DHCFP Commissioner Amy Lischko said in a statement.

Benefits experts say they doubt that any large or medium-size employer offering coverage would

have difficulty passing either test.

Indeed, group health plan participation is typically much higher than the 25% minimum set by the proposed regulations, said J.D. Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates Inc.

"These do not seem to be very difficult standards to meet. I have difficulty thinking of anyone that" would not pass, Mr. Piro added.

A 2005 survey by Mercer Health & Benefits, found that, on average, about 80% of eligible employees enroll in the group health care program their employers offered.

An analysis by the DHCFP estimates the \$295 assessment would affect about only 8% of employers with more than 10 employees in the state, mainly employers that do not provide health care coverage.

The assessment is now projected to raise about \$26 million a year—down from earlier estimates of \$45 million annually—with the revenues directed to a fund that will help pay for the state's new premium assistance program available to individuals earning less than 300% of the federal poverty level.

The Massachusetts health reform law is intended to help the state achieve near-universal health insurance coverage within a few years. It would do this through a variety of initiatives, including premium subsidies for the lower-income, and mandating that all individuals have coverage. Much of the funding for the premium subsidies would come from redirecting revenues now used to reimburse hospitals for providing care to the uninsured.

Biloxi: Coverage hard to secure

Continued from page 3

buy the business interruption coverage. But in an insurance market that was bombarded by last year's hurricane claims, insurers are not willing to offer such generous terms during the current storm season, Mr. Tisdale said. "I can't see it happening again."

The city has declined an offer for business interruption coverage with a price of \$1 million and onerous restrictions, the city's spokesman said. The coverage would have paid only if a Category 5 hurricane struck within 50 miles of Biloxi.

"That would not have covered Katrina," the spokesman said. "If that were in effect, we would not have been covered" for a business interruption loss under those terms.

Mr. Tisdale said the Biloxi city council voted late last week to buy

property coverage on 34 buildings from the Mississippi Windstorm Underwriting Assn. that will provide up to \$1 million in coverage per building. The coverage leaves about \$37 million of uninsured values, he said, because 15 buildings are worth more than \$1 million.

The council also bought coverage from the National Flood Insurance Program that will pay claims up to \$500,000 per building for property damage and up to an equal amount for loss of contents. Landmark Insurance Co. Ltd. is writing fire insurance on the buildings and contents with limits up to \$59 million, according to Mr. Tisdale.

The coverage is a little less than he would like, Mr. Tisdale noted. "Like most public entities, we'll be a little short in our total values," he said.

ACE: Regulators approve deal to sell defunct units to U.K.-based runoff manager

Continued from page 4
Philadelphia-based AARE.

Among the concerns listed in an April 5, 2005, letter to the department by the insurers' attorney—Mark A. Aronchick, of Hanglely Aronchick, Segal & Pudlin in Philadelphia—was that policyholders would be harmed by Randall & Quilter's "aggressive risk management." The letter also charged that ACE is seeking to limit its liability while "keeping a substantial potential upside."

Also objecting to the sale at the time was Boston-based Liberty Mutual Group Inc., which said it had written to the insurance department that the proposed transaction will have a "significantly unfair and unreasonable effect upon policyholders and reinsurance" cedents, including Liberty Mutual.

Following those objections, the deal's terms were revised, and representatives of two of the insurers—American International Group Inc. and Allstate Corp.—said they accept the insurance commissioner's decision approving the transaction.

A Liberty Mutual spokeswoman had no comment, while a spokesman for Warren, N.J.-based Chubb could not be reached.

Addressing concerns

The decision and order issued by Ms. Koken says ACE and Randall & Quilter revised their application subsequent to the April 5 letter.

The decision, which addresses at length the insurers' objections to the sale, concludes Randall & Quilter's plans to manage AARE "are not unfair or unreasonable to its policyholders or contrary to the public interest."

The decision states also that the company's principals, Kenneth E. Randall and Alan K. Quilter, "collectively have over 60 years of experience in the property and casualty insurance business, including more than 28 years of experience in the business of running off insurance and reinsurance portfolios."

The commissioner "concludes that the competence, experience and integrity of the persons who would control the operations of AARE are such that the interests of policyholders and the public would not be jeopardized," the decision states.

Among the provisions in the Pennsylvania commissioner's order and decision are:

- In addition to a \$25 million surplus that would be retained by AARE at the transaction's close, AARE would obtain \$35 million of reinsurance either from an affiliate of holding company ACE International Holdings Ltd. or another reinsurer with a financial rating of at least A. Any commutation of this treaty would require the department's prior approval.

- An independent actuary will review and analyze AARE's reserves at least every two years beginning with the year ending Dec. 31, 2007, with the actuary's selection and scope of review subject to the commissioner's written approval.

- AARE must annually provide a

stress test to demonstrate the company's adequacy to continue to run off the business, as well as a two-year financial projection. It must also annually review its operating results with the department.

- Randall & Quilter must receive prior department approval to redomesticate AARE to another state. It is also forbidden to issue any dividends or make other distributions without the department's prior approval.

Analysts say the sale leaves ACE in better financial shape, although asbestos remains a major issue for the insurer.

John L. Ward, chief executive offi-

cer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said the transaction will reduce ACE's exposure to legacy liabilities, including asbestos, by about 17%.

Damien Magarelli, an analyst with Standard & Poor's Corp. in New York, said, "Obviously, they had a lot of, and still have, asbestos exposures and runoff exposures, but this will start to reduce that."

Kevin Lee, an analyst with Moody's Investors Service in New York, said that while the deal "may be a good start, the Brandywine subsidiaries that were sold only rep-

resent a fraction of ACE's total exposure to asbestos."

"I think it's a modest positive for ACE," said Don Thorpe, senior director for Chicago-based Fitch Ratings. "I think it takes A&E liabilities off their balance sheet, and it takes some reinsurance recoverables off their balance sheet" as well as removing "some uncertainties about the companies that were sold. They've talked about managing through an orderly disposition of some of the Brandywine assets and liabilities, and I think this accomplishes that," said Mr. Thorpe.

Independent insurance analyst

Myron Picoult said, "After all is said and done, all that's left is the balance sheet, and the cleaner the balance sheet, the better off you are."

Mr. Ward said the decision and order could set a precedent.

"This may be a potential resolution for the remainder of the runoff issue that ACE is dealing with," he said.

"The analysis that went into the commissioner's ruling was very thorough. She addresses all the points in the law and why she agreed to approve this, and it sets a tone that there may be resolutions along these lines in the future," he said.

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CERCLA: Canadian operation faces pollution liability under U.S. law

Continued from page 1

government and the attorneys general of five states, American and Canadian Indian groups and an environmentalist organization.

The U.S. and Canadian business interests as well as the Canadian government oppose applying the Superfund law—which is formally known as the Comprehensive Environmental Response, Compensation and Liability Act—to the Vancouver, British Columbia-based company, Teck Cominco Metals Ltd. The other interests support the plaintiffs' efforts.

Teck has not decided whether to seek a rehearing by the full appellate court, but attorneys representing the U.S. Chamber of Commerce and the Canadian business trade associations said the groups likely would support an appeal.

An attorney for the Canadian government said she could not comment on the 9th Circuit panel's ruling.

But the government said in its amicus brief that it has "a strong interest" in preserving its "sovereign right to regulate Canadian persons and companies operating in Canada."

An affirmation of the lower court's decision would make other Canadian businesses operating near

the U.S. border subject to CERCLA, "regardless of Canadian law," the government argued in its brief. In addition, Canadian businesses would become susceptible to other U.S. laws when their "conduct in Canada may have effects in the United States," the government argued.

Instead of allowing the lawsuit to proceed, the issue should be resolved through diplomatic measures, the Canadian government argued.

The Canadian Chamber of Commerce and the Mining Assn. of Canada argued similarly in their joint amicus brief.

The U.S. Chamber of Commerce opposes the litigation on several grounds.

Two frameworks

As Teck unsuccessfully argued, said Amar Sarwao, general litigation counsel for the Chamber in Washington, CERCLA does not state that it applies to conduct outside of the United States. "We'd want a clear statement from Congress," he said.

Otherwise, applying the law so widely would create confusion for companies that have operations in both the United States and Canada, Mr. Sarwao said. Those companies

would "have to deal with two legal frameworks," and many times they are conflicting, he said.

The decision raises other potential problems for U.S. businesses, said attorney Rex S. Heinke, who represents the Canadian business associations.

"If the U.S. can make Canadian companies liable in its courts for alleged environmental pollution, then there's no reason Canada can't do that and Mexico can't do that" to U.S. companies that, for example, emit air pollutants that drift into those countries, said Mr. Heinke, a partner at Akin Gump Strauss Hauer & Feld L.L.P. in Los Angeles. "Is that the way to solve this problem?" he asked.

And, "there's no reason" that non-U.S. litigants could not apply the same liability concept to charge U.S. companies with violations of other statutes in the litigants' countries, Mr. Heinke said.

But those who support the litigation say the 9th Circuit panel's ruling is an important victory for U.S. and Canadian interests.

Without the ruling, U.S. operations have no disincentive to relocate just outside of the country's borders in an effort to avoid future U.S. pollution liabilities, said attorney Rob

Roy Smith, who filed an amicus brief for the Okanagan National Alliance, a Canadian Indian group.

While any Superfund-controlled cleanup of the Columbia River would involve polluted areas only in the United States, the group filed its brief in protest of the Canadian government's failure to control Teck's hazardous waste disposal activities, said Mr. Smith, a senior associate at Morisset Schlosser Jozwiak & McGaw in Seattle.

The attorneys general for Arizona, California, Idaho, Montana and Oregon filed their joint amicus brief in favor of holding Teck liable under U.S. law, because those states have waterways that flow out of Canada, said a spokeswoman for the California attorney general's office, the lead state in the brief. "The same situation could easily happen here" in California as well as in the other states, she said.

The Columbia River in Washington has been polluted with heavy metals contained in the tens of thousands of tons of slag from Teck's lead and zinc smelter operations in British Columbia, according to court papers. Teck disposed of the slag in the Columbia River for most of the 20th Century until 1995.

The private litigants in Washing-

ton sued Teck after the company failed to reach an agreement with the U.S. Environmental Protection Agency over studying the health and environmental impact of the pollution and then ignored the EPA's subsequent December 2003 order to conduct the study.

Moot ruling

While the ruling is significant for U.S. and Canadian business, it is moot in some respects for Teck. The EPA rescinded its order against Teck last month when the company agreed to fund an EPA-designed study. The litigation proceeded because the plaintiffs want fines imposed against Teck for the period it did not comply with the EPA order. The plaintiffs also are attempting to recover attorneys' fees.

A spokesman for Teck subsidiary Teck Cominco American Inc. of Spokane, Wash., said the parent company has "made a commitment, and will stand by it," to remove any "unacceptable risk" in the afflicted area.

Joseph A. Pakootas et al. vs. Teck Cominco Metals Ltd., 9th U.S. Circuit Court of Appeals, July 3; No. 05-35153.

Zocor: Manufacturer attempts to maintain drug's market share

Continued from page 1

based Ranbaxy Laboratories Ltd. produces the 80-milligram dose.

In response, Whitehouse Station, N.J.-based Merck decided to discount the price of Zocor to encourage its continued purchase rather than the generic offered by its competitors. Merck also has contracted with Hyderabad, India-based Dr. Reddy's Laboratories to sell an authorized generic version of Zocor.

Usually, a generic manufacturer is granted a 180-day window of exclusivity to sell a generic version of a drug before other companies are allowed to produce generics. Generic companies that have exclusivity usually price their drugs about 10% lower than the brand-name medications. It is during this period of time that generic companies make the most money because, after the exclusivity period ends, competition in the market significantly drives down the price of the drug, experts say.

By taking these steps, Merck is apparently attempting to maintain its market share for Zocor during the exclusivity period, observers say. "What they're doing is trying to control that and reduce the earnings of the generic manufacturer," said Sean Brandle, a vp at benefit consulting firm The Segal Co. in New York.

Minnetonka, Minn.-based UnitedHealth Inc., the second-largest U.S. health insurer in membership, has decided to accept Merck's offer because the generic version of Zocor will be priced higher than the discounted brand-name drug, a spokesman said. "We support the generic pharmaceutical industry

...as long as they provide lower costs than the brand," he said.

UnitedHealth's decision, though, to place brand-name Zocor on the first tier of its pharmacy plan while the generic is placed in the third tier is "strange" and "confusing," benefit consultants say.

"I think personally that's very confusing because it's a brand product not being treated the same way as other brand products," said Lisa

"I think personally that's very confusing because it's a brand product not being treated the same way as other brand products."

**Lisa Zeitel
Mercer Health & Benefits**

Zeitel, a principal with Mercer Health & Benefits in Norwalk, Conn.

Brand vs. generic

BlueCross BlueShield of Tennessee also has decided to move brand-name Zocor into the first tier during the exclusivity period because of the pricing that Merck has offered, said Terry Shea, director of pharmacy management for BCBS in Chattanooga, Tenn.

For its members in plans with coinsurance features, generic Zocor

will be on the first tier, allowing them to take advantage of the lower-cost version offered by the generic manufacturers. For members with copayments, though, the company's analysis of Merck's offer shows that they will see significant savings by placing brand-name Zocor on the first pricing tier during the exclusivity period, Mr. Shea said.

For BCBS of Tennessee, the move to put Zocor into the first tier represents a variation from its usual approach, which is the active promotion of generic drug utilization. The insurer started its Demand Generics program in 1999 and has a generic utilization rate of 52%, up from 38% in 1999. Zocor, though, "raises questions because of the pricing that's available," he said.

Other insurers declined to put brand-name Zocor in their first pricing tier out of concern that they would be sending mixed messages about the use of generics, which they promote as being just as safe and effective and more affordable than brand-name drugs.

"It probably makes sense from a business standpoint for these insurers," who are purchasing discounted brand Zocor, said Ather Kaddis, director, clinical programs development, for Blue Cross Blue Shield of Michigan. "We decided not to use that strategy because it causes too much confusion in the market. Right now, our strategy is a generic is a generic and a brand is a brand."

Hartford, Conn.-based Aetna Inc. also declined to put brand-name Zocor in its most favorable pricing, wanting to stay true to its generic message and avoid confusing members by asking them to use a brand

for now and then switch to the generic when the exclusivity period ends, said Steven Meholic, head of pharmacy management. The company was not concerned about losing out on the discounted pricing for brand Zocor, which will go into the third tier while generic Zocor goes into the first tier, he said.

"When additional generics come in, it will put additional downward pressure on pricing," he said.

Meanwhile, a spokeswoman for Franklin Lakes, N.J.-based Medco Health Solutions Inc. said the PBM will dispense brand-name Zocor as its house generic through its mail-order pharmacy. Medco reportedly has an agreement with Merck to purchase brand-name Zocor at a price similar to the price of the generic drug for its mail-order pharmacy.

"Our clients will benefit from multi-source pricing, and will pay based on a generic pricing model per their contract," the spokeswoman said in an e-mailed statement.

Benefits consultants praised Medco's approach, saying the PBM will essentially pass along some of its savings to employers. "It impacts (plan sponsors) very favorably," Ms. Zeitel said. "I think our clients view it positively because it impacts their bottom line positively."

More to follow

Other PBMs have not taken a similar approach, possibly because of rebate contracts with manufacturers of other drugs, said Matt Gibbs, national pharmacy practice leader for Hewitt Associates Inc. in Lincolnshire, Ill. Merck's approach,

he noted, is "fairly unprecedented."

WellPoint Inc. views the different solutions involving Zocor as "transitional in nature" because the exclusivity period granted to the generic manufacturers is being challenged in court by the FDA, said Robert Seidman, WellPoint's chief pharmacy officer Woodland Hills, Calif.

There will be a court hearing on the matter on Sept. 12. "We believe the FDA will prevail in that lawsuit and, soon after, generic Zocor will be available for pennies a day," he said.

If Merck is successful with its initiatives, other pharmaceutical companies are likely to take similar steps to protect the market shares of their valuable drug products, observers say. "This is new even to us, but my guess is we'll be seeing more of these types of strategies in the future," Mr. Kaddis said.

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JLT: Heath Lambert pension deficit key in takeover

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2005—but after exceptional items, including dilapidation costs related to the brokerages' leasehold property and payments related to bank guarantees provided for the group's restructuring, the net income was £1.1 million (\$1.9 million).

Heath Lambert, which is not publicly listed, has drastically restructured since 2002, when it was forced to abandon an initial public offering because of a fall in stock markets.

Heath, whose major investors include Royal Bank of Scotland Group P.L.C. and Credit Suisse Group, shed many of its noncore overseas subsidiaries and repositioned itself as a U.K. and European retail brokerage and a global wholesale and reinsurance brokerage.

Analysts said the two brokerages could benefit from a merger.

The combined entity would become one of the largest retail brokers in the United Kingdom, said Joanna Parsons, insurance analyst at ABN AMRO in London.

"Retail is quite competitive, but it is sticky business," she said.

In addition, JLT would benefit from the addition of another major source of revenues in sterling, Ms. Parsons said. JLT has previously said that its results have suffered as a result of collecting much of its revenues in dollars but accounting and reporting in sterling.

As well as creating a stronger retail presence, the deal would also likely boost JLT's London market

broking presence—an area where the brokerage has been struggling, said Ms. Parsons.

In 2005, JLT's Risk Solutions unit, which operates in both retail and wholesale markets, largely in London and Bermuda, reported a 4% drop in revenues to £395.3 million (\$679.4 million) and a drop in pre-tax profits to £74.7 million (\$128.4 million) from £96.2 million (\$184.3 million) in 2004.

A combination of JLT and Heath Lambert could provide opportunities for cost savings, including reductions in staff and offices, according to David Collins, an analyst at Morgan Stanley in London.

The two brokerages have a combined workforce of about 7,100.

A major sticking point in any potential deal could be the future of Heath Lambert's defined benefit pension deficit, experts said.

In June 2005, Heath Lambert's three defined benefit plans were accepted into the assessment period for possible transfer to the Pension Protection Fund, the U.K.'s pension rescue fund that is modeled loosely on the U.S. Pension Benefit Guaranty Corp.

Typically, sponsoring employers must be insolvent for their plans to be considered for entry into the PPF. But, at the time Heath Lambert approached the PPF, it said it believed the plans would be eligible for the fund because they are managed by a separate company, Heath Lambert Management Ltd., which was insolvent and wound up in

May 2005.

At the end of the assessment period, which is still undetermined, the PPF either will take on the assets and liabilities of the three plans, or Heath Lambert will be forced to retain responsibility for the plans.

During the assessment period, the trustees of the Heath Lambert plans are responsible for paying benefits up to the level that would be paid to members by the PPF.

The PPF guarantees 100% of benefits to members already in receipt of a pension, and 90% of benefits owed to members still in work, up to an annual limit of £25,000.

Using U.K. Financial Reporting Standard 17, which calculates the assets and liabilities of defined benefit pension plans, the Heath Lambert plans had a combined deficit of about £210 million (\$382.6 million) at the time when the company first approached the PPF, according to a spokesman for Heath Lambert.

The three defined benefit pension plans are all closed to new entrants, and have about 6,000 members.

This is the most "uncertain factor" of any acquisition of Heath Lambert by JLT, according to Mr. Collins.

It is likely that JLT—which under FRS17 itself had a pension deficit of £145.8 million (\$250.6 million) at the end of 2005, according to company accounts—would want some form of guarantee that it would not at some stage be responsible for funding Heath Lambert's pension deficit, said Ms. Parsons.

Late News

Continued from page 1

Market softening continues in June

The property/casualty insurance market continued to soften in June, with the composite rate down 7% from that of a year earlier, according to Dallas-based MarketScout.com. Only commercial property and business income protection rates experienced increases, and those rose by only 1%, according to the research, which is based on business placed through the Internet portal.

Flu plans common at big companies

Larger companies are more likely than small companies to either have a plan to deal with a possible avian influenza epidemic or to be in the process of developing such a plan, according to a survey conducted by The Conference Board. Overall, about 75% of all companies surveyed reported already having or were actively working on an avian flu response plan. Companies with sales

of \$5 billion to \$10 billion were the most likely to either have a plan or be developing one, with only 3.3% reporting that no plan was in place or being developed. At the other end of the scale, about 35% of companies with sales of less than \$100 million had no pandemic emergency plans.

Tenet, insurers settle claims over Katrina

Tenet Healthcare Corp. said it has reached a \$340 million settlement with its property insurers on physical damage and business interruption claims stemming from Hurricane Katrina. A spokesman for Tenet declined to name the insurers but noted that "about two dozen" insurers, covering the policy period April 1, 2005, through March 31, 2006, participated in the agreement. "A majority of the settlement we announced today was actually reimbursement for business interruption," the spokesman said. Katrina battered five of Tenet's hospitals in the New Orleans area and one in Mississippi. Two New Orleans hospitals, Lindy Boggs Medical Center and Memorial Medical Center, remain closed due to storm damage.

Healthy: Plans pose fresh risk

Continued from page 4

and lifestyle laws, he said.

For example, case law so far indicates that nicotine addiction does not amount to disability under the ADA, said Mr. Alvarez. But some state disability discrimination and "lifestyle discrimination laws" take a broader view than their federal counterparts, he said. Some state laws, in fact, specifically prohibit actions based on tobacco use or "any legal recreational activity."

He also noted that while HIPAA allows employers to offer discounts for group health insurance for par-

ticipants in wellness plans, those discounts are limited to a relatively low percentage of the total cost of employee-only coverages.

When considering a wellness plan, employers need to look at several questions, said Mr. Alvarez. Among those is whether the approach makes sense for the organization and when to consider an employee's "personal life personal," he said. Employers also must ask themselves if they are willing to terminate "great but unhealthy workers" he said, "especially because we probably made them unhealthy."

Privacy: Work policies needed

Continued from page 4

have a blogging policy, said Mr. Wolf. This should address a variety of issues, including the use of corporate equipment and logos, a prohibition on discriminatory comments and requirement that the blogger use a disclaimer to point out that the postings are not official company commentary.

The use of video surveillance is another area that raises workplace privacy concerns, said Mr. Oncidi.

Generally, if employers give notice—such as by having a monitor in plain sight—there is no reasonable expectation of privacy, he said.

But there are areas where surveillance can become unreasonable, such as monitoring restrooms, he said. And there have been cases involving questions of "overbroad surveillance," such as prison policy that made guards subject to strip searches even if there was no reason to suspect misconduct, he said.

BI Stock Index [7/3 - 7/7]

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Percentage change of BI Stock Index vs. key indicators

BI Stock Index  **-0.32**

2839.92

Dow Jones  **-0.53**

11090.67

S&P 500  **-0.37**

1265.48

Source: FinancialContent Inc. (<http://financialcontent.com>)

Largest gains

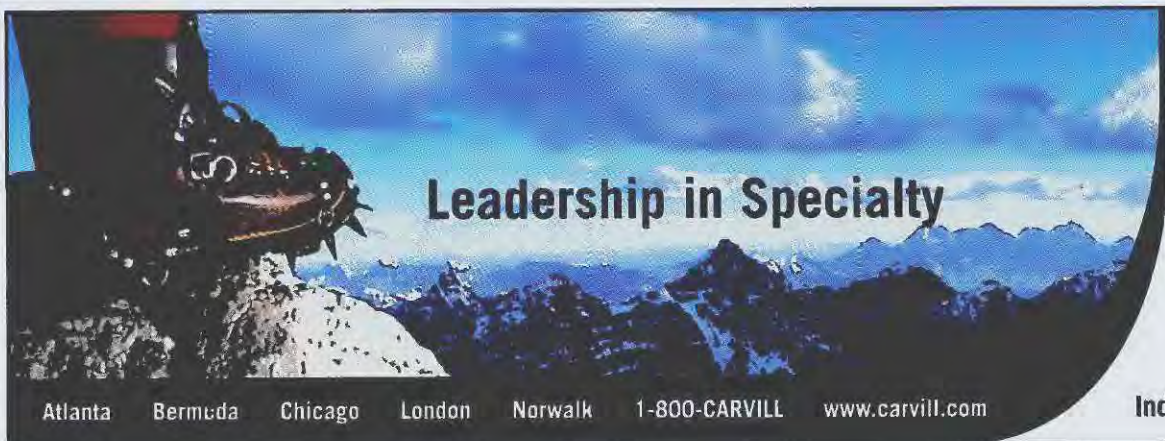
Fairfax Financial Holdings	13.42%
NYMAGIC Inc.	5.68%
IPC Holdings Inc.	5.11%
SCOR SA	4.15%
Hilb Rogal & Hobbs	3.33%

Largest losses

UnumProvident Corp.	-5.13%
Gainsco Inc.	-4.59%
Navigators Group Inc.	-3.70%
USI Holdings Corp.	-3.36%
Clark Inc.	-3.11%

Weekly change by market segment

Brokers	-0.78%
Insurers/Reinsurers	0.34%
Managed Care Organizations	0.76%



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New Online Poll: Where does your benefit plan formulary put name-brand prescription drugs: lowest-cost tier; middle tier; highest tier; multiple tiers, depending on drug type; don't know.

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