

Business Insurance

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\$5

Late News

Pension reform bill vote expected

The full House of Representatives was expected to vote late Friday or Saturday on a sweeping pension funding reform bill. Friday afternoon, congressional leaders working on a compromise version of the bill decided to break out unrelated tax-break provisions into a separate measure, also expected to be considered by the full House. The pension reform bill would require much faster funding of pension obligations, create a new methodology for valuing pension obligations—based in part on the ages of plan participants—and place new restrictions on employers from offsetting current required pension contributions by any extra contributions they made in the past, among other changes.

Lawmakers introduce natural cat bill

A bipartisan group of U.S. House members has introduced

See **LATE NEWS**/page 23



New Orleans property owners worry that low water pressure, already below average before Hurricane Katrina, is jeopardizing fire safety systems.

Big Easy's big threat: low water pressure

High-rises facing greater fire risk

By MICHAEL BRADFORD

New Orleans' hurricane-battered water system has property owners worried that frequent drops in water pressure are leaving them exposed to fires and equipment problems.

The city's system was heavily damaged last year when Hurricane Katrina toppled trees with root systems tangled among underground pipes. Widespread leaks from broken pipes are wasting millions of

gallons of water per day and dips in pressure are frequent occurrences.

Low water pressure caused New Orleans City Hall and the city's civil court building to close for several days in June as air-conditioning equipment that uses water to cool the air would not function properly and water to drinking fountains and restrooms was unavailable.

What's more alarming to property owners, particularly in high-rise

See **NEW ORLEANS** / page 22

Chicago mandates wages and benefits for 'big box' stores

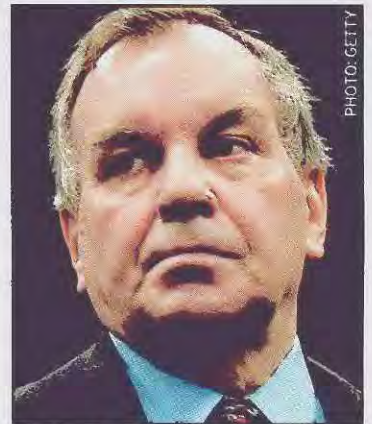
City law raises ERISA queries, observers say

By JOANNE WOJCIK

CHICAGO—Large retailers with stores in Chicago are awaiting Mayor Richard M. Daley's next move before deciding whether to challenge an ordinance mandating that they provide a minimum level of wages and benefits to employees.

The ordinance, which passed the city council 35-14 last week, would require retailers with at least 90,000 square feet of space in a single location to pay their employees at least \$10 an hour and provide another \$3 an hour in benefits by 2010. The law would be phased in over a four-year period, beginning on July 1, 2007.

The new ordinance would apply to approximately 40 existing stores operated by more than 15 major retailers operating in Chicago. Though Mayor Daley has publicly assailed the new ordi-



Chicago Mayor Richard M. Daley has publicly assailed a city council wage and benefit mandate as anti-business.

nance as anti-business, he has not yet announced whether he will veto the measure. If he does, though, it likely will be overridden because the ordinance passed with a veto-proof majority, according to its sponsor, Alderman Joe Moore. The mayor has until Sept. 13, the date of the next city council meeting, to veto the measure.

See **BIG BOX** / page 20

Panel OKs reform of E&S, reinsurance regulation

RIMS objects to a revision

By MARK A. HOFMANN

WASHINGTON—The House Financial Services Committee last week passed a revised version of a bill to reform surplus lines and reinsurance regulation, but a change made by the panel has raised concerns from a key supporter of the reform effort—the Risk & Insurance Man-

agement Society Inc.

The Nonadmitted and Reinsurance Reform Act would create a uniform system for regulating and taxing the surplus lines industry by making nonadmitted insurance subject to regulation only in the policyholder's home state. It would also grant a reinsurer's domiciliary state the sole right to regulate that reinsurer's solvency under most circumstances.

The bill passed last week by the Financial Services Committee closely resembles a version of the mea-

sure approved a week earlier by the panel's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. However, the Financial Services Committee tightened the requirements that a risk manager would have to meet to take advantage of the changes, a move that concerns New York-based RIMS.

The amended version of the bill revises the definition of a "qualified risk manager" whom a commercial policyholder would have to employ in order to tap the nonadmitted

market directly for coverage without having to first approach the admitted market.

Under the measure approved Wednesday, a qualified risk manager would have to meet at least two of three specified criteria: hold an "advanced degree" in risk management from an accredited university or college; have at least five years of experience in commercial property or casualty insurance risk financing, claims administration, loss prevention or risk and insurance coverage

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Inside



REMEMBERING AL

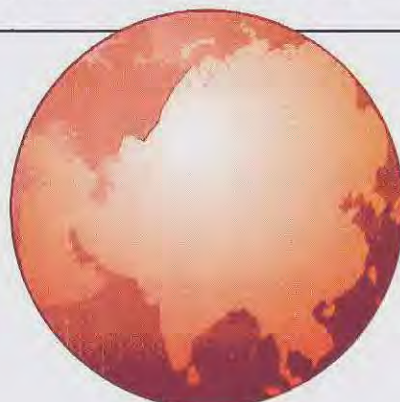
Retired publisher of BI
Al Malecki passes away.

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TERRORISM COVER

House Homeland Security
panel joins debate.

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INTERNATIONAL NEWS

GROWING MARKET

China's insurance market will be the world's largest in a decade, according to Standard & Poor's.

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DISCLOSURE RULES

The U.K.'s Financial Services Authority said it has no plans to force brokers to disclose commissions to buyers.

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HOW CAN YOU ENSURE YOU EMBED ERM IN EVERYTHING YOU DO?



Lisa Kremer is the managing director of Aon's Enterprise Risk Management practice.

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Inside

Insurers, PBMs divide over pill splitting

Some say practice is a smart way to save; other say it undermines generic programs. **Page 4**

Key claims upheld in Marsh class action

Judge dismisses other charges in the securities lawsuit against the broker. **Page 4**

Congress should allow RRGs to cover property

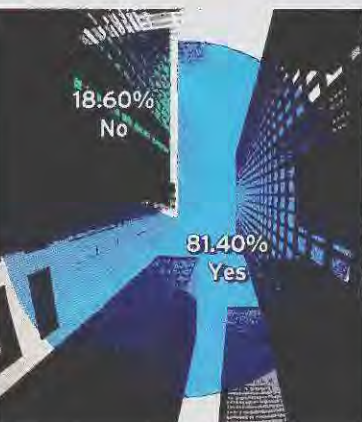
An editorial says there is no logic to allowing RRGs to cover liability but not property risks. **Page 8**

Texas diabetics face higher costs for care

Dallas-Fort Worth Business Group on Health finds that inpatient, outpatient costs in state higher than national average. **Page 14**

Online poll [7/24-7/28]

Should the Risk Retention Act be amended to allow RRGs to write property risks?



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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House joint hearing looks at TRIA issues

By MARK A. HOFMANN

WASHINGTON—Adding the House Homeland Security Committee to the debate over how best to guarantee the availability of terrorism insurance could focus new attention on what might happen if the federal government's current terrorism insurance backstop expires with nothing to take its place, say Washington observers.

The committee's involvement began with an unusual joint hearing, held July 25 by the Financial Services Committee's Subcommittee on Investigations and Oversight and the Homeland Security Committee's Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment. The hearing marked the U.S. House Homeland Security panel's first for-

ay into the subject.

The federal government currently provides a financial backstop for insurers in the event of future catastrophic terrorist attack. That backstop, however, is scheduled to end on Dec. 31, 2007, unless Congress renews the public-private program.

And a public-private partnership remains the best way to ensure the availability and affordability of terrorism insurance, a member of the Risk & Insurance Management Society Inc.'s board of directors told members of the two subcommittees.

Citing an informal survey RIMS took of its members, Terry Fleming told the hearing that 86% of the respondents said they did not believe they would be able to obtain sufficient terrorism coverage at affordable prices without the current fed-

eral terrorism backstop or something similar remaining in place.

Mr. Fleming, who is a director-external affairs for RIMS and director of risk management for Montgomery County in Rockville, Md., noted the extreme difficulties risk managers faced in obtaining terrorism coverage after the attacks of Sept. 11, 2001. "It's only because of TRIA"—the Terrorism Risk Insurance Act enacted in late 2002—"that the insurance markets have calmed down," Mr. Fleming said.

"Terrorism is an uninsurable risk," said Christopher M. Lewis, vp-alternative market solutions at Hartford Financial Services Group Inc. of Hartford, Conn.

In an interview after the hearing, Mr. Lewis said that he did not see the uninsurable nature of terrorism changing. "Unless there's a funda-

mental change in our understanding of the terrorism threat, I don't see that happening," he said.

"Classified information is the big unknown," said Peter Ulrich, senior vp-risk model management at Newark, Calif.-based catastrophe modeler Risk Management Solutions Inc. The type of classified information that could aid modelers includes details of foiled attacks, how they were foiled, as well as any changes in the modus operandi of terrorists, he said.

After the hearing, Mr. Fleming said RIMS is pleased that the Homeland Security Committee had joined the Financial Services Committee in examining the issues surrounding terrorism insurance. He noted that before last week's hear-

See **TERRORISM** / page 20

Ill president sets stage to retire at end of year

Man of many talents, Gordon Stewart ready to write next chapter

NEW YORK—In a remarkably multifaceted career, Gordon Stewart has been a presidential speechwriter; a director of stage, film and television productions; an orchestra conductor; and a college English professor. He says he has used all of the skills acquired from those experiences—politics, international affairs and the arts—in his role as president of the Insurance Information Institute for the past 15 years. This month, Mr. Stewart announced he will retire from the "Triple I" at year end, and III Senior Vp and Chief Economist Robert Hartwig will succeed him. Mr. Stewart spoke recently with Business Insurance Editor Regis Coccia about his tenure at the III.

daughter turned 7 years old. On that same day, I turned 67. It's flattering that a lot of people were a bit surprised at that, but these are the chronological facts, and the time comes.

Third, this is a terrific group of people with a great guy named Robert Hartwig who everybody knows is ready to lead, and this is the time to do it. The last important act of any good leader is not to be followed by chaos, confusion, fear, conflict or uncertainty, but to prepare for a strong future.

So, I look at these three conditions. I've done what I came to do and I think more than I could've envisioned at the start. Fifteen years (as president) is a long time. And I've got a great bunch that I can seamlessly hand this over to.



Mr. Stewart

Q: Why did you decide to retire from the III now?

A: There are three reasons, really. One is, what I envisioned I might be able to do here and what I actually accomplished when I learned more about the business. I feel I've been able to achieve those things which I had hoped to do, including our expansion now into life insurance information. If you look at Triple I today, it has pulled off an impossible paradox. It's both highly credible and the most frequently used source of insurance information in the world. To be both completely credible and totally used is not an easy feat.

Second, there are nice things about being president of the III, with a small "p," but one of them is not immortality. You don't get that. On July 22, our wonderful

Q: What's next for you? What would you like to do after III?

A: I've done many things before I came into this industry and I've remained very active in a number of them. I'm a life member of the Council on Foreign Relations and am extremely interested in those sorts of subjects. I'm active in academic circles and I'm still involved politically. I expect to embark on a number of very interesting projects. I have found in life that if you do things that you believe in, and are passionate about, then the right results will happen. This next phase of my life will unfold as it's supposed to.

Q: What were your proudest accomplishments during your tenure at the III?

Fairfax to restate after commutation

By RUPAL PAREKH

TORONTO—Fairfax Financial Holdings Ltd. last week said it will restate previous earnings following an accounting review related to a soon-to-be commuted \$1 billion reinsurance contract with Swiss Reinsurance Co.

The move, which is expected to reduce Fairfax's shareholders' equity by up to \$240 million, drew mixed reviews from rating agencies.

In addition, Fairfax's Stamford, Conn.-based Odyssey Re Holdings Corp. subsidiary said it would once more restate its financial results for the years 2001 through 2005, and for the first quarter of 2006, to correct the accounting treatment of certain equity and convertible bond investment securities, according to a company statement. Odyssey's latest restatement—which does not impact shareholders' equity—will be the second earnings restatement in under a year for the reinsurer. Odyssey, amid regulatory probes into the use of finite insurance products, in April made five years' worth of finite-insurance related restatements that cut shareholders' equity by \$35 million (BI, April 10).

Fairfax said it discovered the errors leading to its restatement while reviewing the accounting impact of a proposed commutation of a \$1 billion reinsurance contract purchased from Swiss Re in 1999. The contract, referred to as "corporate adverse development coverage," was used to protect the Fairfax group of companies from adverse development on reserves and uncollectible reinsurance for accident years 1998 and prior, Greg Taylor, Fairfax's chief financial officer, said during a conference call with analysts.

Commutation clauses are sometimes included in reinsurance agreements to provide for the valuation, payment and complete discharge of all obligations—including future obligations between the parties for

reinsurance losses incurred—between a ceding company and a reinsurer.

Under the commutation, expected to take place in early August, approximately \$585 million of funds withheld in trust under the Swiss Re contract would be paid to Fairfax's Irish reinsurance subsidiary, nSpire Re Ltd., to fund claims payments and operating expenses.

"The commutation of Swiss Re will significantly decrease the drag from European runoff as well as the cash demands on holding company cash," V. Prem Watsa, Fairfax's chief executive officer, said during the conference call. Fairfax currently has over \$500 million in holding company cash, Mr. Watsa noted.

Under Canadian accounting rules, the move will result in a noncash pretax loss of about \$415 million in the third quarter, Fairfax said, while under U.S. rules, the noncash loss will be approximately \$16 million.

Estimated impact

Although the restated amounts have not been finalized, Fairfax said it estimates the impact of the restatement—which the company expects to complete by the end of August—will be a decrease in shareholders' equity of as of March 31 of between \$225 million and \$240 million.

"This is a very embarrassing moment for us at Fairfax," Mr. Watsa said. "Prior to Odyssey Re's restatement, we had never had one at Fairfax or at subsidiaries."

"We take very seriously our obligation to provide accurate financial results, and our management team, having identified the 2001 and prior reconciliation differences, acted diligently to quantify the difference and promptly disclose our findings," Mr. Watsa said.

The accounting problems that

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Insurers, PBMs divide over pill splitting

Cutting pills obviously slashes costs, but some say it undermines generics

By GLORIA GONZALEZ

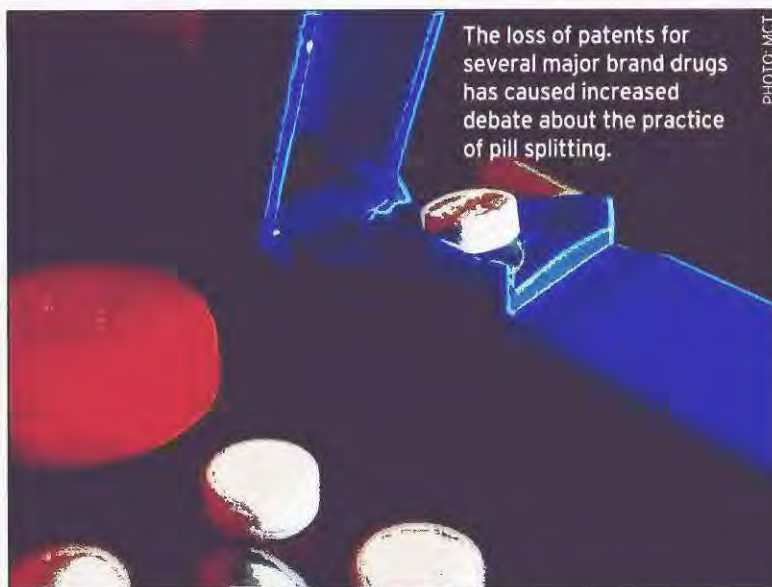
A small number of health insurers, led by UnitedHealth Group Inc., are aggressively promoting the practice of pill splitting as a smart way to save on prescription drug costs.

While other insurers and pharmacy benefit managers also make pill-splitting programs available for self-insured employers, they do not encourage the practice out of concern that any emphasis on pill splitting undermines more effective cost savings opportunities, namely the promotion of increased use of generic drugs. And with several major brand drugs losing their patents, the continued viability of pill-split-

ting programs has become a debatable issue among insurers and PBMs.

Pill splitting is seen as a way for health plans, employers and members to all save money on prescription drug costs. The cost savings are possible because the medications included in these programs have the same or similar pricing across dosages. A member taking a drug approved to be split is prescribed double the dose of what the physician wants them to take on a daily basis and is advised to split the pill and take half a tablet per day.

For example, the 20 mg and 40 mg dosages of Lipitor—a statin drug used to treat high cholesterol and



The loss of patents for several major brand drugs has caused increased debate about the practice of pill splitting.

PHOTO: MCT

frequently recommended for splitting because of its price and popularity—generally cost the same. So

instead of paying an estimated retail price of about \$100 for a 30-day supply of 20-mg Lipitor, a 30-day

supply of 40-mg Lipitor is purchased at the same price, but lasts twice as long since the tablets are split.

"It can be a very effective way for patients to take advantage of an anomaly in drug pricing," said Stephen Hyde, president of Hyde Rx Services Corp., a Colorado Springs, Colo.-based PBM that encourages pill splitting.

Insurers tend to focus on drugs that are easily split and where minor variations in daily dosage are not clinically important, pharmacy experts say. Drugs that should not be split include those in capsule form, those with certain special coatings or controlled-release medications.

Health insurers that have pill-splitting programs tend to focus on

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Judge upholds key claims in Marsh class-action suit

Accounting fraud among charges dismissed

By DAVE LENKUS

NEW YORK—A federal judge has pared the claims but upheld many key allegations in the securities class action lawsuit against Marsh Inc., its parent company and numerous current and former executives over their roles in the contingent commission scandal.

Among the charges the judge dismissed is the accounting fraud claim against all of the defendants, including auditor Deloitte & Touche L.L.P.

New York District Court Judge Shirley Wohl Kram issued her order July 20 in the case, which combines about a dozen lawsuits that claim the defendants violated securities laws by failing to disclose the true nature of Marsh's business practices in generating contingent commissions.

The plaintiffs, which include large pension funds, claim they lost \$12 billion of market capitalization.

Those claims were filed shortly after New York Attorney General Eliot Spitzer sued Marsh for steering clients to insurers that paid it the highest contingent commissions and for rigging bids to ensure that other insurers did not win that business. Marsh settled that lawsuit last year by agreeing to refund \$850 million to clients and stop collecting contingent commissions.

The class action litigation also names Marsh's parent company, Marsh & McLennan Cos. Inc.; 20 current and former directors and officers of the companies; and Deloitte.

Among the plaintiffs' claims that Judge Kram refused to dismiss is that their investment in Marsh & McLennan's stock was

The class action names:

Marsh; parent Marsh & McLennan Cos. Inc.; 20 current and former directors and officers of the companies; and auditor Deloitte & Touche L.L.P.



PHOTO: REUTERS PHOTO ARCHIVE

A judge dismissed several charges against Jeffrey Greenberg, former MMC chairman, but upheld claims that he and others made misleading statements.

damaged when Mr. Spitzer's lawsuit revealed Marsh's business practices.

The plaintiffs will be allowed to press their case that Marsh & McLennan and Marsh actively oversaw "a business model based on unsustainable and improper business practices."

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AIG cuts ties to C.V. Starr marine unit

By ROBERTO CENICEROS

NEW YORK—American International Group Inc. said last week it has ended its agency relationship—effective July 25—with American International Marine Agency of New York Inc., a subsidiary of C.V. Starr & Co. Inc.

"Accordingly, AIMA no longer has any authority to act as agent for the AIG companies," AIG said in a statement.

Earlier this month, AIG announced the formation of a new division, AIG Global Marine & Energy, and its intention to cancel the company's arrangement with AIMA, effective Dec. 31. AIG also said earlier this month that policy renewals, new business or in-force policy issues could be handled by AIMA or AIG until the Dec. 31 termination date.

But that apparently is no longer the case. An AIG spokesman declined to say why the effective dates for the termination changed.

This month, AIMA announced an agreement to produce ocean marine business for Berkshire Hathaway Inc.'s National Liability & Fire Insurance Co. Under the agreement, AIMA can offer up to \$100 million in limits for cargo, hull and marine liability risks.

New York-based AIG said in its statement last week that all marine business formerly conducted by AIMA on behalf of AIG will now be serviced by AIG Global Marine. "This includes all underwriting of new business, renewal business, in-force policy service, marine loss control and engineering, accounting and administrative functions formerly conducted by AIMA as an agent of the AIG Companies," AIG said.

New York-based C.V. Starr, which owns four managing general agencies, for many years was an affiliate of AIG and produced business for the insurer. C.V. Starr and AIG, however, have had a contentious relationship since early 2005, when Maurice R. Greenberg was ousted as AIG's chairman and chief executive officer. Mr. Greenberg is chairman of C.V. Starr.

Sally Roberts contributed to this report.

HSAs beat HRAs in survey of employers

Savings accounts viewed as doing more to cut costs

By RUPAL PAREKH

Health savings accounts not only do a better job of containing health care costs than do health reimbursement arrangements, but they are also more popular among employees, a national survey of employer groups indicates.

Results of the survey—conducted in April by human resource and benefits consulting firm Buck Consultants Inc.—are based upon more than 130 U.S. organizations' views on consumer-driven health

programs tied to HRA or HSA-type plans.

Nearly half—46%—of respondents said they believe that HSAs can control health care costs more effectively than HRAs, while just 13% believe that HRAs—which have been offered to consumers longer than HSAs—do a better job.

In addition, a majority of employers said they believe employees prefer HSAs over HRAs. According to the survey, 52% of respondents said they believe that HSAs are favored more by employees, vs. 23% that view HRAs as more attractive to employees.

"The ability to invest funds held in HSAs and the fact that employees can roll over their balances when they leave em-

ployment help make HSAs more attractive than HRAs," said Robert Burnett, a principal in Buck Consultants' health and welfare consulting practice in San Francisco, in a statement.

Fifty-five percent of survey respondents said they plan to retain their HRA plans, while 30% of those with HRAs are planning to replace their HRAs with HSAs.

"The majority of employers believe health care costs will decline if employees purchase care with funds deposited into an HSA they control," Mr. Burnett said.

The survey demonstrates "an increasing

See HSAs / page 23

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REGIS COCCIA

Editor

Sensitive information is worth protecting

Is computer theft becoming more frequent or just attracting more attention? News stories on laptops containing sensitive information that have been stolen or otherwise "gone missing" have appeared often in the last few months.

In one of the latest incidents, it recently came to light that Marsh Inc. was helping a client find a computer that went missing from offices of Marsh unit CS STARS. Last week, Marsh said it had found the computer, which contained personal information on more than half a million workers compensation claimants. Marsh said the Federal Bureau of Investigation told the brokerage it was "reasonably certain" that no data stored on the machine had been used, but as a precaution, Marsh is providing credit monitoring services and identity theft coverage to the workers comp claimants.

In addition, federal officials last month announced they had recovered a stolen laptop that held personal data on 26.5 million U.S. veterans and military personnel. The White House asked Congress to pay for credit monitoring at a cost of more than \$160 million.

Other incidents are also troubling: In March, a burglar stole a server from the Midwest Excess L.L.C. unit of American International Group Inc. containing the names of 930,000 individuals. That same month, a thief walked off with a laptop containing personal information about nearly 100,000 University of California, Berkeley, alumni and students. Before that, consumer data company ChoicePoint Inc. accidentally released data about 145,000 consumers. These are just a few examples of data security breaches.

What's wrong with this picture? Why are people and businesses not taking steps to prevent the theft of sensitive information?

The "2006 Computer Crime and Security Survey" by the Computer Security Institute and the FBI indicates that cybercrime—including theft, unauthorized access and virus attacks—generally is down from a year ago, but the theft of laptop or mobile hardware still accounts for a significant percentage of total financial losses.

Not long ago, the principal worries of computer users included loss of data from system crashes, viruses or, for a time, the millennium bug. Times have changed.

Combine the hundreds of mil-

lions of computer users around the world with the ability to store massive amounts of data on devices as small as a cell phone and the ubiquity of Social Security numbers and other data, and it's no wonder that identity theft is soaring.

Whether the laptops I cited above were snatched to sell the hardware—government officials have suggested that whoever took the VA computer may have had no idea what it contained—the risk of identity theft is all too real.

The Identity Theft Research Center cites studies suggesting that 7 million Americans became victims of stolen identity from mid-2002 through mid-2003. That figure likely is even higher now. The Federal Trade Commission reports that, on average, each victim spends more than 175 hours and \$1,000 to clear his or her name.

That's why I am amazed that some people appear careless when it comes to securing their data. Storing data on secure servers, which can be put in protected environments with restricted access, is a good idea. Thanks to Internet technology, data residing on servers can be retrieved virtually anywhere—with appropriate passwords. Biotech security measures, such as fingerprint recognition, are available but still some time away from being widely used.

The ability to store or access 26.5 million of anything on a laptop shows the speed of progress in information technology. Take, for example, my desktop computer at home. When I bought it six years ago, it had a 20-gigabyte hard drive and one of the fastest processors available at that time. The newer, much faster laptop on which I wrote this column has far more memory, and even more powerful laptops are available. What kinds of technology will our children and our children's children be using decades from now? Will there be better protections against computer crime?

The insurance industry has innovative coverages to respond to the growth in computer use—and related risks. For identity theft alone, average policy limits typically range from \$15,000 to \$25,000, according to the Insurance Information Institute. Not all computer users see the value of purchasing such protection, but data security is a serious problem. We would all do well to manage that risk.

Editor Regis Coccia can be reached at rcoccia@businessinsurance.com.

Securities class-action activity encounters slowdown: Study

By **DAVE LENCKUS**

Fewer securities fraud class-action suits were filed during the first half of 2006 than during any six-month period since the end of 1996, according to a new study.

In addition, the annualized estimate of 123 filings for 2006—based on the 61 actual new filings during the first six months—represents a 36% drop from the historical average of 194 filings from 1996 through 2005, reports the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in cooperation with Cornerstone Research of Boston.

The midyear study, published last week, found a large reduction in the market capitalization losses at issue in the lawsuits filed so far this year. The so-called disclosure-dollar loss—or the market capitalization loss that investors sustained the day after an organization announced it had misrepresented its financial reports—dropped 55% on an annualized basis to \$45 billion in 2006 from \$100 billion in 2005. For the first six months, the actual disclosure-

“We’re halfway through 2006, and already we’re witnessing evidence consistent with a slowdown in the volume of federal class action litigation activity.”

Joseph Grundfest
Stanford Law School

sure-dollar loss was about \$22 billion, according to the report. The maximum-dollar loss fell 44% on an annualized basis to \$255 million in 2006 from \$456 billion in 2005. During the first six months, the actual maximum-dollar loss was \$127 billion, the study reports.

“We’re halfway through 2006, and already we’re witnessing evidence consistent with a slowdown in the volume of federal class-action litigation activity,” Stanford Law School Professor Joseph Grundfest said in a statement. Mr. Grundfest is the director of the Securities Class Action Clearinghouse and a former commissioner of the U.S. Securities and Exchange Commission.

“While we lack the data necessary to determine the precise cause of the slowdown, the most intriguing hypothesis is that extensive and expensive corporate efforts to improve governance and accounting have reduced plaintiffs’ ability to allege fraud,” Mr. Grundfest said in the statement.

The study also found that the impact of the alleged illegal backdating of stock options for executives at more than 60 publicly traded

companies has not been significant: Only eight federal class actions alleging illegal backdating have been filed this year, bringing the total number of such cases to 10.

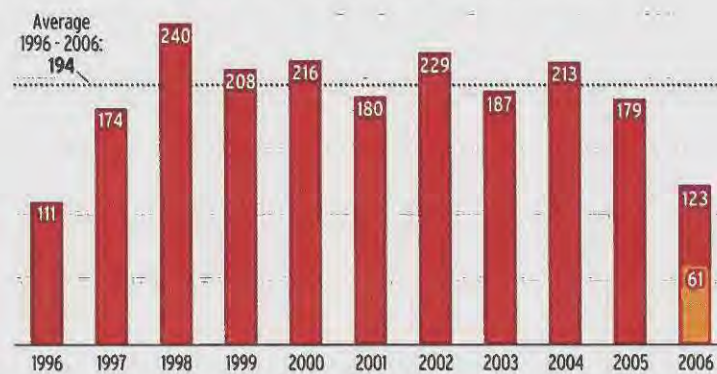
Mr. Grundfest suggested that the backdating issue has not led to significant litigation for several reasons, including that many of the backdating disclosures were not followed by statistically significant drops in stock prices.

In addition, he said, in some situations the uncertainties of the appropriate accounting principles for backdating options may have caused potential plaintiffs to fear they would have problems alleging an intent to commit fraud.

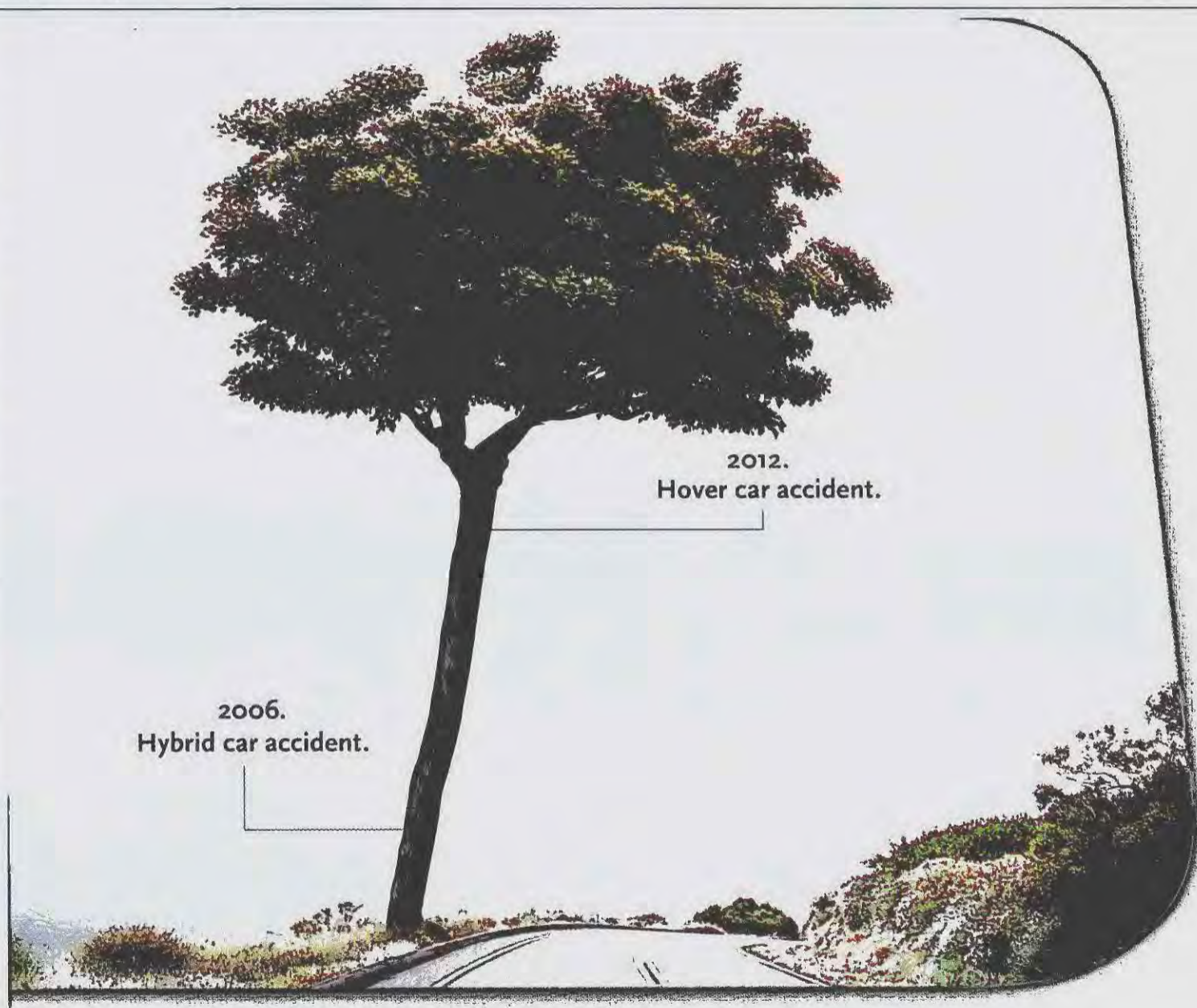
The study, “Securities Class Action Case Filings: 2006 Mid-Year Assessment,” is available at <http://securities.stanford.edu>.

Tracking securities class-action filings

Number of class-action filings 1996 through 2006 (first half)



Note: Index for 2006 is annualized, index to date for 2006 is 61.
Source: Cornerstone Research



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Editorial

Expanding RRG coverage should get high priority

TWO DECADES AGO, amid soaring prices and shrinking coverage, Congress expanded the Risk Retention Act so that risk retention groups could fund member policyholders' liability coverages.

Prior to that expansion, RRGs could be utilized only to provide product liability coverage. Not surprisingly, just a handful of RRGs had been established until Congress in 1986 expanded the type of risks the groups could fund.

Twenty years after the last expansion, RRGs have proven their value. More than 230 groups currently are operating and are providing a vital and stable source of coverage for members, such as educational institutions, hospitals and physicians.

The attraction of RRGs is a streamlined regulatory process. After meeting the licensing requirements of one state, a risk retention group can provide coverage to policyholder owners, such as members of a trade association, in any state.

That eliminates the expense—faced by traditional captives—of using a commercial insurer that is licensed in most or all states to serve as a front. In addition, the broad exemption from state regulation means the groups don't have to comply with a hodgepodge of state rules, many of which likely serve little

purpose for commercial insurance buyers.

Now, given the increasing difficulty buyers face in obtaining adequate and affordable property insurance, we believe it is time for Congress to change the law so that buyers can utilize RRGs to cover property risks, too.

We don't know if the rate hikes that commercial insurers are imposing for property risks are justified. But we don't think that is the issue.

Even if market conditions didn't demand it, we still would enthusiastically endorse allowing RRGs to write property coverage. If there is logic in allowing hospitals, for example, to fund their professional liability exposures through a risk retention group, but not to do the same for their property risks, it escapes us.

Realistically, we know that in the short time remaining in the current session, Congress is not likely to address this issue this year.

But expansion of the law should be a top congressional priority next year. It is, as said by the American Risk Retention Coalition, one of the groups calling for the expansion, a simple and straightforward action legislators can take to alleviate the big problems commercial buyers now face in the property insurance market.

Support on terror risk welcome

GETTING MEMBERS of the House Homeland Security Committee to join their counterparts on the House Financial Services Committee in a rare joint hearing on terrorism insurance is a welcome development indeed.

As we report on page 3, the members of two subcommittees of the two committees heard witnesses describe the problems associated with underwriting the terrorism peril, and how those problems might multiply if the federal terrorism insurance backstop is allowed to expire as scheduled on Dec. 31, 2007.

Now, there is nothing new about the topics the witnesses discussed. Risk managers, insurers and others have repeatedly presented the case for a federal backstop to prevent massive market dislocations in the event of another catastrophic terrorist attack. What was new was the fact that last week they had an opportunity to present that case not only to lawmakers who deal with insurance but to

those who deal with national security well.

And that's how it should be. Despite the repeated cries of some critics that the federal backstop is somehow nothing more than a "bailout" of insurers, the issue isn't one of insurer solvency but rather one of economic security. Economic security cannot be divorced from national security. Terrorists don't attack to bankrupt the insurance industry; they attack to do as much damage to the economy as whole that they can.

Adding lawmakers who deal with homeland security to the debate over how best to meet the challenges associated with terrorism insurance recognizes the national security aspect of the issue. We realize that nothing is likely to happen in the current Congress regarding extension of the federal backstop. But the more lawmakers who understand the issue the better, as we prepare for the next debate over the federal government's role in guaranteeing insurance coverage for an event we hope will never occur.

Schillerstrom



Letters

Captive innovations build on past practices

To the editor: Relative to the editorial opinion, "Innovative Use of Captives," in the July 17 issue of *Business Insurance*, I support your recognition of the expanded uses and value of captive insurance companies. However, the editorial seems to suggest that these "innovative uses" are new to the captive scene when, in fact, these "innovations" are just the current manifestation of practices that innovative captive owners have been employing for a decade or more.

Hopefully, your editorial will convince

more captives to look at expanding their insurance/reinsurance underwriting as well as finding more ways to provide value to employees within their organizations. I fully support these approaches, but also recognize that a lot has already been done to "pave the way" by many proactive and forward-thinking risk managers and their management.

Richard M. Inserra
President
Insurance Strategies Ltd.
Ridgefield, Conn.

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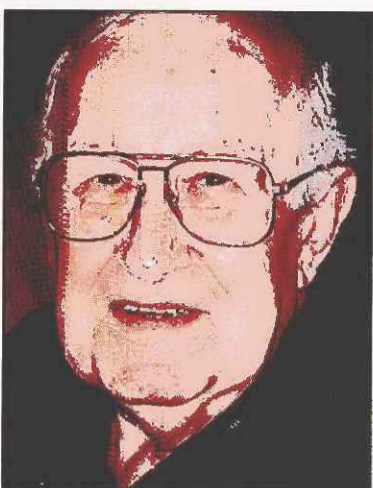
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The late Alfred Malecki is credited by many with making *Business Insurance* a successful publication.

Retired former publisher of *BI* remembered

Al Malecki revered for compassion, wit

NEW YORK—Alfred Malecki, the former publisher of *Business Insurance*, died July 23 at his home following a long battle with cancer. He was 85.

Mr. Malecki, who retired in December 1991, joined the magazine as advertising director at its founding in 1957 and was named publisher in 1970. He was a vp of Crain Communications Inc., which publishes *Business Insurance*.

Eased in New York, he also served as the founding publisher of *Pensions & Investments*, a sister publication of *BI*, from 1973 until 1976. Before joining *BI*, Mr. Malecki was eastern advertising manager for Advertising Age, also published by Crain, and for many years was in charge of the company's New York office.

"Al was a great salesman for Ad Age and an even greater salesman and spokesman for *Business Insurance*," said Rance Crain, president of Crain Communications, who served as the first editor of *BI*. "He

got to know everybody in the insurance world."

The magazine's current leaders, including Vp and Publisher Martin J. Ross III, Associate Publisher/Editorial Director Paul Winston, Director of Communications Ronnie I. Drachman and Director of Business Development Robert L. Niese, were hired during Mr. Malecki's tenure, Mr. Crain noted. "It's had continuity over the years and you have to give Al a lot of the credit for that," Mr. Crain said.

Kathryn J. McIntyre succeeded Mr. Malecki as publisher on Jan. 1,

1992, after serving as editor and associate publisher. Ms. McIntyre retired at the end of 2001 after 25 years at the magazine.

"Al Malecki was a loyal and long-time employee of Crain Communications. He helped to launch *Business Insurance* magazine and was its longtime publisher. He was a great inspiration and mentor to many associates at Crain. We all have warm and fond memories of Al," said Keith Crain, chairman of Crain Communications.

Mr. Ross described Mr. Malecki as "a man of wisdom, honesty and friendship. Al looked at the *BI* staff as an extension of his family and instilled a tight bond in the staff that I hope continues to exist today. For those who knew Al and those of us who worked with him, our stories are plentiful and memories will not be forgotten."

As members of Mr. Malecki's "tremendously extended family" of co-workers and friends, "we had the tremendous benefit of his wisdom and his wit, we reveled in his zest for life and learning, and we mar-

"He was a man of the utmost integrity. He wasn't schooled in journalism, but when he got into publishing he recognized immediately how essential it was that advertising and editorial be kept separate."

Kathryn J. McIntyre

veled at and envied his boundless enthusiasm and energy," said Ms. Drachman. "And like all families, we hold memories that will last forever."

"He was a man of the utmost integrity. He wasn't schooled in journalism, but when he got into publishing he recognized immediately how essential it was that advertising and editorial be kept separate," said Ms. McIntyre. "Al was a phenomenal leader, always fair and extremely loyal" to those who worked for him, she said.

Among his many standout qualities, she said, were his compassion for others—"One of Al's favorite lines was, 'Nobody's ever useless. They can always serve as a bad example.'"—and his sense of humor.

Mr. Malecki was "very well respected" in the insurance industry and used his influence to help others, including the Spencer Educational Foundation Inc., which supports students of risk management and insurance, she noted.

"There is no question that without Al Malecki's leadership in the formative years of the magazine that it would not be where it is to-



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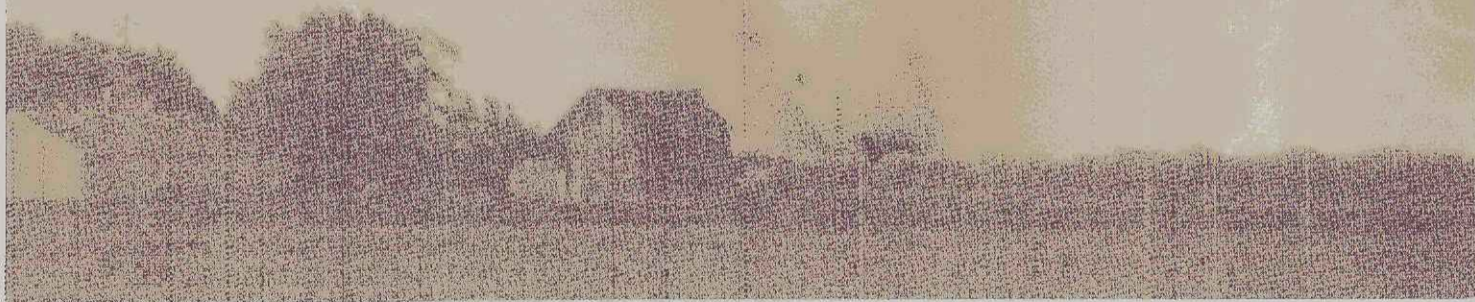
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Unfunded pension liabilities decline 27.2%

Future contributions hinge on rule, legislative changes

By ROB KOZLOWSKI

The unfunded pension liabilities of the top 100 U.S. corporate pension programs continued to decline in 2005—falling 27.2% from the previous year, according to a review of annual reports done by *Pensions & Investments* magazine, a sister publication of *Business Insurance*.

In dollar terms, the 100 largest pension programs were underfunded by a total of \$50.6 billion in 2005, down from \$69.5 billion in 2004 and \$89 billion in 2003.

Overall employer contributions to the top 100 programs dipped 3.3% to \$35.7 billion in 2005, from \$36.9 billion in 2004. Contributions totaled \$51.6 billion in 2003, largely due to the \$18.6 billion General Motors Corp. put into its underfunded program that year.

A total of 10 firms contributed at least \$1 billion to their plans in 2005.

The largest contribution in 2005 came from Boeing Co. of Chicago, which put \$2.6 billion into its underfunded program. The firm also made the largest contribution of the top 100 in 2004, at \$3.6 billion.

Boeing saw its asset/liability ratio improve to 96.2% in 2005, up from 91.1% in 2004. Company officials also expect to contribute \$500 million each year in both 2006 and 2007, according to a Securities and Exchange Commission filing.

Exelon Corp. of Chicago contributed \$2 billion to its program in 2005, up from \$450 million in 2004. Despite a 6.8% return on plan assets, with the contribution Exelon's funding ratio improved to 88.4% in 2005, up from 71.8% in 2004.

Other companies that contributed at least \$1 billion to their plans in 2005 were: International Business Machines Corp., White Plains,

N.Y., \$1.7 billion; Ford Motor Co., Detroit, \$1.4 billion; Daimler-Chrysler A.G., Stuttgart, Germany, \$1.3 billion to its global plans; E.I. du Pont de Nemours & Co., Wilmington, Del., \$1.25 billion; Hewlett-Packard Co., Palo Alto, Calif., \$1.18 billion; Lockheed Martin Corp., Bethesda, Md., \$1.05 billion; Dow Chemical Co., Midland, Mich., \$1.03 billion; and Bank of America, Charlotte, N.C., \$1 billion.

Investment returns down

The top 100 programs saw their investment returns dip in 2005. The average percentage return on plan assets for the top 100 U.S. corporate pension plans was 9.7% in 2005, down from 11.5% in 2004 and 17.2% in 2003.

American Express Co. of New York saw the highest percentage of actual return on plan assets in 2005: 15.3%, up from 10.5% in 2004. The expected long-term rate of return stayed at 7.8% for both years. Atlanta-based Delta Air Lines, with an expected rate of return of 9%, had the second-highest investment return in 2005 at 15.2%, up from 12.0% in 2004.

None of the top 100 firms reported an investment loss. United States Steel Corp. of Pittsburgh and CBS Corp. of New York, which spun off from Viacom Inc. last year, reported the lowest rate of return at 4.9% each.

The two worst-funded pension programs were in the airline industry.

Delta had the worst-funded program of the top 100, with a funding ratio of 50.6%, down from 56.4% in 2004. The second worst-funded program, belonging to Northwest Airlines Corp. of Eagan, Minn., saw a slight improvement in its funded ratio, up to 61.2% in 2005 from

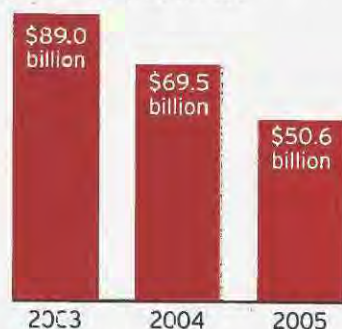
58.7% in 2004. The other bottom five firms in terms of funded ratios were: Goodyear Tire & Rubber Co., Akron, Ohio, 63.0%; Exxon Mobil Corp., Irving, Texas, 64.8%; and AK Steel, Middletown, Ohio, 67.4%.

Twenty-seven of the top 100 pension programs had funding surpluses, based on projected benefit obligations.

GM reported a surplus of \$6.1 billion on its program in 2005, the highest of the top 100, up from \$126 million in 2004. On a percentage basis, GM's program was

Underfunding drops

Total amount the top 100 pension plans were underfunded



106.9% funded. GM increased its 2005 discount rate to 5.7% from 5.6% the previous year, and its expected return on plan assets remained at 9%.

Funded ratios drop

While funded status improved overall, 45 of the top 100 saw their funded ratio drop in 2005.

Walt Disney Co. of Burbank, Calif., had the largest drop in funded ratio, down to 68.9% in 2005 from 83.3% in 2004. The company's projected benefit obligation was \$4.95 billion for 2005, compared with \$3.77 billion in 2004. The increase was attributed to the lowering of the firm's discount rate to 5.25% in 2005 from 6.3% in 2004.

The next biggest drop was Federated Department Stores Inc. of New

York, whose funded ratio dropped to 85.4% in 2005 from 96.2% in 2004. Federated entered the top 100 list following the purchase of May Department Stores Co. in 2005, increasing plan assets to \$2.4 billion in 2005 from \$1.6 billion in 2004.

Discount rates fell while expected long-term rates of return on assets stayed steady in 2005.

The average discount rate for the top 100 programs fell to 5.6% in 2005, down from 5.8% in 2004 and 6.1% in 2003. Only General Motors and Allstate Corp. of Northbrook, Ill., increased their discount rates last year, while 81 of the top 100 decreased their discount rates.

The average expected long-term return on plan assets decreased to 8.5% in 2005 from 8.6% in 2004.

Only United Technologies Corp. of Hartford, Conn., increased its expected long-term return on plan assets in 2005, to 8.4% from 8.3% in 2004.

The expected long-term return decreased for 22 of the top 100 firms. The average decrease for these firms was about 27 basis points.

Anticipated changes in accounting rules and pension legislation are making the necessity of future contributions uncertain.

In their annual reports, companies sponsoring the 100 largest U.S. pension programs said they will contribute a total of about \$12 billion to their pension plans in 2006, although a number of companies said the amount would depend on pending accounting rule changes and pension reform legislation.

FASB plans overhaul

The Financial Accounting Standards Board of Norwalk, Conn., voted last November to overhaul its Statement 87 on pension accounting in two phases. The first phase, which FASB plans to issue by the end of this year, would require corporations to include their pension plans' funded status on their balance sheets, using market value and

projected benefit obligation liabilities.

There is no timetable yet for the second phase, in which FASB would examine how liabilities are measured, possibly using accumulated benefit obligations instead of projected benefit obligations. Projected benefit obligations assume that all employees will stay with the company until normal retirement age, while accumulated benefit obligations show what is owed to employees today.

"We certainly hope that happens. It was one of the things we suggested to FASB," said Alan Glickstein, senior consultant with Watson Wyatt Worldwide in Dallas. But, he added, "I'm not at all confident that it's going to happen, let alone that it's inevitable."

In the second phase, FASB could also establish what discount rate should be used to measure obligations and whether asset and liability gains should be amortized.

"Funding is at a pretty good level and improving, and many plans have the flexibility to put a wide range of contributions under the current rules. However, it seems extremely likely that phase one of the financial accounting changes will go in effect at the end of the year," said Mr. Glickstein. "Funding reform itself is far less certain, and that leaves organizations in limbo."

"When you look at where things have been for the last five to 10 years in respect to these accounting reports and funding ratios, they weren't as great as they looked in the late '90s and not as dire as they looked a couple of years ago," said Steven J. Foresti, managing director at Wilshire Associates Inc. in Santa Monica, Calif. "Whatever the changes end up being, the landscape will be different at some point in the future, and that would lead any decision maker to delay making any decisions."

Rob Kozlowski is a reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.

BI to honor industry's women leaders

Business Insurance will publish a special report on "Women to Watch" in the Oct. 9 issue and invites readers to nominate outstanding women working in insurance, risk management and employee benefits.

While the insurance industry historically has been led by men, more and more women are taking on leadership roles. *Business Insurance* will explore how professional opportunities for women have evolved.

As part of the report, *BI* will profile women executives who are doing outstanding work in insurance, reinsurance, risk management, employee benefits and related fields, such as law and consulting. In October 2000, *BI* produced a similar special issue recognizing contribu-

tions—past and present—that women have made to these fields. This year, the magazine will look at women who are currently in leadership positions.

Business Insurance editors will review nominees and select a group of leaders for the list of women to watch. Among the criteria for inclusion are: recent professional achievements, influence on the marketplace and contributions to the advancement of women in business. It is open to women leaders worldwide.

To nominate outstanding women, please visit www.BusinessInsurance.com/WomentoWatch and fill out a brief nomination form. The deadline for completing the form is Friday, Sept. 1.



PHOTO: PALM BEACH POST

Florida CFO Tom Gallagher said "no viable private-sector coverage" exists for underwriting builders risk.

Florida insurer of last resort to cover builders until year end

TALLAHASSEE, Fla.—Citizens Property Insurance Corp. is changing direction on its decision not to write builders risk insurance.

Citizens' board decided earlier this month that the insurer of last resort in Florida would renew builders risk policies and write new coverage, after announcing in June that it would no longer be a market for the insurance.

Citizens has written around 6,000 policies covering about \$4.5 billion in properties under construction.

The board decided it would not

drop the coverage after being asked by Tom Gallagher, chief financial officer of the Florida Department of Financial Services, to revisit its decision to get out of the builders risk market.

Mr. Gallagher said in letter to Citizens' board that there is "no viable private-sector coverage available."

Citizens agreed to continue writing the coverage until Dec. 31 and will re-examine at a November board meeting the decision to continue as a market.

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Texas diabetics face higher costs for care: Study

By JOANNE WOJCIC

Nearly two-thirds of Texans diagnosed with Type 2 diabetes in 2005 were between the ages of 18 and 64—prime working ages for most Americans—a report by the Dallas-Fort Worth Business Group on Health has found.

Moreover, the cost of caring for Type 2 diabetes patients is higher in Texas than the national average, according to the inaugural "Texas Type 2 Diabetes Report" for 2006.

Hospital inpatient charges for Type 2 diabetes patients in Texas averaged \$48,046 last year, compared with the national average of \$39,401. Inpatient charges were highest in Houston, averaging \$62,104. Meanwhile, outpatient charges for treating Type 2 diabetes in Texas were also above the national average: \$4,550 in 2005 vs. an average of \$3,712 nationally.

Type 2, or adult-onset, diabetes accounts for 90% to 95% of cases and is associated with age, obesity and other factors.

Type 2 diabetes patients in Texas also fell below the national average for receiving recommended care,

such as tests for glucose levels, Hemoglobin A1c and cholesterol, as well as eye exams and urine tests for glucose.

For example, the share of Texans with diabetes who received a Hemoglobin A1c test, a key marker for managing diabetes, was 70.3%, vs. the national average of 74.1%. In addition, only 63% of Texans with Type 2 diabetes received eye exams in 2005, compared with the national average of 68.8%.

Among the other recommended tests, just 80.1% of Texans with Type 2 diabetes received cholesterol tests in 2005, compared with a national average of 83.9%; 76.3% received urine glucose tests, compared with a national average of 83.2%; and 83.8% received blood glucose tests, compared with a national average of 86.4%.

There was, however, one bright spot in the report. The percentage of diabetic patients in Texas without a diagnosed comorbidity increased to 31% in 2005 from 28.4% in 2004. Comorbidities of Type 2 diabetes include, but are not limited to, congestive heart failure, coronary artery disease, hyperlipidemia,



Patients in Texas with Type 2 diabetes fall below the national average for receiving recommended care, according to the Dallas-Fort Worth Business Group on Health.

hypertension and obesity.

"The benchmarking information presented in the report underscores the need to address this burgeoning health problem among working-age Texans," said Marianne Fazen, executive director of the coalition, in a release announcing the findings.

She said the 120-member employer coalition developed the report to serve as a resource for Texas

employers, many of whom are investing in worksite wellness and diabetes management programs as a way to lower employee health care costs and to help their employees more effectively manage chronic conditions like diabetes.

The report is available in electronic format at no charge on the coalition's Web site at www.dfwbgh.org

Employers' costs for workers comp surpass benefits

Employers' costs for providing workers compensation insurance continue to outpace indemnity benefits and medical payment expense combined, according to a study released last week by the National Academy of Social Insurance.

The findings, based on 2004 data, reflect a trend that began in 2000, the Washington-based NASI said.

Total workers comp benefit payments rose by 2.3% to \$56.0 billion, while employer costs rose by 7% to \$87.4 billion, according to the data.

"Employer costs reflect rising premiums insurers charge to cover future benefit costs," John F. Burton Jr., the study panel's chairman, said in a statement. "The recent rise in costs appears to be part of a longer cycle of ups and downs in the insurance market."

In contrast, declines in employer costs occurred in the 1990s as favorable investment returns led insurers to cut premiums in order to expand their market shares. Costs also declined in the 1990s because of a drop in benefits paid to workers, according to the statement.

After 2000, low interest rates and poor stock market returns led insurers to raise premiums in order to cover future benefit costs, the NASI said.

The NASI is a nonprofit, nonpartisan organization that promotes informed policymaking.

—By Roberto Cenicerros

Splitting: Dividing pills seen as a way to save on pharmacy costs

Continued from page 4

particular classes of drugs, such as anti-depressants or statins. For example, Blue Care Network of Michigan, the health maintenance organization subsidiary of Blue Cross Blue Shield of Michigan, launched a program in March to allow its members who take Lipitor or brand Zocor to lower their cholesterol to receive tablets that contain twice the prescribed dose of their medication, allowing them to take half a tablet instead of a whole one.

A 30-day supply lasts 60 days, but the member pays one copayment rather than two. "The advantage to the members is that their copays are literally cut in half because their prescriptions last twice as long," said Kim Tonkavich, the director of pharmacy health centers for Blue Care Network of Michigan.

The most extensive pill-splitting program is sponsored by Minnetonka, Minn.-based UnitedHealth Group unit UnitedHealth Pharmaceutical Solutions. The insurer recently launched the second phase of its program, which allows members of commercial fully insured health plans and many self-funded groups to split pills for 16 different medications in five different therapeutic categories.

During the initial phase of its program, launched in the fourth

quarter of 2005 for fully insured UnitedHealthcare members taking statin medications, the company found that 11% of members participated. The program offers potential savings up to 1% to 2% of total drug spending while members can save up to \$300 annually, according to UnitedHealth.

When the idea of pill splitting first surfaced as a way of dealing with pharmacy costs increasing at double-digit percentages, many insurers were hesitant about the practice, citing safety concerns. But a study by researchers at Stanford University Medical Center alleviated these fears, finding that pill splitting could yield significant cost savings without compromising drug efficacy or safety.

Generic programs

The key concern now expressed by insurers and PBMs is whether pill splitting programs undermine other efforts to control prescription drug costs. CIGNA Healthcare, for example, offers a pill-splitting program to its self-insured clients, but does not recommend the program and does not conduct a program for its fully insured members because there are generic equivalents in all the classes of drugs recommended for splitting, said Thom Stambaugh, chief phar-

macy officer for the Bloomfield, Conn.-based insurer. "There are significantly more savings by promoting appropriate generic utilization than by requesting people cut tablets in half," he said.

While pill splitting may seem like a great idea, the savings opportunity is minute in comparison to other potential opportunities and undermines the ability to go forward with these ideas, said Dr. Ed Weisbert, chief medical officer for St. Louis-based Express Scripts Inc. In 2006, the "real opportunity" to save money on prescription drugs is to switch people to generics, particularly people taking statins because of the introduction of generic Zocor, he said.

"Statins are a great example where it's sort of a diversion to talk about splitting because of the plummeting price of generics," Dr. Weisbert said. "We think the promotion of generics is a far more effective strategy. We don't see the value of the (pill splitting) program anymore. We actually don't recommend it to our clients."

Generic manufacturers, meanwhile, don't price every dose of a drug the same, making them less ideal for pill splitting, Mr. Stambaugh said. "Therefore, it no longer makes sense to tablet split on a generic medication," he said.

Insurers and PBMs that promote pill-splitting programs, though, argue that splitting generic medications offer further cost savings opportunities.

Innoviant Inc., a Wausau, Wis.-based PBM, has a list of 12 drugs approved for its pill-splitting program, six of which are generics, said Rhonda Grabow, vp of strategic planning. "It is possible to split generics," she said. "The only reason you don't hear about people splitting generics is because they're less expensive. But if you're paying less for a generic and splitting it, you're saving even more."

"Going generic doesn't destroy the positive effects of tablet splitting," said Richard Bruzek, vp, pharmacy, for Health Partners, a nonprofit health care organization based in Bloomington, Minn., that launched a pill-splitting program last year that focuses on certain cholesterol and anti-depressant drugs and has about 12,000 participants.

Low demand

Another key issue is whether there is demand for pill-splitting programs. Express Scripts conducted a pilot program with one client several years ago relating to pill splitting for statins and anti-depres-

sants and found that only 4% of patients actually split pills, Dr. Weisbert said.

There is not a lot of demand among employers for pill-splitting programs, said Dr. Paul Wernick, a consultant with Watson Wyatt Worldwide in Minneapolis. "I think the reason is there is an employee hassle aspect involved and I'm not sure employers want to put their employees through that," he said.

A number of clients have adopted Innoviant's pill-splitting program, which has proven popular among its health system and hospital clients with self-funded pharmacy benefits, Ms. Grabow said. "It's much easier for them to get the message of pill splitting across on why it would be appropriate and how it can be safe to do because they're in the medical community," she said.

A few clients have shied away from pill-splitting programs because they have other changes occurring in their benefit programs while one client did not implement a program because of a fear of being sued if a member split the pills incorrectly and did not receive the proper dose, Ms. Grabow said. "There is a small population of people who are skeptical of pill splitting, but I think it's become more mainstream now," she said.

Property cat reinsurer Aeolus forms in Bermuda

Ex-Arch executives to lead startup

By RUPAL PAREKH

HAMILTON, Bermuda—Yet another startup reinsurance company is making its home in Bermuda.

Aeolus Ltd.—which through its Aeolus Re unit plans to provide fully collateralized property catastrophe coverage to insurers and reinsurers on an ultimate net loss and industry loss warranty basis—last

week announced its launch with an initial capitalization of up to \$500 million.

Backing for the Hamilton, Bermuda-based company is being provided by an investor group led by New York-based private equity firm Warburg Pincus L.L.C., as well as an investment from Arch Capital Group Ltd., Aeolus said in a statement.

The new firm was founded by Peter A. Appel, who will serve as chairman and chief executive officer of Aeolus Ltd., and David A. Eklund,

who will serve as chairman of Aeolus Re. Mr. Appel served previously as president and CEO of Arch Capital while Mr. Eklund served previously as president and chief underwriting officer of RenaissanceRe Holdings Ltd.

Additionally, Bert Golinski, most recently managing director and head of reinsurance intermediary Guy Carpenter & Co.'s Bermuda operations, will take on the role of president of Aeolus Re.

Joseph King, formerly head of Arch Reinsurance Co.'s U.S. proper-

ty unit, has been tapped to serve as chief underwriting officer of Aeolus Re. Both appointments are subject to approval by the Bermuda Department of Immigration.

"Other recent entrants into the property reinsurance market have noted that demand for property catastrophe reinsurance capacity has outstripped supply following the 2004 and 2005 hurricane seasons," Mr. Eklund said in a statement.

"This imbalance continues to grow, driven in part by the changes

in rating agency guidelines and catastrophe models that have significantly increased capital requirements for rated reinsurers. As a result, we believe we can provide a real service to the industry by offering substantial limits and fully collateralized security to insurers and reinsurers seeking protection against property catastrophe risks," he said.

Aeolus is one of several companies that have set up in Bermuda in the wake of the 2005 hurricane season.

Malecki: Drive, integrity left lasting legacy

Continued from page 10

day," she said. James Burcke, who succeeded Ms. McIntyre as *BI* editor and now is head of communications at Catlin Group Ltd. in London, said Mr. Malecki "could be as tough as nails when he had to be, but even when he was putting you in your place, he was charming...and he was not only a boss, but a teacher, a very good one."

"Al believed in *Business Insurance* and was its foremost champion. More importantly, he believed in the people who worked with him. Al would have said that his employees worked with him, not for him. Al treated all of us with dignity, compassion and kindness," Mr. Burcke said. "The world is a lesser place without Al Malecki."

Mr. Malecki was born and educated in Leipzig, Germany. He moved with his family to South America and began a marketing career that culminated in a role as manager of operations for Mobil Corp. in Bolivia. Mr. Malecki later moved to the United States and entered the publishing field in 1953.

He received several honors recognizing his leadership at *BI*. The Insurance Marketing Communications Assn. presented him its highest award, the Golden Torch, in 1995, for achievements such as marketing innovations and creation of the Risk Manager of the Year award. In 1987, B'nai B'rith International gave him the National Insurance Industry Achievement Award.

In accepting the Golden Torch award, Mr. Malecki said at the time, "No award to an individual is ever merited solely by that person but largely by the people who work with that person, supporting his efforts and striving jointly for success. This ultimately gives rise to recognition of a success story of which the recipient of the award is but a symbol."

Mr. Malecki is survived by his wife, Zenia Malecki, daughter Sophie Dichter and son-in-law Lee Dichter.

Memorial contributions may be sent to the Alzheimer's Assn. of New York, 360 Lexington Ave., New York, N.Y. 10017.

—By Regis Coccia

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COMMENTARY

Dave Lenckus

Barring retiree's suit doesn't aid employers

When is an employer's court victory not a victory for employers?

When the decision is the July 10 ruling that a 3rd U.S. Circuit Court of Appeals panel handed down in a case that examines who has the legal standing to sue a benefits plan administrator under the Employee Retirement Income Security Act.

The court's split decision not only is just plain wrong, it also will not be the employer victory it looks like at first blush. If upheld, the decision—which the majority supported with extraordinarily unsound reasoning—will hurt employers.

The case centers on the elimination of retiree health benefits that Blue Cross & Blue Shield of Northeastern Pennsylvania in Wilkes-Barre promised an employee in 1993 if she retired early from the company (*BI*, July 24).

The offer was attractive in some respects, but it also presented some drawbacks for the employee, who was 62 and had 13 years of service with the Blues at the time. The carrot: health insurance for the employee throughout her retirement with a guarantee that the benefit would be neither reduced nor taken away. The tradeoff: a reduced company pension benefit and a smaller monthly Social Security benefit than the full benefit she would receive if she worked until age 65.

She opted for the guaranteed health care coverage, as anyone who is not independently wealthy would.

Eight years later, the Blues ignored its promise when it modified its benefits plan by retroactively yanking health benefits from retirees who had worked less than 15 years for the company.

The woman sued, but the 3rd Circuit panel, as did a lower federal court, denied her a day in court by ruling she has no legal standing to sue the Blues, which self-administers its plan. The appellate panel ruled she could not show she would have qualified as a plan participant under the modified plan if she had not chosen early retirement.

That reasoning is as absurd as saying a 60-year-old woman cannot file an age and sex discrimination suit against the company that terminated her employment and replaced her with a young man, because only active workers can file employer actions. The court's reasoning clearly subverts ERISA and the U.S. Supreme Court's 1989 decision in *Firestone Tire & Rubber Co. vs. Bruch*.

To be clear, I am not suggesting that the court should have ordered the Blues outright to restore the woman's health benefits. This retiree, however, deserves her day in court, and denying that is shameful.

But while the Blues so far has successfully argued that its promise is good for only as long as it is convenient for the company to keep it, the ruling is not a big victory for employers in the long run.

Sure, for those employers that would make empty promises to employees and then renege on them to cut costs, this decision is a nice gift—for now.

But consider this:

Management, as individuals, also is covered by this decision—if it stands.

But that is not at all certain, because this is the kind of case that raises the hackles of lawmakers and jurists. So, even if this retiree fails as the case moves on to the full 3rd Circuit, the Supreme Court and Congress may have something to say about employers that make and break promises about their ERISA plans.

Meanwhile, a ruling like the 3rd Circuit's has to make employees question whether they can believe any employer promises designed to entice them into early retirement. Such distrust could corrode early retirement plans to the point that employers would have to junk that cost-saving tool.

Even if the ruling stands and the Supreme Court and Congress decline to intervene, business in the 3rd Circuit has to be circumspect. After all, what business agreements will the court twist and deform next?

Senior Editor Dave Lenckus can be reached at dlenckus@businessinsurance.com.

PRODUCTS & SERVICES

Florida program covers elder care liability

DALLAS—U.S. Risk Underwriters and Lighthouse Underwriters L.L.C. have released a new low-limit professional/general liability program for elder care service providers in Florida.

The policy is available to skilled care, assisted living and continuing care retirement communities. Policy limits are \$25,000 per occurrence and in the aggregate. There is a \$2,500 deductible and the premium is \$15,000 fully earned.

The program uses Dallas-based U.S. Risk's standard combined general liability/professional liability form for health care risks and is sold by independent agents on an open brokerage basis.

For more information, call Steve Danielson, business development executive, at Lighthouse Underwriters at 772-871-2755, or reach him at sdanielson@lighthouseunderwriters.com.

General Star offers two new programs

STAMFORD, Conn.—General Star Management Co. has developed a liability program for manufacturers of machinery and machinery parts.

The program, which provides commercial general liability coverage on either an occurrence or a claims-made basis, is available nationwide on a nonadmitted basis. Policy limits are: \$2 million general aggregate; \$2 million products and completed operations aggregate; \$1 million each occurrence; and \$1 million personal and advertising liability. First-dollar coverage is available for qualifying risks.

Stamford, Conn.-based General Star also has developed a security

guard and security provider liability program.

The program provides commercial general liability coverage, including products and completed operations; and professional liability coverage, which includes personal and advertising liability protection.

Common policy limits are \$2 million policy aggregate and \$1 million per event; commercial general liability limits are \$1 million per occurrence; professional liability errors and omissions limits are \$1 million per incident. The minimum premium is \$15,000 and first-dollar coverage will be considered.

For more information on either program, call Vp Cole Palmer at 203-328-6533 or Vp Michael Keene at 203-328-6379. Information also is available at www.generalstar.com.

Hartford expands limits for technology risks

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has expanded to \$2 million the policy limits for the company's FailSafe MEGA product—professional liability coverage designed for smaller technology companies.

Other features of the coverage, which is offered through Hartford's technology practice group as an endorsement to a business owner's policy, include a broad definition of covered technology services, a universal coverage territory, and built-in coverage for independent contractors and clients in the event they are sued because of glitch in the policyholder's technology services. Premiums start at \$800 with minimum self-insured retentions as low as \$2,500.

For companies that need more complex technology coverage, Hart-

ford offers two standalone policies FailSafe GIGA and FailSafe TERA.

For more information, contact Toby Levy, director of the technology practice group, at 860-547-3377 or at tlevy@thehartford.com.

ASI enters market for nonconstruction risks

ATLANTA—American Safety Insurance Services Inc. will enter the general liability market for nonconstruction risks and expand its capability to offer excess and umbrella liability coverage.

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For the excess liability product, Atlanta-based ASI will offer limits up to \$5 million. Premiums begin at \$2,500 for low- and medium-hazard risks and \$7,500 for high-hazard risks.

Both products are written on a nonadmitted basis by American Safety Indemnity Co. For more information, call Joseph Savarese, underwriting director for nonconstruction, or Gerard O'Neill, underwriting director for excess, at 732-671-5837.

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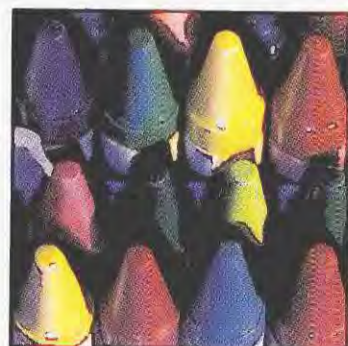
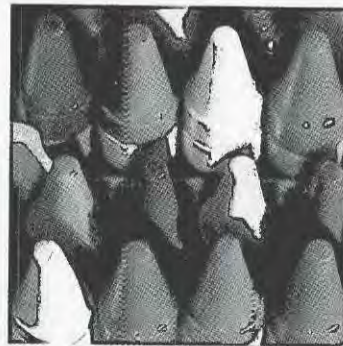
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China's market heavyweights

The top 10 nonlife insurers in China ranked by premiums and percentage of market share as of May 31. Premiums are in millions and are converted to U.S. dollars from Chinese renminbi. \$1 = 0.0175 renminbi.

Rank	Company	Premiums (\$)	Market Share (%)
1	PICC Property & Casualty Co. Ltd.	1,804.2	48.3
2	China Pacific Property Insurance Co. Ltd.	921.7	11.7
3	Ping An Property Insurance Co. Ltd.	806.7	10.2
4	China United Property Insurance Co. Ltd.	698.5	8.9
5	Tianan Insurance Co. Ltd.	290.6	3.7
6	China Continent Property & Casualty Co. Ltd.	283.1	3.6
7	Yong An Property Insurance Co. Ltd.	179.6	2.3
8	Anbang Property & Casualty Insurance Co. Ltd.	170.9	2.2
9	China Export & Credit Insurance Corp. (Sinosure)	148.4	1.8
10	Sinosafe General Insurance Co. Ltd.	144.7	1.8
Total		\$7,442.5	94.5%

Source: Standard & Poor's

Rapid rate of premium growth pushing China toward No. 1

By JUDY GREENWALD

The outlook for China's insurance industry is encouraging, but its rapid expansion raises challenges including weakened capitalization, a shortage of talent and management skills, and low levels of operational sophistication, says Standard & Poor's Corp. in a special report.

"Conversely, we expect these issues to be partly offset by an increasing focus on shareholder val-

ue, improving fundamentals and proactive regulatory developments," says S&P in the report, "China Insurance Outlook 2006-2007."

S&P, which has revised its outlook on China's insurance sector to "positive" from "developing," said the country's 2005 premiums of about \$61 billion make it Asia's third-largest insurance market after Korea and Japan, and that it is set to become the world's leading insurance system in terms of pre-

miums within a decade.

China now has 79 insurance companies and groups, according to the report. Of those, 48 are domestically funded and the remainder are foreign-controlled or joint ventures, although the latter now account for no more than 5% of premiums. Nearly half have been established in the past five years.

The report says the four largest companies and groups maintained

See CHINA / page 20

IOSCO to consider using arbitration in credit rating disputes

Fitch Ratings, German insurer case unresolved

By RICK MILLER

BERLIN—The recent stalemate in a dispute between Fitch Ratings and Germany's insurance association raises the question of whether an arbitration process is needed as part of an international code of conduct for credit rating agencies.

"We have no official forum where interested parties can get a judgment whether a certain practice is consistent with the code or not," said Michael Wolgast, head of economics at the Berlin-based Gesamtverband der Deutschen Versicherungswirtschaft e.V. "We need some sort of arbitration system."

The arbitration issue is among those expected to come up during a review of the code by the International Organization of Securities Commissions in Madrid, Spain. The organization launched the IOSCO Code of Conduct Fundamentals in

December 2004.

The code provides mechanisms that credit rating agencies can use to protect their analytical independence, eliminate or manage conflicts of interest and help ensure the confidentiality of certain types of information shared with them by issuers.

A task force set up last month by IOSCO will look at the degree of adoption of the code by credit rating agencies and if aspects could be "modified or refined to better reflect market realities," according to an IOSCO spokesman.

The review includes considering whether "additional guidance" is needed in terms of how to resolve differences, such as an arbitration process, he added. A report is expected by November.

Meanwhile, the Committee of European Securities Regulators in Paris this month launched its own review of the IOSCO code. CESR is conducting a survey of market participants through Aug. 15 about the day-to-day application of the code by agencies, to which the GDV has

See STALEMATE / next page

FSA rebuffs call to mandate brokers' commission disclosure

By SARAH VEYSEY

LONDON—The United Kingdom's insurance regulator says it currently has no plans to force brokers automatically to disclose their commissions to buyers, despite calls from a market body to make such disclosure mandatory.

A group representing Lloyd's of London underwriters last week called upon the United Kingdom's Financial Services Authority to make broker disclosure of commissions mandatory.

The London-based Lloyd's Market Assn., which represents managing agencies at Lloyd's, said that although it had reached an agreement with some brokers about new business models and commission disclosure, it hoped the FSA would

make such disclosure mandatory.

Under current FSA rules, brokers must disclose commissions to commercial buyers of insurance only if brokers are asked.

Andrew Beazley, chief executive officer of Beazley Group P.L.C. and chairman of an LMA-backed working party set up to discuss broker business models in the wake of a series of investigations into brokers business practices in the United States last year, said that the LMA hoped to encourage the FSA to change that stance.

A spokesman for the FSA said the



Andrew Beazley says many commercial buyers do not ask for information about commissions.

insurance regulator did not currently support the idea of making commission disclosure mandatory.

The regulator favors a market-led solution to the issue of commission disclosure, the spokesman noted.

But Andrew Kendrick, chairman and chief executive officer of ACE European Group in London and chairman of the LMA, said the association would encourage the FSA to be more "demonstrative" on the issue of broker disclosure.

Automatic commission disclosure would "inject trust into the re-

lationship" among broker, client and underwriter, said Mr. Kendrick.

Eric Galbraith, chief executive of the British Insurance Brokers Assn., said that "there should be transparency in all relationships with clients," but how that transparency works is "a matter between the broker and the client."

Despite the rule that brokers must disclose to clients the commissions earned on their business if asked, many commercial buyers of insurance still do not ask for such information, Mr. Beazley said.

The United Kingdom's risk management association, however, says that most large commercial insurance buyers are aware of their right to ask brokers about commissions and generally are receiving satisfactory responses to those questions.

Even without changing the FSA rule, commission disclosure appears to be improving.

A survey undertaken in March by the London-based Assn. of Insurance & Risk Managers found that 64% of buyers said their broker automatically disclosed earnings. That is double the rate found in a similar study undertaken in June 2005.

Currently, AIRMIC is satisfied that a majority of its members are asking questions of their brokers and getting responses to those questions, according to David Gamble, executive director of AIRMIC.

If, however, members report that they are no longer satisfied with the responses they receive to requests for information, then AIRMIC may call for mandatory disclosure, he noted.

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Stalemate: Fitch declines call to give advance notice of rating changes

Continued from previous page

already formally responded, Mr. Wolgast said.

The German trade association filed a complaint in April to Fitch's London office citing three areas in which Fitch allegedly disregarded the code.

The trade association claimed Fitch did not clearly delineate in materials when a financial-strength rating was solicited by an insurer or on Fitch's own initiative, that it did not give insurers enough time to review a rating before it was made public, and, lastly, that the agency

made specific data errors.

After having independent parties at Fitch review the complaint, Fitch said last month it did not find any evidence that it had violated its own Fitch Code of Conduct, which is based on the IOSCO code.

Richard Hunter, Fitch's regional credit officer for Europe, based in London, who participated in the review, said the GDV was "factually incorrect" when it quoted the IOSCO code as saying unsolicited ratings have to be disclosed wherever they are mentioned.

"We did find evidence of data errors that had been made, and corrective action is being taken."

Richard Hunter
Fitch Ratings

"There is a difference of opinion," he said. "We will make the information available if people ask for

it for an individual name, but if we systematically put it out every time we mention the rating, it will actually raise more questions...that an unsolicited rating is a second-class rating or there is something wrong with it, which clearly isn't the case."

On giving advance notice to insurers before a rating change is made public, the GDV wanted two or three days' notice. "We do not guarantee, neither does the IOSCO code expect us to guarantee, a minimum period of advance notice," Mr. Hunter said.

"We did find evidence of data errors that had been made, and corrective action is being taken," said Mr. Hunter. He noted that insurer ratings were not affected by the errors.

Despite the lack of agreement on two of the three points, Mr. Hunter said he sees no need for a type of "court of appeals."

"As a general concept, it is difficult to see how it best serves the interest of the marketplace to have arbitration because, what it does is, it introduces uncertainty into the process," Mr. Hunter said.

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AND IN THE MATTER OF THE COMPANIES ACT 1985

PROPOSED SCHEMES OF ARRANGEMENT FOR "THE WFUM POOLS"

NOTICE IS HEREBY GIVEN that, by an order dated 27 June 2006 made in the above matters, the High Court of Justice of England and Wales has directed that meetings ("Meetings") be convened of the Scheme Creditors (as defined in the proposed scheme of arrangement referred to below) of the above companies (the "Scheme Companies") at 11am (English time), on 27 October 2006, at Plaistons Hall, 1 London Wall, London EC2Y 5JU, United Kingdom, for the purpose of considering, and if thought fit, approving (with or without modification) schemes of arrangement under Section 425 of the Companies Act 1985 proposed to be made between the Scheme Companies and their Scheme Creditors (the "Scheme").

The Court has ordered that Sovereign Marine & General Insurance Company Limited ("Sovereign") and its two subsidiaries, Greyfriars Insurance Company Limited ("Greyfriars") and Sovereign Insurance (UK) Limited ("Sovereign (UK)"), should each convene a single meeting of Scheme Creditors to vote on their respective Schemes.

In relation to the remaining thirteen Scheme Companies, the Court has ordered that each Scheme Company should convene two meetings of Scheme Creditors, to vote on their respective Schemes as follows:

(1) for Scheme Creditors in relation to their Scheme Claims other than IBNR Claims; and

(2) for Scheme Creditors in relation to their IBNR Claims.

("IBNR Claims" being as described in the Voting Form referred to below).

Scheme Creditors which have Scheme Claims falling into both of these classes will be able to vote in each meeting.

All Scheme Creditors are requested to attend the relevant Meeting(s) at such time and place either in person or by proxy. Registration will commence at 9.30am and Scheme Creditors are requested to arrive no later than 10.30am in order to register. The chairman of the Meetings will address Scheme Creditors generally on the Scheme at the commencement of the Meetings.

Scheme Creditors may attend and vote in person (or, if a corporation, by a duly authorised representative) at the relevant Meeting(s). Alternatively they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

All of Sovereign's Liabilities (as defined in the Scheme) and those of its subsidiaries, Greyfriars and Sovereign (UK), are included in the Scheme. With respect to the other Scheme Companies, the Scheme will apply to their Liabilities in respect of business underwritten or administered by the WFUM Pools, except for any liability in respect of UK compulsory insurance.

The proposed Scheme and the explanatory statement required to be provided pursuant to Section 426 of the Companies Act 1985 (the "Explanatory Statement"), the notice convening the Meetings (the "Notice") and details of how to obtain the voting and proxy form for use at the Meetings (the "Voting Form") have been circulated to known potential Scheme Creditors and to those existing London Market brokers believed to have placed business with or on behalf of the Scheme Companies, as well as certain London Market bodies.

The documentation and information may be obtained from the website at www.wfumools.com (the "Website") or on request from the proposed Scheme Manager, PRO Insurance Solutions Limited, Bruton Court, Bruton Way, Gloucester GL1 1DA, United Kingdom ("PRO") as follows:

By E-mail: pro_wfumools@pro-ltd.co.uk marked for the attention of Toby Woodbridge

By Fax: +44 (0)1452 523 437 marked for the attention of Toby Woodbridge

By Phone: +44 (0)1452 523 426

Due to the complexity of the WFUM Pools it will be much easier for Scheme Creditors to enter details of their claims on the Voting Form on the Website and Scheme Creditors are strongly encouraged to do so. All known insurance contracts which are subject to the Scheme, together with details of unpaid agreed claims, have been included by PRO in the Voting Forms on the Website. Calculation of the time-value discount and the allocation of claims across Scheme Companies will be carried out automatically on Voting Forms completed on the Website, and the completed Voting Form will be sent by e-mail to the Scheme Creditor for them to sign.

Alternatively, Scheme Creditors can contact PRO to request paper copies of the Voting Form.

Scheme Creditors are requested to return their completed and signed Voting Forms to PRO by post, fax or e-mail at the above contact details by 4pm (English time) on 20 October 2006. Alternatively Scheme Creditors may hand their Voting Form in at the registration desk prior to the Meetings if attending in person or by proxy, however Scheme Creditors are urged to return the completed forms in advance of the Meetings. Faxed or e-mailed forms will not be accepted unless legible and Scheme Creditors must return the original to PRO, marked for the attention of Toby Woodbridge to be received no later than 7 days after the Meetings. By the said Order, the Court has appointed Stephen Adamson or, failing him, such person as the Scheme Companies shall nominate, to act as chairman of the Meetings and has directed the chairman to report the result of the Meetings to the Court.

Any Scheme Creditor which is unclear about or has any question concerning the action it is required to take in order to vote on the Scheme, or which would like to discuss the way in which its claims data is likely to be evaluated under the Scheme process, including the Estimation Methodology, should contact PRO.

If approved by the requisite majority of Scheme Creditors, the Scheme will be subject to the subsequent approval of the Court.

This is an important announcement concerning the WFUM Pools. For further information in this regard, please e-mail pro_wfumools@pro-ltd.co.uk

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THE BENEFITS OF BETTER COVERAGE.

Big box: Ordinance may trigger litigation invoking ERISA pre-emption

Continued from page 1

Approximately 140 U.S. cities have some sort of living-wage ordinance, but they usually apply only to employers that contract with those municipalities. In addition, many of those ordinances require that employers that do not provide health benefits pay a higher minimum wage than those that do. Only a few municipalities—including San Francisco; Santa Fe, N.M. and the District of Columbia—have laws that require select groups of employers to pay a higher minimum wage than that set by the state or federal government. However, none of those measures also include benefit mandates.

In addition to being the first city ordinance to mandate a specific level of benefits, Chicago's effort is unique in that it targets only large retailers and also prescribes a minimum level of employee benefits in addition to a higher minimum wage.

A similar provision contained in a Maryland statute was overturned by a federal court earlier this month because it was found to violate a provision of the Employee Retirement Income Security Act, which pre-empts state rules that relate to employee benefit plans (BI, July 24).

The Maryland law mandated that employers with at least 10,000 employees in the state pay an amount equal to at least 8% of payroll on employees' health benefits. Those not reaching that threshold would have to pay the difference to a state fund. The way the law was written, it applied only to Wal-Mart Stores Inc. Judge Frederick Motz said the Maryland law violated ERISA's fundamental purpose of permitting multistate employers to offer uniform benefit programs.

In light of the Maryland ruling, Chicago's ordinance is likely to face a similar challenge, observers say.

"The ordinance likely does violate a keystone of ERISA: that employers—especially national employers—are allowed to maintain undifferentiated self-funded medical benefits at all of their locations," said Henry Saveth, an attorney at

Mercer Human Resource Consulting in New York.

"I don't know exactly the degree that they're going to dictate benefits, but if they're going to say that a minimum contribution has to be made to a health plan, and nothing more, that seems to be a problem," he added.

J.D. Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates Inc., suggested that the frequent use of the term "employee benefits" as opposed to "employee benefit plan" may be an attempt to avoid ERISA pre-emption.

This strategy had been successful in at least one other case—*Fort Halifax Packing Co. vs. Coyne*—which decided that a Maine statute requiring severance payments was not preempted because it involved just a one-time payment. The reasoning in that 1987 federal court decision was that the state could require an employer to pay a benefit, but not establish a benefit plan, per se, Mr. Piro explained.

However, the Chicago ordinance is clearly pre-empted by ERISA because it "requires an ongoing system of benefits," he said.

"State laws relating to employee benefit plans are pre-empted. State laws relating to employee benefits are not," Mr. Piro said. "I don't think the distinction applies if you are required to put in place a benefit plan to administer the benefit."

In particular, the Chicago ordinance requires that "all large retail employers shall provide employees an hourly compensation package with a total value of no less than the sum of the living-wage rate and the benefits rate for each hour that the employee works on the premises of a large retailer."

Beginning on July 1, 2007, the living wage rate will be an hourly rate of \$9.25, while the benefits rate will be \$1.50 per hour. Each year the rates will be increased to \$9.50 for wages and \$2.00 for benefits on July 1, 2008; \$9.75 wages and \$2.50 in benefits on July 1, 2009; and \$10.00 in wages and \$3.00 on July 1, 2010.

Further, "benefits" is defined as

Massachusetts receives approval for Medicaid funds

WASHINGTON—A federal agency last week approved Massachusetts' request for a so-called Medicaid waiver, assuring the state will get critical funding needed to implement its landmark health care reform law.

The approval by the Centers for Medicare and Medicaid Services ensures that Massachusetts will receive \$385 million in special federal Medicaid funding for each of the next two years.

The funds will be used by the state to expand its Medicaid program and to provide health insurance premium subsidies for lower-income state residents who are not eligible for Medicaid.

With those funds, and through a redirection of revenues now used to reimburse hospitals for uncompensated care to instead subsidize premiums for lower-income individuals, Massachusetts over the next three years hopes to increase the percentage of the population who have health insurance coverage to about 95% from 90%.

"The federal government's ap-

proval of the Massachusetts' plan is a critical step for our implementation efforts of this sweeping reform," Timothy Murphy, secretary of the Massachusetts Executive Office of Health and Human Services, said in a statement.

The Massachusetts law, signed by Gov. Mitt Romney in April, also imposes an annual assessment of up to \$295 per employee for employers with more than 10 workers that don't make a fair and reasonable contribution to their employees' health insurance plan.

Under recent Massachusetts regulations, the fair and reasonable contribution requirement is considered to be met if at least 25% of full-time employees are enrolled in a company's health insurance plan.

Alternatively, the fair and reasonable standard would be met if an employer pays at least one-third of the premium for individual coverage.

Benefit experts said earlier those tests will be easily met by most employers.

—By Jerry Geisel

"payments made by a large retail employer for any bona fide fringe benefits, paid directly to an employee or to a third party on behalf of an employee or dependents of an employee, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are tips or gratuities, deducted from an employee's wages or otherwise reimbursed by an employee, or required by any other local, state or federal law."

Potentially affected retailers, with the exception of Bentonville, Ark.-based Wal-Mart Stores Inc., either did not respond to requests for comment or referred calls to the

Chicago-based Illinois Retail Merchants Assn.

Wal-Mart issued a statement attributed to Michael Lewis, senior vp of the retailer's Midwest division, which said that the ordinance "imposes special interest mandates" and "sends a message that Chicago is closed for business, closed for development and closed for job creation."

However, neither the IRMA nor the Washington-based Retail Industry Leaders Assn., the industry trade groups to which all of the affected retailers belong, have said whether they will file suit invoking the ERISA pre-emption.

Although the IRMA board has au-

thorized the association to litigate, if necessary, "we're waiting to see what the mayor does before challenging the measure," said a spokesman. "We're hoping that the mayor does the right thing."

IRMA represents 23,000 retailers in the state of Illinois ranging from mom-and-pop stores to large retailers, including the so-called "big box" retailers affected by the ordinance.

Similarly, a spokeswoman for the RILA said that organization is taking a wait-and-see stance.

"We are still in the reviewing process and we have not made any decisions yet," she said in an e-mail.

But Alderman Moore thinks his measure would withstand a court challenge because of the city's "home rule" status. Under the 1970 Illinois Constitution, cities and counties with at least 25,000 residents, or those whose residents decide by referendum, are given the authority to adopt laws relating to their local property, affairs and government, in addition to the powers specifically delegated to them by the Legislature.

In addition, under the Fair Labor Standards Act, which the federal government enacted in 1937, states and municipalities have the power to establish a higher minimum wage or set minimum wages for industries not governed by the FLSA.

Currently, the federal minimum wage is \$5.15 per hour, while Illinois' statewide minimum wage is \$6.50. However, both amounts can be less if the employee also receives gratuities.

The city legal department prepared an analysis of the ordinance prior to the vote on behalf of three aldermen, including its sponsor, Alderman Moore, and the measure's leading opposition, Alderman Emma Mitts, as well as Alderman Edward Burke, chairman of the Finance Committee.

However, the legal department has not made the analysis public because it is privileged communications prepared on behalf of its clients—the city council, a spokeswoman said.

Terrorism: Joint hearing examines TRIA issues

Continued from page 3

ing, terrorism insurance questions in the House had been dealt with only by the Financial Services Committee.

Bringing the Homeland Security Committee into the discussion is "important because it points out the true nature of the risk, which is a wartime risk," said Ben McKay, senior vp-federal government relations for the Property Casualty Insurers Assn. of America in Washington.

"We're talking about terrorism and I think sometimes that gets lost when we get talking about the minutiae of insurance policies, but at the end of the day this is about national security and economic security, and insurance is just a part of that," said Mr. McKay.

"I think it bridges the dialogue from this year into next. There were

"We're talking about terrorism and I think sometimes that gets lost when we get talking about the minutiae of insurance policies."

Ben McKay
Property Casualty Insurers
Assn. of America

a lot of good comments in favor of extending TRIA or coming up with a more long-term solution, which we've always advocated," he said.

"The Homeland Security involvement highlights (that) this isn't

about the solvency of the insurance industry. This is about the responsibility of the government to protect its citizens against the implications of international terrorism," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"The risk of a terrorist attack not only threatens the economic security of the U.S., it also threatens the national security of our country—so there's an obvious connection," said a spokesman for the Washington-based American Insurance Assn. "We appreciate (Homeland Security's) interest and look forward to working with them as we have the House Financial Services Committee, whose leadership has made the issue of terrorism insurance a priority. The more members of Congress who are engaged, the better," said the spokesman.

China: Striking industry balance

Continued from page 17

combined market shares of 70% of the nonlife insurance sector and 74% of the life insurance sector through the first five months of 2006, although these shares have gradually decreased in recent years because of other companies' higher growth rates.

The report says industry risk remains moderately high in both the life and nonlife sectors, "reflecting the fragile financial condition of some insurers faced with tough competition and saddled with poor market discipline and a lack of technical know-how."

"Weak capitalization and possible underreserving amid strong premium growth may trigger some corporate failures, despite improvements across the wider industry," the report says.

"To create a financially sound in-

dustry, insurers will need to strike a better balance between profit and growth."

Focusing on the nonlife sector, the report says vehicle insurance accounts for about 69% of premiums. "Demand for other property and casualty insurance is expected to increase in line with growth in the wider economy and the personal wealth of individuals," says the report.

The report also notes that reliance on reinsurance is relatively low, but the development of intermediaries, including agents and brokers, has been rapid.

Copies of the report are available to subscribers of RatingsDirect, S&P's Web-based credit analysis system, at www.ratingsdirect.com. Non-subscribers can obtain the report for \$400 at research_request@standardandpoors.com.

Stewart: Industry leader says III is ready for next chapter

Continued from page 3

A: Building an organization that is completely trusted and universally used. In the 15 years that I've been here, people have disagreed with us, but no one has ever suggested that anything we've said here is materially wrong or deceptive or inaccurate. On the other side, we're the single most-used source in the industry, and I think I can prove that.

(Mr. Stewart demonstrated on his office computer a Google search using the word "insurance." Out of 1.1 billion entries, the Insurance Information Institute site was the first nonpaid entry listed. He then searched "annuities," and III came up fifth out of nearly 25 million entries.)

I have tried to be, in a very diverse, heterogeneous, contentious, nationalistic industry, to the extent possible, a unifying presence. So we established the Joint Industry Forum, which is the only time and place when all 14 national and international associations come together and people across all party lines sit down over a meal and talk. We have disaster information centers, where there are collective response mechanisms after events such as Hurricane Andrew, 9/11 and Hurricane Katrina.

Thirdly, one of the few initiatives I kept when I came here was our national survey (which polls public approval of the insurance industry). It has asked the same question of the same sample since 1968. When I started here at the III, we were in the low 30s, right above consumer finance. Slow climb. Now, for the last five years, we've been at 55% or above, which, as one CEO said, is a rating a lot of politicians would kill for. We are hardly claiming sole credit for this increase. On the other hand, if during the time I had been here we had gone from 55% to 32%, I think I and the Triple I would have had something to an-

swer for. The fact there has been an active, credible means of communicating to the American public has helped the industry enormously, along with some behavior changes by the industry.

I also think it is partly a result of a generation of CEOs who are more in touch and in contact with the public. These companies are doing a better job of trying to anticipate where discontent will arise and asking themselves, "What's my part in this?" When I first came here, I found an almost universal tendency on the part of the industry to blame everybody else for everything: lawyers, consumer activists, communist agitators, who knows what—all of whom exist, by the way, and are a problem. They're not phantoms. Nonetheless, companies didn't include on their list anything much about themselves. We worked with them and said, "Here are some things we can all do together that might make some of our public problems go away." Now, there has been much more willingness to say, "What can we as an industry do about problems we're having rather than simply blame everybody else?"

Lastly, I would cite the organization itself. This is a terrific group of people who did not just materialize out of thin air. We have 14 out of a staff of 24 who talk to the public and the media. I'm just one of them. I try to encourage a whole group of people to be qualified, to know the answers. Bob himself just excels at this. The leadership is now ready.

Q: You've had a very diverse set of career experiences. How did those kinds of skills help you as president of the III?

A: I was probably a very odd choice for this job, having this diverse background, and I wondered what all of these things that

I've done could possibly have to do with what I would face at the III. Turns out, I've used every single one of them. And that is one of the things that has made doing this job so satisfying.

Directing: that Web site is partly an aesthetic achievement. In some ways, I've seen the Web as my great play. Having directed in television, movies, radio and in stage, one of the things you learn is that each medium has its own artistic imperatives, and you'd better understand each on its own terms. Most early Web ventures failed because people saw them as taking content they already have and putting it up on the Web, or as a cool visual thing to win design prizes. What they didn't understand is that the beauty, the aesthetic, of the Web lies in its utility and how easy, how comfortable it is for people to use.

Another thing you learn in directing—everybody should be a director once to learn this—you have four weeks to get this show open. In four weeks, people are going to walk into this auditorium, the lights will go down, the curtain will come up and something had better damn well happen. What you learn is that the likelihood of that show succeeding depends more on what you do in the first week than what you do in the last week. And that means understanding what the material is you're working with and who you have cast in those roles. If you've done those two things right—have a good script and good actors in the first week—by the fourth week you'll be getting things ready, which is almost where we are today with III. So directing has helped enormously because you project forward and say, "Uh oh, my success or failure depends on what I do early, now, not pulling a rabbit out of a hat in dress rehearsal."

Conducting: two things that I have taken (from that) I've used at

III. One is that preparation is absolutely everything. You do not wish to appear before a competent orchestra, pick up that stick and have them look at you and not know what the hell you're doing. You need to know every note in the score. And that's something I've tried with the subject matter of insurance to the best of my ability; to come to understand it, understand the score, in that sense. Second, in today's world and at a nonprofit organization, you can't force people to play for you. They have to want to play. And the way you do that is by having good musicians in the first place and then letting them play. Today's conductor, when he has wonderful musicians, you will notice, doesn't have to beat time during their solos. At III, we have great players in media, research and the Web—it's a pleasure to see them performing as such a high level.

What did I learn from seven years at the (American) Stock Exchange with (former Securities and Exchange Commission Chairman) Arthur Levitt? A whole lot that has been vital. I myself would not seek to run an insurance company. I also know I wouldn't last 15 minutes on the exchange floor trying to be a specialist or a trader, but I watched what they do and came to understand what was important to them, how difficult their jobs were, the kinds of challenges they faced. I've watched how CEOs deal with running successful companies. I couldn't do it, but I know what they go through. When it comes to the membership part of III, our success is achieved, in large part, from understanding and empathizing, and trying to help with the reality of what these CEOs do.

The political experience has also been vital in my role as III president. One thing Henry Kissinger imparted: people are policy. Know the people and you will know the policy. All of these things—even a

degree in European history—is helpful when it comes to dealing with global companies. I've wound up using virtually everything, and I can't predict on any given day, how those experiences will help.

As the staff here can attest, I am obsessive about writing, perhaps because I am also a former Amherst College English professor who has worked on three State of the Union addresses. One of the reasons we're valued as a resource and are so credible is that this place is always clear and literate.

Q: How have the III's relations with the industry been during your years here?

A: One thing III can be proud of is having the strongest, broadest board in the industry. And we have been blessed with outstanding chairmen. Since coming to the III, I've learned a great deal from industry CEOs. I believe all our board members could explain today why there should be a III, why they're a part of it, and what their companies get out of it. I don't think there is another business in America that has an independent, free-standing organization like the III. What usually happens is that the national lobby trade, the American Assn. of Whatever, creates some sort of department or a paper subsidiary that's really just a front and tries to pass it off as an independent, credible source of information. I don't think there's another American industry that has a III. And that's something we should all feel pretty good about. I think that's directly connected to the historically high approval ratings our industry has today. But to have that, you have to be willing to trust an organization to represent you fairly, fully and honestly. I'm fully confident the wonderful people at the III will accomplish even greater things in the years to come.

Fairfax: Earnings restated

Continued from page 3

were uncovered have since been remedied, Fairfax said in a statement.

According to a spokesman for Fairfax, "There is no relationship between the announced restatement and the industrywide inquiry by regulators into the use of finite reinsurance policies."

Rating agencies had mixed reaction to news of the restatement.

New York-based Standard & Poor's Corp. placed under review a variety of financial strength and credit ratings for Fairfax and related entities, due primarily to Fairfax's delayed filing of second-quarter financial statements stemming from of its restatement.

Oldwick, N.J.-based A.M. Best Co. Inc., meanwhile, did not make any rating changes to Fairfax and its subsidiaries, and it noted that it views the company's decision to commute the Swiss Re contract as a

positive step.

"There are many reasons why the unwinding of this contract is economically beneficial," said Joyce Sharaf, assistant vp and managing senior financial analyst at Best. "The positives more than outweigh the negatives."

"European runoff has been a significant drain on Fairfax's holding company and now, that cash drain on the holding company will be eliminated through at least 2007."

She added that, "Every year, there is an interest rate on the funds held on the contract that Fairfax has to pay, and now they don't have to pay that, which is some savings."

"The biggest negative in commuting the contract is that they do take an economic hit in the third quarter, but there are benefits to be gained going forward, especially with regard to investment income and holding company cash," Ms. Sharaf said.

Fairfax accuses hedge funds of scheme

TORONTO—Toronto-based insurer Fairfax Financial Holdings Ltd. last week filed a \$6 billion lawsuit against a group of prominent hedge funds, alleging the defendants conspired to manipulate Fairfax's share prices.

Filed in Superior Court in Morris County, N.J., Fairfax's complaint charges that the hedge funds engaged in "a massive, illegal and continuing stock market manipulation scheme, which has targeted and severely harmed Fairfax, among other companies, and which has resulted in immense ill-gotten profits for" the more than 20 funds, the complaint states. The funds intended to profit from the destruction of Fairfax by "short-selling" the company stock, or taking posi-

tions in the market that would be profitable in the event Fairfax's stock price declined, says the complaint.

Fairfax in its suit alleges that S.A.C. Capital and its affiliates are at the center of the scheme—which the conspirators called the "Fairfax Project"—which was intended to "damage severely, if not destroy, Fairfax and its affiliated companies," by:

- Disseminating false and misleading information about Fairfax to company employees and shareholders, bankers, regulators and rating agencies.

- Spreading inaccurate information to the public through bogus analyst reports and statements to the financial press.

- Engaging in a long-term cam-

paign of personal harassment of current and former employees, executives and shareholders of Fairfax.

- Attempting to instigate regulatory probes of Fairfax by providing false and misleading data to regulatory agencies.

The suit seeks to recover no less than \$6 billion in compensatory damages as well as punitive damages and treble damages for the defendants' alleged misconduct.

"This is another baseless lawsuit by a company attempting to shift the blame for its fundamental business problems," a spokesman for S.A.C. said. "We are confident that we will prevail."

—By Rupal Parekh

New Orleans: Property risks rising as local water pressure drops

Continued from page 1

buildings, is that the absence of sufficient water pressure means sprinklers don't properly function and firefighters might be hindered in their efforts to put out a fire.

Dangerous drops in water pressure are "a daily occurrence," said Ashton Page, second vp in real estate operations at Pan American Life Insurance Co. in downtown New Orleans. He said water pressure to the 28-story building routinely falls to 20 pounds or less—less than is needed to power sprinklers on the building's top floors and properly operate cooling systems.

And, even when the water pressure is at its highest, at 30 pounds, it's still below that of pressure maintained in systems in most other cities, Mr. Page said.

"What people in the rest of the country don't know is that New Orleans was nowhere near normal before the storm," he said. "Most cities give 60 pounds of pressure, but New Orleans gives 30 pounds" because the aging system was unable to handle higher pressure even before the storm, said Mr. Page.

Property owners' petition

Apart from the fire risk, "the loss of pressure to cooling towers will shut a building down," Mr. Page said. While that hasn't happened yet at the Pan American building, "we came close a couple of weeks ago," he said.

Cooling towers lower the temperature of water for use in commercial air conditioners.

The pressure problem has prompted a group of New Orleans property owners to petition the Sewerage & Water Board of New Orleans to "seriously review this situation and respond with an action plan and timetable outlining what

specific efforts are under way to stabilize the water supply and provide notification should drastic changes be imminent."

That language was in a letter signed by representatives of 13 properties and property management companies and hand-delivered July 13 to Marcia St. Martin, executive director at the Sewerage & Water Board.

While the property owners are "sympathetic to the monumental task you are facing repairing damaged infrastructure, it is critically important that emphasis and priority be given to stabilizing the supply to key employers if the city's recovery is to be successful," they wrote.

The insufficient water pressure "will shut down our ability to provide domestic water for consumption and sanitary needs, air conditioning and more importantly, supply water" to fire prevention systems, the property owners said in the letter. "In addition, these interruptions may have caused considerable damage to our equipment and could pose a grave threat to life safety," they wrote.

As of late last week, the property owners still were waiting on action by the Sewerage & Water Board. "They are promising a meeting with the mayor," said Mr. Page, "but nothing has been scheduled."

A spokesman for the board did not respond to requests for information on how the board is addressing the water pressure problem.

Not all commercial properties in New Orleans are as worried about the water pressure. Harrah's Casino, which is a two-story structure in the city's central business district, has not had problems that would compromise safety at the facility, according to Lance Ewing, vp-risk management at Memphis, Tenn.-



Problem prevention

Property owners who turn on the tap and find a trickle instead of a torrent should be concerned about fire protection. FM Global suggests policyholders take steps to make sure property is protected if water pressure drops or is deliberately impaired for plant maintenance or repairs. Until the pressure is restored, the insurer suggests that property owners:

- Prohibit processes with ignition sources and ban smoking
- Shut down any hazardous processes
- Notify their emergency-response teams and public fire service
- Assign a fire watch patrol
- Have fire extinguishers and temporary sprinkler systems in place
- Contact their property insurers about planned impairments

based Harrah's Entertainment Inc.

All the routine checks on the casino's fire suppression system have indicated that it is not compromised by water pressure problems, Mr. Ewing said.

Property owners along Poydras Street, a main downtown thoroughfare, appear to be particularly affected. Eight of those who signed the letter to the Sewerage & Water Board represent properties along this street. They are the 1515 Poydras, Freeport McMoran Building, Amoco Building, Dominion Tower, Energy Centre, Entergy Building, One Shell Square and Pan American Life.

In addition, other buildings, Place St. Charles on St. Charles Avenue and One Canal Place on Canal Street, are represented in the letter along with Stirling Properties, SRSA Property Management and Darryl Berger Investments.

Mr. Page said Pan American Life's loss control amounts to keeping a close eye out for fire when pressure drops. "All you can do is post a fire watch team when you know the sprinkler system can't put out a fire," he said. Patrols by the building's security guards are dispatched to rove the floors and help with an evacuation if a fire should break out, he said.

Mr. Page said that while the cost of property insurance written for the building by Chubb Corp. "went through the roof" after the hurricane, the increase was related to hurricane damage in the area and not water pressure problems. The Pan American Life building suffered minor damage to windows and its roof from Katrina, Mr. Page said, but its planned reopening last October was delayed two weeks because of inadequate water pressure.

The low-pressure problems are not limited to the downtown area.

Coverage questions

"It's only a matter of time before something happens to cause the in-

surance industry to take note," Michael Tubbs, vp with Willis Group Holdings Ltd. in New Orleans, said of the potential for a loss related to the water pressure problems. "That's my concern—when will that happen?"

A large loss could affect the way insurers rate commercial property risks in New Orleans and impact coverage pricing, said Mr. Tubbs.

A spokesman for Factory Mutual Insurance Co., which does business as FM Global, said that while the insurer has heard from policyholders in the city's central business district that are experiencing "a couple of hours a month of intermittent problems" with low pressure, others, further from the city and closer to Lake Pontchartrain "may be seeing a few hours a week" of such problems.

If a fire does damage a building with sprinkler systems that are impaired by low water pressure, the spokesman said in an e-mail that FM Global would not deny a claim that was beyond the control of its client.

It is not as clear-cut, though, how a business interruption claim would be handled, he noted.

It is possible, though, that coverage could be written by some insurers that would deny coverage in the event a sprinkler system failed to function properly, said Mr. Tubbs of Willis.

"It depends on the policy," he said.

"Some policies are written with a sprinkler warranty that could void coverage" unless the policyholder informs the insurer that there are problems with the fire suppression system or it is being deliberately impaired and other measures, such as fire watches, are undertaken while the system is compromised, Mr. Tubbs said.

Reform: RIMS upset by revision of 'qualified risk manager' definition

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analysis; and hold at least one of a group of professional designations. Those include four specified designations (see box) as well as "any other designation, certification or license determined by a state insurance commissioner or other state insurance regulatory official or entity to demonstrate minimum competency in risk management."

The version of the measure approved by the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises required a qualified risk manager to meet only one of three criteria, one of which was holding at least a bachelor's degree in risk management (BI, July 24). That definition mirrored the definition provided in the Terrorism Risk Insurance Extension Act of 2005 and had been the result of work between RIMS and the committee during consideration of the terrorism insurance extension bill.

But the subcommittee's ranking member—Rep. Paul Kanjorski, D-Pa.—objected to that definition, which he thought would not guarantee that a risk manager had the

Who would qualify?

The amended Nonadmitted and Reinsurance Reform Act of 2006 defines a "qualified risk manager" as a person who meets at least two of the following three criteria:

- 1 Holding an "advanced degree" in risk management from an accredited university or college
- 2 Having at least five years' experience in commercial property or casualty insurance risk financing, claims administration, loss prevention or risk and insurance coverage analysis
- 3 Holding at least one of the following designations:
 - Chartered Property Casualty Underwriter
 - Associate in Risk Management
 - Certified Risk Manager
 - RIMS Fellow
 - "Any other designation, certification or license determined by a state insurance commissioner or other state insurance regulatory official or entity to demonstrate minimum competency in risk management."

Source: House Financial Services Committee

experience to buy coverage in the surplus lines market.

The change was made in an amendment offered by the committee's chairman—Rep. Mike Oxley, R-Ohio—which was approved on a

voice vote.

RIMS preferred the less stringent definition.

"While RIMS has expressed its support for the underlying principles of this legislation, we have seri-

ous concerns regarding the amended criteria that defines a qualified risk manager," Terry Fleming, RIMS director-external affairs, said in an e-mail.

"We look forward to working with the House and Senate to ensure that the final version of this bill establishes criteria that reflect the broad spectrum of experience and expertise of our members," Mr. Fleming, who is also director-division of risk management for Montgomery County in Rockville, Md., said in his e-mail.

Chairman Oxley's amendment also directs the Government Accountability Office to conduct a study of the bill's impact on "the size and market share of the nonadmitted market" 18 months following enactment of the bill.

The reinsurance portion of the bill makes a reinsurer's domiciliary state "solely responsible for regulating the financial solvency of the reinsurer," provided that the domiciliary state is accredited by the National Assn. of Insurance Commissioners or has solvency requirements "substantially similar" to those required for NAIC

accreditation.

"This is the beginning, hopefully, of a concentrated effort" to reform "insurance regulatory structures," said Rep. Oxley, who was presiding over his final markup of legislation before retiring from Congress.

The measure could go before the full House before Congress recesses for the November elections this fall. No companion legislation has been introduced in the Senate.

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Marsh: Judge tosses some key class-action claims

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Judge Kram refused to dismiss the claim that Marsh & McLennan violated federal securities law by not disclosing the business practices Marsh employed to enhance its contingent commissions. The plaintiffs claim Marsh & McLennan's statements in its quarterly and annual reports from 2000 through 2003 misled investors about those business practices.

Roger E. Egan, the former president and chief operating officer of Marsh, and Jeffrey Greenberg, the former chairman of Marsh & McLennan, must continue to defend claims that they were aware of subordinates' misconduct and made misleading statements about Marsh's contingent commission practices after Marsh & McLennan filed its 2004 first-quarter financial statements.

At that time, Mr. Spitzer's investigation was under way, but he had not yet filed his suit against Marsh and its parent company. The judge, however, dismissed those claims against the remaining defendants.

The judge also allowed the plaintiffs to press their claims that Marsh & McLennan, Marsh and Messrs. Egan and Greenberg have secondary liability for those who engaged in the misconduct.

While the judge dismissed allegations that many of the defendants misled clients about Marsh's contingent commissions, she refused to dismiss those claims



PHOTO: BLOOMBERG NEWS/LANDOV

A judge in class-action litigation against Marsh & McLennan has upheld some charges against former Marsh President Roger E. Egan over contingent commission practices.

against Mr. Egan.

But Marsh & McLennan's failure to disclose its alleged misconduct "does not amount to a misstatement of earnings," the judge ruled in dismissing one claim. Judge Kram noted that the company accurately accounted for its contingent commission revenues.

As a result, the claim that Deloitte issued false audit opinions on Marsh & McLennan's financial statements was dismissed. In addition, the judge ruled that Deloitte could not be held liable for any misleading unaudited financial statements.

Marsh & McLennan also had no

obligation to distinguish its contingent commission revenue from the rest of its brokerage and risk management services revenues, the judge ruled.

The judge also tossed out allegations that Marsh & McLennan should have predicted both that it could lose contingent commissions as a source of revenue and that contingent commissions could lead to litigation.

And the judge dismissed allegations that members of Marsh & McLennan's audit committee should have recognized numerous "red flags" that signaled problems with Marsh's business practices.

Marsh & McLennan and Mr. Egan would not comment on the judge's ruling.

An attorney for Mr. Greenberg said the judge "dismissed the vast majority of claims against Jeff and the other defendants" because the plaintiffs could not meet "the low threshold" of adequately stating facts that, if proven, would hold the defendants liable.

In addition, "the court substantially narrowed the time frame in which plaintiffs have to prove that Jeff made intentionally false statements," said the attorney, Michael S. Feldberg, a partner with Allen & Overy L.L.P. in New York. That time frame was between May and October 2004.

Judge Kram has given the plaintiffs until Aug. 18 to replead the charges she dismissed.

HSAs: Employers look to contain health care costs

Continued from page 4

confidence among plan sponsors that HSAs can help drive participant behavior change," Mr. Burnett said.

According to the survey, the top three reasons that employers currently offer or plan to offer in 2007 a CDHP plan integrated with either an HRA or HSA are to reduce health care costs; expose employees to the true costs of care; and to attempt to

stem future cost increases.

Still, most employers—81% of survey respondents—cited employees' education and understanding of the plans as the key challenge to successfully implementing a consumer-driven health plan tied to an HSA or an HRA.

The employers also reported that they don't fully understand the plans themselves. A total of 77%

percent of respondents reported understanding HRAs and HSAs either "minimally well" or "relatively well," compared with only 20% of respondents who understand the plans "very well."

Copies of the survey, "HRA/HSA survey for Consumer-Driven Health Care Plans," are available at www.bucksurveys.com. The cost is \$100.

Late News

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legislation that would create a commission to examine the best way to structure a national natural catastrophe fund. The measure—H.R. 5891—seeks "to maximize private-sector participation" in the development of a national fund to help provide coverage for natural catastrophes as well as to examine what role states should play in "stabilizing the property/casualty and reinsurance markets," according to a summary of the bill.

IRS issues final rules on HSA contributions

Final Internal Revenue Service regulations published last week make clear that employers linking health savings accounts to flexible benefit plans can condition their HSA contributions on employee participation in health assessment and disease management programs. The final regulations end uncertainty created by rules proposed last year by the IRS that suggested such conditioning only would be allowed if employees had the right to take the employer's HSA contribution as cash. Such a cash-out design is uncommon. But the final regulations provide numerous examples of conditioning—such as an employer making an HSA contribution on behalf of employees who complete a health risk assessment and participate in a corporate wellness program—that would be permissible if the HSA is part of a flexible benefit plan.

United America president resigns

United America Indemnity Ltd. President Joseph F. Morris has resigned effective Aug. 25, the company said. Mr. Morris, who has held the position since January, previously was the chief financial officer and president of Penn-America Group Inc., which merged with United America Indemnity in January 2005. "Now that the transition to the current operating structure is complete, it is time for me to move on," Mr. Morris said in a statement. United America Indemnity provides excess, surplus lines and specialty property/casualty insurance and reinsurance through its wholly owned subsidiary insurance companies. The company said it currently is searching for a chief executive officer.

2Q cat losses hit \$3.7 billion

Catastrophes caused an estimated \$3.7 billion in insured property damage during the second quarter of 2006, according to the Insurance Services Office Inc.'s Property Claim Services unit. PCS said the bulk of the losses—61%—were sustained by personal lines property, with 15% sustained by commercial property. The remaining 24% of the losses represented those sustained by vehicles, both personal and commercial lines. All the events were

related to severe weather. The \$3.7 billion brings total estimated insured catastrophe losses for 2006 to \$5.2 billion, according to PCS.

U.K. insurer group forms fraud unit

The Assn. of British Insurers has launched a bureau to investigate insurance fraud. The Insurance Fraud Bureau is intended to crack down on organized insurance fraud. Its chairman is former New Scotland Yard detective John Beadle, counterfraud manager at Royal & SunAlliance Insurance Group P.L.C. The London-based ABI said the bureau would use a series of insurance industry databases, develop "cross-industry intelligence and coordinate investigations between insurers, the police and other agencies." The bureau, which will be funded by levies on insurers, will investigate common types of insurance fraud, including disability claims for nonexistent or exaggerated injuries, fraudulent arson by businesses and staged auto accidents.

Allianz seeks buyer for health products line

Allianz Life Insurance Co. of North America has decided to sell its health products line of business and is currently looking for a buyer, the company said. The company has decided to sell the unit because it is a specialized business that does not fit the overall strategic direction of the organization, the Minneapolis-based company said in a statement. The division provides excess of loss coverage for catastrophic medical claims to health maintenance organizations, provider organizations, insurance companies and employers that self-fund their employee benefits plans. The division represented 2.5% of the gross written premiums for Allianz Life as of June 30, the company said.

Hewitt opening U.K. health care practice

Hewitt Associates Inc. is launching a health care consulting practice in the United Kingdom. The unit will be based in London and headed by James Kenrick, who is joining Hewitt after working for more than 20 years with several U.K. and U.S. insurers. The operation will work with clients on development and implementation of health management strategies, such as health audits, absence management and health benefit reviews.

At BusinessInsurance.com

New Online Poll: Compared to five years ago, would you say state regulation of the insurance industry has improved, gotten worse or has not changed?

Items in the Late News column originally appeared in BI's Daily News feature on www.businessinsurance.com. Visit the BI Web site to sign up to receive BI's Daily News by e-mail.

BI Stock Index [7/24 - 7/28]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.businessinsurance.com

Percentage change of BI Stock Index vs. key indicators

BI Stock Index	
2893.10	1.36
Dow Jones	
11219.70	3.23
S&P 500	
1278.55	3.08

Largest gains

Brown & Brown	13.76%
Hilb Rogal & Hobbs	11.97%
Arthur J. Gallagher	10.51%
IPC Holdings	9.66%
Zenith National	8.29%

Largest losses

Aetna Inc.	-17.53%
EMC Insurance	-15.71%
CIGNA Corp.	-10.34%
Health Net Inc.	-9.52%
Sierra Health Services	-9.30%

Weekly change by market segment

Brokers	4.98%
Insurers/Reinsurers	1.73%
Managed Care Organizations	-6.75%

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

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