

# Business Insurance

\$5

June 11, 2007

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**MANAGED CARE COMPANIES SEE PROFIT GROWTH SLOW IN FIRST QUARTER / PAGE 3**



**SURPLUS LINES BROKER FACES JAIL TIME OVER POLICY SCAM / PAGE 3**

## In Brief

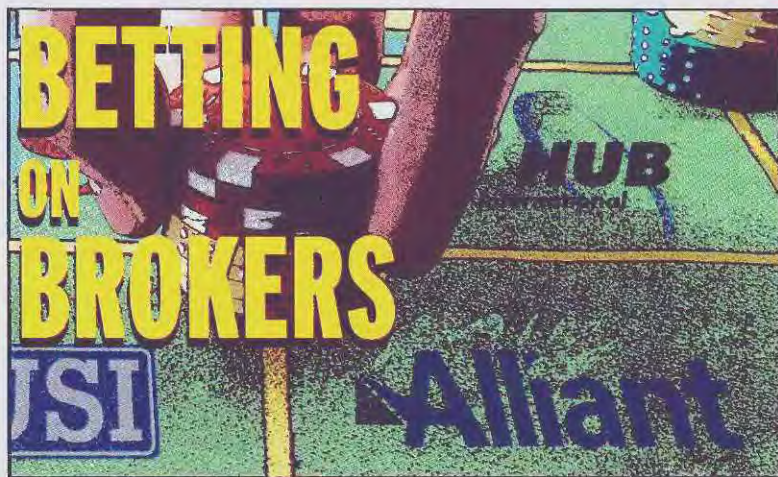
**RenRe sets up sidecar for Florida property cat**

RenaissanceRe Holdings Ltd. has launched a so-called sidecar dedicated to providing reinsurance capacity for the Florida homeowners market. Starbound Reinsurance II Ltd. will create approximately \$375 million in reinsurance capacity. The facility was created through a fully collateralized quota-share retrocession agreement between Renaissance Reinsurance Ltd. and Starbound II, under which the reinsurer will cede to Starbound II a certain percentage of its property excess-of-loss business—mainly covering hurricane risks.

**Bill proposes tax breaks for domestic partners**

Legislation has been introduced in the U.S. Senate that would extend the same favorable tax

See **IN BRIEF** page 30



## Deal gives Alliant new private owner

*Blackstone latest buyer entering broker field*

By **ROBERTO CENICEROS**

**NEWPORT BEACH, Calif.**—The recent boom in private equity investments in the insurance brokerage business took another twist last week when the Blackstone Group bought out another private equity firm's interest in Alliant Insurance Services Inc. for a reported \$1.1 billion.

The deal will bring New York-based Blackstone a brokerage with a firm hold in several specialty areas. Alliant is ranked the 13th largest broker in the United States, according to the 2006 *Business Insurance* broker rankings.

The purchase of Newport Beach, Calif.-based Alliant, which is expected to close by the end of August, comes on the heels of private equity buyouts of rival retail brokers USI Holdings Corp. of Briarcliff Manor, N.Y. and Hub International Ltd. of Chicago. Though in

those cases, the brokerages were public traded firms that were taken private through the deals.

Private equity interest in the retail brokerage sector has been accompanied by several private deals in the wholesale brokerage sector.

And investors' interest in the brokerage industry is not expected to let up anytime soon, observers say.

The only surprising thing about the Alliant deal is that private equity firm Lindsay Goldberg & Bessemer of New York is selling its stake in the brokerage after acquiring it only about 18

months ago, said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm specializing in insurance.

Regardless of which private firm is behind Alliant the deal is not

See **ALLIANT** page 30

### ALLIANT INSURANCE SERVICES

**BROKERAGE REVENUES:** \$230 million in 2006

**PREMIUMS:** \$2.4 billion

**CLIENTS:** 20,000

**HEADQUARTERS:** Newport Beach, Calif.

Source: Alliant Insurance Services

## Court OKs EEOC rule on retiree benefits

*Ruling may end fight over whether plans must follow bias law*

By **JERRY GEISEL**

**PHILADELPHIA**—A federal appeals court decision last week upholding the ability of employers to reduce health benefits to retirees when they become eligible for Medicare likely puts an end to a long-running legal battle that threatened to accelerate the decline of the plans.

In a unanimous ruling, a three-judge panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia said the Equal Employment Opportunity Commission has the authority to implement a rule that would exempt retiree health plans from the Age Discrimination in Employ-

ment Act when those plans reduce benefits for retired workers after they become eligible for Medicare.

The rule was first proposed by the EEOC in 2003 as a way of counteracting a decision by the 3rd Circuit three years earlier that found the plans were subject to ADEA. That decision exposed employers with retiree health care plan designs that cut benefits when retirees reach age 65 to age discrimination suits.

The practical effect of the EEOC rule would allow employers to continue providing a two-tier system of retiree health care coverage, with younger retirees receiving richer benefits than Medicare-eligible retirees. The rule, though, was never implemented because of a legal challenge by the AARP.

Writing for the appeals court

See **EEOC** page 28

## CalPERS has dual goals for health investments

*Hopes better system will cut costs, boost returns*

By **JOANNE WOJCIK**

**SACRAMENTO**—The California Public Employees' Retirement System—one of the largest U.S. health care purchasers—hopes that a new investment strategy will drive down its own health care spending.

CalPERS is partnering with a new private equity fund that will invest up to \$700 million of CalPERS' pension fund assets in ventures that are working to improve the quality and cost-efficiency of the nation's health care system. CalPERS has around \$235 billion in invested assets and will spend about \$4.9 billion on health care this year.

The objective of CalPERS' strategy is twofold: to "invest in companies that will make the health care system operate better and then possibly buy products and services of those companies and save money," said Rob Feckner, president of the pension fund's board of administration, according to a transcript of his

remarks from a press conference last Tuesday in Sacramento.

The fund, Health Evolution Partners, was created by Dr. David J. Brailer, the former health information technology czar for the Bush administration (see story, page 29).

Dr. Brailer and his San Francisco-based staff will analyze and advise CalPERS on investments that will create efficiencies in health care and generate market rate returns, which the CalPERS spokesman said are expected to be as high as 20% annually. Health Evolution Partners will also manage, coordinate and monitor the investments.

CalPERS will be the exclusive investor in the fund for the first 12 months, contributing \$500 million initially and eventually up to \$200 million more. After the first year, other investors will be invited to join Health Evolution Partners.

Although Dr. Brailer once served

See **CALPERS** page 29

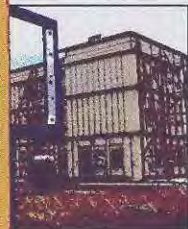
## SPOTLIGHT

### GOVERNMENT RISK MANAGEMENT

Tough property cat market

finds some public risk managers going bare, getting creative; schools' zero-tolerance policies

seen as ineffective; incoming PRIMA president on public risk management; policies, training key to reducing police liability. **Page 11**



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Crain Communications Inc.  
**Information Center**  
(Detroit Office)

# How can you reduce medical costs in workers' compensation?

Ask Aon.

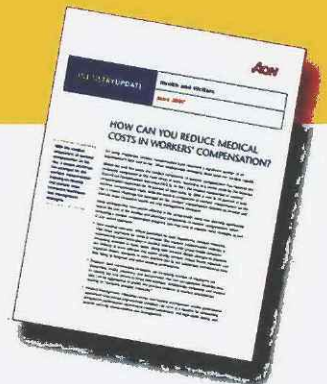


With the medical component of workers' compensation soaring, many organizations see no end in sight. However, there are strategies that have proven effective in the group health arena that could also

have a dramatic effect on the medical and pharmacy components of workers' comp. Visit [www.aon.com/ask](http://www.aon.com/ask) to learn more about cost-containment strategies that can help your workers' comp program.

- Heidi Mader,  
*assistant vice president in Aon Consulting's health and welfare practice*

Download our full perspective  
at [www.aon.com/ask](http://www.aon.com/ask)



## On the Web

### BENEFIT MANAGER OF THE YEAR®

#### Deadline for 2007 award extended to June 22

The deadline for nominations for the *Business Insurance* 2007 Benefit Manager of the Year® award has been extended to June 22. The winner will be profiled in the Sept. 17 issue of the magazine. Download a nomination form at [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY) or request a form from *BI* Editor Regis Coccia at [rcoccia@business-insurance.com](mailto:rcoccia@business-insurance.com).

### QUESTIONS & ANSWERS

#### Incoming PRIMA head discusses public risks

*Business Insurance* features an interview with William C. Kostner, incoming president of the Public



Risk Management Assn. as well as the risk manager for Lincoln, Neb., in this week's Spotlight

Report section. An audio podcast of his full-length Q & A discussion with *BI* Senior Editor Dave Lenckus can be found at [www.BusinessInsurance.com/QandA](http://www.BusinessInsurance.com/QandA).

### SECTOR BRIEFINGS

#### Telecommunications Sector Briefing now online

The Telecommunications Sector Briefing—which covers such wide-ranging risks such as business interruption, the dangers of electromagnetic radiofrequency and exposure on the information highway—is now available online. For more, go to [www.BusinessInsurance.com/sectorbriefings](http://www.BusinessInsurance.com/sectorbriefings).

### BI DIRECTORIES

#### Public entity risk pool directory updated

*Business Insurance* has updated its directory of public entity risk pools for 2007. It is available online for purchase in either PDF format or as an Excel spreadsheet. For more information, go to [www.BusinessInsurance.com/directories](http://www.BusinessInsurance.com/directories).

## Business Insurance®

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

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# Canadian pleads guilty in liability policy scam

By DOUGLAS McLEOD

**NEW YORK**—A Canadian man has pleaded guilty to bilking dozens of commercial policyholders of \$8.5 million by issuing bogus liability policies in the names of Lloyd's of London underwriters and other insurers.

Ian Stuart, who operated purported surplus lines brokerages in New York and suburban Toronto, pleaded guilty to a single wire fraud charge last week Monday in U.S. District Court in New York.

He faces up to 20 years in prison and has agreed to forfeit the \$8.5 million generated in the scam, according to the U.S. Attorney's

office. He is scheduled to be sentenced before U.S. District Judge Jed Rakoff on Sept. 17.

Mr. Stuart—who also used the aliases Ian Stuart-Smith, John Harris and John Harrington—ran several purported brokerage firms without a New York license, including Surplus Lines Inc. and Heritage Inc., both New York corporations, and Rupertsland Insurance Intermediaries Ltd. of Ontario, according to prosecutors.

Between 2000 and 2004, Mr. Stuart defrauded dozens of mostly construction company and restaurant

policyholders and their retail insurance brokers by falsely claiming to be an authorized representative of various licensed insurers, prosecution court filings say. Along with Lloyd's underwriters, insurers that Mr. Stuart claimed to represent included Great American Insurance Co.; Berkshire Hathaway Inc.'s Mount Vernon Fire Insurance Co.; the Indian Harbor Insurance Co. unit of XL Capital Ltd.; Argonaut Group's Colony Insurance Co.; Travelers Indemnity Co.; Houston Casualty Co.; and the Essex Insurance Co.

unit of Markel Corp.

Mr. Stuart issued fake binding documents and policies in the insurers' names and collected premiums from agents and premium finance companies in New York, California, Texas and other states, prosecutors charged.

To conceal the scheme, Mr. Stuart also used some of the premiums he collected to pay for the defense—and, in some cases, settlement—of certain claims, prosecutors say.

Mr. Stuart, 56, of Ontario, was originally indicted in 2004 on 20 mail and wire fraud counts. He was arrested in Ontario in May 2006 and has remained in custody since his extradition to the United States.



## Jobs not guaranteed for disabled applicants

### ADA accommodation decision may end up in Supreme Court

By JUDY GREENWALD

**ST. LOUIS**—The Americans with Disabilities Act does not require an employer to offer a vacant job to a disabled worker as an accommodation if a better qualified applicant is available, says a federal appellate court, ruling on an issue that attorneys say may ultimately end up in the U.S. Supreme Court.

The May 30 decision by the 8th U.S. Court of Appeals in St. Louis in *Pam Huber vs. Wal-Mart Stores Inc.* says Ms. Huber sustained a permanent injury to her right arm and hand while working for Bentonville, Ark.-based Wal-Mart as a dry grocery order filler. She sought reassignment to a router position as a reasonable accommodation under the ADA, says the opinion.

But Wal-Mart required her to apply and compete for the position with other applicants, and ultimately filled the job with a nondisabled applicant, explaining Ms. Huber was not the most qualified candidate. Instead, it placed her in a maintenance associate position.

Ms. Huber then sued Wal-Mart in federal court claiming discrimination under the ADA and the Arkansas Civil Rights Act of 1993.

The court ruled in Ms. Huber's favor, and Wal-Mart appealed.

"The parties' only dispute is whether the ADA requires an employer, as a reasonable accommodation, to give a current disabled employee preference in filling a vacant position when the employee is able to perform the job duties, but is not the most qualified candidate," says the decision.

The decision notes there have been earlier conflicting appellate court rulings on this issue. In 1999, the 10th U.S. Circuit Court of Appeals in Denver held that under the ADA, an employer must automatically award a position to a qualified disabled employee, "regardless of whether other better qualified applicants are available, and despite an employer's policy to hire the best applicant."

But in a 2000 decision, the 7th U.S. Circuit Court of Appeals in Chicago held the ADA does not require an employer to reassign a qualified disabled employee to a job if it has a policy of hiring the most qualified applicant, and a more qualified worker is available.

The 8th Circuit agreed with the 7th Circuit. The ADA "is not an affirmative action statute" and does not require an employer to reassign a disabled worker "when such a reassignment would violate a legitimate

See ADA page 26

### FIRST QUARTER 2007 MANAGED CARE ORGANIZATION RESULTS

Ranked by net income. Dollar figures in millions.

Company	Net income 2007	% Increase (Decrease)	Revenues 2007	% Increase (Decrease)
UnitedHealth Group	\$927.0	4.0%	\$19,047.0	8.0%
WellPoint Inc.	783.1	7.0	15,079.2	9.0
Kaiser Permanente	698.0	56.0	9,400.0	9.0
Aetna Inc.	434.6	8.0	6,700.0	7.0
CIGNA Corp.	289.0	(18.0)	4,374.0	6.5
Coventry Health Care Inc.	121.7	0.6	2,236.5	15.4
Health Net Inc.	88.6	16.0	3,428.9	7.6
Humana Inc.	71.2	(14.9)	6,204.8	31.9

## Managed care companies' first-quarter profits lower

But health care costs, premiums are likely to remain stable

By GLORIA GONZALEZ

**NEW YORK**—Commercial health care costs and premium increases likely will remain in a stable range this year, despite unusually low profits for many of the major managed care companies in the first quarter of 2007.

Indianapolis-based WellPoint Inc., the largest managed care company in terms of membership, said it expects its medical cost trend to remain relatively flat in 2007 at just less than 8%.

Medical costs and rate hikes lin-

gered in the 6% to 8% range in the first quarter.

Standard & Poor's Corp. expects medical costs and premiums to increase at the same pace among managed care companies this year, Shellie Stoddard, a director with S&P in New York, said during the company's conference "Health Insurance 2007: Realizing Reform" held in New York on June 6. "Margins have compressed to that level," she said.

In 2008, though, premium increases will fall below cost trends, as managed care companies face increasing price competition, she said.

The key question for health insurers is whether they have

See MANAGED CARE page 28



ON OCT. 8, 2007, *Business Insurance* will celebrate its 40th anniversary of publication. Each week until then, *BI* will offer a peek at news we reported during the past four decades.

**MAY 30, 1977** A Michigan county court judge rejected a massive liability suit against 16 drug companies that marketed diethylstilbestrol, or DES, but an appeal was considered likely. The suit represents 144 women whose mothers were prescribed the drug during pregnancy. The daughters, who developed cancerous or precancerous conditions, seek a combined \$650 million in damages.

**JUNE 27, 1977** President Jimmy Carter appoints a commission to study inequities in retirement plans, both public and private. One possible recommendation is the expansion of the Employee Retirement Income Security Act to include public retirements plans. A key concern of the panel is "double dipping" in federal benefits by military personnel already receiving pensions.

# Massachusetts eases compliance with health reform law

*Final rules governing creditable coverage help employers, workers*

By **JERRY GEISEL**

**BOSTON**—Massachusetts regulators last week finalized rules to make it easier for employers and employees to comply with the state's landmark health care reform law.

The final rules largely incorporate regulations proposed in March by the Commonwealth Health Insurance Connector Authority, the state agency in charge of implementing key portions of the 2006 law. The central goal of the law is to ensure near-universal health care coverage for state residents within a few years.

For example, the final rule delays the deadline until Jan. 1, 2009, for most state

residents to be enrolled in health care plans that meet state design requirements, known as minimum creditable coverage criteria. Individuals not enrolled in such plans face financial penalties.

Earlier, board officials said the delay was needed to give employers more time to analyze the coverage requirements and make any necessary changes to their plans to prevent employees from being hit with tax penalties.

The Connector board also finalized design requirements for a plan to be considered to be offering minimum coverage. Among other things, such plans can't have annual deductibles greater than \$2,000 for individual coverage or \$4,000 for family coverage. The annual out-of-pocket expenses, including deductibles, for in-network services can't exceed \$5,000 for individual coverage and \$10,000 for family coverage.

Additionally, high-deductible health

insurance plans linked to health savings accounts automatically would be considered minimum creditable coverage.

The board, though, did change an earlier proposed rule that largely affects Section 125 plans that employers must offer to employees. The plans must be offered starting July 1 and will allow employees to avoid penalties for not having coverage. Additionally, if an employer does not offer such a plan and employees then receive free care in a hospital, the employer can get stuck with picking up part of the tab. In a Section 125 plan, employees pay for health care premiums with pretax contributions.

The board initially proposed a maximum two-month waiting period after which new employees could enroll in the plans. Under the final rules, if an employer pays a portion of the premium, the waiting period for coverage can be identical to the

## WHAT IS MINIMUM CREDITABLE COVERAGE?

*By Jan. 1, 2009, Massachusetts residents would have to be enrolled, unless qualifying for an exemption, in health plans with these features to avoid financial penalties*

- No annual benefit limits on core covered services.
- Annual deductibles for in-network covered services not to exceed \$2,000 for individual coverage or \$4,000 for family coverage.
- Annual out-of-pocket limit cannot exceed \$5,000 for individuals and \$10,000 for families.
- Deductible for prescription drug coverage, if separate from the health plan, cannot exceed \$250 for individual coverage and \$500 for family coverage.

Source: Commonwealth Health Insurance Connector Authority

See **RULES** page 26

## Discovery rights limited in asbestos cover case

*Court restricts reinsurers' access to information*

By **DOUGLAS McLEOD**

**NEW YORK**—A state appeals court has limited reinsurers' discovery rights in a dispute with United States Fidelity & Guaranty Co. over \$400 million in reinsurance claims for USF&G asbestos losses.

A New York appellate panel late last month modified a lower court's broad discovery ruling, finding that USF&G's attorney-client and work product privileges limit discovery to testimony and documents related to the insurer's preparation of its reinsurance claim. Reinsurers had sought similar information on USF&G's underlying settlement of asbestos claims with policyholder Western MacArthur Co.

Robert Lewin, a lawyer representing TIG Insurance Co., one of the reinsurers, said TIG will not seek permission to appeal the panel's ruling. Mr. Lewin, who is a partner at Stroock & Stroock & Lavan L.L.P. in New York, also said that information regarding the underlying settlement may still be discoverable within the limits laid down by the appeals court.

Lawyers for USF&G and the Excess Casualty Reinsurance Assn., a pool that assumed part of USF&G's risk, could not be reached. USF&G wrote liability coverage for asbestos producer Western MacArthur from 1948 to 1960, according to the ruling. From 1956 to 1962, USF&G reinsured the Western MacArthur business with American Re-Insurance Co. and the ECRA pool, each of which assumed 50% of the ceded risk.

As Western MacArthur became mired in asbestos litigation, though, USF&G denied coverage. The company sued for bad faith, and in June 2002 USF&G agreed to pay \$975 million to settle asbestos claims in a Western MacArthur bankruptcy reorganization, the ruling says.

USF&G informed its reinsurers of the settlement in November 2002 and billed them \$400 million for their part of the total. The insurer allocated all of the underlying asbestos losses to the last treaty year, rather than over all years the treaties were in force.

A month later, American Re sued USF&G for a court declaration of its obligations and those of the ECRA pool members under the treaties.

The two sides previously have fought over discovery issues in the case, with USF&G losing a challenge to an initial round of reinsurer discovery demands.

Subsequently, TIG, an ECRA pool member, demanded all USF&G communications regarding the preparation of its reinsurance claim—including its allocation decision—and loss assessments related to the underlying Western MacArthur settlement.

This time, though, in a May 29 ruling, a five-judge panel of the New York Appellate Division, First Department, narrowed a lower court's broad discovery ruling against USF&G.

The appeals court rejected the lower court's findings that the reinsurers have a "substantial need" for the information and that USF&G's claimed privileges are negated by the "common interest" it has with reinsurers in the case.

The panel also found, though, that earlier deposition testimony by a USF&G official touched on advice the insurer got in preparing its reinsurance claim and therefore opens the preparation of the claim to discovery, despite claims of attorney-client and work product privilege.

*American Re-Insurance Co. vs. United States Fidelity & Guaranty Co. et al; New York State Supreme Court Appellate Division, First Department; 2007 NY Slip Opinion 04523.*

## Double-digit health cost hikes ahead

*Aon Consulting study sees average increases over 10% in all plan types*

By **JOANNE WOJCIK**

Health care costs are expected to increase at double-digit rates for the 12-month rating periods beginning between April 2007 and September 2007, according to a new survey by Aon Consulting, a unit of Chicago-based Aon Corp.

The survey of more than 70 medical, dental, pharmacy and vision plan vendors projects increases averaging 10.9% for health maintenance organizations; 10.8% for point-of-service plans; 11.2% for preferred provider plans; 12.7% for indemnity plans; and 10.7% for consumer-driven health plans.

"Employers are still challenged by the fact that health care cost increases are more than four times general inflation rates," said Bill

Sharon, senior vp with Aon Consulting and director of the study, in a statement.

"For many businesses, health care costs continue to be their fastest-growing expense," he said.

Reasons vendors cited for these increases included increasing patient demand for services, an aging population, increasing medical technology costs, increasing hospital costs, increasing price and utilization of prescription drugs, poor lifestyle choices, cost-shifting and medical malpractice costs.

Insurers are forecasting consumer-driven trend rates to be the same as HMOs, POS plans and PPOs because the number of members in CDHP plans is still relatively small and the experience to date is not 100% credible, according to the

Aon Consulting survey report. In addition, CDHP claims costs vary considerably from employer to employer depending on plan design, level of enrollment and degree of consumerism education, Aon reported.

One bright spot in the survey was a projection that pharmacy costs are trending downward and are expected to increase by 9.5% in 2007, compared with 12.2% last year. The cost of specialty drugs, such as injectable medications, is projected to grow by 15.1%, down from 17% last year.

Aon Consulting's Health Care Trends Survey is conducted every six months.

The complete study is available online at [www.aon.com/us/busi/hc\\_consulting/hw\\_redirect.jsp](http://www.aon.com/us/busi/hc_consulting/hw_redirect.jsp).

## Some insurers offering NBCR cover

*Low sublimits available for terrorism risk despite exclusion in TRIA*

By **RUPAL PAREKH**

**NEW YORK**—More insurers are offering coverage for nuclear, biological, chemical and radiological terrorist attacks, despite lingering problems in pricing and evaluating those risks, some industry executives say.

NBCR threats are not covered under the Terrorism Risk Insurance Extension Act of 2005, the federal terrorism insurance backstop which is an extension of the Terrorism Risk Insurance Act of 2002.

But more companies have been making NBCR coverage available in the past 12 months, though it is sublimited to "very low levels," said Jack Gressier, chairman of Bermuda-based AXIS Insurance.

Mr. Gressier made his comments as part of a panel discussion focusing on property/casualty trends at Standard & Poor's Corp.'s annual

industry conference last week in New York. Damien Magarelli, a director of New York-based S&P, served as moderator for the session.



**For insurance companies, terrorism represents 'a risk to be managed rather than a product to be sold.'**

Kenneth J. LeStrange, Endurance Specialty

order to retain renewal business for terrorism policies, Mr. Gressier said. "We personally believe it is possible" to underwrite terrorism risks—AXIS sells standalone terrorism policies—but adequately pricing those risks is becoming "increasingly difficult," Mr. Gressier said.

Pricing adequacy for the product remains a concern because many insurers fear predictive tools for terrorism are inaccurate, Mr. Gressier noted.

Kenneth J. LeStrange, chairman,

Those that are offering sublimits for NBCR events are largely doing so

See **TERRORISM** page 27

"Dempsey, Myers helped us recover from a devastating event by working with us, side-by-side, to document our BI claim."

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## Call for Nominations

### 2007 Benefit Manager OF THE YEAR

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

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

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

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

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

**DEADLINE FOR NOMINATIONS:**  
**June 22, 2007**

For nominating forms and instructions, call 312-649-5274 or e-mail: [rcoccia@BusinessInsurance.com](mailto:rcoccia@BusinessInsurance.com) or visit

[BusinessInsurance.com/BMOY](http://BusinessInsurance.com/BMOY)

## Business Insurance

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## Commentary

# There's a difference in news and opinions

One of the things I look forward to as editor is hearing from readers. We like to know when we've published something that strikes a chord, but sometimes what appears in *BI* doesn't resonate, and readers express their disapproval.

That was especially true recently after a commentary by one of *BI*'s senior editors. Based on the mostly critical communications I received, it seems some readers have confused news and opinion. There is a difference.

In her May 21 commentary, Senior Editor Joanne Wojcik extolled the Planned Parenthood Federation of America for providing preventive health care services to women and men, giving free or low-cost access to care at a time when tens of millions of uninsured lack such access.

Quite a few readers suggested that *Business Insurance* was promoting Planned Parenthood, an organization that they noted is the major provider of abortions in the United States. Contrary to one angry reader's suggestion, *BI* is not a "running dog apologist" for Planned Parenthood or any organization.

*BI* is not promoting abortion, endorsing the right to procure one or advocating for those who support such procedures. We generally have avoided issues that do not relate in some way to risk management, commercial insurance or employee benefits, and we will continue to do so.

As some readers noted, it is true that Planned Parenthood clinics have performed a significant number of the estimated 40 million abortions reported since that procedure was legalized nationally by the Supreme Court in 1973. That figure comes from the Alan Guttmacher Institute, which was founded by a doctor who helped create the Planned Parenthood Federation. It is also true that Planned Parenthood's founder, Margaret Sanger, was a eugenicist who advocated sterilization for the poor and minorities. But the readers who criticized *BI* missed two important points: Ms. Wojcik's column was not about abortion; it was about access to health care. Furthermore, the commentary was her opinion.

Opinion is defined as a belief, not based on certainty but what seems true or probable to a person's mind. Opinions are therefore open to dispute.

Readers will find writers' opinions in the pages of this magazine



## REGIS COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com)

and at *BusinessInsurance.com*, but not in stories that report on news events. Columns such as this one, editorials, Perspectives by industry executives and commentaries by senior editors of the magazine are all intended to advance a point of view—that of the writers. A writer's opinions do not necessarily reflect those of others at the magazine and should not be inferred as representing "an agenda" of *Business*

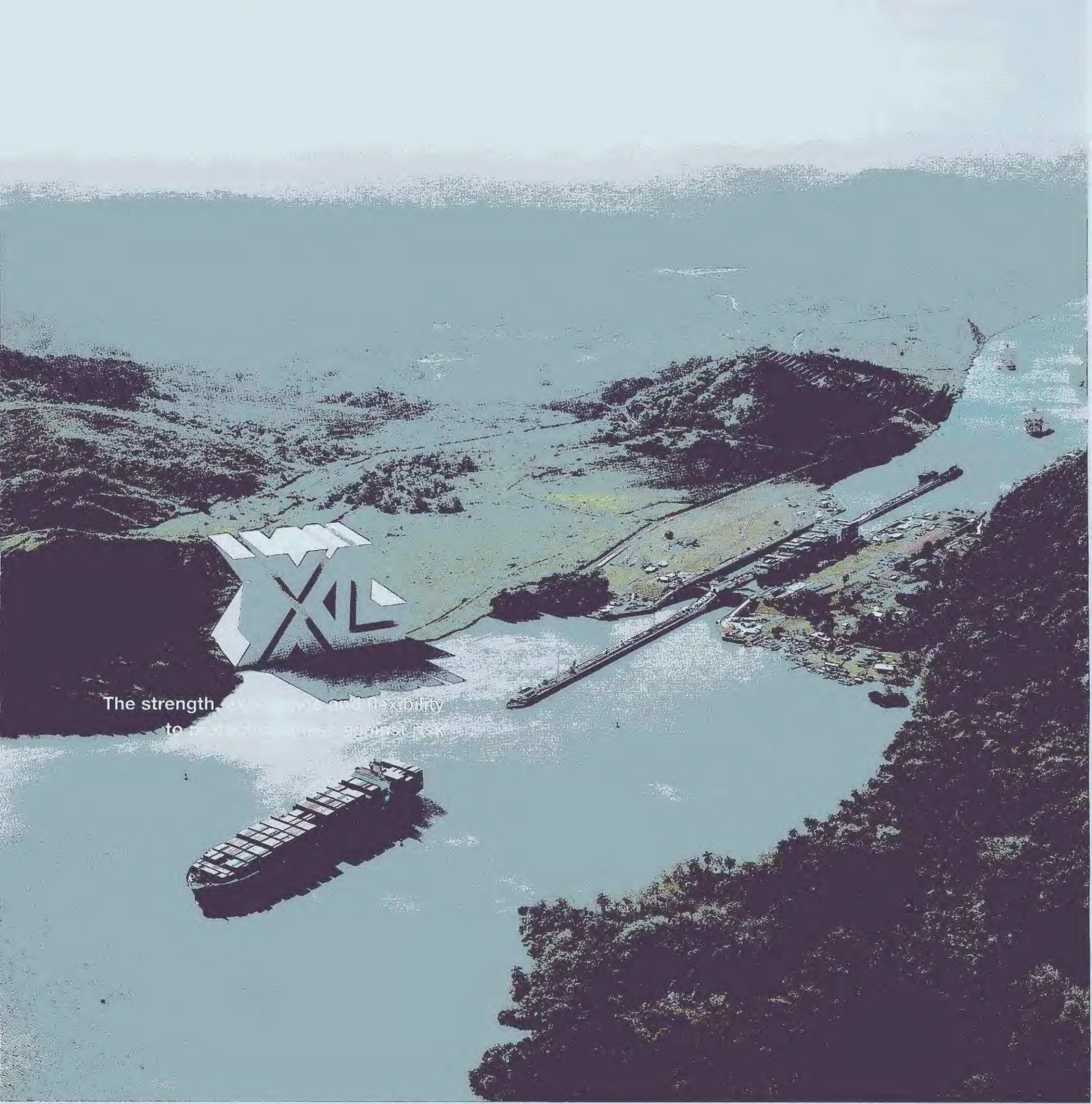
**Opinions do not require objectivity or discussion of all sides because their point is to take a side.**

### Insurance.

News stories, such as those found on pages 1, 3, 4 and inside the magazine, are based on facts and are intended to provide objective and balanced information, not to forward the writer's opinion. There frequently is more than one side to a news story, and *BI* strives to present all sides. Sometimes we get the facts wrong or omit an important fact. When that is the case, we will correct that error or omission.

Opinion pieces contrast news articles. Opinions do not require objectivity or discussion of all sides because their point is to take a side.

It's important to understand the difference between news and opinion. To help keep our readers informed and promote discussion of risk management, insurance and benefit issues, we will continue to offer both. Readers are free to disagree with the opinions we publish, and are welcome to share their own.



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# Business Insurance OPINIONS

## Benefits equity ruling was a courageous act

THE BEHIND-THE-SCENES story sometimes is more interesting than the main story, and we believe last week's ruling on an Equal Employment Opportunity Commission regulation affecting retiree health care plans falls into that category.

The main story, as we report on page 1, is that the 3rd U.S. Circuit Court of Appeals ruled that the EEOC has the right to issue a rule exempting retiree health care plans from the Age Discrimination and Employment Act.

The practical effect is that employers can continue to offer—because of the availability of Medicare—lesser health care benefits to older retirees than to younger retirees.

This ruling likely ends years of litigation and the resulting uncertainty for employers on whether they would be sued for age discrimination because they didn't provide the same level of health care benefits for Medicare-eligible retirees as they do for younger retirees.

*At times, practicality triumphs over principle.*

Even more important and interesting was the change of heart by the EEOC. Years ago, the EEOC not only applauded a ruling—also by the 3rd Circuit—that said retiree health care plans are covered by ADEA, it incorporated the ruling in its compliance manual.

To the EEOC's credit, that wasn't the end of the issue. The agency's officials opened their doors to employers and organized labor, both of which warned of the anti-retiree consequences if the ruling stood. If employers had to spend equal amounts on health care coverage for the two groups of retirees, the EEOC was told, the inevitable result would be a cutback in benefits provided to younger retirees or even elimination of retiree health care coverage.

Those arguments obviously struck home with the EEOC as the agency not only accepted the arguments but also cited them in subsequent litigation.

Obviously, for an agency in charge of enforcing age discrimination law, the idea of sanctioning benefit inequities must have been difficult to accept. But at times, practicality triumphs over principle. Clearly, in the interest of ensuring the maximum benefits for all retirees, this was one such case and the EEOC was wise to recognize it as such.

## Broker consolidation fueled by private equity

IT DOESN'T TAKE clairvoyance to forecast consolidation among insurance brokers—it's already happening.

As we report on page 1, private equity firms continue to acquire brokers, with The Blackstone Group agreeing to purchase a majority stake in Alliant Insurance Services Inc. for an estimated \$1.1 billion. This is the latest in a string of billion-dollar private equity deals, including purchases of USI Holdings Corp. and Hub International Ltd.

Why are investors so interested in brokers? For one, they tend to produce consistent returns, with stable client bases and without the risk associated with underwriting. Revenue growth, however, usually comes via acquisition, and that's part of Blackstone's plan for Alliant. Interestingly, all three recently acquired brokers were largely built on a strategy of acquiring other firms.

But questions remain. In the soft market, typically a difficult environment for business growth, can brokers generate returns high enough to satisfy investors? Will the owners make expense cuts that hurt client service? More consolidation in the brokerage field clearly is ahead, but we wonder if that ultimately will benefit buyers and underwriters, who both are well served by a broad choice of distribution channels.



### Letters

#### Human touch prompts long-term success

TO THE EDITOR: *Business Insurance's* recent reporting on human capital risk struck a chord.

As a former risk manager and insurance professional, I now head a search firm specializing in risk management and insurance placements. My knowledge and experience of the property and casualty insurance business gives me a key differentiation point when compared to my competitors.

Knowing the technical aspects of the business is important, but equally important is knowing the cultures of the companies we serve. We are able

to present candidates who embody those unique qualities which mirror those of the client company. It results in a much better long term, strategic placement.

I am glad to hear that risk managers are recognizing the value of the human capital piece of the risk management process. It confirms that our strategy and service are on the right course.

**Barney Mercer, CPCU, ARM**  
Principal  
Mercer & Associates  
Dallas

### Write us

*Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: r.coccia@businessinsurance.com

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

Will RIMS' position opposing all contingent commissions lead more brokers to cease accepting them?



**NEXT WEEK'S POLL:** Does private equity ownership help insurance industry companies serve customers more effectively?

BI Online Poll tool sponsored by Wausau

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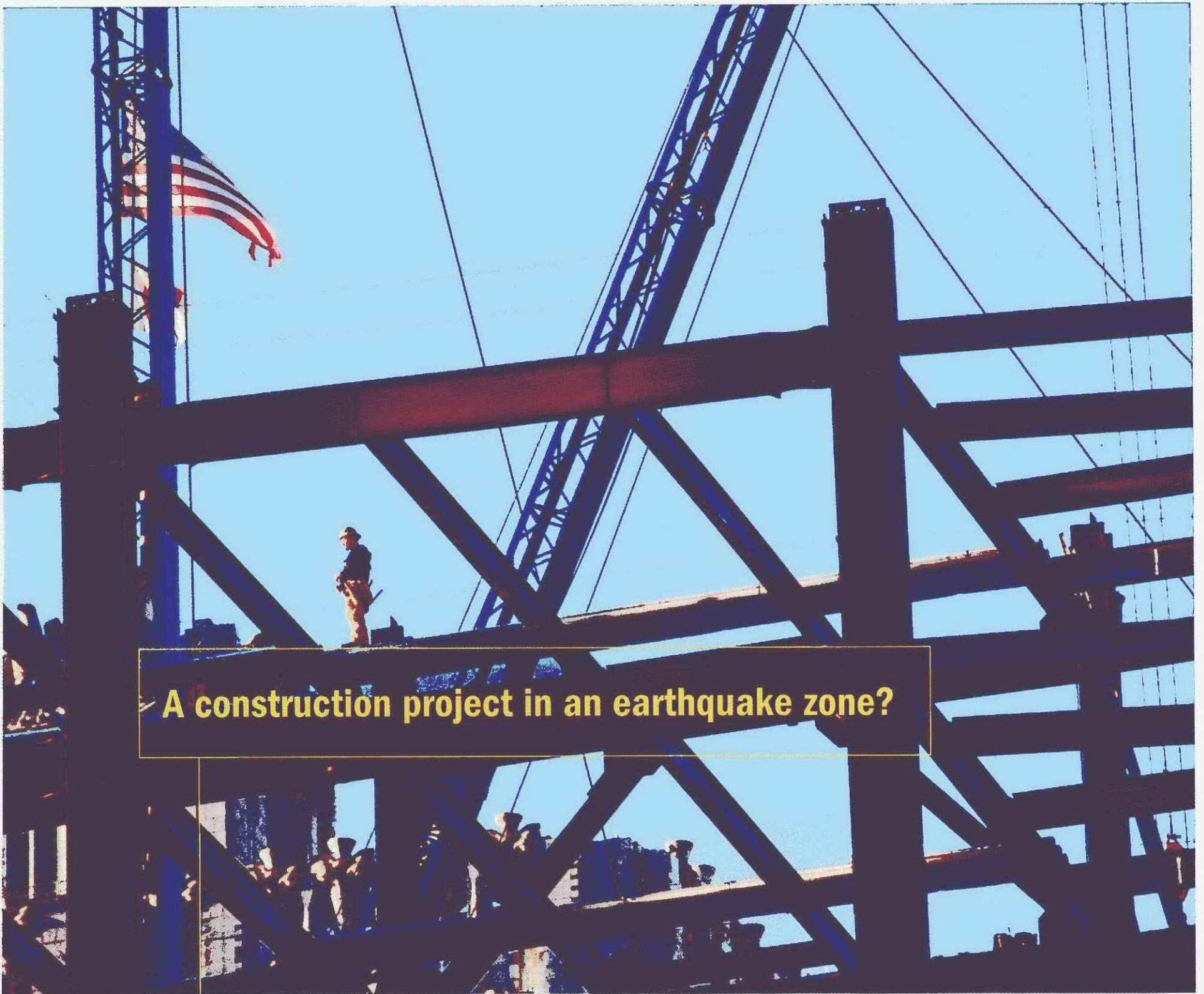
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# PUBLIC ENTITIES GRAPPLE WITH CAT COVERAGE

Government  
Risk  
Management

SPOTLIGHT

The main building of Charlotte High School in Punta Gorda, Fla., stood empty, supported by massive metal bracing, a year after severe damage from Hurricane Charley in 2004. Many public entities continue to struggle with the high cost of insuring against catastrophes.

AP PHOTO

## Catastrophe prices lead some to forgo cover

*Governments, school districts weigh costs; some buyers opt to skip earthquake protection*

By JUDY GREENWALD

There have been few natural catastrophes in the United States since early 2006, but you wouldn't know it by talking to public entity risk managers seeking catastrophe coverage in earthquake and hurricane-prone areas.

Public entity risk managers in California and the Gulf Coast, including Florida and Louisiana, still face high rates and tight capacity, although East Coast risk managers report some relief this year (see story, page 16).

In response, some risk managers—particularly in California—are not purchasing any catastrophe coverage.

Other risk managers are developing creative solutions to get coverage, while self-funding is an option as well (see story, page 18).

Susan Blankenburg, vp, public

entity practice for Marsh Inc. in San Francisco, said California public entities "have a very difficult time trying to understand why they were being punished" for Florida's hurricanes when California has not had major cat losses.

"But what the marketplace is doing is really putting all cat perils into one pot. So to a certain degree," California public entities are subsidizing hurricane-damaged areas, said Ms. Blankenburg.

"Our public entities bought what they felt they could and, actually in a lot of cases, probably bought more than what they had in their budgets," she said.

However, John Chino, senior vp for Arthur J. Gallagher & Co. in Aliso Viejo, Calif., said most California public entity risk managers are not purchasing earthquake insurance. He said he has just one client still buying the coverage.

Mr. Chino said the biggest factor differentiating public agencies and commercial entities "is that public agencies have this perception that (the Federal Emergency Management Agency) is going to bail them out, because in the event of an earthquake, the county would be declared a federal disaster (area), and they are in line for that kind of disaster relief."

In some cases, not buying cat coverage is nothing new.

The San Francisco Unified School District has never had earthquake insurance because of its cost, said Matt Hansen, director of risk management. "We want to perform our due diligence with the public's money because that's our money, but we do have a track record for working well" with FEMA, including following the 1989 temblor in which district property sustained moderate damage, he said.

Anaheim, Calif., stopped buying earthquake coverage about six years ago, said Tom Vance, the city's risk manager.

"We do look at the cost each year, but we don't think it makes any sense to spend taxpayers' money on it when it seems prohibitively expensive for the limits you get, given the deductibles and everything," said Mr. Vance.

Instead, the city plans to look to FEMA and California's Office of Emergency Services to rebuild public facilities in the event of an earthquake, he said.

Others are just paying the higher rates.

Manhattan Beach, Calif., studied whether the city should eliminate coverage on certain buildings, but found that "for every million dollars of building value that we take

See PUBLIC page 14

ZERO  
TOLERANCE  
CAN INCREASE  
SCHOOLS' RISKS  
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Q&A: PRIMA  
PRESIDENT  
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PAGE 20

TRAINING  
ESSENTIAL  
TO AVOID POLICE  
LIABILITY  
PAGE 23

**WHO'S IN THE POOL?**

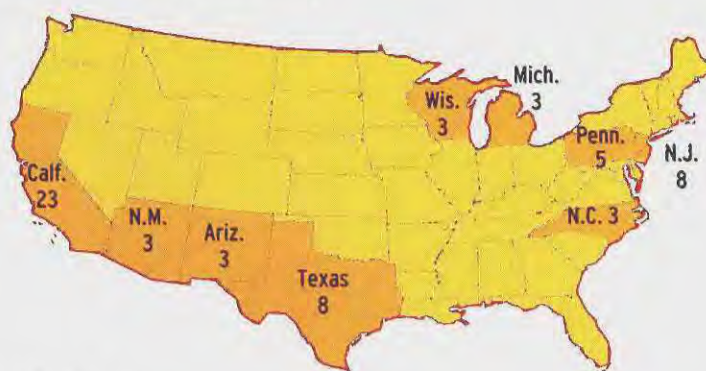
Types of members in public entity risk pools\*

Cities/Towns	19.6%
Counties	16.7%
Special purpose districts	15.7%
School districts	13.2%
Transit districts	12.7%
Housing Authorities	10.3%
Other	6.4%
5.4% Higher Education	

\*Pools may cover more than one membership type  
Source: BI survey

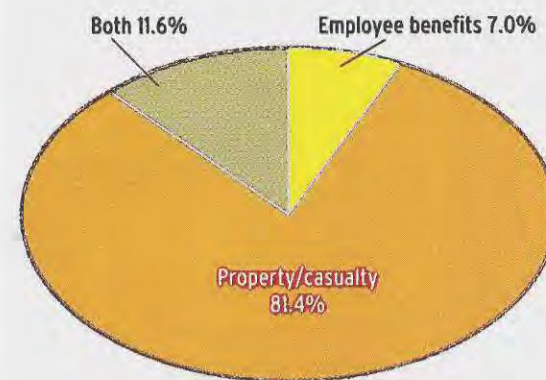
**STATES WITH THE MOST PUBLIC ENTITY RISK POOLS**

Ranked by pools that responded to survey



Source: BI survey

**WHAT TYPE OF POOLS?**



Source: BI survey

# Largest public entity risk pools

Ranked by member contributions in 2006

Rank	Pool name/Address	Phone/Fax/Web site	2006 member contributions	2006 members	Type of pool	Member type	Principal officer
<b>1</b>	Local Government Center (LGC) HealthTrust L.L.C. P.O. Box 617, Concord, N.H. 03301	603-224-7447 Fax: 603-224-5406 <a href="http://www.nhlgc.org">www.nhlgc.org</a>	\$316,402,602	300	Employee benefits	Cities/towns/townships, counties, housing authorities, school districts, special districts, transit districts	John B. Andrews, executive director/secretary/treasurer
<b>2</b>	California State Assn. of Counties Excess Insurance Authority (CSAC EIA) 3017 Gold Canal Drive, Rancho Cordova, Calif. 95670	916-631-7363 Fax: 916-631-7112 <a href="http://www.csac-eia.org">www.csac-eia.org</a>	\$292,000,000	205	Employee benefits & property/casualty	Cities/towns/townships, counties, higher education, housing authorities, school districts, special districts, transit districts	Michael Fleming, CEO
<b>3</b>	Protected Insurance Program for Schools P.O. Box 4328, Torrance, Calif. 90510	310-212-0363 Fax: 310-212-0300 <a href="http://www.pipsjpa.org">www.pipsjpa.org</a>	\$171,841,780	391	Property/casualty	Higher education, school districts	Eloy Oakley, president
<b>4</b>	Alliance of Schools for Cooperative Insurance Programs (ASCIP) 12750 Center Court Drive, Suite 205, Cerritos, Calif. 90703	562-403-4640 Fax: 562-403-4644 <a href="http://www.ascip.org">www.ascip.org</a>	\$148,344,000	150	Employee benefits & property/casualty	Higher education, school districts, charter schools, community college districts, regional occupational programs	Angela Jones, president
<b>5</b>	Texas Municipal League Intergovernmental Risk Pool P.O. Box 149194, Austin, Texas 78714-9194	512-491-2300 Fax: 512-491-2311 <a href="http://www.tmlrp.org">www.tmlrp.org</a>	\$141,772,929	2,610	Property/casualty	Cities/towns/townships, housing authorities, special districts, transit districts	R. Marvin Townsend, executive director
<b>6</b>	Texas Assn. of School Boards Risk Management Fund P.O. Box 301, Austin, Texas 78767	512-467-3510 Fax: 512-467-3523 <a href="http://www.tasbrmf.org">www.tasbrmf.org</a>	\$96,477,795	1,122	Property/casualty	Higher education, school districts, special districts,	Dubravka Romano, associate executive director-risk management services
<b>7</b>	Housing Authority Insurance Group <sup>1</sup> 189 Commerce Court, Cheshire, Conn. 06712-0189	203-272-8220 Fax: 203-271-2265 <a href="http://www.housingcenter.com">www.housingcenter.com</a>	\$95,946,000	923	Property/casualty	Housing authorities, nonprofits	Dan Labrie, CEO
<b>8</b>	Texas Assn. of Counties Health & Employee Benefits Pool P.O. Box 2131, Austin, Texas 78701	512-478-8753 Fax: 512-478-1426 <a href="http://www.county.org">www.county.org</a>	\$92,330,088	168	Employee benefits	Counties, special districts	Jim Jean, director-program administration
<b>9</b>	BETA Healthcare Group Risk Management Authority 1443 Danville Blvd., Alamo, Calif. 94507	925-838-6070 Fax: 925-838-6088 <a href="http://www.betahg.com">www.betahg.com</a>	\$82,369,211	88	Property/casualty	Counties, special districts, nonprofit, 501(c)(3) health care facilities	Thomas J. Wander, CEO
<b>10</b>	Connecticut Interlocal Risk Management Agency 900 Chapel St., Ninth Floor, New Haven, Conn. 06510-2807	203-498-3000 Fax: 203-773-6971 <a href="http://www.ccm-ct.org/insurance">www.ccm-ct.org/insurance</a>	\$74,250,877	384	Property/casualty	Cities/towns/townships, housing authorities, school districts, special districts, transit districts, local public agencies	Bruce A. Wollschlager, president/CEO

<sup>1</sup> Includes Housing Authority Property Insurance and Housing Authority Risk Retention Group

Source: BI survey

Researched by Kevin Edison and Karen Tucker

Visit [www.businessinsurance.com](http://www.businessinsurance.com) for more information and to access the full searchable Directory of Public Entity Risk Pools. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

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# Florida property catastrophe capacity may be on the rebound

By JUDY GREENWALD

Many observers see improved signs of property catastrophe capacity in Florida for public entity risk managers.

"In Florida, we're actually finding some more capacity this year than we did a year ago," said David L. Marcus, Boca Raton, Fla.-based co-managing director of the public entity and scholastic division of Arthur J. Gallagher & Co.

While it's not a huge amount, "there is more capacity for wind," primarily because of last year's low catastrophe losses. Mr. Marcus said

a large public entity can obtain \$200 million to \$250 million in capacity for a particular risk.

In addition, "we have moderating rates," and depending on the account, there might even be "some slight price decrease," as well as a "very slight" loosening in terms, he said.

Virginia Dellago, senior vp and client executive at Marsh Inc. in Tampa, Fla., said additional capacity is improving the situation in Florida and "helping to provide a little bit of competition right now. It is by no means back to what it was, and I don't know that it ever

will be, but I would say this year's definitely an improvement over last year."

Nancy Sylvester, a Baton Rouge, La.-based co-managing director for Gallagher's public entity and scholastic division, said capacity is greater, in part, because there are new insurers in the marketplace.

But "for the most part, I think risk managers are having to be hugely creative with their insurance programs and the amount of risk they're willing to retain, and they're having to be very flexible," Ms. Sylvester said.

Keri Martin, assistant risk manag-

er for the city of Winter Park, Fla., had difficulty obtaining adequate capacity last year. But as the city embarks on its renewal this year, there are some "initial indications that things are calming down," said Ms. Martin, who noted the city is not prone to significant windstorm damage because of its central Florida location.

"The insurers have loosened up a bit and it looks like we're going to be able to get a lot more coverage...for our money this year, so I'm pleased with how things are looking," said Ms. Martin.

"Last year we had capacity issues

and this year we don't seem to be facing those kinds of issues," said Joel McPherson, risk manager for the city of Titusville, Fla. However, "We'll be paying more. Whether it's a lot more, we don't know."

This year's renewals were "certainly easier than last year's although the cost is still expensive," said Mark Langdorf, director of risk management for the Brevard County Public Schools in Melbourne, Fla.

The district was able to procure \$5 million more in windstorm coverage than it had last year, for a total of \$55 million, but paid \$900,000 less, said Mr. Langdorf.

However, the district now has a 5% deductible per building, which, for example, could amount to \$2.5 million for a building valued at \$50

**'For the most part, I think risk managers are having to be hugely creative with their insurance programs and the amount of risk they're willing to retain, and they're having to be very flexible.'**

Nancy Sylvester,  
Arthur J. Gallagher & Co.

million, as opposed to the flat \$1 million deductible it has had in the past. When a district has as many schools as Brevard does, "the potential deductible exposure is just tremendous," said Mr. Langdorf.

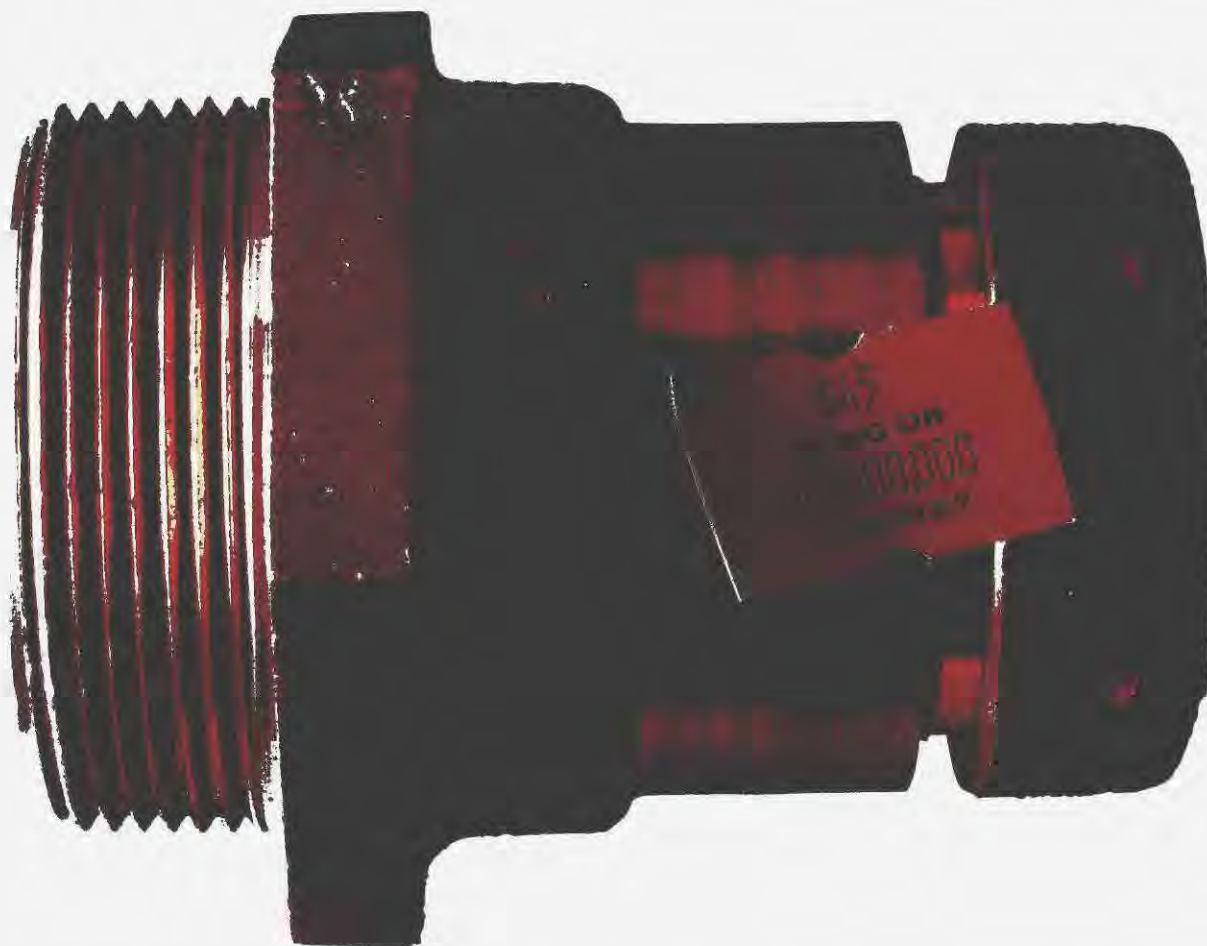
Jack Moore, Houma, La.-based risk manager for the Terrebonne Parish School District, which is in the southern part of the state, said last year, "there was zero capacity, so not only could you not really find adequate coverage, when you did find somebody who was willing to write a minuscule amount of coverage, it was for quadruple of what you were paying for full coverage before."

"Now, I can get more coverage, but the arm and the leg that I paid last year? I've got to give them twofold this time," said Mr. Moore.

He noted that in the northern part of the state, "pricing and availability not only improves but becomes affordable."

Doing whatever you can to protect your facilities does help, according to John Williams, director of risk management for the West Palm Beach, Fla.-based Solid Waste Authority of Palm Beach.

Mr. Williams said as a highly protected risk, "We have not had a problem in the last few years securing coverage." In many cases, he said, the authority has gone beyond code to retrofit its buildings, using the latest building methods to achieve lower rates.



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## Programs to avoid disruptive behavior seen as stronger tactic in student discipline

Rigid or flexible zero tolerance policies on student behavior will not discourage disruptive student behavior, according to experts.

Those policies—which typically lead to student suspensions, expulsions and arrests for widely varying degrees of disruptive behavior—must be underpinned with programs designed to prevent bad behavior, experts say.

“Zero tolerance for violations only works if a school is taking action to reduce and eliminate a problem,” said Larry Cohen, executive director of the Oakland, Calif.-based Prevention Institute, a nonprofit organization dedicated to improving community health.

“Those things, in my mind, tend to be lacking,” he said. The result is that schools often boot out problem students without any plan for them, which only shifts the problem from the schoolyard to the streets, he said.

In an August 2006 report, the Washington-based American Psychological Assn. called on schools to relax their zero tolerance policies to reduce the number of students who are losing class time. The APA, citing 10 years of school violence research, encouraged schools to move to



Experts say students gain more from school programs that help them avoid disruptive behavior.

programs designed to prevent disruptive behavior.

Child psychologist Steven Dranoff said programs that help students negotiate through natural bends in the childhood road to socially acceptable behavior are preferable to zero tolerance policies.

But whether a school has flexible or rigid policies, school officials as well as students must “understand why kids do what they do,” and students have to learn how to break the cycle of disruptive behavior, said Mr. Dra-

noff, president of D&D Industrial Consulting Inc. of Clifton, N.J.

The San Diego public school system added a behavior program to its zero tolerance disciplinary system with some favorable results, according to Earlene Dunbar, program manager for counseling and the guidance department.

Under the district's zero tolerance system, a disciplinary committee considers whether the school that is recommending suspension or expulsion for a student had an appropriate level of intervention in the area where the student violated school policy, Ms. Dunbar said.

To that end, the district three years ago implemented a program, designed by Mr. Dranoff, at a middle school with a history of significant student behavioral problems. Suspensions and fighting at the school have dropped considerably, Ms. Dunbar said.

Hoping for similar results, the district has recently implemented the program at two more schools.

In addition, officials are considering modifying the district's zero tolerance policies because of the research that shows “suspending students doesn't change behavior,” Ms. Dunbar said.

—By Dave Lenckus

## Questions Answers

The skills needed by risk managers of public entities in the United States have changed greatly in recent years. In an interview with Business Insurance Senior Editor Dave Lenckus, William C. Kostner, incoming president of the Alexandria, Va.-based Public Risk Management Assn. and risk manager for the city of Lincoln, Neb., examined some of those changes and his goals for PRIMA.



## PRIMA's focus on skills

**Q: How have challenges that public entity risk managers face changed over the past few years?**

Well, I think in the past we focused more on straightforward safety, insurance, financing of organizational risks, contract requirements, etc., and I think we still do that.

But I think today we're facing some new challenges, and I see them as disasters, financial issues and business orientation issues... and that involves enterprise risk management...also employment practices liability.

**Q: Given those challenges, over the past 10 years have public entity risk managers needed to develop a different set of skills set to deal with these challenges effectively?**

Well, I think we have.... Besides all of the standard skills that we would have with us...I think some of the things we've been asked to do are to become more business managers...to look at additional ways to fund exposures—really to come in as problem solvers to deal with problems within our public entities.... Most of the risk managers I deal with now are more business-savvy than in the past.

**Q: Which skill sets would you say risk managers have developed best, and where do you see room for improvement?**

Certainly the technical (skill) is there and continues to be there. But I think beyond that, there's more business knowledge. I think public entities are forced to look more at self-funding; they're forced to look more at how to solve problems that are major dollar values—such as health insurance, such as pension liabilities—and trying to find solutions to those problems...really higher-level problems than what we might have dealt with in the past.

**Q: Do you see anywhere in those skill sets where risk managers still need to improve, or do you think they're where they need to be?**

I think there's always room for improvement and, in fact, training is one of the main issues we talk about at PRIMA. And this June we're going to be launching a

program, called PRIMA University, where we're going to have a number of training opportunities for members to go ahead and refine their skills, refine some of their knowledge areas and be able to hone those business skills, really.

**Will PRIMA training focus on any particular area or areas?**

We're still working on those.... It will focus both on the basic skills of risk managers, plus it will also focus on some of the needs in this changing environment.

**Q: Are there enough qualified candidates vying for positions as public entity risk managers, or are public entities fighting for those candidates**

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**with the private sector?**

Well, I don't think there are enough qualified candidates.... We're trying to offer some improved training; looking at some certification programs, also; looking at different ways we can maybe have educational partners, such as Florida State University, to assist in training more folks in the risk management area...and of course coming up with our own PRIMA Online University.

**Q: How do you see PRIMA evolving over the next year during your tenure as president? What would you like your legacy as head of the organization to be?**

Add to our membership. We have 2,000 members right now, and I would like to see us add to that substantially.... My second goal would be to improve our training.... I'd like to make sure that we go on to be a top-level training organization.... Third, I'd really like to make sure that PRIMA becomes more visible and more vocal out there among public entity associations.... We need to talk about our successes.... There's an awful lot that we have done, and I'd like to make sure that our members' stories are out there—that we can show how public risk management makes a difference.

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## Tolerance: Policy linked to training

CONTINUED FROM PAGE 19

going to get sued," she said. "Risk managers would have a much better understanding of the fallout" of disciplinary programs that are ineffective, said Ms. Peeling, referring to, for example, continuing school violence and associated litigation.

Dorothy Gjerdrum, the St. Paul, Minn.-based executive director of the public entity and scholastic division at Arthur J. Gallagher & Co., agreed on the need for risk management involvement.

Any time there is "a break between policy and enactment of a policy, there's a potential for liability," she said.

For schools, that risk is created when zero tolerance policies are implemented but school faculty and administrators are not trained in how to apply those policies appropriately, Ms. Gjerdrum said.

Ms. Peeling and Ms. Gjerdrum also agreed that risk managers could and should play an important role in shaping school culture.

Ms. Gjerdrum said that risk management input on matters that affect school culture would reflect an enterprise risk management perspective, "which is really starting to emerge" among other types of public entities.

Regardless of a school district official's title or formal duties, "We're all here for the same thing—we're all here to educate the kids," Ms. Peeling said. For children to learn and achieve the level of test scores that a school desires, "there has to be a safe school environment."

### Liability considerations

Some critics would like to see schools abandon zero tolerance policies. The idea is not to give up on holding dangerous or self-destructive students accountable for their actions but to give school officials and the police greater latitude in how they deal with incidents.

For police in particular, zero tolerance policies can be problematic, said Mr. Salmon of OSS. When police follow those policies and arrest students for noncriminal school code infractions, they could lose their qualified immunity for failing to use discretion, which is a key issue in police immunity cases, he said.

But police often follow those policies because of a lack of adequate training in this area, said Mr. Salmon, who also is a police academy instructor. "It's very confusing to police."

Meanwhile, such cases typically go nowhere because juvenile courts toss them out, he said.

That can lead to one or two problems, he said: The school's authority is weakened in the eyes of its students, and the incidents sometimes promote harassment of the arrested

## Views vary on removing disruptive students from classes

Removing disruptive students from schools is not the common sense approach to improving school safety that it would seem to be, if the schools do not have effective programs designed to prevent disruptive student behavior, according to studies.

"It seems intuitive that removing disruptive students from school will make schools better places for those students who remain, or that severe punishment would improve the behavior of the punished student or

those who witness that punishment," a task force of the Washington-based American Psychological Assn. reported in August 2006. "But the available evidence consistently flies in the face of these beliefs. Zero tolerance of disruptive or violent behavior has not been shown to improve school climate or school safety."

Removing students from school "for even a few days disrupts their education and often escalates poor behavior by removing them from a structured

environment and giving them increased time and opportunity to get into trouble," conclude the authors of "Dismantling the School to Prison Pipeline," a 2005 report by the New York-based NAACP Legal Defense and Education Fund Inc.

In addition, "some kids have a (psychological) need to be punished," said Steven Dyanoff, a child psychologist and president of D&D Industrial Consulting Inc. of Clifton N.J. "They'll have a heyday" at schools with strict

zero tolerance policies, he said.

Meanwhile, contrary to schools' justifications that they are removing dangerous students, "examples abound of students facing removal from school and criminal sanctions for conduct such as pushing other students, throwing food, cursing, or disobeying a teacher," note the authors of the NAACP study. They also noted that preschoolers face an exceptionally high expulsion rate.

—By Dave Lenckus



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# Supreme Court ruling won't change high-speed chase policies

By MARK A. HOFMANN

The most important aspect of a recent Supreme Court decision involving high-speed pursuits by law enforcement officers may be how it relates to documentation of the incidents, say some law enforcement liability experts.

That is evident in the high court's decision, for the first time, to post a video on its Web site of the incident on which the court ruled.

The police video shows the events that led the court's majority to rule in *Timothy Scott vs. Victor Harris* that a Georgia deputy sheriff did not violate a suspect's Fourth Amendment protections against the use of excessive force during a seizure when an officer rammed the suspect's car during a high speed chase. The action left the suspect paraplegic (*BI*, May 7).

Writing for the 8-1 majority, Associate Justice Antonin Scalia rejected the argument of Mr. Harris—the fleeing suspect—that halt-

ing the chase would have assured public safety.

"A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death," he wrote.

But experts say that the court's ruling doesn't mean that law enforcement personnel will throw caution to the wind in the pursuit of wrongdoers, though some officers may be tempted to act with less caution in the short term.

"It's a very limited opinion," said Geoff Alpert, a professor in the criminology and criminal justice department of the University of South Carolina in Columbia, who specializes in police-pursuit issues. "It has nothing to do with innocent third parties and is limited to Fourth Amendment claims by the fleeing suspects."

But "while you may have a con-

stitutional ability to ram someone who is wreaking havoc on the roadways, it doesn't give you a green light to chase helter skelter as you did in the 1970s."

"I think it's a little bit limited," said Laura Peterson, risk manager for the State of Nebraska in Lincoln. Ms. Peterson, who is a director of the Alexandria, Va.-based Public Risk Management Assn. "It's very much a contact-based case," which are types of cases where the Fourth Amendment applies.

In the short-term, the case may lead to some officers taking additional chances, some observers said.

"To get the bad guys off the street—it might lead some officers to proceed less cautiously themselves," said Pat Gallagher, president of Gallagher-Westfall Group Inc. in Springtown, Pa., and co-director of the Legal & Liability Risk Management Institute, a division of the Indianapolis-based Public Agency Training Council. "Getting wrapped up in trying to keep up

with this speeding violator—they might start taking chances."

"It probably will increase high-speed pursuits," agreed James Ginger, chief executive officer of Willis, Va.-based Public Management Resources, a policy management and training consultant and a member of the LLRMI advisory board. There will be some pressure "to allow officers to engage in those types of pursuits" at least in the short term, he said.

The decision is "not really going to affect" the policies and procedures of Columbia, Mo., police officers, said Sarah Perry, risk manager for the city of Columbia. "Our police department didn't feel this would have any change on how they do high-speed pursuit or don't do it," said Ms. Perry, who is also a PRIMA director.

The decision may lead to filming of incidents by police, some observers say.

"I think *Scott vs. Harris* will influence departments to put cameras in

the cars so they document performance," Mr. Gallagher said.

"I think it can have wide-ranging implications in the sense in what the court seems to have done," said Thom P. Rickert, regional service officer for Willis Group Holdings in San Antonio. "It said 'hey, if we can see it, we can make a fact decision on making summary judgment.'"

"They have proven to be an effective risk management tool," said Ms. Perry. "Very typically, they've been useful to us in the event of vehicle accidents, especially during a pursuit."

Law enforcement officers would "agree cameras are good thing," said Greg Langan, loss control director of the public entity and scholastic division of Arthur J. Gallagher & Co. in Mendota Heights, Minn.

"The officers know they're on tape and I think that the officer is more prone to exhibit appropriate behavior and follow the training they've been given because they know they're on tape," he said.

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# International NEWS

## Former CFO of HIH nets prison sentence

By SARAH VEYSEY

**SYDNEY, Australia**—Dominic Fodera, former chief financial officer of HIH Insurance Ltd., was sentenced on Thursday to three years in jail for his role in the company's collapse.

In November 2005, the Australian Securities and Investments Commission charged him with authorizing the issue of a 1998 prospectus for convertible notes from which there was a "material omission."

The issue, which raised \$155 million Australian (\$96.7 million) for HIH, did not disclose a deal between HIH and the Australian unit of French bank Societe Generale, which was described by the HIH Royal Commission that investigated HIH's collapse in April 2003 as a "total return swap."

Under the arrangement, HIH agreed to provide \$35 million Australian (\$21.6 million) to enable Societe Generale to buy the convertible notes and that any risk or loss associ-

ated with the notes would be borne by HIH, thus reducing Societe Generale's exposure as an underwriter.

The failure to disclose these matters gave the false impression to investors that Societe Generale would have a financial interest in the



HIH's former CFO, Dominic Fodera, was found guilty in the insurer's collapse.

notes after they had been issued and subscribed, and that Societe Generale regarded them as a sound financial investment.

Several institutional investors continued to hold the notes at the date of HIH's collapse. The notes helped finance HIH's bid for FAI Insurance, which was launched in 1998.

HIH became Australia's biggest-ever corporate collapse when it failed in 2001.

A former chief executive and a former director of the insurer have been jailed for their part in its downfall.

Mr. Fodera will be released after two years upon agreeing to a good-behavior bond.

Elizabeth Fry contributed to this report.

## Canada ruling favors employers

Court allows sponsors greater flexibility on pension management

By GLORIA GONZALEZ

**TORONTO**—Canadian plan sponsors received a favorable ruling from the Ontario Court of Appeal, which last week overturned a ruling that challenged several common practices in pension plan management.

Although plan sponsors will still have to carefully analyze their pension trust and plan documentation to see if they may take certain actions with regard to their plans, the Court of Appeal's decision provides useful guidance to employers.

"It's a huge decision for pension plan sponsors," said Mitch Frazer, chair of the strategic communications committee of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada.

In administering its defined benefit plan, Woodstock, Ontario-based Kerry (Canada) Inc., paid administrative expenses from the pension fund and also took contribution holidays after taking into account the actuarial surplus of the plan. In 2000, the plan was amended to add a defined contribution component for new hires and existing members who opted to convert their past service entitlements to the defined contribution plan, with the company intending to use defined benefit plan funds for its contributions to the new plan.

Former employees who were members of the plan objected and asked the Ontario Superintendent of Financial Services to order the company to reimburse the plan for the administrative expenses and

contribution holidays and to deny registration of the amendment.

These issues were debated by regulatory officials and eventually by the Ontario Divisional Court, which ruled in March 2006 that Kerry (Canada) was not allowed to pay administrative expenses out of the fund because the historical plan documents and trust agreement did not feature language allowing the company to do so.

The divisional court also ruled that Kerry (Canada) could not use the surplus in the defined benefit plan to fund its defined contribution plan contributions because the amendment created two pension funds and the defined contribution members had no connection to the defined benefit plan and could not be legitimately given a beneficial interest in the funds from the defined benefit side.

In *Kerry (Canada) Inc. vs. DCA Employees Pension Committee*, the Ontario Court of Appeal ruled that the divisional court erred in finding that the company was not allowed to pay expenses from the fund. The court found that there was no statutory requirement that the employer pay the expenses and that the language of the plan documentation did not prohibit the payment of expenses from the fund, except those paid to trustees. "Silence does not create a legal obligation on the company to pay," the Court of Appeal said in its decision.

Ronald Walker, a senior partner in the litigation group of Fasken Martineau in Toronto, who represented Kerry (Canada), said he and his client were pleased with the decision, because it provided clarity for plan administrators managing day-to-day issues related to expense payment. "I'm delighted that they said what many, many companies

### SUIT FACTS

In *Kerry (Canada) Inc. vs. DCA Employees Pension Committee*, the Ontario Court of Appeal ruled on several critical issues:

- The company is allowed to pay for administrative expenses from the pension fund because no statutory requirement or language in the plan documentation prohibited payment.
- Allowing plan sponsors to pay for services provided by third parties from the pension fund does not constitute a revocation of the trust.
- Introduction of a defined contribution component to a defined benefit plan does not create two separate pension plans.
- The employer may use surplus funds from the defined benefit plan to fund contributions for defined contribution plan members if the plan is structured properly.
- Plan sponsors have the right to use surplus to take contribution holidays while the plan is ongoing.
- Pension regulators have greater relative expertise on questions concerning plan documentation and their decisions should be given deference.
- Employers must give notice when giving plan members the option to convert from a defined benefit to a defined contribution plan.

were doing was reasonable and also correct," he said.

The Court of Appeal decision, though, did not give blanket approval over employers' actions with respect to payment of expenses from the fund, pension experts say. Employers will have to carefully analyze their historical trust and

See **PENSIONS** next page

## People-related risks top the list for risk managers in Europe

By SARAH VEYSEY

People-related risks are the top priority for risk managers across Europe, according to a new study, which also found that 74% of risk managers say there is a growing focus on managing risks rather than pure insurance buying.

For U.K. risk managers, regulation and legislation were the top priorities, the survey found.

"Managing Risk in Europe 2007" found the top six risks affecting European companies are: people-

related risks, competition, business interruption, environmental considerations, financial risks and damage to physical assets.

The European operations of Marsh Inc. studied 738 companies from 10 countries in Europe in fourth-quarter 2006. People-related risks are almost always a fixture in companies' risk-registers, according to Eddie McLaughlin, managing director of the risk consulting practice at Marsh Ltd. in London.

Many respondents said they were noticing a trend towards greater

spending on risk management as opposed to insurance buying.

This, Marsh said, reflects the fact that, among other things, "companies are becoming more savvy in risk management and acknowledging that value can be created from more effectively managing risk."

For the 100 respondents from the United Kingdom, the top risk was regulation and legislation, followed by competition and employers liability. Regulation did not feature as a top priority risk in any other territory, said Mr. McLaughlin.

The high priority given to these risks may be due in part to the U.K. regulator, the Financial Services Authority, which is a "leading light," as well as the fact that risk management is well-advanced in the United Kingdom, he noted.

Of all the countries surveyed, companies in the United Kingdom have the highest confidence in their ability to manage risks.

Respondents were asked to rate their confidence in managing risks out of a possible 5. The aggregate confidence level of U.K. companies

was 3.88, according to the study. The second and third most confident countries were Spain and Belgium.

More than three quarters, or 77%, of U.K. respondents said the trend is to focus on managing risk rather than buying insurance.

And risk management budgets are increasing, according to 55% of respondents. Only 7% of respondents said their risk management budgets were decreasing, while 38% of risk managers said that their budgets were static.

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# EEOC: Retiree benefits rule approved

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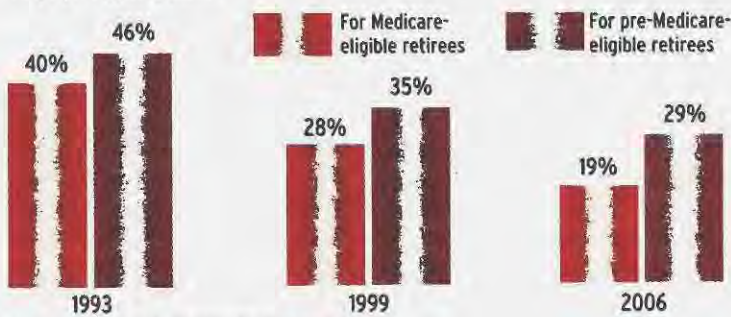
panel, Judge Jane Restani said Section 9 of the ADEA "clearly and unambiguously" gives the EEOC the authority to issue ADEA exemptions so long as those exemptions are reasonable and "necessary and proper in the public interest."

The EEOC met those tests in this case, Judge Restani wrote, saying that if employers had to continue providing the same level of benefits to older retirees as to younger retirees, employers would reduce health care benefits to all retirees.

By contrast, providing an ADEA exemption "will likely benefit all retirees" with the "proper purpose of encouraging employers to provide the greatest possible health benefits for all retirees," Judge

## HOW RETIREE HEALTH CARE PLANS ARE SHRINKING

Employers offering plans\*



\*For employers with at least 500 employees  
Source: Mercer Health & Benefits

Restani wrote.

Benefit experts are hailing the decision as a victory for both employers and retirees. For employers, the ruling gives them certainty that they will have legal protection over the design of the plans.

The decision also is a victory for retirees, experts say. If employers had to equalize benefits for the two groups of retirees, the inevitable result would have been a reduction in benefits to younger retirees because it would have been prohibitively expensive to upgrade benefits of Medicare-eligible retirees to the level provided to younger retirees.

"The only real-world option would have been to reduce benefits," said Andy Anderson, of counsel at Morgan, Lewis & Bockius L.L.P. in Chicago.

And some employers may have gone further and eliminated retiree health care plans, whose numbers have dwindled over the past decade because of escalating costs.

If the court had not upheld the EEOC's proposed rule, "it could have been the nail in the coffin" for many plans, said Douglas L. Greenfield, a member of the law firm Bredhoff & Kaiser P.L.L.C. in Washington.

"It certainly would have dealt a body blow to plans," said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

While the ruling may have prevented the demise of retiree health care plans, no one expects a resurgence of the plans because employers still have concerns about costs.

At best, the number of plans may stay somewhat stable, said Cara Jareb, director of retiree medical consulting at Watson Wyatt Worldwide in Arlington, Va.

The ruling likely means the controversy over the design of retiree health care plans is over. If the AARP decides to appeal the ruling, it is unlikely that the Supreme Court would agree to review the appeals court decision, experts say.

"There is no split in the circuits and the ruling does not raise issues of great national importance," said Neil Grossman, an attorney with Mercer Human Resource Consulting in New York.

"The issue is, 'Does the EEOC have the right to issue this kind of regulation?' That's not the kind of case the Supreme Court is likely to take up," Mr. Piro said.

Laurie McCann, a senior attorney with the AARP in Washington, said

the ruling is disappointing and that the organization is seriously considering appealing.

The controversy began nearly seven years ago, when the 3rd Circuit ruled that retiree health care plans were subject to ADEA. As a result, employers could have faced age discrimination charges for providing a lower level of health care benefits to older retirees than to younger retirees.

The ruling was a bombshell to employers, who had long thought that the ADEA did not apply to retiree plans. The possibility of litigation over what had been longstanding retiree health care plan designs suddenly became real.

Employers' fears heightened when the EEOC said it would incorporate the Erie County ruling—so named for the county in Pennsylvania that was sued by its Medicare-eligible retirees—in its compliance manual.

Employers and labor organizations began to lobby the EEOC to reverse course, warning that with health care plan costs roughly two-and-a-half times higher for younger retirees than for Medicare-eligible retirees, the result of mandating benefit equality for the two groups would be a reduction of benefits provided to younger retirees, or the elimination of the benefits.

Over time, the EEOC found such arguments convincing. First, it announced that it would no longer enforce the Erie County ruling. Later, it proposed exempting retiree health care plans from ADEA.

But the AARP sued to block the EEOC from finalizing the exemption. Initially, U.S. District Court Judge Anita Brody sided with the AARP, saying that implementation of the rule would permit retiree health care designs that the 3rd Circuit in 2000 said violated ADEA.

But Judge Brody later reversed her ruling in the wake of a 2005 Supreme Court decision in an unrelated case that said federal courts generally must defer to regulatory agencies' interpretation of law, so long as the statute on which there is a point of contention is ambiguous and that the agency's interpretation of it is reasonable. Judge Brody said that was the case with the EEOC's exemption rule.

The AARP appealed Judge Brody's ruling, setting the stage for the latest ruling by the 3rd Circuit.

A spokesman for the EEOC said the agency is reviewing the decision and determining what steps it will next take.

# Managed care: Profits moderate in first quarter

CONTINUED FROM PAGE 3

reached the end of a cycle of profitability, said Arun Kumar, managing director of J.P. Morgan Securities in New York. "In many ways, we're almost at the tail end of the best of times for the managed care industry," Mr. Kumar said at the S&P conference. "I don't think it's going to be as bad as it was 10 years ago... but there probably will be an end to the current run of profitability at some point, maybe in '08."

The two largest managed care companies reported smaller than normal gains during the first quarter of 2007.

Profits for UnitedHealth Group Inc., the largest managed care company in terms of net income, rose by only 4%, well below the strong double-digit gains the company usually enjoyed over the past several years (see chart). The Minnetonka, Minn.-based insurer took a pre-tax charge of \$176 million to address liabilities related to its stock options practices, which are being examined by state and federal regulators.

"While we are certainly not pleased with this charge, we believe it is a positive step in putting the option-related matters behind the company and resolving any lingering uncertainty," President and Chief Executive Officer Stephen Hemsley said during the company's fourth-quarter earnings call.

UnitedHealth did well given that senior managers spent so much time last year focusing on the stock options issues, said Bradley Ellis, director at Fitch Ratings in Chicago. "I think most people, including us, expected a little turbulence in their earnings," he said. "It wasn't a bad quarter for United—maybe not what we're used to seeing."

WellPoint also experienced abnormally low profits in the first quarter, reporting a 9% increase in profits compared with increases of more than 20% in recent years for both quarterly and full year results. "It's getting more competitive out there and to manage these types of margins is a testament to their strength," Mr. Ellis said.

At WellPoint, though, the main focus is on changes in top management. Chief Financial Officer David Colby was forced to resign May 31 due to an unspecified violation of the company's code of conduct. The company declined to provide details, but said an investigation did not uncover illegal conduct and the violation was unrelated to the company's business.

"No doubt about it, David Colby was a well-respected, highly-regarded CFO in the industry," Mr. Ellis said. "I think it's a loss for the company," although the move speaks well of the company's willingness to apply its code of conduct to all employees regardless of their position.

Mr. Colby was replaced by Wayne DeVeydt, who has served as WellPoint's senior vp and chief accounting officer since March 2005. "There's no reason to believe

he's anything but qualified," Mr. Ellis said.

The CFO change was announced the day before the planned retirement of President and Chief Executive Officer Larry Glasscock. Angela Braly became president and CEO on June 1 and Mr. Glasscock continues as chairman.

Among the managed care companies, Kaiser Permanente showed the strongest gains in the first quarter with profits up 56% amid rate increases and reduced costs in several key areas, including medical expenses and administrative costs. Kaiser's first half profits in 2006 were adversely affected by investments in infrastructure improvements the company made last year.

**'The political landscape is probably the biggest dynamic.... I think reform is inevitable.'**

Gail Boudreaux,  
Health Care Service Corp.

In terms of enrollment, Philadelphia-based CIGNA Corp. showed the largest gains, with medical membership growing 4.7% in the quarter after years of declining or flat enrollment. The company projects organic membership growth of between 5% to 6.5% this year with particularly strong gains in its consumer-driven health plans.

"CIGNA has solved a lot of the problems they have experienced over the years," Mr. Ellis said, adding, though, that companies that experience enrollment growth outside of industry norms should be monitored for potential pricing weakness.

The insurer expects medical cost trend for its total book of business to be in the range of 6.5% to 7.5% with pricing yields exceeding that, Mike Bell, CIGNA's CFO, said during the company's first-quarter earnings conference call.

Government efforts to reduce the number of the uninsured will be a major factor in future enrollment growth and profitability for health insurers, observers say.

"The political landscape is probably the biggest dynamic," said Gail Boudreaux, executive vp of Health Care Service Corp., a mutual insurance company that operates through its Blue Cross and Blue Shield divisions and other subsidiaries. "I think reform is inevitable."

Membership in the commercial sector is relatively flat so insurers are reaching out to the uninsured population, particularly the 8 million uninsured people in households with income over \$75,000, Ms. Stoddard said. "Companies are really going after products with better price points to get these healthy people into the risk pools," she said.

## ERIE COUNTY RULINGS

**AUGUST 2000:** The 3rd U.S. Circuit Court of Appeals rules the Age Discrimination in Employment Act applies to retiree health care plans. The ruling involved plans provided by Erie County, Pa.

**OCTOBER 2000:** The Equal Employment Opportunity Commission adopts the ruling in its compliance manual.

**APRIL 2001:** A federal district court rules that Erie County's retiree health care plan violates ADEA because Medicare-eligible retirees receive "lesser" benefits than younger retirees.

**JULY 2001:** The EEOC suspends enforcement of the Erie County ruling and says it will review its earlier policy.

**AUGUST 2001:** The EEOC formally withdraws enforcement of the ruling and pledges to develop rules that do not discourage employers from offering retiree health plans.

**APRIL 2002:** Erie County settles litigation by paying \$305,000 to retirees and their lawyers. Before settlement approval, the county cuts younger retirees' benefits.

**APRIL 2004:** EEOC proposes final rules to exempt retiree health plans from ADEA.

**FEBRUARY 2005:** AARP files suit to block publication of the final EEOC rule. Judge Anita Brody bars the EEOC from publishing the rule for 60 days and agrees to hear arguments on the rule.

**APRIL 2005:** Judge Brody permanently blocks the EEOC from enforcing its exemption rule.

**SEPTEMBER 2005:** Judge Brody reverses her earlier ruling and says the EEOC has the right to issue its retiree health care ADEA exemption.

**JUNE 2007:** The 3rd Circuit affirms the EEOC's right to issue the ADEA exemption, saying that the exemption was reasonable and in the public interest.

## Health sector M&A picks up

Merger and acquisition activity in the health insurance sector is regaining momentum after an absence of major deals in 2006.

"Although we had kind of a hiatus in terms of consolidation transactions in 2006, 2007 seems to have really picked up," said Shellie Stoddard, a director with Standard & Poor's Corp. in New York.

The biggest deal so far this year is UnitedHealth's proposed \$2.6 billion acquisition of Las Vegas-based Sierra Health Services Inc., which is opposed by consumer and provider groups. The insurers recently received a request for additional information from the antitrust division of the U.S. Department of Justice regarding the proposed merger.

Some other deals are also in the works.

Hartford, Conn.-based Aetna Inc. last month announced a plan to acquire for \$535 million Phoenix-based Schaller Anderson Inc., a provider of health care management services for Medicaid plans and a manager of commercial self-funded health plans.

Bethesda, Md.-based Coventry Health Care Inc. announced in April that it would acquire Mutual of Omaha's commercial employer group health business in Nebraska and Iowa as well as its national Federal Employees Health Benefits administration business for \$120 million.

New York-based insurers HIP Health Plan of New York and Group Health Inc. are working on a plan to merge as a for-profit entity and Pittsburgh-based Highmark Inc. and Philadelphia-based Independence Blue Cross are seeking regulatory approval to merge as well.

—By Gloria Gonzalez

## CalPERS: Investment in health care to drive down costs

CONTINUED FROM PAGE 1

as the national coordinator for health information technology under the Bush administration, he said the fund will not invest in electronic health records—a key administration priority—which he called "a saturated market" at last week's press conference.

Rather, Health Evolution Partners will invest in other businesses that are working to "reduce the crushing costs of health care" by developing innovative products that assist with remote patient monitoring, chronic disease management, telemedicine and drug prescribing, as well as Internet marketplaces for services such as reading chest X-rays, said Dr. Brailer.

Dr. Brailer added that the fund is the start of Health Evolution Partners' 10-year strategy aimed at changing incentives in the U.S. health care system to encourage long-term cost-cutting strategies.

While some employer groups hailed CalPERS' effort, some observers expressed skepticism, including questioning whether the pension fund could realistically achieve the "double bottom line benefit" that Mr. Feckner suggested.

"I think it is a good idea, and I am glad that CalPERS is making the investment," said Helen Darling, president of the National Business Group on Health in Washington, a consortium of the nation's largest employers.

"We need every possible good idea and many new ones to control costs, and such a fund might move us along a little faster on the inno-

vation curve," she said.

Moreover, "David Brailer is a very smart man, so I am glad he is turning his attention to the cost crisis," Ms. Darling said.

Peter Lee, president of the San Francisco-based Pacific Business Group on Health, one of the nation's largest employer health care coalitions, also applauded the CalPERS' initiative.

He called the CalPERS connection to the fund a "breakthrough investment" that "can be a market shaper," and he hailed the decision to have Dr. Brailer run the program.

However, some observers were skeptical about the potential impact of CalPERS' effort.

"It makes sense that CalPERS would try to put some of its resources into part of the health care system that is doing the kind of things that they would encourage but, boy oh boy, is that ever going to be a hard thing to do," said Grace-Marie Turner, president of the Galen Institute Inc., a public policy research organization based in Alexandria, Va. "There are so many people trying different things that it's really not clear at this point what's going to work and who is doing the right thing," she said.

"You're not going to simultaneously drive down health care costs and at the same time return enormous shareholder returns," said Paul Hackleman, director of benefits for San Mateo County, Calif.

Although CalPERS' move is not the first time a health care purchaser has attempted to benefit financially by investing in the health care business, it is the largest such

venture to date.

In 2005, Bentonville, Ark.-based Wal-Mart Stores Inc. pledged to donate \$5 million over three years to help build that nation's first state-of-the-art digital hospital which would serve many Wal-Mart employees (BI, April 11, 2005).

And last year, a group of five large employers announced they

were providing the seed money to develop the technological infrastructure that would facilitate sharing electronic medical records over the Internet. Dubbed "Dossia," the development project is being collectively funded by Applied Materials, BP America Inc., Intel Corp., Pitney Bowes Inc. and Wal-Mart (BI, Dec. 11, 2006).

## CalPERS teams with expert

Dr. David J. Brailer was appointed the first National Health Information Technology Coordinator by President George W. Bush on May 6, 2004.

He was charged with setting the nation's health care industry on a course toward modernized health information standards, certification of health information tools, state-of-the-art information sharing architectures and new policies for protection of consumer privacy. During his tenure, he also pushed information technology programs for adverse drug events, bioterrorism, pandemic flu and other public health threats.

In April 2006, after having completed the groundwork for building a national health IT infrastructure, Dr. Brailer left the federal government to return to the private sector. In May 2007, Dr. Brailer launched Health Evolution Partners, a private equity fund focused on transforming

the health care industry. Initially, the fund will make investments on behalf of the California Public Employees' Retirement System, but after one

year, the fund will be open to other investors.

Dr. Brailer holds doctoral degrees in both medicine and economics. He earned his medical degree from West Virginia University and his doctorate in economics from the Wharton School at the University of Pennsylvania. As a doctor of internal medicine,

he practiced in HIV medicine and immune deficiency until 2002, when he founded CareScience Inc., a company that developed a health information exchange that published quality reports on physicians and hospitals. The company also formed a hospital and physician network dedicated to improving health care quality.

—By Joanne Wojcik



Dr. Brailer

## MarketScout 2007 eInsurance Symposium

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# News In Brief

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treatment to health insurance coverage offered to employees' domestic partners that employer coverage provided to employees' spouses and dependents now receive. Under the bipartisan bill, the cost of employer-paid coverage provided to a domestic partner or other nondependent, nonspouse beneficiary, would not be added to an employee's taxable income. Employees also could withdraw on a tax-free basis funds in their health savings accounts to be reimbursed for medical expenses incurred by a domestic partner. Currently, such withdrawals would be taxable to the employee, with an additional 10% penalty tax imposed.

## Supreme Court to hear FedEx age bias suit

The U.S. Supreme Court has agreed to consider whether an age discrimination lawsuit filed by 14 FedEx Corp. employees may proceed. FedEx asserts that the employees' suit should be dismissed because they did not file a formal charge alleging age discrimination with the U.S. Equal Employment Opportunity Commission before they filed suit in April 2002 against the company. Under federal law, plaintiffs must file a discrimination complaint with the EEOC at least 60 days before filing a lawsuit against their employer. The plaintiffs claim that a form they filed with the EEOC in December 2001 included the information necessary to comply with that law, and that they should

be allowed to proceed with their lawsuit.

## P/C, benefits broker to launch in California

Private equity fund Trident IV L.P. is committing up to \$100 million to form Edgewood Partners Insurance Center, a new property/casualty and employee benefits broker in California. Edgewood will be headed by John G. Hahn and Dan R. Francis. Mr. Hahn will leave his current position as president of BISYS Commercial Insurance Services. Mr. Francis is former president and CEO of ABD Insurance & Financial Services Inc. of Redwood City, Calif., a unit of Greater Bay Bancorp. Mr. Hahn said that Edgewood will focus particularly on high-tech, biotechnology, real estate, construction and hospitality risks. It will also have a "significant" employee benefits brokerage business, he said.

## Judge OKs lawsuit over UnitedHealth options

A federal judge has refused to dismiss a class action securities lawsuit filed against UnitedHealth Group Inc. related to its stock options practices. James Rosenbaum, U.S. chief district judge in the U.S. District Court of Minnesota, denied the insurer's motion to dismiss the complaint, which seeks to recover billions of dollars of alleged investor losses caused by a substantial drop in the company's share price. The decline in the company's stock price was related to the company's announcement of "significant deficiencies" in the granting and accounting for stock options to its executives and government probes into these practices, according to the complaint. A UnitedHealth spokesman could not be reached for comment.

# Alliant: Private equity deal part of a growing trend

CONTINUED FROM PAGE 1

expected to affect the broker's clients in the same way that a buyout by a rival brokerage might, observers say.

"From a customer standpoint I don't see any change," said Tom Vance, risk manager for Anaheim, Calif., which uses Alliant to place its property coverage and for administration of an excess liability pool.

Alliant has a large book of public entity business as well as specialty practice groups for energy, health care, Indian nations, construction and several other industries. It also provides employee benefits broking and consulting services and has about 20,000 commercial clients.

"I don't think it's going to impact us one way or the other," said Tom Phillips, risk manager for Santa Monica, Calif., which also uses Alliant for some of its property/casualty risks.

Alliant said Blackstone's resources will help it remain independent and provide a larger platform from which to grow through acquisitions and expanding its risk management offerings for large accounts.

Blackstone says it manages about \$88 billion in assets, whereas Lindsay Goldberg says it has more than \$5 billion in equity capital.

"We have had very, very direct discussions with Blackstone about our business plan," said Tom Corbett, Alliant's chairman and chief executive officer.

"We would not let them get involved and they would not get involved if there was an expectation that there would be some sort of change to undermine the success that we have had historically," he said.

Alliant also will benefit from providing risk services for roughly 100 companies owned by Blackstone, Mr. Corbett said. Blackstone will own a majority stake in Alliant "but whether that is 51% or 60% or 65% will be determined over the next 60 days," he said.

The precise share controlled by Blackstone will depend on the shares sold by Alliant employees and managers. The employees' and managers' stake, however, is expected to remain substantial in the deal, which is expected to close within 75 days of its announcement.

Although the deal marks Blackstone's entry into the insurance brokerage business, it is not its first commercial insurance industry involvement. Blackstone is a shareholder in

Bermuda-based Aspen Holdings Ltd. and Ariel Reinsurance Ltd.

Blackstone's participation in the brokerage sector adds another significant investor to the mix of those interested in insurance broking, Mr. Ward said.

"It's another new and significant player coming into this market, so it adds to the dynamics and the interest in watching how this is going to play out and what the impact is going to be," Mr. Ward said.

Alliant itself previously has been part of the mergers and acquisition trend. Lindsey Goldberg and Alliant's management bought the brokerage in 2005 and last fall Alliant purchased the U.S. property/casualty and employee benefits retail brokerage business of U.K. broker Jardine Lloyd Thompson Group P.L.C. for \$100 million.

That purchase likely gave Alliant enough scale to attract Blackstone's interest in paying a hefty enough price to entice Lindsay Goldberg to flip the broker so soon after purchasing it, observers said.

Lindsay Goldberg did not return calls seeking comment, and the parties involved in the sale of Alliant to Blackstone declined to discuss terms of the deal. But reports say Blackstone is paying \$1.1 billion for the brokerage.

### Interest in distribution

Insurance brokers are attractive to private equity firms because they produce stable returns with little risk, said Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago.

"Insurance distribution is a fairly simple business," he said. "So consequently, it's a fairly simple business for purchasers like these private equity firms to get into."

Heightened private equity firm interest in brokers is expected to continue despite some challenges to revenue production, such as a soft commercial insurance pricing and the contingent commissions issue, Mr. Ward said.

Alliant's Mr. Corbett agrees that private equity money will continue seeking to invest in brokers. Brokerages require little capital investment and the industry's fragmented nature provides opportunity for Alliant with Blackstone as a parent to make acquisitions, he said.

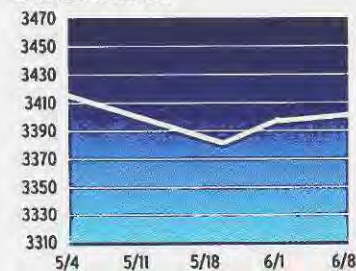
"We believe that there is a need for consolidation, and we think it will step up quite a bit over the next three to five years," Mr. Corbett said.

## Stock Index

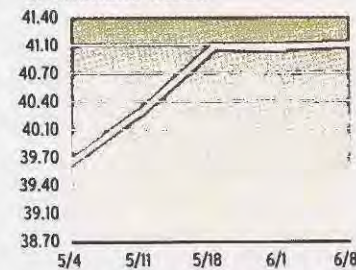
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

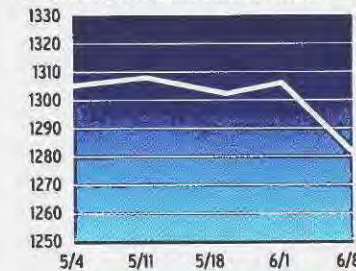
### BI STOCK INDEX



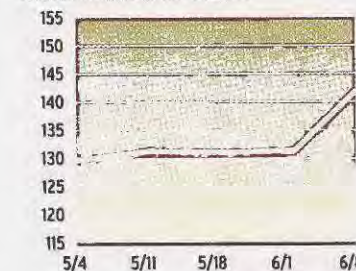
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

<b>BI STOCK INDEX</b>	3404.82	-0.01%
<b>DOW JONES</b>	13424.39	-1.78%
<b>S&amp;P 500</b>	1507.67	-1.87%

### LARGEST GAINS

NYMAGIC Inc.	3.44%
SCPIE Holdings Inc.	3.43%
Gainsco Inc.	3.41%
UNICO American Corp.	3.14%
PMA Capital Corp.	1.68%

### LARGEST LOSSES

United Fire & Casualty Co.	-7.74%
AXA	-4.86%
MetLife Inc.	-3.48%
CNA Surety Corp.	-3.26%
Hartford Financial Services	-3.24%

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

# Readers Choice Awards votes due by June 13

Time is running out to vote in the 2007 Business Insurance Readers Choice Awards.

Now in their third year, BI's Readers Choice Awards recognize the top-performing companies in 11 different categories relating to risk management, insurance and employee benefits. Readers of the newsmagazine along with visitors to [BusinessInsurance.com](http://BusinessInsurance.com) are invited to

vote for companies that they believe offer the best combination of service, value, quality and innovation.

Winners will be announced and profiled in the Aug. 20 issue of *Business Insurance*, and online after publication.

All votes are completely confidential. To vote, go to <http://ErdosSurvey.com/B/BI/ReadersChoiceBallot>. All votes must be submitted by June 13.

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## END PAGE

Contributing: Roberto Cenicerros,  
Meg Fletcher, Gloria Gonzalez,  
Rupal Parekh

## Employer doesn't have a wooden leg to stand on

"A wooden leg is a man's property, not part of his person," a Colorado court ruled in 1926.

Therefore, an employer didn't have to compensate an employee that damaged his wooden leg while working, the court said.

Fast forward 81 years, and the wooden leg argument doesn't stand up in a case involving hip replacements, according to a Colorado appellate court.

The case involved American Appliances Inc.; its insurer, Liberty Mutual Insurance Co.; and an appliance repairman. The repairman stepped out of a company truck in June 2005, heard a pop, fell, and felt intense pain from his left prosthetic hip shifting inside of him.

The employee underwent prosthetic hip replacement surgery and an administrative judge in Colorado's Industrial Claim Appeals Office ruled that his employer, American Appliances, had to pay for the hip replacement even though the claimant had several non-industrial left hip replacements before June 2005.

The employer challenged those findings and cited the 1926 wooden leg argument.

The appeals court, however, found in favor of the employee noting that Colorado in the 1990s amended workers comp laws to distinguish between external and internal prostheses. The 1926 court decision now applies only in cases involving external devices.

## Scourge of insurers faces cover problems

Controversial filmmaker Michael Moore hit a snag in making his latest movie—finding an insurer willing to provide coverage for the picture's production.

"Sicko," Mr. Moore's new film—which takes a scathing look at the American health insurance industry and calls for a switch to a free, universal health care system—premiered at the 60th annual Cannes Film Festival in France and is set for wide release at the end of June.

"Every major insurance company turned me down and I finally found a little insurance agency in Kansas City, Mo., to actually insure the film," Mr. Moore said last week during a television appearance on the "Oprah" show, though he did not provide any additional information on the agency or insurer on the risk.

Furthermore, Mr. Moore said that health insurance company employees were warned to steer clear of him.

"They sent out memos to their staff: 'Do not talk to him' and they had in-service training sessions: If he shows up, don't run, don't flee, don't put your hand in front of the camera," Mr. Moore said.

"One of the pharmaceutical companies set up a Michael Moore hotline. If I were to show up at any of their regional offices, the employees were to call this hotline," said Mr. Moore, whose prior credits include "Bowling for Columbine," and "Fahrenheit 9/11."

Filmmaker Michael Moore attended the Cannes Film festival for the showing of his new movie, "Sicko." Mr. Moore said he had a hard time finding an insurer willing to cover the movie, which criticizes the health insurance industry.

## Praise heaped on insurers for role in fighting bias

California Insurance Commissioner Steve Poizner credited insurance coverage with allowing his Jaycee chapter to fight gender discrimination in a precedent-setting U.S. Supreme Court case.

In 1982 while a Silicon Valley businessman/entrepreneur, he was elected president of the Palo Alto Junior Chamber of Commerce. The group considered a bylaw requirement limiting membership to only men as "nonsense," so it invited women to join and the chapter grew quickly, he said at the opening session of the National Assn. of Insurance Commissioners' recent meeting in San Francisco.

The Tulsa, Okla.-based national Jaycee organization caused "a crisis" when it sued his chapter in state and federal courts, Mr. Poizner said.



California Insurance Commissioner Steve Poizner told other regulators at the recent National Assn. of Insurance Commissioners that an insurer covered the cost of fighting a landmark suit filed in the 1980s that sought to stop his Jaycees chapter from accepting women as members.

"We were outgunned," but discovery of a defense clause in the chapter's general liability policy provided "a very small legal defense budget" to fight the suit.

Ultimately, that case and others reached the nation's highest court, which voted unanimously in 1984 to overturn the Jaycees' ban on women members after two justices recused themselves because they were former Jaycees.

*Roberts vs. United States Jaycees* "became the precedent-setting case" for other organizations such as the Lions Club, Rotary Club and Kiwanis Club, Mr. Poizner said. "They all changed their membership policies after that."

"What's the moral of the story? It wouldn't have happened without insurance," he said as the audience laughed and applauded.

## Judge leads trip to movies

And the Oscar goes to...United-Health Group Inc. shareholders.

A shareholder lawsuit filed against the Minnetonka, Minn.-based health insurer resembles the plot in "The Sting," a 1973 Academy Award-winning movie starring Paul Newman and Robert Redford as con artists who avenge the murder of their friend through a scheme involving "past-posting" or betting on horse races after the results are known, according to the federal judge

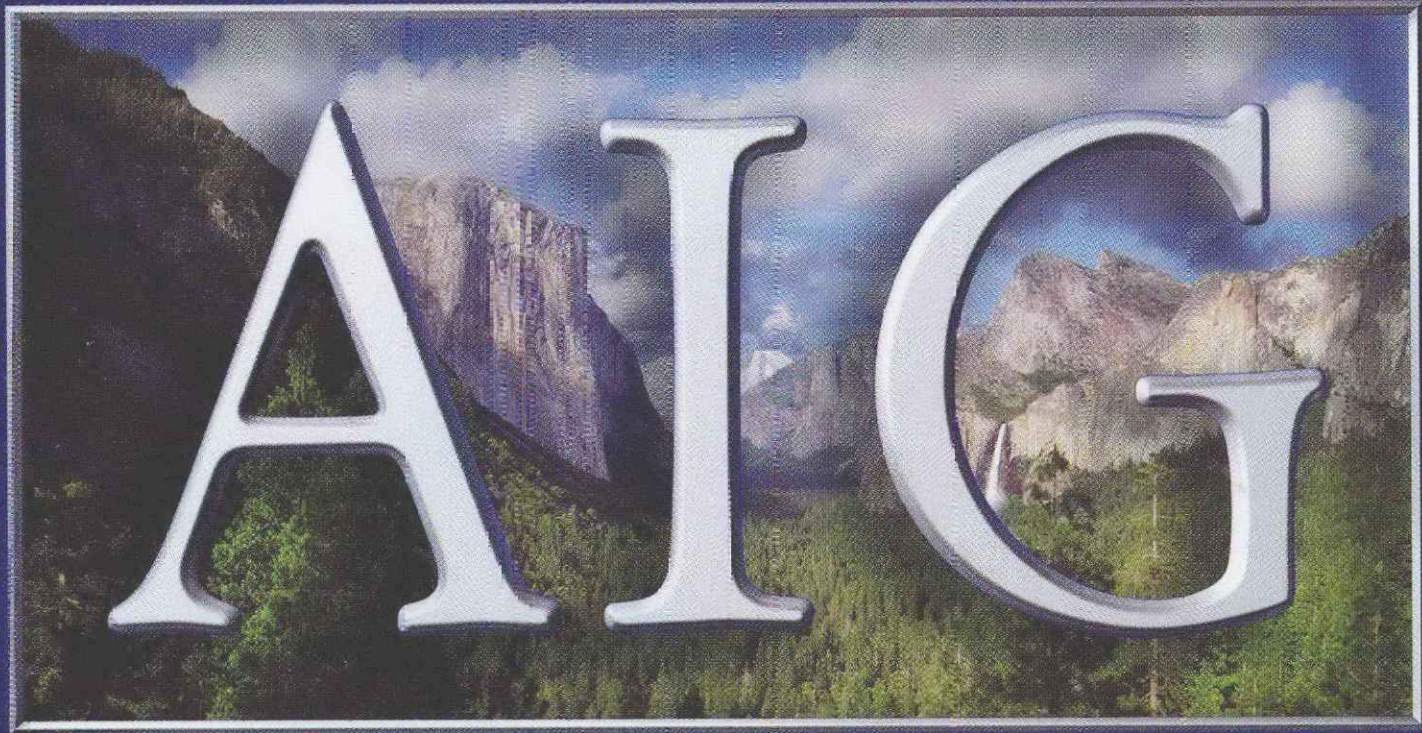
overseeing the case. In fact, he even encouraged all parties to the suit to watch the film.

In denying a motion by the insurer to dismiss the complaint, which seeks to recover billions of dollars of alleged investor losses, the judge said the plaintiffs' claim was based on the theory that the defendants were awarded stock options with selected grant dates that were already in the money, meaning that they were playing a game they knew they could not lose.

"The court expresses not the slightest opinion as to whether such shenanigans occurred here, but such is the essence of the plaintiffs' theory," wrote James Rosenbaum, U.S. chief district judge in the U.S. District Court of Minnesota, in his ruling last week.

As for the judge's movie tip, "I'm going to go see it now," said Karl Cambronne, an attorney with Minneapolis-based Chestnut & Cambronne who is representing 10 pension fund plaintiffs in the case.





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