



INSURER SUES AMAZON IN PATENT INFRINGEMENT COVERAGE BATTLE / PAGE 3

SEN. SCHUMER BACKS EXPANSION OF COVER UNDER TRIA / PAGE 3

HURRICANES WHIP UP A RECORD YEAR FOR CATASTROPHE BONDS / PAGE 4

In Brief

Hartford sells book of medical stop-loss

The Hartford Financial Services Group Inc. has agreed to sell its medical stop-loss insurance business to National Benefit Resources Inc. The deal includes about \$200 million in stop-loss premium volume that Hartford currently provides to more than 800 self-funded employers. NBR is a unit of UnitedHealth Group Inc. and underwrites stop-loss coverage. Terms were not disclosed.

Express Scripts, CVS battle for Caremark

The Federal Trade Commission is seeking information from Express Scripts Inc. just as the pharmacy benefit manager is trying to outbid drugstore chain CVS Corp. to take over one of its competitors. The request from the federal agency that monitors

See **IN BRIEF** page 34

SPOTLIGHT

SELF-INSURANCE & CAPTIVE MANAGEMENT

Captive growth continues at moderate pace; legislative tweaks introduced to help increase captive business; Southwest domiciles see a surge in incorporations as attractive regulations and pleasant environments attract risk managers.

PAGE 11

Questions linger over proposed broker payments

Extra commissions resemble contingents, some critics say

By **DAVE LENCKUS**

The world's three largest brokerages are not convinced that performance-based supplemental commissions are any less problematical than the contingent commissions they are designed to replace, but the fourth-largest intermediary has embraced them.

A growing chorus of critics, including Joseph Plumeri, chairman and chief executive officer of London-based Willis Group Ltd., is questioning whether the kind of supplemental commissions that two insurers have proposed paying brokers still may influence brokers to consider their own interests over their clients' when placing coverage.

Unlike contingent commissions, which are not paid until brokers reach certain volume or profit thresholds with insurers, proposed supplemental commissions would compensate brokers based on their

past performance with insurers and would be calculable for a buyer before any coverage is placed.

Both Marsh Inc. and Aon Corp. said they are still reviewing the structure of the proposed commissions. A spokesman for Chicago-based Aon said: "We don't want to do anything that could be perceived as a conflict of interest by our clients."

But, J. Patrick Gallagher, president and CEO of Arthur J. Gallagher & Co., says the brokerage has negotiated supplemental commissions with numerous insurers over the past year and the fully disclosed arrangements have not caused any problems with clients.

Regarding whether those or similar performance-based commissions could be perceived as potentially influencing a broker's behavior, Mr. Gallagher said: "All conflict of interest is waived through disclosure, in my opinion."

Mr. Gallagher and brokerage consultants assert that supplemental commissions are necessary to fairly compensate brokers that provide client services on behalf of insurers.

See **COMMISSIONS** page 33

UnitedHealth completes \$1.5B restatement

Move seen as key step to resolving options backdating problems, but some hurdles remain

By **RUPAL PAREKH**

MINNETONKA, Minn.—Embattled health insurer UnitedHealth Group Inc. is making headway in moving

past its stock-option backdating problems, though it's not out of the woods, analysts say.

The company's completion last week of a \$1.5 billion restatement

HEALTH INSURANCE REFORM

How Illinois Gov. Blagojevich's health insurance reform plan would work

- Imposes a 3% payroll tax on employers with 10 or more employees that don't spend at least 4% of payroll on health care coverage
- Subsidizes health insurance premiums for lower-income individuals
- Establishes state health insurance purchasing pool for small employers and individuals to obtain coverage
- Requires health care plans sold by insurers to continue coverage for dependents until age 29



AP PHOTOS

Illinois Gov. Rod Blagojevich is the third governor this year to propose reforms aimed at reducing the number of uninsured.

Illinois joins bandwagon on health care reform

Business groups slam plan to expand coverage

By **JOANNE WOJCIK**

SPRINGFIELD, Ill.—Illinois Gov. Rod Blagojevich last week became the third governor in as many months to propose sweeping health care reform legislation to vastly reduce the number of uninsured.

The Illinois governor's plan to provide coverage to the state's 1.4 million uninsured residents resembles earlier proposals in California and Pennsylvania.

All the proposals, for example, would boost the number of people

eligible for state health insurance premium subsidies; create state health insurance purchasing pools to make it easier and less expensive for the uninsured, and in some cases, small employers, to obtain coverage; and impose fees or assessments on most employers—except the smallest ones that do not offer health insurance.

Gov. Blagojevich's proposal, though, differs from the others in several ways. Among other things,

See **HEALTH CARE** page 33

lion to \$1.7 billion. The only cash payment the company will record is approximately \$100 million for additional corporate income taxes due for historical periods, and a charge of \$55 million in the first quarter of 2007 for a settlement with the Internal Revenue Service relating to employees who exercised certain options in 2006.

As part of the restatement, UnitedHealth posted higher 2006 earnings; net income grew 35% to \$4.16 billion from \$3.08 billion in 2005, which the company said in a state-

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QUESTIONS & ANSWERS

Deutsche Post exec finds good fit with captives

Business Insurance adds to its series of in-depth interviews of industry leaders with Bill Fitzpatrick, vp-risk benefits, corporate insurance and risk management for Deutsche Post World Net. See his interview on page 26 as well as online at www.BusinessInsurance.com/QandA.

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Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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House likely to act on TRIA extension in April

Support growing for expansion of losses program would cover

By RUPAL PAREKH

NEW YORK—Congress should eliminate the distinction between acts of terrorism committed by foreign and domestic terrorists under a renewed federal terrorism insurance program, witnesses said last week at a hearing of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

The field hearing, held at New York City Hall near the World Trade Center site, came shortly after a Senate Banking, Housing and Urban Affairs Committee hearing about the terrorism backstop earlier this month (*BI*, March 5).

Witnesses also stressed that the bill should steer clear of temporary

solutions, and institute a long-term—if not permanent—program to replace the backstop created by the Terrorism Risk and Insurance Act. TRIA was originally passed in 2002, extended for two years in 2005, and is set to expire on Dec. 31.

Meanwhile, House lawmakers indicated last week that legislation to extend—and likely expand—TRIA could be ready as early as next month.

SUNSET?: The Bush administration remains opposed to a permanent federal terrorism backstop. Page 31.

In testimony, New York Mayor Michael Bloomberg said that TRIA should not discern between acts of terrorism carried out by foreign or domestic interests; this distinction becomes complicated when a domestic group contains at least one member from another country, or maintains contact with other terrorism groups, he said. He noted the 2005 attacks on London's mass transit system—carried out by British citizens—as an example of the type of event that would be excluded under the current version



BACKSTOP ESSENTIALS

According to Sen. Charles Schumer, D-N.Y., federal government backstop protection for terrorism risks should:

- Be made permanent, or last a minimum of 15 years
- Provide coverage for nuclear, biological, chemical and radiological risks
- Offer sufficient insurance capacity for densely populated areas deemed "high-risk"
- Be signed into law as quickly as possible

ZUMA PRESS

of TRIA if a similar attack occurred in the United States.

In addition, terrorism coverage for only conventional types of weapons such as explosives is insufficient, and TRIA should be expanded to respond to all possible kinds of attacks, Mayor Bloomberg said. "We must not only be prepared for yesterday's attack," he said.

Sen. Charles Schumer, D-N.Y., in his testimony outlined four major points for lawmakers to consider in drafting a new TRIA bill, including that the new version should provide coverage for nuclear, biological, chemical and radiological threats (see box).

See **TRIA** page 31

Insurer sues Amazon to restrict coverage

Says it won't cover patent infringement losses

By MARK A. HOFMANN

TYLER, Texas—A patent infringement case involving two of the world's most recognized companies—International Business Machines Corp. and Amazon.com Inc.—has now become an insurance coverage dispute as well.

That's because earlier this month, New York-based Atlantic Mutual Insurance Co. asked the U.S. District Court for the Eastern District of Texas in Tyler to absolve it from responsibility for covering Amazon.com's losses if it should be found responsible for infringing on a series of patents on IBM technology. Atlantic Mutual had issued three commercial general liability policies to Amazon.com during the late 1990s that Amazon sought to tap for defense and other costs.

According to court papers, IBM sued Amazon on Oct. 23, 2006, in U.S. District Court for the Eastern District of Texas in both the courts in Lufkin and Tyler, alleging that "Amazon has built its business model on the use of IBM patents, knowing its business was covered by and infringing IBM's patents. Amazon, moreover, has ignored IBM's repeated demands that Amazon either pay for the use of Amazon's IBM's property or stop taking the property for Amazon's own use. Indeed, after four years of

stonewalling, Amazon's intent is clear—Amazon would rather take IBM's property unlawfully than pay for its use. This lawsuit seeks to stop Amazon's taking of IBM's property without payment."

Last month, IBM filed an amended suit that added a series of Amazon domestic and international



Online retailer Amazon.com is embroiled in a patent infringement dispute with IBM.

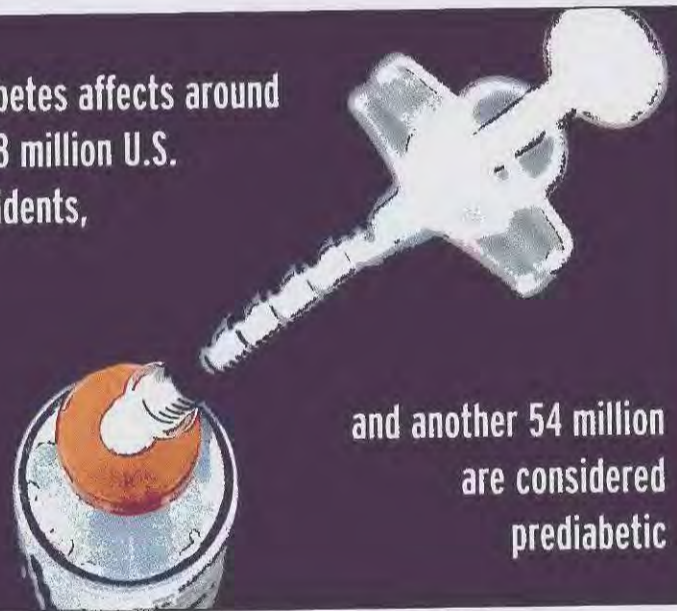
subsidiaries as defendants.

The action seeks compensatory damages for patent infringement, lawyers' fees and court costs and "increased damages of up to three times the amount of compensatory damages found."

On March 2, Atlantic Mutual filed a complaint for declaratory relief in the Tyler court. In its complaint, Atlantic Mutual said that it had issued three commercial general liability policies to Amazon.com covering the periods May 15, 1997, to May 15, 1998; May 15, 1998, to May 15, 1999; and May 15, 1999 to May 15, 2000. The policies held

See **AMAZON** page 34

Diabetes affects around 20.8 million U.S. residents,



and another 54 million are considered prediabetic

Diabetes complicates accommodation efforts

Nature of disease muddles application of ADA, FMLA

By JUDY GREENWALD

Employers with workers who suffer from diabetes not only have potentially daunting health care costs to consider but a host of legal requirements with which they must comply, including those raised by the Americans with Disabilities Act and the Family Medical Leave Act, observers say.

An estimated 20.8 million U.S. residents are diabetic, with 54 million considered prediabetic, according to the U.S. Centers for Disease Control and Prevention. With about 1.5 million new cases diagnosed a year, diabetes is an issue

likely to confront employers more frequently in the coming years.

Management at any given company likely is unaware in the vast majority of cases if an employee is diabetic "because they're simply putting in a day's work and doing it well," said John W. Griffin Jr., an attorney with Marek, Griffin & Knaupp in Victoria, Texas, who is chairman of the American Diabetes Assn.'s legal advocacy subcommittee and a diabetic himself.

When the disease does become an issue, two primary laws that come into play are the ADA and the FMLA (see story, page 32).

The ADA protects workers considered to have a physical or mental impairment that substantially limits one or more major life activities. The law requires employers to make

See **DIABETES** page 32

Cat bond activity spikes in 2006

Big hurricane losses drive record year for capital markets deals

By JUDY GREENWALD

A record total of \$4.69 billion in new catastrophe bonds were issued in 2006, a 136% increase from 2005's record performance of \$1.99 billion, a study shows.

The report, produced by New York-based reinsurance intermediary Guy Carpenter & Co. L.L.C. and affiliate MMC Securities Corp.,

notes that 20 transactions were completed by 15 sponsors in 2006, double the 10 completed in 2005.

Christopher McGhee, MMC Securities managing director and head of Guy Carpenter's investment banking specialty practice, said in a statement that the growth in the 2006 cat bond market was driven by a tightening in capacity, increased costs in the traditional market and cat model changes, all of which were the result of the 2004 and 2005 storms.

"Given the lack of U.S. hurricane activity in 2006, it is unclear whether the market momentum

will continue into 2007," he said. "What is clear, however, is that capital markets will continue to play an increasingly important role in risk transfer."

Since 1997, the first year in which multiple transactions occurred, 89 catastrophe bonds have been issued, with total risk limits of \$15.35 billion.

At year end, there was \$8.48 billion of bond principal outstanding, a 74% increase from 2005's year-end total of \$4.9 billion.

According to the report, 2006

See **CAT BONDS** page 31

BONDS BOOM

Risk capital in cat bonds by year; figures in millions of dollars



Within any single year, takedowns from shelf offerings are consolidated and considered as one transaction.

Source: Guy Carpenter & Co. L.L.C./MMC Securities Corp.



REUTERS

Rates for catastrophe-exposed properties have not eased from the levels reached after a series of hurricanes wreaked havoc in 2005.

Cat market still tight despite added capacity

Though casualty rates continue to soften, surplus lines execs say

By ROBERTO CENICEROS

INDIAN WELLS, Calif.—Some commercial accounts renewing property coverage in catastrophe-prone regions in the United States have seen increases in available capacity, say surplus lines insurers and wholesale brokers.

Although increased capacity points to a slight easing of the post-Hurricane Katrina crunch for wind and earthquake-exposed properties, insurers are likely to remain very selective in providing additional capacity, say the brokers and insurers attending the National Assn. of Professional Surplus Lines Offices' 21st annual Mid-Year Educational Workshop.

And prices for wind- and earthquake-exposed property have not eased from their post-2005 levels even though more capacity may be available for some accounts, NAPSLO members said.

On the casualty side, meanwhile, the surplus lines industry is facing growing competition from standard insurers looking to write more business—which points to continued declines in casualty rates.

Some standard-market insurers, who six months ago would only

write casualty business that produced at least \$100,000, are now writing accounts that generate as little as \$15,000 in annual premiums, said Alan J. Kaufman, chairman, president and chief executive officer for Burns & Wilcox Ltd., a managing general agent and surplus lines broker in Farmington Hills, Mich.

Overall, insurance capacity remains tight for coverage of catastrophe-exposed properties, NAPSLO members said. The exposed values are typically large and geographically concentrated and rating agencies continue to demand that insurers reduce their exposures or boost their capital.

"For those reasons, brokers and buyers probably should not expect material changes in pricing trends," said David A. Jordan, senior vp and chief operating officer for Risk Specialists Companies Inc., a surplus lines brokerage that places coverage for Lexington Insurance Co., a Boston-based unit of American International Group Inc.

Others disagree, including some buyers with policies that allow them to cancel coverage midterm, said Glenn Hargrove, president and CEO of Crump Insurance Services Inc. in Dallas. Buyers are taking advantage of the ability to cancel and planning to purchase new policies at a lower rate before the next

See **CAT LOSSES** page 30

Calls for antitrust change get louder

Senate Judiciary chairman says insurer exemption permits abuses

By MARK A. HOFMANN

WASHINGTON—The chairman of the Senate Judiciary Committee will push ahead with his effort to strip insurers of the limited immunity from federal antitrust laws that they currently enjoy under the McCarran-Ferguson Act.

During a brief March 7 hearing regarding the McCarran-Ferguson Act, Judiciary Committee Chairman Patrick Leahy, D-Vt., said the "potential for insurance industry abuse became clear on the Gulf Coast in the wake of Hurricane Katrina."

"The bottom line is, right now we do not know what anti-competitive acts insurers may be engaging in because the antitrust immunity insurers enjoy acts as a curtain that hides their activity from federal



AP PHOTOS

Sen. Leahy

antitrust authorities," said Sen. Leahy, who is among sponsors of the Insurance Industry Competition Act that would repeal the limited antitrust exemption.

Witnesses, including Sen. Trent Lott, R-Miss., told the committee of

what they regarded as unfair insurer practices following Hurricane Katrina. Sen. Lott is cosponsoring the antitrust exemption repeal bill.

But Marc Racicot, president of the Washington-based American Insurance Assn., told the committee that repealing the exemption would replace the current regulatory system with "an uncertain system that adds another layer of federal antitrust enforcement on top of the state regulatory and antitrust structure."

The result would harm consumers, Mr. Racicot said.

Some observers have said that the loss of the limited exemption could have a broad impact, reducing insurers' ability to exchange information and potentially preclude them from moving into new lines (BI, Feb. 26).

Starr committee clears Greenberg

Independent panel sees no violation in estate asset sale

By RUPAL PAREKH

NEW YORK—C.V. Starr & Co. Chairman and Chief Executive Officer Maurice R. Greenberg last week was cleared of wrongdoing by an independent body investigating accusations that he and other executors of the estate of Cornelius Vander Starr breached their fiduciary duties in a decades-old sale of certain assets.

In 2005, then-New York Attorney General Eliot Spitzer outlined the allegations against Mr. Greenberg and three other Starr estate executors in a 26-page report that focused on three transactions done from 1969 to 1970.

In each transaction, Mr. Spitzer alleged, the executors breached their fiduciary duties to the Starr estate—and to the New York-based Starr Foundation—by selling assets

of the estate "for far less than their actual value." Mr. Spitzer's report stated that the executors improperly enriched themselves through the deals and deprived Starr Foundation of assets that would now be worth more than \$6 billion (BI, Dec. 19, 2005).

In addition, Mr. Spitzer sent a letter to Florence A. Davis, president of the New York-based charity foundation that was formed by Mr. Starr, urging her to take action regarding the allegedly suspect transactions.

An independent Starr Foundation committee commenced on Jan. 31, 2006, to investigate the attorney general's claims.

Results of that review were published in a 174-page report released last week, which found that Mr. Greenberg and the other executors "acted in good faith and prudently

performed their duties, and that there is no basis for the (attorney general) report's contention to the contrary."

Given the findings of the review, "the independent committee does not consider it appropriate to pursue the litigation remedies suggested or to reconstitute the foundation's board of directors or structure," the report stated.

Mr. Spitzer had suggested that the foundation attempt to recover its allegedly lost assets in court, among other things.

A spokesman for New York Attorney General Andrew Cuomo said, "This office is not surprised that a foundation controlled by Mr. Greenberg has issued a report attempting to absolve him of wrongdoing."

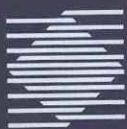
Founded in 1955, Starr Foundation has \$3.3 billion in assets.



Mr. Greenberg



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Pensions overseer urged to act more like SEC, IRS

GAO reports says plans should receive routine inspections

By DOUG HALONEN

WASHINGTON—Labor Department investigators should conduct routine examinations to ensure pension plans are complying with federal regulations, according to a report by the Government Accountability Office.

Currently, the Employee Benefits Security Administration, the Department of Labor's enforcement agency, launches investigations chiefly for complaints alleging wrongdoing.

The GAO report, released Feb. 20, recommended that EBSA supplement its current enforcement program with the same sort of routine compliance examinations used by other federal agencies, including the Internal Revenue Service and the Securities and Exchange Commission.

According to the report, EBSA's failure to routinely review the books, records and internal controls of benefit plans was "limiting its ability to detect and deter violations."

Complicating EBSA's mission, according to the GAO, is a lack of staff. The enforcement agency has 385 investigators to oversee 3.2 million benefits plans, a ratio of 1:8,000. The SEC, in comparison, has 1,953 examiners and investigators to oversee 17,337 entities under its jurisdiction, a 1:9 ratio, according to the GAO.

"Given the ratio of employee benefit plans to investigators, EBSA's limited presence may create an incentive for fiduciaries or plan sponsors to take compliance lightly," the report said.

But in a Dec. 19, 2006, letter of response attached to the GAO report, Bradford P. Campbell, acting assistant secretary of labor—who reviewed the report before it was released—said EBSA officials disagreed that a compliance examination program would provide a bigger deterrent than the agency's existing enforcement efforts.

Limited resources

"Given the size of the plan universe that the agency oversees relative to its number of investigators, EBSA has focused its available resources on investigations that we believe will most likely result in the deterrence, detection and correction of ERISA fiduciary violations," Mr. Campbell said.

Plan sponsors would also balk at a new inspection program, according to Eric Keller, an ERISA attorney with Paul, Hastings, Janofsky & Walker L.L.P., Washington. "Any audit is not an event that a client looks forward to," Mr. Keller said.

Along with conducting compliance examinations, the GAO report recommended EBSA "take appropriate steps" to reduce the number of

investigators it is losing.

The report said 52, or 11.2%, of EBSA's investigators left their jobs in 2005, with 34 of those leaving to work outside the government. It said the attrition rate for investigators for all other federal agencies that same year was 5.2%.

Also in its report, the GAO recommended that Congress approve a law to make it easier for the Labor Department to waive civil penalties against plan fiduciaries for violations "in instances where doing so would facilitate the restoration of

The enforcement agency has 385 investigators to oversee 3.2 million benefits plans, a ratio of 1:8,000. The SEC, in comparison, has 1,953 examiners and investigators to oversee 17,337 entities under its jurisdiction, a 1:9 ratio, according to the GAO.

plan assets."

It also urged the EBSA to take additional steps to better coordinate enforcement efforts with the SEC.

Among the impediments to EBSA enforcement, according to the report, is that plan sponsors have up to 285 days to file their annual Form 5500 reports. Along with additional delays associated with department processing of the form and other factors, EBSA investigators can be forced to rely on data that's two or more years old.

"Because of these delays, fiduciaries may have more time to misappropriate plan assets, causing harm to participants for long periods before violations are identified," the report said.

GAO said the EBSA had made some improvements in its enforcement program since 2002, when the GAO last examined the agency's program for Congress.

"Yet despite these improvements EBSA's ability to protect plan participants against the misuse of pension plan assets is still limited because its enforcement approach is not as comprehensive as those of other federal agencies and generally focuses only on what it derives from its investigations," GAO said.

"While it has employed some proactive measures such as computerized targeting of pension plan documents, EBSA remains largely reactive in its enforcement approach, thus potentially missing opportunities to address problems before trends of non-compliance are well established," according to the report.

Doug Halonen is a reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.

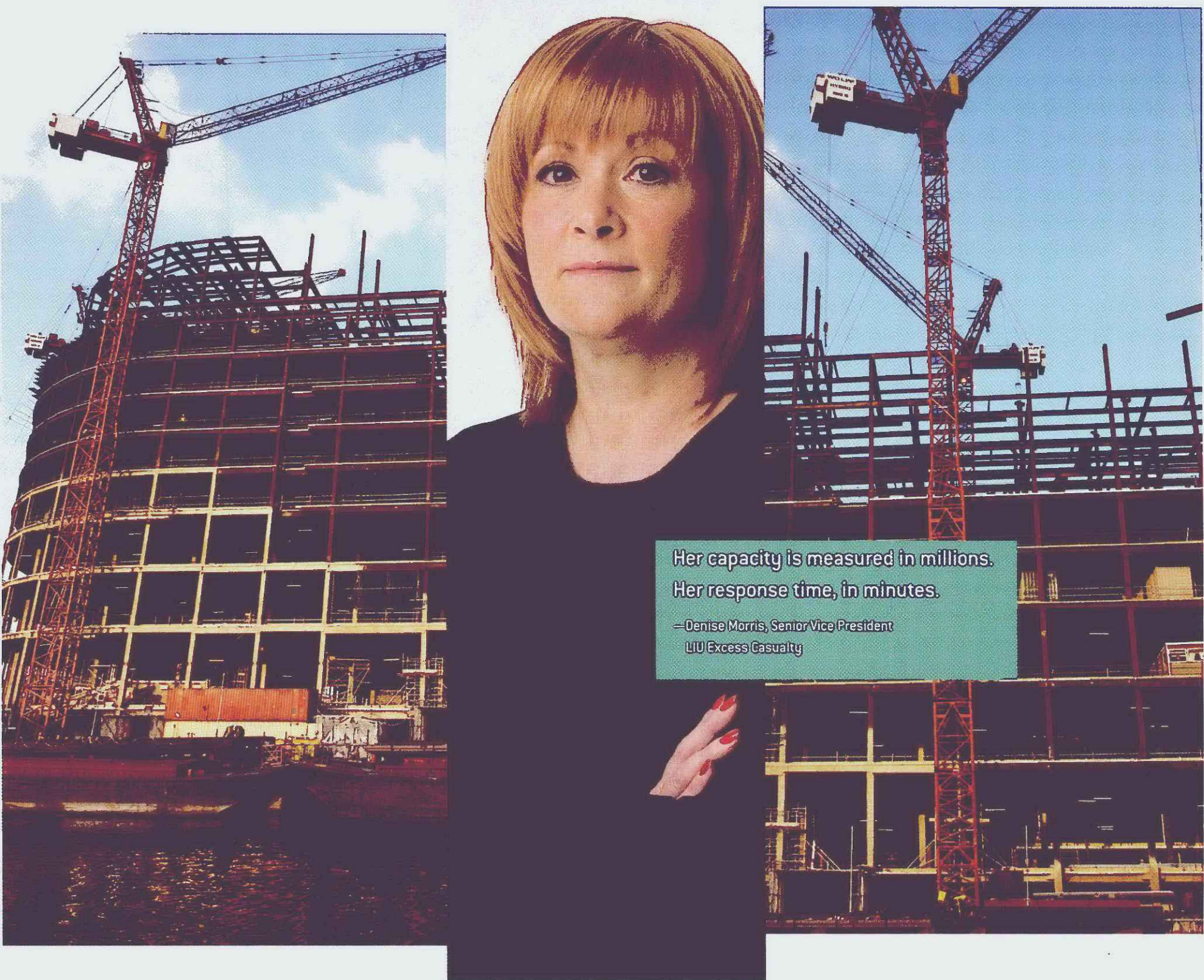
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Business Insurance OPINIONS

Antitrust laws change won't solve claims woes

WE'RE NO FANS of paramount state insurance regulation, and we haven't been big defenders of the McCarran-Ferguson Act that grants states primary responsibility for insurance regulation. In fact, we've supported the idea of an optional federal charter for insurers and producers for years.

That said, we urge lawmakers who want to repeal McCarran-Ferguson's grant to insurers of limited immunity from federal antitrust laws to proceed with extreme caution. While we can understand the frustration their constituents along the Gulf Coast have felt about how some claims stemming from Hurricane Katrina have been handled, we're at a loss to see how repeal of McCarran-Ferguson would improve that particular situation.

Some lawmakers who favor repeal make it clear that their ire is directed primarily at large personal lines insurers. Yet repeal of the limited exemption appears likely to harm small, single-state or regional insurers rather

than national companies. The result could be a greater concentration of market share among fewer insurers. It's hard to see how less choice would work to consumers' advantage.

In fact, it's hard to see how a change in antitrust laws would improve claims-handling practices. The primary argument for state regulation is that states can enforce consumer protections more effectively than any federal regulator could. Complaints about claims-handling practices, or nonpayment of legitimate claims, strike us as the ultimate insurance consumer protection issue rather than a matter of antitrust law.

Repeal of McCarran-Ferguson is a fair issue for congressional debate. The question of whether a 62-year-old law is the best way to regulate insurance in an increasingly international marketplace deserves consideration. But we believe that debate shouldn't be driven by an issue that has little to do with the antitrust exemption.

We urge lawmakers to proceed with extreme caution.

Greater transparency needed in pension fees

IT ISN'T OFTEN that we agree with Rep. George Miller, D-Calif., who chairs the House Education and Labor Committee.

But in calling for greater transparency of defined contribution plan fees paid by participants, Rep. Miller is right on target.

Participants have plowed tens of billions of dollars into these plans, which are chiefly 401(k) plans. Yet, in many cases, employers and plan administrators do not provide readily accessible information in an easy-to-understand format showing how much of participants' contribution dollars are going to pay for overhead, such as fees charged by mutual fund providers.

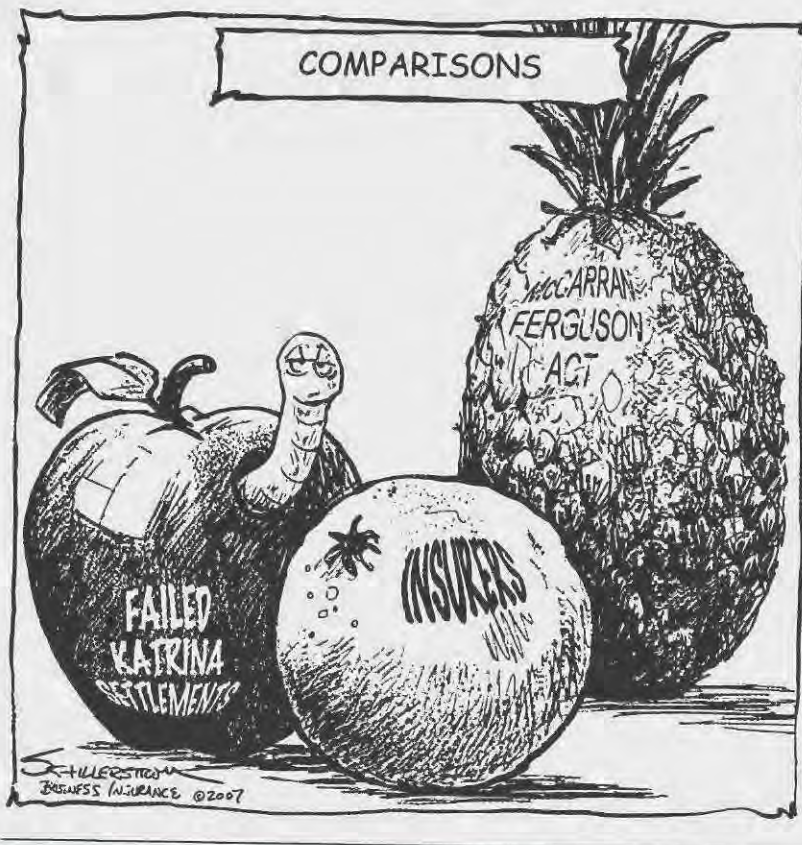
As Rep. Miller puts it, because of weak disclosure rules, employees aren't in a position to know how much they are paying in fees.

Just as bad, there are no standards that distinguish when a service provider fee is reasonable and when it is excessive.

There is the temptation to say that this isn't a big deal as the difference in the fees from one mutual fund provider may be small. But small differences in fees over a long period of time can result in big differences in defined contribution plan account balances.

Rep. Miller noted a one percentage point difference in retirement plan fees can reduce the size of an account balance by nearly 20%.

Defined contribution plan accounts belong to employees and they have a right to know how much of their money is going to pay for service providers. This is an area ripe for regulatory guidance and, failing the prompt action of regulators, legislative intervention.



Perspective articles guidelines

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspectives section.

The section is intended to be a forum for readers' opinions and a forum for the discussion of technical topics that do not lend themselves to news stories.

Therefore, Perspectives articles should take a point of view, offer advice and/or explain a technical subject. They should not present case studies or promotional information.

To submit an article for the Perspectives section:

Send us a letter describing the topic you would like to address. Briefly describe what you want to say in the article.

You will receive from us an acceptance or a refusal of your article idea.

If accepted, we will respond with comments and request the full article, which generally should be no more than 800 words in length.

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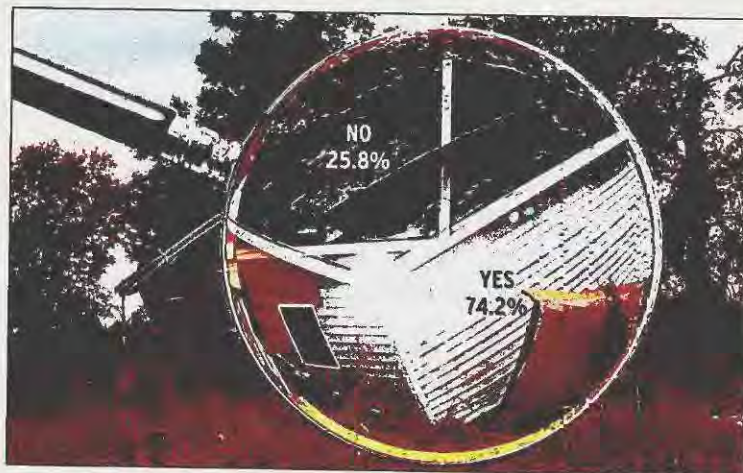
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Overview: Life insurers turning to 'Triple X' facilities

CONTINUED FROM PREVIOUS PAGE

life insurance companies, which entered the captive arena to form so-called "Triple X" facilities.

Triple X captives, typically several times larger than the average captive, are being used to meet reserving requirements for universal life whole life and term life insurance, allowing the sponsors to remove hundreds of millions of dollars of reserve liability from their balance sheets.

In Vermont alone, four Triple X captives were licensed last year and four more insurers are discussing formations, Mr. White said.

Captive growth is more than just new facilities being launched. It also involves existing captives taking on new business lines or increasing risk retentions. For example, premiums flowing through Three Rivers Insurance Co., one of Vermont's oldest captive insurance companies, nearly tripled over the past four years, rising to about \$94 million in 2006, said Three Rivers President John Wilson in Burlington.

Coverage expansion

Three Rivers, the captive insurance subsidiary of Pittsburgh-based aluminum giant Alcoa Inc., has steadily added business. In 2003, it

began funding benefit risks of non-U.S. employees, and in 2005 it began reinsuring group term life insurance coverage of U.S. employees. Last year, Three Rivers began reinsuring certain personal lines policies purchased by employees and retirees from several major commercial insurers.

Mr. Wilson described that last expansion as a win for the captive by bringing to it a line of business that should be profitable and a win for employees, who in many cases are receiving coverage at a lower cost with better terms and conditions compared with what they could obtain on their own.

Group captive executives say their programs are growing despite more competition in the traditional market.

For example, Santa Cruz, Calif.-based Nonprofits' Insurance Alliance of California saw premium volume and membership rise about 10% last year, said Pamela Davis, president of NIAC, which has about 5,500 policyholders and \$40 million in premium volume.

"We grew—soft market notwithstanding—rather significantly," said Ms. Davis, who attributed the growth to factors such as broad coverage forms and superior claims handling services.

COUNTING CAPTIVES

DOMICILE	2006	2005
Bermuda	989	987*
Cayman Islands	740	733
Vermont	563	542
British Virgin Islands	383*	380
Guernsey	381	382
Barbados	235	242
Luxembourg	208	208
Turks & Caicos Islands	169**	166**
Isle of Man	161	165
Hawaii	160	158
Dublin	154*	154*
South Carolina	146	122
Nevada	97	58
Arizona	74	53
District of Columbia	70	59
Singapore	60	60
Switzerland	48	48
New York	39	33
Utah	30	15
Bahamas	26	22
Labuan	26*	29*
Montana	21	13
British Columbia	18	15
Georgia	17*	15
Netherlands Antilles	17	16
Jersey	15	15
Malta	15	8
Gibraltar	14*	14*
Mauritius	13*	13*
Kentucky	10	6
Colorado	8	9
Delaware	6	5
U.S. Virgin Islands	6	9*
Panama	4	4*
Illinois	3	3
Tennessee	3	3
Hong Kong	2	2
Arkansas	1	1
Guam	1*	1
Kansas	1	1
Oklahoma	1	1
South Dakota	1	1
Maine	0	0
Puerto Rico	0	1
Rhode Island	0	0

*BI Estimate **Excludes credit life insurers
For the complete ranking of captive domiciles worldwide, see www.BusinessInsurance.com.

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Domiciles tweak laws to increase appeal

Though D.C., Ireland make major changes to captive regulations

By RUPAL PAREKH

Domiciles worldwide in the past year focused on fine-tuning laws governing captives—to attract more business and to bolster standards of captive insurance regulation.

While there have been few major overhauls of captive laws recently, a few domiciles, notably the District of Columbia and Ireland, made fairly significant changes in 2006.

Elsewhere, moves to enhance corporate governance and tightening compliance measures for captives were common.

"Most of the domiciles are tweaking their statutes, rather than changing them," said Thomas M. Jones, a partner in Chicago with the law firm of McDermott Will & Emery L.L.P. Mr. Jones specializes in captive legal and tax issues.

The District of Columbia is a domicile currently "at the forefront of legislative change," with two significant captive bills now pending, said Mr. Jones. "They are seeking to get a competitive advantage by offering a broader array of options for structuring captives."

The first bill, known as the Captive Insurance Company Amendment Act of 2007, would increase the types of "inter-cell" transactions that protected cell captive participants can undertake while retaining the protections normally afforded by the facilities.

The effect of that bill, if enacted, would be to permit two different cell owners to provide each other with loans or share some risks, while remaining legally separate when facing liabilities, said Dana Sheppard, associate commissioner with the District of Columbia's Department of Insurance, Securities and Banking. Additionally, the measure would facilitate the transformation of cells into full-fledged captives and captives becoming cells, Mr. Sheppard said.

The second piece of legislation authorizes securitization transactions in hopes of encouraging the formation of so-called reinsurance "Triple X" captive facilities, which offer a way for life insurers to form reinsurance captives. Both bills were signed by Washington Mayor Adrian M. Fenty late last year and are awaiting approval by the U.S. Congress, which must sign off on such measures.

The Vermont's Department of Banking, Insurance, Securities and Health Care Administration is also in the process of drafting legislation to, among other things, facilitate captive involvement in securitization arrangements, according to Kevin Moriarty, assistant general counsel for the department in Montpelier.

Another onshore domicile trying to get a bigger share of the captive market is Montana, where regulators have drafted legislation to divert 10% of all captive premium taxes into a fund to be used by the state auditor's office—which acts as Montana's insurance and captive regulator—to market the domicile.

See **LEGISLATION** page 15

LARGEST MANAGERS OF BERMUDA CAPTIVES

Ranked by gross premium volume, in millions of dollars

Manager	Premium volume		Captives	
	2006	2005	2006	2005
Marsh Management Services (Bermuda) Ltd.	\$8,900.0	\$7,150.0	285	272
Aon Insurance Managers (Bermuda) Ltd.	4,100.0	5,200.0	284	272
International Advisory Services Ltd.	3,486.0	2,824.0	183	173
Cedar Management Ltd.	1,103.4	1,055.6	14	8
JLT Risk Solutions Management (Bermuda) Ltd.	1,077.8	1,130.0	47	49
Liberty Mutual Management (Bermuda) Ltd.	1,000.0	1,000.0	21	19
Beecher Carlson (Bermuda)	941.0	1,800.0	26	26
USA Risk Group (Bermuda) Ltd.	579.4	446.6	3	3
Quest Management Services Ltd.	490.0	450.0	92	80

Source: BI survey

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LARGEST MANAGERS IN SINGLE DOMICILE BY PREMIUMS

Ranked by premium volume at year-end 2006 in millions of dollar

Marsh Management Services (Bermuda) Ltd.	\$8,900
Marsh Management Services Inc. (Vermont)	\$5,000
Aon Insurance Managers (Vermont) Inc.	\$4,200
Aon Insurance Managers (Bermuda) Ltd.	\$4,100
International Advisory Services Ltd.	\$3,486

Source: BI survey

LARGEST MANAGERS IN SINGLE DOMICILE BY CAPTIVES

Ranked by captives managed at year-end 2006

Marsh Management Services (Bermuda) Ltd.	289
Aon Insurance Managers (Bermuda) Ltd.	284
Aon Insurance Managers (Guernsey) Ltd.	214
Marsh Management Services Inc. (Vermont)	203
Aon Insurance Managers (Vermont) Inc.	192

Source: BI survey

LARGEST PROTECTED CELL MANAGERS

Ranked by cell companies managed

Aon Captive Services Group	48
Marsh-Captive Management Services	33
HSBC Insurance Management	24
JLT Risk Solutions Management	18
Willis Management	17

Source: BI survey

Ranking

Largest captive managers worldwide

Ranked by captives managed worldwide in 2006

Rank	Company/Address	Phone/Fax/Web site	Parent	Captives 2006	Captives 2005	Domiciles	Captives formed in 2006	Total staff	Principal officer
1	Aon Captive Services Group 38/39 Fitzwilliam Square, Dublin, 2 Ireland	353-1-676-2911 Fax: 353-1-696-2744 www.aon.com	Aon Corp.	1,386	1,352	29	70	463	Stephen Cross, CEO
2	Marsh-Captive Management Services P.O. Box HM 1826, Hamilton, HM HX Bermuda	441-292-4402 Fax: 441-297-9780 www.marsh.com	Marsh & McLennan Cos. Inc.	1,120	1,103	31	73	422	Andrew D. Carr, chairman -captive management practice
3	Willis Management 1 Lawson Lane, Suite 410, Burlington, Vt. 05401	802-658-9466 Fax: 802-658-5520 www.williscaptives.com	Willis Group Holdings Ltd.	247	240	17	25	113	James Girardin, executive vp
4	USA Risk Group P.O. Box 306, Montpelier, Vt. 05601	800-872-7475 Fax: 802-229-6280 www.usarisk.com	-	209	177	7	12	48	Gary Osborne, president
5	International Advisory Services Ltd. 44 Church St., Hamilton, HM 12 Bermuda	441-295-3688 Fax: 441-295-2584 www.ias.bm	-	194	183	3	13	105	David Ezekiel, president/managing director
6	HSBC Insurance Management 8 Canada Square, Level 16, London, E14 5HQ England	44-207-991-0273 Fax: 44-207-991-4640 www.insurancemanagement.hsbc.com	HSBC Holdings P.L.C.	168	146	7	25	68	Peter Walker, chief executive
7	Beecher Carlson Holdings Inc. 2002 Summit Blvd., Suite 925, Atlanta, Ga. 30319	404-460-1400 Fax: 404-450-1435 www.beechercarlson.com	-	94	93	10	7	61	Tom Golub, CEO
8	Quest Management Services Ltd. Skandia International House, 16 Church St., P.O. Box HM 2062, Hamilton, HM HX Bermuda	441-295-2185 Fax: 441-292-1143 www.questgroup.bm	-	92	80	1	1	16	Nicholas S. Dove, president/principal
9	AIG Insurance Management Services 175 Water St., New York, N.Y. 10038	212-458-3451 Fax: 212-458-3434 www.aigcaptives.com	American International Group Inc.	91	98	10	13	47	Paul Obolensky, president
10	AMS Insurance Management Services Ltd. Sea Meadow House, P.O. Box 116, Road Town, Tortola, British Virgin Islands	284-494-4078 Fax: 284-494-8589 www.amsbvi.com	AMS Group	88	76	2	0	10	Derek Lloyd, director/insurance manager

Source: BI survey

Researched by Kevin Edison and Karen Tucker

Visit www.businessinsurance.com for more information and to access the full searchable Directory of Captive Managers. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Legislation: Domiciles opt to tweak existing statutes

CONTINUED FROM PAGE 13

S.B. 161 would help Montana compete with other captive domiciles and bring Montana "to where we can finally get out and start promoting ourselves like Vermont and other states," said John Huth, captive insurance coordinator in the auditor's office in Helena. The Montana Captive Insurance Assn. has endorsed the legislation.

In South Carolina, state Sen. Gerald Malloy, D-Darlington County, introduced S.B. 0509 late last month. The legislation would allow captives domiciled in South Carolina to write primary workers compensation coverage.

Currently, South Carolina allows captives to write workers comp reinsurance or to cover the deductible on large-deductible workers comp plans, said a spokeswoman for the South Carolina Department of Insurance.

Other captive domiciles differ in their treatment of workers comp coverage. In Vermont, for example, captives cannot write direct coverage, but they can write excess workers comp policies, according to Mr. Moriarty. In contrast, Hawaii allows captives domiciled there to write direct coverage or reinsure workers comp policies.

European, offshore domiciles

In Europe, regulators in Ireland last year were the first out of the blocks to implement the European Union's reinsurance directive, which requires reinsurance captives to meet minimum guaranty fund requirements.

Under the new rules, Ireland-based reinsurance captives must adhere to a minimum guaranty fund of €1 million (\$1.3 million)

and meet solvency requirements tied to premiums and claims.

Regulators in Dublin—in light of an increasing shift to a risk-based regulatory approach under the E.U.'s coming Solvency II directive—are, however, easing some restrictions on certain direct-writing captives, which may eventually be applied to reinsurance captives as well.

"For lines that are deemed to be very low-risk, we are prepared to

See **LEGISLATION** next page

LARGEST MANAGERS OF CAYMAN CAPTIVES

Ranked by gross premium volume, in millions of dollars

Manager	Premium volume		Captives	
	2006	2005	2006	2005
Marsh Management Services (Cayman) Ltd.	\$1,925.0	\$1,940.0	183	186
Aon Insurance Managers (Cayman) Ltd.	1,690.0	1,600.0	134	127
Kensington Management Group Ltd.	827.0	779.0	28	29
HSBC Financial Services (Cayman) Ltd.	778.0	602.0	102	93
Willis Management (Cayman) Ltd.	751.6	825.0	35	32
USA Risk Group (Cayman) Ltd.	476.2	308.0	44	38
Global Captive Management Ltd.	400.0	421.7	83	79
Artex Risk Solutions (Cayman) Ltd.*	102.0	92.5	14	12
Strategic Risk Solutions (Cayman) Ltd.	42.7	9.3	16	5
Beecher Carlson (Cayman)	18.7	42.5	9	9

*Formerly Fair Winds Captive Management (Cayman) Ltd.
Source: BI survey



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Ireland gets new regulators

Dublin-based captives are subject to a new lineup of regulators this year.

Frank Brosnan—former deputy head of nonlife insurance supervision at the Irish Financial Services Regulatory Authority—held regulatory authority over captives in the domicile until his move last year to a position in banking supervision at IFSRA.

The role of deputy head of the IFSRA's insurance supervision department has now been split into two separate positions. Mike Frazer is responsible for all reinsurance matters, while Andrew Mawdsley oversees insurance-related regulatory activities.

Messrs. Frazer and Mawdsley report to Patrick Brady, who was appointed head of insurance supervision at the IFSRA last May.

—By Michael Bradford

LARGEST MANAGERS OF VERMONT CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2006	2005	2006	2005
Marsh Management Services Inc.	\$5,000.0	\$4,300.0	173	196
Aon Insurance Managers (Vermont) Inc.	4,200.0	3,900.0	194	178
USA Risk Group of Vermont Inc.	552.9	526.5	36	33
Willis Management (Vermont) Ltd.	530.3	546.0	38	35
SB&T Captive Management Co.	408.6	407.0	18	19
AIG Insurance Management Services Inc.	231.9	552.4	33	32
Strategic Risk Solutions (Vermont) Ltd.	139.9	106.6	22	25
HSBC Insurance Management (USA)	55.0	20.0	4	2
Beecher Carlson (Vermont)	53.1	108.0	8	8
Artex Risk Solutions Inc. (Vermont)*	51.0	24.5	1	1

*Formerly Arthur J. Gallagher Captive Services (Vermont)

Source: BI survey

Legislation: Domiciles opt to tweak existing statutes

CONTINUED FROM PREVIOUS PAGE

look at the required solvency margin there," said Andrew Mawdsley, co-deputy head of Ireland's Insurance Supervision Department.

Meanwhile, the Isle of Man is expected to pass legislation this year to allow the formation of incorporated cell companies. ICC's—the first one to write insurance was recently approved in Guernsey in February—are similar to protected cell companies, but offer added protection to member entities in the

event a cell collapses

Several domiciles have enhanced corporate governance and compliance regulations for captive insurers.

In Switzerland, a new directive issued by the Federal Office of Private Insurance that went into effect Jan. 1 requires insurers, including reinsurance captives, to create a system, if one is not in place, to ensure proper corporate governance procedures are followed. Under the new rule, insurers must outline processes for monitoring and assessing their exposures through a risk management program and internal controls.

The British Virgin Islands also has added directives to strengthen compliance for captives domiciled there.

"They want to insure that all the proper records and information are being kept on island by the managers," and have recently begun performing informal inspections of captive managers' offices to ensure this compliance, said Stuart Grayston, president of offshore operations in Bermuda for captive manager USA Risk Group, which manages more than 60 captives in the BVI.

"It might be overkill" for some of the smaller captive managers, said Mr. Grayston, but "we don't have any problem with it. It just

Continued on next page



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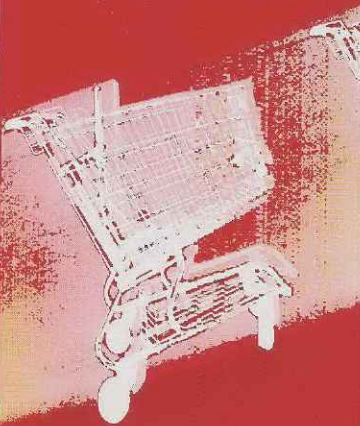
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SPOTLIGHT

CONTINUED FROM PREVIOUS PAGE

adds a few dollars to our costs, but other than that, I think it's a good thing."

While the Cayman Islands did not make any specific changes to its captive statute, last year it conducted—for the first time in 25 years—a comprehensive review of the insurance law, according to the Cayman Islands Monetary Authority.

"We are really excited about the prospect of an all-encompassing new law," said Morag Nicol, deputy head of the insurance supervision division of the Cayman Islands Monetary Authority. "It will provide considerable transparency" and "provide further detail and clarity regarding what's expected" from companies in the domicile, she said.

Bermuda last year added provisions to its insurance law through the Insurance Amendment Act of 2006, but those changes have had little affect on the captive sector, according to the island's regulator, the Bermuda Monetary Authority, in a statement released last month.

"There are no real impacts on the Class 1, 2, and even 3 as far as legislative requirements are concerned...(regulators) are really concentrating on the Class 4s," or the large commercial sector, which has seen a boom in startup reinsurance companies, said USA Risk Group's Mr. Grayston.

At some point, however, Bermuda will need to work to improve regulation of segregated account companies, because current law requires regulation of a SAC overall, but not each of individual cells, said Philip A. Barnes, managing director of Aon

Insurance Managers (Bermuda) Ltd. who is also president of the Bermuda Insurance Management Assn.

On a global scale, the International Assn. of Insurance Supervisors continues its review of international standards for supervision of captives, which it plans to distribute to insurance regulators around the world.

"The fact that the IAIS has engaged key captive jurisdictions to produce a captive guidance paper regarding captive supervision...is very encouraging," said Jeremy Cox, supervisor of insurance at the BMA, in a statement.

Roberto Cenicerros and Michael Bradford contributed to this report.

LARGEST MANAGERS OF GUERNSEY CAPTIVES

Ranked by gross premium volume, in millions of dollars

Manager	Premium volume		Captives	
	2006	2005	2006	2005
Aon Insurance Managers (Guernsey) Ltd.	\$3,000.0	3,000.0	214	203
Marsh Management Services (Guernsey) Ltd.	1,089.0	806.0	61	67
Willis Management (Guernsey) Ltd.	415.2	390.0	48	51
Heath Lambert Insurance Management (Guernsey) Ltd.	150.0	222.0	19	19
JLT Risk Solutions (Guernsey) Ltd.	58.0	147.0	20	17

Source: BI survey



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Several states grapple with captive efforts

Legislation introduced but has yet to win lawmakers' approval

By **ROBERTO CENICEROS**

Efforts are proceeding slowly for three states that announced their intentions early last year to become new captive domiciles.

Lawmakers or regulators in Connecticut, Ohio and New Jersey revealed plans in 2006 to push legislation that would give their states the authority to license captives.

While those efforts continue, observers of the U.S. captive industry said recently that they have not heard of any other states looking to host captives.

Legislation to make New Jersey a captive domicile remained, as of late last month, in the state Assembly Financial Institutions and Insurance Committee. The legislation was introduced in that committee in January 2006 by Assemblyman Neil Cohen, D-Union. The assemblyman chairs the committee.

The bill "is not dead, but it's not moving real quick," said Richard Stokes, regional manager of the Trenton, N.J., office of the Property Casualty Insurers Assn. of America.

Assemblyman Cohen did not return calls seeking comment.

Mr. Stokes noted that in New Jersey, bills have two years to be adopted or expire. So legislators have until the end of this year to act on Assemblyman Cohen's legislation.

In Connecticut, state Sen. Joseph Crisco, D-Hamden, has revived efforts to pass a captive bill. Sen. Crisco, chairman of Connecticut's Insurance and Real Estate Committee, originally introduced legislation in February 2006 that would make the state a captive domicile.

The Senate approved his bill a month after its introduction, but it expired before Connecticut's Assembly approved it.

Then this January, Sen. Crisco revived the effort by introducing S.B. 60 in his committee.

Although Sen. Crisco's office did not return calls for comment, the language of the bill reveals that it would establish a division responsible for regulating captives within Connecticut's Insurance Department.

As of late last month, S.B. 60 had not passed out of the committee where it was introduced, but a public hearing regarding the bill was held last month.

Efforts also continue in Ohio. Last year, the state's former director of the Department of Insurance, Ann Womer Benjamin, said her department was drafting captive legislation.

That effort failed to produce a captive bill, though, and Ohio's current insurance director, Mary Jo Hudson, who began serving in the post on

Jan. 8, is still reviewing the idea and cannot yet say whether she would support such an effort, said a spokesman for the insurance director.

But state Sen. Steve Stivers, R-Columbus, plans to introduce a captive bill, perhaps before the end of March, a spokesman for the senator said.

"The senator is very interested in getting this done in Ohio," the spokesman said.

LARGEST MANAGERS OF BARBADOS CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2006	2005	2006	2005
Marsh Management Services (Barbados) Ltd.	\$1,100.0	\$1,000.0	29	33
Aon Insurance Managers (Barbados) Ltd.	366.7	260.0	47	46
IAS (Barbados) Ltd.	307.0	215.0	10	10
Towner Risk Management Ltd.	246.9	232.7	17	15
Innovative Captive Strategies (Barbados), Ltd.	22.0	N/A	2	N/A
Meadowbrook Risk Management Ltd.	8.4	8.5	3	5
American International Management Co. (Barbados) Ltd.	4.5	11.6	2	2

Source: BI survey



Self-insurance grows for catastrophe-exposed properties

Additional capacity may ease pressure on limits, deductibles

By SALLY ROBERTS

More employers are self-insuring their U.S. coastal property risks, but not necessarily because they want to.

Following the record hurricane seasons in 2004 and 2005, substantial rate increases and reductions in insurance capacity for catastrophe-exposed property risks have forced

buyers to assume more risk. Whether that increased risk retention takes the form of higher deductibles, lower limits or other changes to terms and conditions, policyholders are not able to transfer as much risk as they could two years ago, brokers, consultants and risk managers say.

As a result, buyers are looking at captive insurance to soften the blow and some are turning to quota-share arrangements within layered programs to save on premiums, brokers say.

New property catastrophe capacity coming into the market, howev-

er, should provide some relief for buyers and could ultimately result in more affordable risk transfer, property experts say.

And for most buyers with coastal property exposures, that would be welcome news.

"The '04 and '05 season has left us with breathtaking deductibles that have been foisted upon us by the insurance companies. Although there is capacity out there, they want to make sure the insured has a lot of skin in the game," said John Phelps, director of risk management for Blue Cross & Blue Shield of Florida Inc., which is based in Jack-

sonville, and also has offices in Fort Lauderdale and Miami.

Mr. Phelps said although the health insurer's windstorm deductible went from 2% of property value per location to 5% in 2005, and its aggregate windstorm deductible went from \$1 million to \$1.75 million in 2005, there was "no sense of urgency" to establish a captive to handle it. "We can handle it through our balance sheet at the current time. But it's always an alternative out there and the more we're asked to retain in both the property and liability lines, the more we think about it," he said.


"Certainly the dramatic increases in pricing and dramatic reduction in capacity for that coverage has led clients to rethink their risk-taking willingness," said Ed Koral, senior manager—actuarial and insurance solutions for Deloitte Consulting L.L.P. in New York. "These are people who have not recently had to make risk retention decisions for this type of risk, and now the market is forcing them to rethink and they are retaining more risk."

Necessity not strategy

Indeed, "last year was really the first year that people started taking meaningful plugs of capacity on a self-insured basis," said Alexandra S. Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services in Glendale, Calif. "It, however, was more of a case of self-insuring as a necessity rather than anything that was a pure strategy."

But in those cases where buyers are strategically turning to captives to self-insure their coastal property risks, they are not looking to self-insure the entire exposure, Ms. Glickman said. "They're using it to

See **SELF-INSURANCE** page 21



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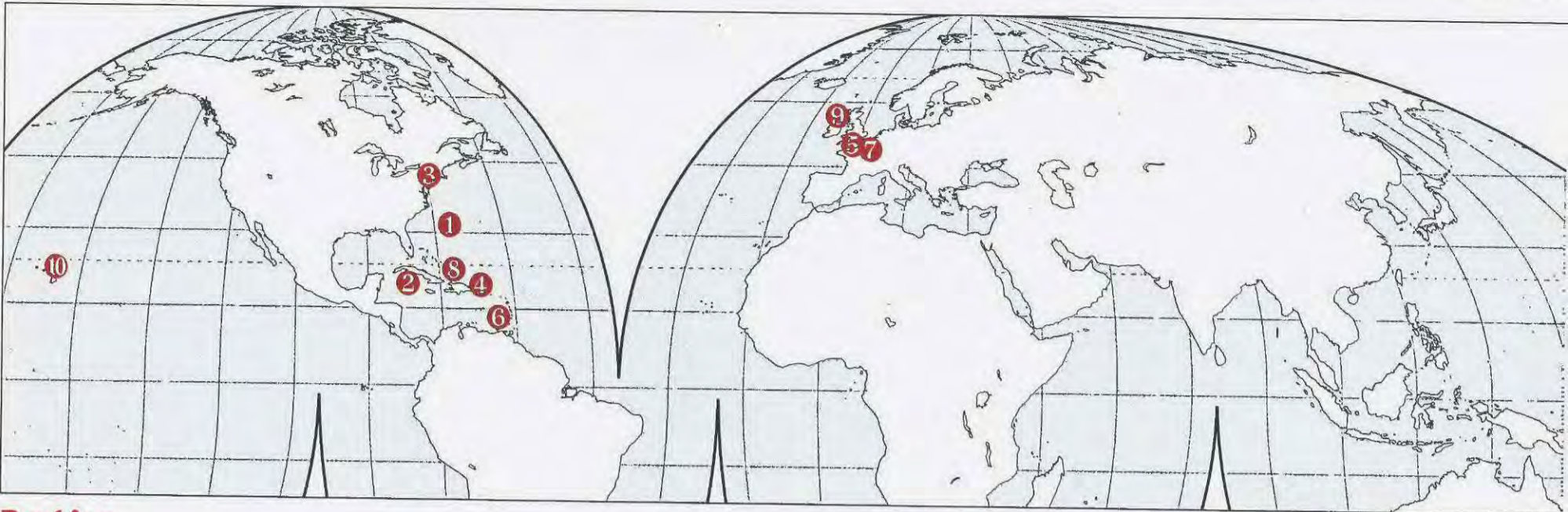
With limited capacity available to insure coastal property risks, buyers with the best story to tell are most likely to obtain coverage, according to a broker and a consultant.

"Underwriters are very, very fixated on information," said Alexandra S. Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services in Glendale, Calif. "Now more than ever, insurance companies are really delineating between clients. They want to know not just what the asset looks like, but they are very interested in the operating strategy of the company."

"If you have a very good story to tell and you can back it up with third-party support, that's really what the underwriters want to know; do you really have a handle on your own exposures?" Ms. Glickman said.

"Make sure to do your homework from a cat model perspective and get a better picture of how likely you are to have that type of event," said Ed Koral, senior manager-actuarial and insurance solutions for Deloitte Consulting L.L.P. in New York. "There is a limited amount of capacity to offer up to insurance buyers, and underwriters will offer that up to the people who make the best presentation of their risks."

—By Sally Roberts



Ranking Largest captive domiciles

Ranked by number of captives

Rank	Domicile	2006	2005	Regulator/Address	Phone/Fax/Web site	Capital & surplus	Contact
1	Bermuda	989	987*	Bermuda Monetary Authority 43 Victoria St., Hamilton, HM 12 Bermuda	441-295-5278; fax: 441-278-0289 www.bma.bm	\$120,000 for Class 1 (single-parent insuring only risks of parent and affiliates); \$250,000 for Class 2 (group/association deriving no more than 20% of net premiums from unrelated companies); \$1 million for Class 3 (more than 20% from unrelated companies)	Jeremy E. Cox, supervisor of insurance
2	Cayman Islands	740	733	Cayman Islands Monetary Authority Elizabethan Square, George Town, Grand Cayman KY1-1001 B.W.I.	345-949-7089; fax: 345-949-2532	\$120,000 for Class B license (most single-parent, P/C captives); \$240,000 if writing long-term coverages; \$360,000 if writing both long-term and general business	M. Nicol, head-insurance supervision; insurance@cimoney.com.ky
3	Vermont	563	542	Vermont Department of Banking, Insurance, Securities and Health Care Administration 89 Main St., Drawer 20, Montpelier, Vt. 05620-3101	802-828-3304; fax: 802-828-3460 www.vermontcaptives.info	\$250,000 for single-parent; \$500,000 for industrial insured or sponsored; \$750,000 for association captives; \$1 million for risk retention groups. Approved letters of credit can be used toward capitalization	Leonard D. Crouse, deputy commissioner- captive division
4	British Virgin Islands	383*	380	Financial Services Commission P.O. Box 418, Road Town, Tortola, British Virgin Islands	284-494-4190	\$100,000 for P/C captives writing up to \$500,000 in net premiums; \$250,000 for life/health captives	Michael Oliver, director-insurance; oliverm@bvifsc.vg
5	Guernsey	381	382	Guernsey Financial Services Commission La Plaiderie Chambers, La Plaiderie, St. Peter Port, Guernsey GY1 1WG Channel Islands	44-148-171-2706; fax: 44-148-171-2010	Minimum is £100,000 (\$195,910)	Alan Fleming, director-insurance; insdiv@gfsc.gg
6	Barbados	235	242	Ministry of Finance and Economic Affairs Bridgetown, Barbados	246-426-3815; fax: 246-436-2699	\$125,000	Carlos Belgrave, supervisor-insurance; sofi@caribsurf.com
7	Luxembourg	208	208	Commissariat aux Assurances 7 Blvd. Royal, L-2449 Luxembourg	352-226-911; fax: 352-226-910	€1.2 million (\$1.6 million)	Victor Rod, insurance commissioner; commassu@commassu.lu
8	Turks & Caicos Islands	169**	166**	Financial Services Commission Harry E. Francis Building, Pond St., P.O. Box 173, Grand Turk, Turks & Caicos Islands	649-946-2791; fax: 649-946-2821	\$100,000 for general insurers; \$180,000 for life insurers. Subject to review of business plan	Albert P. Smith, superintendent of insurance; asmith_fsc@tciway.tc
9	Isle of Man	161	165	Isle of Man Insurance and Pensions Authority HSBC House, Ridgeway St., Douglas, IM1 1ER Isle of Man	44-162-464-6000; fax: 44-162-464-6001 www.gov.im/ipa	£500,000 (\$979,550) for long-term; £150,000 (\$293,865) for general; £100,000 (\$195,910) for reinsurance; £50,000 (\$97,955) for restricted	David A. Vick, chief executive/insurance supervisor; ipa@gov.im
10	Hawaii	160	158	State of Hawaii, Department of Commerce & Consumer Affairs Insurance Division 335 Merchant St., P.O. Box 3614, Honolulu, Hawaii 96811-3614	808-586-0981	Minimum requirements vary by type of captive; additional requirements determined on a case- by-case basis	Craig Watanabe, captive insurance administrator; captiveins@dcca.hawaii.gov

* BI estimate. ** Excludes credit life insurers
Source: BI questionnaire

Visit www.businessinsurance.com for more information and to access the full searchable Directory of Captive Domiciles. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Self-insurance: Buyers review options

CONTINUED FROM PAGE 19

take small (chunks) of capacity so that the layer pricing doesn't get completely thrown off track," she said. "That's the smartest way to approach it, because the last thing you want to do is bankrupt a captive because you then have to reload it."

Joe Siech, executive managing director of Beecher Carlson in Atlanta, said he's seeing clients "use their captive to quota share parts of layers to achieve premium reductions that aren't readily available by taking higher deductibles."

"In this market, there's not a lot of credit for taking higher retentions because underwriters need to get a certain price per million to feed their (catastrophe) models and new capital requirements," he said. So rather than go from, say, a \$500,000 to a \$5 million deductible to try to save on premium, buyers are turning to their captives with quota-share arrangements.

But captives are not necessary for such a strategy, according to Gallagher's Ms. Glickman.

She recommends "vertical quota-share" arrangements to those clients that are having difficulties in securing property coverage, have the financial wherewithal to absorb more risk and do not have loan covenants on their properties.

Under this type of self-insured arrangement, buyers assume a certain amount, such as 10%, of every layer of coverage above the deductible, similar to coinsurance, she said.

So if a risk manager needed to secure \$100 million of wind coverage, the most the buyer would have to pay out in a \$100 million loss would be 10% or \$10 million, she said. Buyers "participate like any other insurer on those layers."

A captive is not necessary unless the insured wants to charge back the premium to a third party, she said.

According to Mr. Siech, while captives have benefits and should be "explored," they are "not for everybody." A lot of clients, he said,

end up having lender requirements that dictate whether they need a certain level of insurer security in place, which can be "a bit problematic using a captive" because few are rated by rating agencies. In those cases, a fronting insurer would be required and "by the time you get a front and pay fronting costs, it's going to be more expensive at the end of the day."

Long-term view

At the same time, Mr. Siech said, buyers need to take a long-term view when they become an active risk participant within a coastal property captive arrangement.

"Unlike a lot of casualty risks that have a lot predictability around them, property risks just don't have that," he said.

Brokers are optimistic, however, that buyers soon will see some relief in coastal property pricing as new capacity has come into the market.

"Most clients with exposure there don't want to self-insure anymore, but they're being forced to," said Jill Dalton, managing director for Marsh Inc.'s property practice in New York. "We're hoping that in 2007 we're going to see some relief in that because of the light (2006) storm season and new capacity coming into the market."



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SOUTHWEST CAPTIVES

	Arizona	Nevada	Utah
Captive statute enacted	2001	1999	2003
New captives licensed in 2006	23	37	16
Total captives at year-end 2006	74	97	30
Licensed, active captives at year-end 2006	73	90	30
Pure captives	48	53	29
Risk retention groups	18	24	1
Rent-a-captives	0	1	0
Association captives	2	10	0
Branch captives	0	1	0
Cell captives	1	1	0
Agency captives	3	0	0
Industry group captives	1	0	0

Source: State insurance departments

Southwest domiciles expand at rapid pace

Arizona, Nevada, Utah growth rates exceed competition

By DAVE LENCKUS

More than 150 years after writer John Soule and newspaperman Horace Greeley advised America's young men to "go west," their advice is not lost on today's new captive insurer owners.

Boasting captive laws modeled after that of pre-eminent U.S. captive domicile Vermont, respected regulators, relatively easy accessibility and various vacation attractions, the 2006 captive growth rates of the newest domiciles in the United States—Arizona, Nevada and Utah—far exceeded Vermont's. Indeed, Nevada last year licensed nearly as many captives as Vermont, even though Vermont's captive base is roughly six times bigger than Nevada's.

While the three southwest domiciles share high growth rates, they are markedly different in other respects, captive managers and regulators note. For some captive owners, one or more of those differences and possibly their relatively recent emergence as domiciles could be the tipping point in their decisions about where to locate, captive managers say.

Combined, the 193 licensed and active captives in Nevada, Arizona and Utah at year-end 2006 amounted to about one-third of the 563 in Vermont. Nevada had the largest number of the trio—90—followed by Arizona with 73 and Utah with 30.

Captive regulators in the three Southwest domiciles acknowledge that they do not expect their respective jurisdictions to catch up—as measured by total number of active captives—with Vermont anytime soon.

But growth rate is another matter, they say. Vermont licensed 37 new captives last year for a growth rate of less than 10%. The growth rates in each of the three Southwest domiciles, however, approached or exceeded 50%, with Nevada licensing 35 new captives, Arizona 23 and Utah 16.

There is a spirit of competition among many of the regulators, though they characterize it as friendly and insist that a captive owner's decision on where to locate is far less important than the fact that captive owners have alternative risk financing options.

Regarding that spirit and the possible impact on Vermont's captive industry, Len Crouse, Vermont's deputy commissioner of insurance and its top captive regulator, said: "I'm not so concerned about numbers anymore. Our numbers are good."

Besides, he said, Vermont still attracts the largest captive owners.

The numbers are important in Nevada, however. Not only does Cliff King, chief administrator-captive programs in the state's Insurance Division in Carson City, promote the state's attractions as a captive domicile but so does Insurance Commissioner Alice A. Molasky-Arman, who meets with every prospective captive owner considering establishing a captive in the state.

"I enjoy it," Ms. Molasky-Arman said. Perhaps more importantly, the

Continued on next page



IN THE WORLD OF CAPTIVE
DOMICILES, THERE REALLY
IS A GOLD STANDARD.



Camel's Hump, Vermont

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CONTINUED FROM PREVIOUS PAGE

commissioner said she has a responsibility to understand who wants to set up a captive in Nevada.

Prospective captive owners love that attention, said Robert Vogel, vp of Carson City, Nev.-based captive manager Pro Group Captive Management Services Inc., a division of Pro Group Management Inc., the state's largest captive manager with 44 captives under management as of last month.

Meanwhile, the Insurance Division's efforts have caught the attention of the state's Economic Development Commission, which has joined the division and the Nevada Captive Insurance Assn. in promoting the state.

Arizona's top captive regulator, however, says the domicile is not competing with any other for captive business. The Arizona Insurance Department is "just fulfilling a need of consumers and the public," said Rod Morris, captive insurance administrator in Phoenix.

"Therefore, whether we approve new licenses is immaterial to us—other than it's nice to be considered a desirable domicile," said Mr. Morris, who previously held executive positions at the U.S. Overseas Private Investment Corp. and the CNA Risk Management Services unit of CNA Financial Corp.

Instead, the Phoenix-based Arizona Captive Insurance Assn. has

taken the lead in promoting Arizona as a captive domicile, said Judie Harrington-Carlisle, executive director.

In Utah, Don Spann, the Insurance Department's first captive insurance director, credits captive growth in the state largely to the Salt Lake City-based Utah Captive Assn., captive managers and brokers.

Mr. Spann said he joined the Utah department last October after a 30-year tenure in the Tennessee Insurance Department because of the governor's, Legislature's and top insurance regulators' support for the captive industry.

For example, the state's 2003 captive law was modified in 2005 to eliminate the captive premium tax, Mr. Spann said.

That and the captive fee structure makes Utah one of the lowest-cost domiciles in the United States, said Jonathan S. Soules, a Salt Lake City-based vp with captive manager Marsh USA Risk & Insurance Services Inc. and president of the Utah Captive Assn.

Equally important as domicile alternatives for captive owners is proper and consistent regulation, captive managers and regulators say.

After all, "if something goes wrong, it'll reflect on everybody in the business," Mr. Crouse said.

Jon Harkavy, an Arlington,

See **SOUTHWEST** next page

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Southwest: Arizona, Nevada, Utah expanding at a rapid pace

CONTINUED FROM PAGE 23

Va.-based vp and the general counsel for captive manager Risk Services L.L.C., which is an approved captive manager in all three Southwest domiciles, noted that both Colorado and Delaware were viewed as strong domiciles shortly after enact-

ing their captive laws in 1972 and 1984, respectively. But regulator changes in both domiciles led to a waning commitment to captive growth, he said.

The regulators in both Nevada and Arizona are fair, straightforward and predictable and recognize that traditional and captive

insurers must be regulated differently, Mr. Harkavy said. Risk Services does not yet manage a captive in Utah.

Arizona's decision not to market itself, however, might raise questions among some captive owners about whether its current commitment to the captive industry will continue under a future commissioner, he said.

But Nancy Gray, the Burlington, Vt.-based executive director-North America for Aon Insurance Managers USA Inc., an Aon Corp. unit that manages 22 captives in Ari-

zona, said the state "has demonstrated its commitment to the captive marketplace."

The Insurance Department's decision not to market the state "doesn't matter," Ms. Gray said. "What we're looking for is how they're going to regulate captives once they're there."

Mr. Morris says the Arizona Department's commitment is demonstrated by the fact that—counting traditional insurers—it regulates more insurance companies than any other major captive domicile. In doing so,

the department handles all of its analysis functions in house, he noted.

Nevada's Insurance Division outsources many of those functions, but Pro Group's Mr. Vogel said that also can be an advantage to captive owners. "I like outside eyes, because they're not beholden to anyone," and outside experts often "will have a lot more expertise" in their field, he said.

Nevada's commitment to the captive industry is demonstrated by

Continued next page

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Southwest attracts wide variety of captives

Nevada, Arizona and Utah have attracted mainly single-parent captives, but Nevada also has 24 active risk retention groups, compared with 18 in Arizona and one in Utah, according to regulators and state captive insurance associations.

The domiciles have attracted a wide variety of captive owners, including manufacturers, building contractors, real estate developers, automobile dealers, physicians, lawyers, nursing homes

and, in Nevada, casinos.

Headquarters for Nevada's captive owners dot the U.S. map from New York to San Francisco. Arizona has attracted not only captive owners from across the country but also three or four owners whose captives previously were licensed in other U.S. states and about eight that had been chartered in offshore domiciles. Many of Utah's captive sponsors are local businesses.

The risks covered in the captives vary just as widely: general liability; property; workers compensation; longshoremen and harbor workers; professional liability, including medical malpractice liability; construction defects; directors and officers liability; cargo; and earthquake. In Utah, however, workers comp only can be reinsured through a captive and not written directly.

—By Dave Lenckus

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CONTINUED FROM PREVIOUS PAGE

one captive law change and another that is in the works, both of which are designed to ease unnecessary financial burdens for captive owners, according to the state's regulators and captive managers (see related story).

Nevada also generally completes the licensing process for risk retention groups in 30 to 60 days, while most domiciles take three to six months, Aon Insurance's Ms. Gray said.

Meanwhile, Aon Insurance is looking at Utah to distinguish itself from both Nevada, the largest of the three domiciles, and Arizona, which like Utah, does not impose premium taxes on captives.

But Fred Turner, president of Irvine, Calif.-based Active Captive Management L.L.C., which operates captive manager Utah Captive Managers L.L.C. in Salt Lake City, said Utah has some advantages over Arizona. Utah Captive Managers has 20 captives under management in Utah and two more under development.

For example, he noted that Utah requires only three captive board directors, while Arizona law requires five.

Mr. Turner also said that while the Arizona Insurance Department responds quickly, he has encountered delays in dealing with that state's Corporation Commission, which also has to sign off on captive formation paperwork. The delays led one captive owner to select Utah over Arizona as its domicile, Mr. Turner said.

Arizona's Mr. Morris acknowl-

edged that the Corporation Commission did get backlogged in late 2005 and early 2006, but he said that problem has since been rectified.

Ms. Gray said she has not encountered that problem. She also said that Arizona's board-member requirement is not an issue for any Aon Insurance client.

Overall, regulators in Arizona, Nevada and Utah and captive managers in the domiciles say they expect to see more captive owners stream into the Southwest in the future.

None of the domiciles will individually catch up with Vermont, Mr. Vogel predicted. "But when you look at all three, that might be possible as a region."

Nevada considers modifying captive laws

Nevada insurance regulators supported a 2005 captive law change and want state lawmakers to make another modification this year to ease what they say are unnecessary financial burdens on owners of captive insurers.

Nevada lawmakers in 2005 lowered the premium tax and fees on risk retention groups licensed in other states that write business for Nevada policyholders.

The 3.5% premium tax, which was reduced to 2%, especially discouraged the groups from forming in Nevada because Nevada-licensed RRGs had faced retaliatory taxes in other states in which they wrote coverage. Many states impose such penalties.

This year, Nevada regulators hope to shepherd through the Legislature a bill that would change the captive law's capital and surplus requirement to an

aggregate amount.

Currently, captives must meet separate requirements for capital and surplus. That requirement has tripped up some captives that were more than adequately funded in total but did not have their funds appropriately delineated under the current requirements, said Cliff King, chief administrator-captive programs for the Nevada Insurance Division.

—By Dave Lenckus

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Questions Answers

Delivery giant sees captives as a good fit worldwide

Bill Fitzpatrick, vp-risk benefits, corporate insurance and risk management for German delivery giant Deutsche Post World Net, operates two captives that fund benefits for more than 125,000 employees throughout Europe and 80 countries outside the continent. Bonn, Germany-based Deutsche Post acquired a majority stake in DHL Global in 2002 and the captive programs cover employees at Deutsche Post and DHL locations.

Mr. Fitzpatrick, who joined the global delivery company last June, after spending 16 years with American International Group Inc. as director-multinational accounts in London, is considering expanding the use of the captives into areas such as voluntary benefits. He recently spoke with *Business Insurance* Europe Senior Reporter Michael Bradford about how Deutsche Post uses the captives and why they are a good fit for the company's units throughout the world.

Q. How many captives does Deutsche Post own?

We have six captives. For the employee benefits programs, there are two—DP Re in Luxembourg and Marias Falls in Bermuda, which is by the far the largest captive. The other four were acquired when Deutsche Post bought companies.

Q. How large are the captives?

In Luxembourg, the benefits business we have is life, disability, accident and medical coverages in DP Re. It also provides some reinsurance for our captive in Bermuda. Gross premium is €13.6 million (\$17.9 million) per year and that will exceed €15 million (\$19.8 million) in 2007. It covers around 50,000 to 60,000 employees, pretty much everything on the continent. That's 15 countries.

The Bermuda captive, Marias Falls, provides life, medical and disability and some accident coverage. Benefits premiums are up around €30 million (\$39.6 million) per year. That one primarily covers

everything outside of Europe—locations in 80-plus countries.

Q. How much do the local operations save by funding benefits through the captives as opposed to using the traditional market?

Twenty-five percent is the type of savings we see over the commercial market.

Q. Where does that savings come from?

From the removal of the brokerage commission, paying premiums in advance and eliminating the profit to insurance companies. In terms of benefits it brings to DHL entities, they receive the same or better cover at 20% to 25% less than would be purchased at the commercial level with service levels that meet or exceed the local standards. A win-win for all, I would say.

Q. Apart from cost savings, what are the reasons for operating a captive to fund benefits, as opposed to using the traditional market?

There are a handful of advantages that we see. We're coming in with a 25% savings to the local entities. We're also able to put in contractual conditions that normally would be excluded. Most local policies have a standard set of exclusions that may or may not fit the needs of the account being written. We can adjust these provisions to fit the needs of DPWN.

For example, most life policies exclude a claim if the individual is not a fare-paying passenger. With the numerous planes that DHL has in the air at any given moment, this type of exclusion could result in the nonpayment of a claim for a DHL employee trying to get from one location to another, but not actively on duty.

The captive can also consider the payment of a questionable claim that would normally be declined under the provisions of a contract written at the local level. If we decide to pay it, we can, even if it is outside the guise of the contract.

We can advise our local offices of their insurance costs for the year and they can budget appropriately. The first thing we do is come in

and simplify administration; it is a very simple plan from an administrative standpoint.

Q. How are you considering expanding the captive? What new uses do you have in mind?

We are taking a real hard look at voluntary benefits. We are starting to see those benefits on the increase and we are looking at dif-

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ferent uses for our captives for voluntary benefits. We also are looking at whether there is an opportunity for pension benefits in the captives. And we are wondering if there are opportunities, where we have customers who need coverage, to provide them with coverage.

We will continue to grow the programs. It's been a great deal for the DHL entities in terms of bringing cover to their workforce.



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Market Moves

UnumProvident Corp. rebrands as Unum Group

CHATTANOOGA, Tenn.—UnumProvident Corp. has changed its name to Unum Group as part of a larger rebranding effort focusing on the Chattanooga, Tenn.-based organization's group benefits capabilities.

While the parent has changed its moniker, Unum said in a statement that the names of its insurance subsidiaries—Unum Life Insurance Co. of America, Provident Life & Accident Insurance Co., Paul Revere Life Insurance Co. and Colonial Life & Accident Insurance Co.—remain the same.

Unum insures 25 million people in the United States and the United Kingdom.

Cooper Gay renames Leadenhall Insurance

NEW YORK—London-based Cooper Gay (Holdings) Ltd. has renamed Leadenhall Insurance Brokers Inc., its U.S. specialty wholesale brokerage, as Cooper Gay Risk Services Inc.

The name change is intended to more closely align the New York-based arm with the brand of its parent insurance and reinsurance intermediary that also operates at Lloyd's of London, Cooper Gay said in a statement.

Cooper Gay Risk Services is led by Managing Director Emma Garner.

All Risks Ltd. opens Wash., Fla. branches

HUNT VALLEY, Md.—All Risks Ltd. has opened branches to service the Seattle and Orlando, Fla., areas, the Hunt Valley, Md., wholesale insurance broker and managing general agent announced.

The Redmond, Wash., office is led by Branch Manager Jason Ferguson, and will handle brokerage and contract binding business.

Contact information is: 18300 N.E. Union Hill Road, Suite 286, Redmond, Wash., 98052; Phone: 366-598-9047; Fax: 425-882-6977.

The Lake Mary, Fla., office is led by Underwriter Liz Henderson, who has focused on commercial lines, property/casualty underwriting and marketing management.

The office is at 801 International Parkway, Fifth Floor, Lake Mary, Fla., 32746; Phone: 407-562-1420; Fax: 470-562-1725.

OneBeacon specialty arm targets public entities

BOSTON—OneBeacon Insurance Group has formed a public entity arm, OneBeacon Government Risk Solutions.

Josette Kiel is leading the new unit, the second formed since Boston-based OneBeacon's initial public offering in November. The first was OneBeacon's Accident & Health Group. Ms. Kiel can be reached at 210-807-0691 or

jkiel@onebeacon.com.

OneBeacon Government Risk Solutions will offer property/casualty products for governmental entities.

U.S. Risk purchases E.M. Morrow in California

OAKLAND, Calif.—U.S. Risk Insurance Group Inc. has purchased E.M. Morrow Insurance General Agency Inc. and made the Oakland, Calif., operation a subsidiary of U.S. Risk of California Inc., the Dallas-based specialty lines underwriting manager and wholesale broker said.

Morrow Principal David Barkley and existing management at the agency will continue operating Morrow and expand U.S. Risk's

presence in California.

The purchase price was not disclosed.

Burns & Wilcox makes Chicago-area move

DOWNERS GROVE, Ill.—Burns & Wilcox Ltd. has expanded its Chicago-area operation and moved from Lombard to Downers Grove, Ill., the Farmington Hills, Mich.-based specialty insurance wholesaler, underwriter and managing general agent said.

This is its 13th office to expand in the past year in addition to opening four new offices, Burns & Wilcox said in a statement.

The new office's contact information is: 3010 Highland Parkway,

Suite 650, Downers Grove, Ill., 60515; Phone: 630-874-1100; Fax: 630-795-0296.

Electronic exchange expands operations

ST. CHARLES, Ill.—MarketScout Corp., a Dallas-based electronic insurance exchange specializing in property/casualty products, has expanded to the Chicago area.

The new office will focus on personal lines, workers compensation and "tough" liability placements, the company said in a statement.

Co-leaders of the office are Kandy Taccki and Suzanne Dettmann, both personal lines underwriting manager.

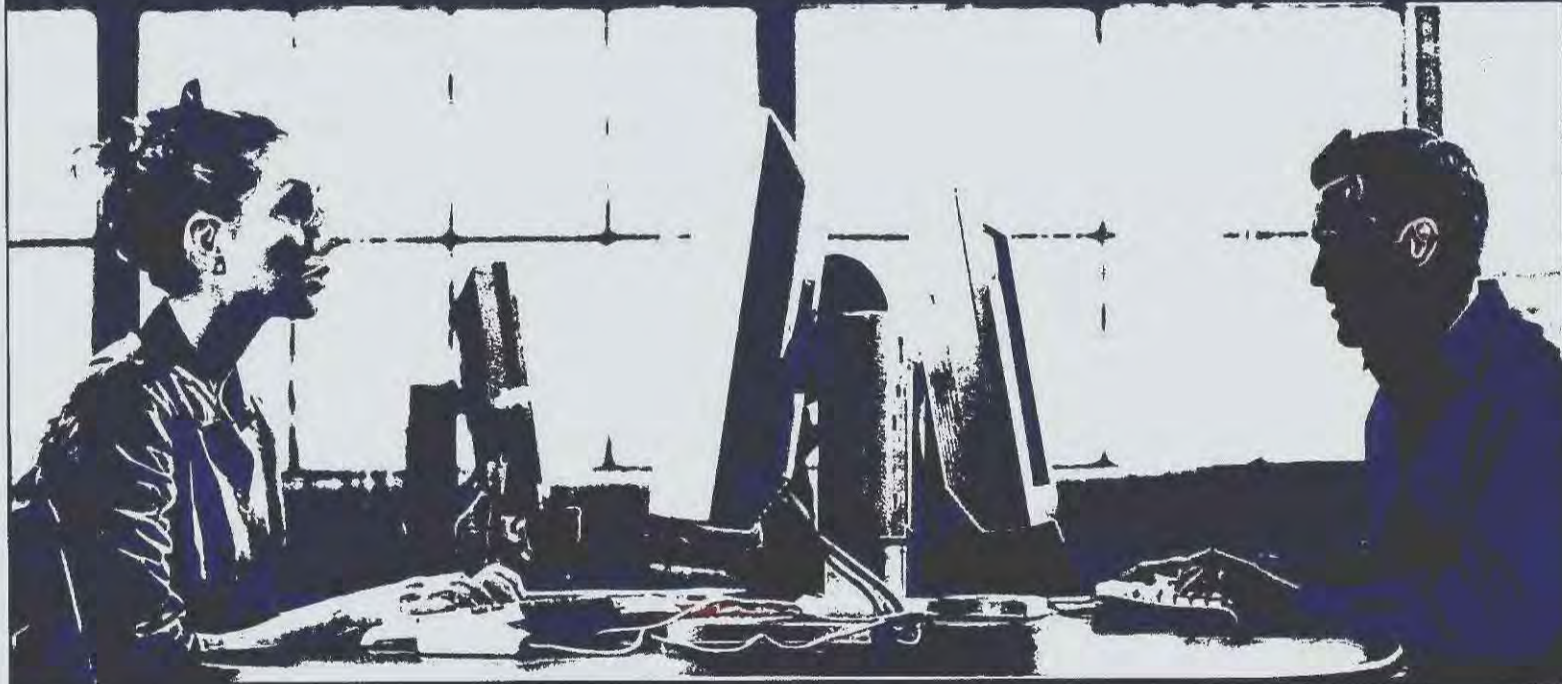
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LaFox Road, Suite Q2, St. Charles, Ill., 60175; Phone: 630-377-9460 (Ms. Taccki) or 9430 (Ms. Dettmann); Fax: 630-377-9435.

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BI's new Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while Products & Services reports on new product offerings. Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; cbenton@businessinsurance.com. P&S and C&G items should be sent to Joe Walker at jwalker@businessinsurance.com.

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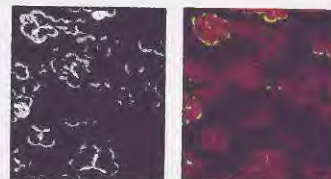


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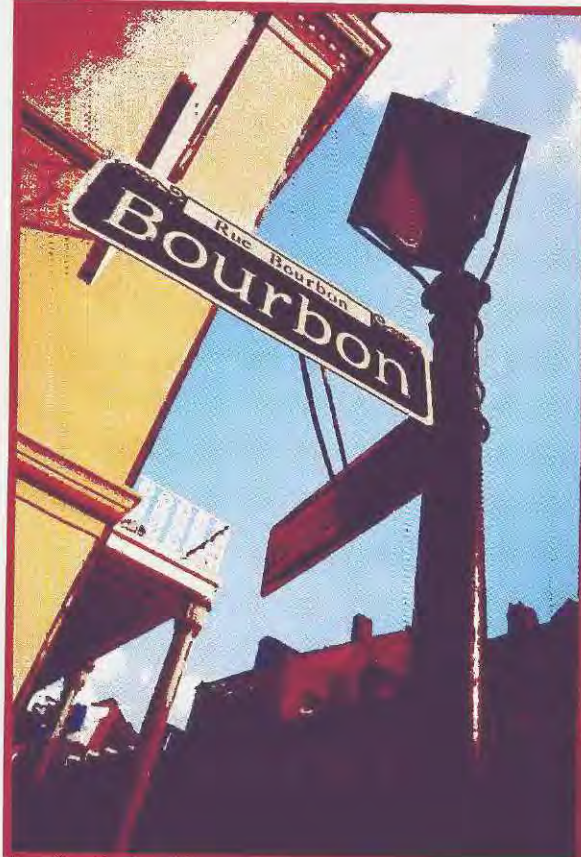
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International NEWS

E.U. commissioner mulls introducing mass torts

'Collective redress' suits not class actions: Aide

By RICK MITCHELL

BRUSSELS, Belgium—The new European Commissioner for consumer affairs is mulling a consumer protection system that could bring a form of class actions to European law.

Though the Commissioner's office declines to use the term "class actions," Bulgarian European Commissioner Meglena Kuneva said in a speech earlier this month to the European Consumer Consultative Group that she is "in favor of considering possible action on collective redress, both for competition infringements and, for example, small claims."

As Ms. Kuneva noted in her confirmation hearings before the European Parliament last year, some member states

already have, to varying degrees, "mechanisms of collective redress," and others are considering introducing such mechanisms.

A spokeswoman for Ms. Kuneva said the commissioner's proposals did not amount to the introduction of class actions, though she did not explain the difference between class actions and the form of "collective redress" favored by Ms. Kuneva.

"It's collective redress against companies that sell or provide defective merchandise or services. It's not the same thing as class actions," she said.

The spokeswoman said the commissioner planned to make a formal announcement on March 13, and would explain more when she presents a research study on the subject later in the month in Strasbourg, France.

Ms. Kuneva, who took office in November, has said collective actions could be part of her larger



Ms. Kuneva

plan to revamp E.U. consumer protection rules to improve cross-border sales and the reliability of Internet shopping, purchases of second-hand goods, financial services and car rental, among other things.

The commissioner's proposals already are piquing the interest of risk managers in Europe.

"It does sound like class actions," said Marie-Gemma Dequae, president of the Federation of European Risk Management Assns. and group risk manager for Netherlands-based metals company N.V. Bekaert S.A.

"However, we don't yet know enough about (the commissioner's) plans to comment" more fully, Ms. Dequae said.

The commissioner's plan sounds similar to a recently aborted consumer rights bill that would have introduced class actions in France (*BI*, Feb. 7), said Michel Yarhi, president of France's risk management group, the Association pour le Management des Risques et des Assurances de l'Entreprise. "It sounds like the same idea," he said.

Mr. Yarhi, who is also group insurance manager at Société Générale, said he is not worried by the prospect of a European consumer law but hopes for a common approach between French and European legislation. Certain candidates in France's current presidential campaign have supported the idea of class actions.

"It would be a very bad situation if there were antagonism between a European approach and the French approach," he said.

"In any case, the European law would have to be transposed into French law," Mr. Yarhi said.

Norway eyes insurer commission ban

Broker compensation would be limited to buyer payments

By ADRIAN LADBURY

OSLO, Norway—Norwegian insurance brokers would be banned from taking commissions from insurance companies next year, under rules the government is expected to introduce.

Norway's neighbors Denmark and Finland have already removed the potential for conflicts of interest caused by brokers' acceptance of income from both insurers and buyers, through recently adopted rules.

Brokers in Norway and Sweden, however, are currently only subject to voluntary codes of conduct, drawn up by their national insurance associations, that prevent them from accepting payment from both parties.

Norwegian insurance professionals say that the code of conduct had worked well since its introduction four years ago.

But the discovery of cases of brokers taking payments from both buyers and insurers in the municipal insurance market had, in part, prompted the Norwegian finance ministry to decide that tougher action was required, experts said.

"The proposal has been made on the basis of doubts that have been raised about insurance brokers' independence, because they can receive commissions from the insurance companies. The draft legislation entailing a ban on commissions from insurance companies is given to prevent further doubts being raised," explained Hanne

Myre, head of the pensions and insurance section at Kredittilsynet, the Financial Supervisory Authority of Norway.

A government-appointed committee published its proposals for amendments to the relevant insurance legislation at the end of last year and the consultation period will end in mid-April.

Observers said there are likely to be few objections to the proposals and that it is probable the law will be changed as early as January.

The proposed ban currently excludes reinsurance, marine and energy, and aviation business because the application of such rules to these international lines would place local buyers and insurers at a competitive disadvantage, said the experts.

It is thought likely, though, that pressure will build to eventually include these lines.

Olav Vannebo, director of the Norwegian Insurance Assn., said that brokers were "quite angry" with the association when it originally launched the voluntary code of conduct, but said that they accepted that, theoretically, they should be paid by their customers.

Insurance buyers "are asking the brokers to find the best solution and they should pay them. They have been playing along and I think that (the brokers) generally say that it's the right thing to do. It is not convenient for us, because we have to



ISTOCKPHOTO

Norway's government in Oslo is considering a ban on brokers taking commissions from insurance companies.

adjust and (the brokers) will have problems with implementation," he said.

Ronald Berg, former consultant with Tillinghast, a unit of Towers Perrin, in Sweden, welcomed the effort in Norway.

"This is definitely a good development and one we have been arguing for for many years. Brokers have two hats and it's now up to them to decide for whom they are performing the services," he said.

Mr. Berg, who is now retired, said that buyers will have to improve the way they purchase coverage because of the changes along with the brokers who will have to change their "attitudes."

"It is good news for buyers, brokers and insurance companies because they know where they stand," he said.

Mr. Berg agreed that the Norwegian rules could act as a catalyst in other countries.

"I'm sure it will happen in Sweden. I'm sure it will spread further and the European Union will be the same. The stone is rolling," he said.

Merchant ship total losses decrease

By MICHAEL BRADFORD

NEW YORK—Improved design and enhanced safety regulations have helped bring total losses of merchant ships sharply lower over the past seven years, according to the International Union of Marine Insurance.

But over the same period, partial losses have climbed more than 200%, IUMI said.

There were 67 total losses of ships larger than 500 gross tons in 2006, recently released IUMI statistics show. In 2000, there were 140 such losses.

The highest number of total losses in a single year was 182 during the 1990s, according to IUMI.

The drop in total losses is a result of "better designed and more robust ships being built," Deirdre Littlefield, IUMI's New York-based president, said in a statement.

"More stringent inspections and surveys demanded by insurers, classification societies, flag states and the port state control regime, enhanced safety and maintenance regulations introduced by the International Maritime Organization and other bodies, and the huge advances in technology and com-

munications" are helping lower losses, she said.

As total losses have fallen, partial losses have soared, reaching 685 last year, IUMI statistics showed.

The increase in partial losses can be blamed partly on neglect of safety and maintenance by vessel owners rushing to cash in on "the highly profitable levels of maritime trade," Simon Beale, a Lloyd's of London marine underwriter and member of the IUMI executive committee, said in the statement.

The statistics are available at www.iumi.com.

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Commentary

Stopping the madness about college hoops

As many of you probably know, there's a crisis lurking for your business later this week. An event possessed of such dire economic possibilities it's amazing that we haven't yet found a way to mitigate its risk.

In fact, I haven't seen the same level of hand wringing this year over the dreaded annual impact of March Madness—the NCAA men's basketball tournament. You might recall that preceding last year's Big Dance there were numerous analyses of the threat the tournament posed to business productivity, particularly during the first-round games played Thursday and Friday.

Perhaps the single biggest fear factor ratcheting up last year's level of angst was the news of CBS Sports' plan to make coverage of early round games available free online.

Avian flu had nothing on CBS last March as the basis for panicky pronouncements about the billions in productivity that could be sucked from the U.S. economy.

Why the March Madness on Demand offering was clearly destined to bring U.S. business to its knees, as once-productive workers infected by the prospect of following tournament action on their computers were suddenly turned into some sort of hoops-crazed zombie army.

We were warned that—stricken oblivious to the need to process those purchase orders for the Kalamazoo office or get the Steadman contract out by 5—the basketball-watching horde would not only destroy businesses' earnings, it also would bring employers' IT systems crashing down around companies' ruined balance sheets as roundball junkies got their fix via company computers.

Oh, the humanity.

Reading some of the accounts of impending disaster as the tournament approached, you could swear you heard faint strains of "Nearer, My God, to Thee."

Curiously, I don't recall seeing any follow-up coverage of the catastrophe, which makes me think there was just a touch of hyperbole in the discussion of the financial chaos the online tournament coverage would provoke.

Well, this year offers another opportunity to measure the extent of the damage: CBS again is offering free online broadcasts, bigger and better than ever!

CBS Sports says last year's online coverage produced 19 million video streams and 5 million site visits. This year, CBS has doubled its bandwidth to accommodate an anticipated increase in



RODD ZOLKOS

Senior Editor Rodd Zolkos can be reached at: rzolkos@businessinsurance.com

demand.

Among other things, this year's version of MMOD will also offer a video player that's 50% larger than last year's, and streaming audio of Westwood One radio broadcasts of the first 56 games of this year's tournament over the MMOD player.

And, of course, to ensure that this year's online tournament coverage from CBS remains the threat to our economic vitality that last year's was, the 2007 ver-

Avian flu had nothing on CBS last March as the basis for panicky pronouncements.

sion will once again include a "boss button" that allows basketball fans to switch the image on their monitor from basketball to a benign looking spreadsheet with a single keystroke, should you-know-who happen by.

Accepting the reality that not every employer will see the NCAA tournament and accompanying office pools as a staff team-building exercise, CBS does provide instructions on the MMOD site to block the broadcasts from your computer network.

I guess new technology has always prompted some fears, so maybe last year's Cassandras were to be expected. And maybe the lack of panic pieces as the opening tipoff of this year's tournament draws near demonstrates a growing acceptance of the Internet, and a mounting recognition that the productivity it might cost from time to time is more than offset in the overall productivity increases it's spurred and the new business opportunities it's made possible.

Or maybe it's something else. Maybe it's all just been overshadowed by the Great Daylight Saving Time Crisis of 2007.

Capacity: More coverage choices likely

CONTINUED FROM PAGE 4

hurricane season, he said.

"They are hoping that there is going to be (a price reduction) and you know, (the price is) not going to go up," said Mr. Hargrove.

He said he believes the market is returning to a healthier state and pricing likely will improve as capacity eases, especially for upper layers of coverage.

Curt Ross, president of Colemont Insurance Brokers of Georgia L.L.C. in Atlanta, said the market is undergoing a correction with buyers likely to see a few more choices when purchasing coverage this year.

But he, too, expects insurers to be very selective in releasing capacity, and doing so only in cases where insurers find favorable conditions or want to accommodate a top producer.

Don't expect price reductions, however, Mr. Ross said. Should 2007 bring damaging storms, he said that would shape availability of property-casualty insurance.

Recently, Mr. Ross said he has seen additional coverage obtained by school boards in Mississippi and an account with a commercial building in Palm Beach, Fla. But such examples remain few, brokers say, because mid-year renewals for catastrophe-exposed properties start mainly in the second quarter of the year.

Even so, several NAPSLO attendees said they expect capacity to continue to ease because of events such as Florida Gov. Charlie Crist signing legislation last month to add up to \$17 billion in state-backed reinsurance capacity to the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Co.

NAPSLO members said they expect that will drive private-sector reinsurers to move capacity to other parts of the Gulf Coast and California, easing conditions there.

Purchasing conditions for reinsurance have also improved substantially from last year when reinsurers were making up for storm losses.

In July, when Scottsdale Insurance Co. renewed its reinsurance treaties for catastrophe-exposed property policies, it saw its price rise 200% to 300%—depending on the layer, said Gary L. Tjepelman, Scottsdale's senior vp of underwriting.

Scottsdale also had to double its retention and "we were not unique," Mr. Tjepelman said.

But insurers that renewed their treaties in January, 2007, saw increases in the 15% to 20% range, said Mr. Tjepelman and other NAPSLO members.

Sidecar participation is receding

By ROBERTO CENICEROS

INDIAN WELLS, Calif.—Hedge fund money that backed a surge in reinsurance vehicles known as sidecars is "returning to Wall Street," a panel of speakers told members of the National Assn. of Professional Surplus Lines Offices Inc.

The property/casualty industry is not producing adequate returns to satisfy today's sidecar investors, speakers told NAPSLO's Mid-Year Educational Workshop.

Additionally, primary insurers have adjusted their portfolios, making it possible for traditional reinsurance to satisfy their needs, the speakers said.

"There is a consensus in the industry now that the utilization of sidecars is done. They are just gone," said Paul Goodwin, senior vp of direct treaty for Munich Reinsurance America Inc. in Princeton, N.J.

Sidecars are special-purpose reinsurance vehicles that enjoyed particularly strong growth last year to fund much-needed capacity for catastrophe risks.

Other panelists agreed that sidecar capacity is receding.

"I see a lot of that hedge fund money going the other way now," said Thomas F. Leonhardt, senior vp for Towers Perrin in Chicago. "The utilization of that capacity is no longer necessary to sustain the capacity needs."

Furthermore, exiting sidecar capital isn't flowing to other property/casualty needs such as terrorism risk coverage, Mr. Leonhardt said.

But sidecar participation in P/C insurance is not entirely over, even though interest in using the alternative risk transfer vehicles has waned, said Glenn Hargrove, president and chief executive officer for Crump Insurance Services Inc. in Dallas.

Crump, which is owned by a private equity group that funds sidecars, can use its relationship with its parent to arrange reinsurance for specialty program business when a primary insurer is uncomfortable assuming the entire risk, said Mr. Hargrove, who was not part of the panel but did attend the NAPSLO meeting.

"We would be able to offer that as another alternative in order to get deals done," Mr. Hargrove said.

Wholesale brokers regularly use

their industry relations to find reinsurance capacity for coverage arrangements they are negotiating with primary insurers, he added.

Meanwhile, some primary insurers say they won't need sidecar capacity to carry out their business plans this year.

Wholesale specialty insurance underwriter RSUI Group Inc., for example, expects to obtain enough traditional reinsurance to match its risk appetite for 2007, said David E. Leonard, RSUI Group Inc.'s Atlanta-based executive vp.

That was not the case in 2006, "so it's a good change of events that we have been able to put together the reinsurance to support our business plans," Mr. Leonard said.

The insurance industry was reeling last year from hurricane losses in 2005. Simultaneously, rating agencies demanded that insurers increase their capital or reduce their risks as catastrophe modeling companies revamped their systems, which showed that insurers had greater exposure than previously thought, the speakers said.

"Exposures more than doubled just by flipping the switch and changing the model, and that drove (insurance) companies that were buying \$400 million in catastrophe cover, based on a projection of a prior version model, to now need \$800 million," Towers Perrin's Mr. Leonhardt said.

That created a temporary disconnect between available capital and the industry's new perception of catastrophe risk, the panelists said. Pricing increased and hedge funds sensed they could fill the gap with sidecars.

However, the P/C insurance industry still produced a 14% return on equity in 2006.

"Our view has always been that the sidecar money was driven by what they perceived to be very high returns, and I don't think they perceive 14% to be very high returns," RSUI's Mr. Leonard said.

Sidecar investors are looking for returns of at least 20% to 25%, the panelists said.

NAPSLO meeting draws 650

While surplus lines insurers and wholesale brokers attending the National Assn. of Professional Surplus Lines Office Inc.'s Mid-Year Educational Workshop described 2006 as a "phenomenal year" for their industry, several expressed nervousness about softening market conditions during 2007.

A softening market is good for policyholders, but the reverse is true for insurers that thrive when risks struggle to find coverage.

In response to increased competition from standard market insurers, though, NAPSLO mem-

bers said their companies are launching several new products—such as legal liability for warehouse operators and real estate developers or evacuation expense coverage for higher education entities—that also is good for insurance purchasers.

About 650 people attended the NAPSLO Mid-Year Educational Workshop held March 1-3 in Indian Wells, Calif.

NAPSLO's annual convention will be held Oct. 3-6 in New Orleans. For more information contact Kansas City, Mo.-based NAPSLO at 816-741-3910.

—By Roberto Cenicerros

TRIA: Hearing stresses long-term solution

CONTINUED FROM PAGE 3

Congress should also consider permitting tax-deferred reserving for underwriters to create a dedicated pool of capital for terrorism insurance, said Eric Dinallo, acting New York state insurance superintendent.

Robert W. Ferguson, chairman of Swiss Re America Holding Corp. in Armonk, N.Y., urged lawmakers to include coverage for group life

insurance in the extension of the federal backstop.

Meanwhile, some lawmakers at the hearing indicated that extension legislation is a priority.

"We're committed to extending TRIA this year," said Rep. Deborah Pryce, R-Ohio, a subcommittee member.

Rep. Carolyn Maloney, D-N.Y., meanwhile, noted that lawmakers are looking drafting a new TRIA bill as early as April.

In addition, at a separate event last week, Rep. Barney Frank, D-Mass., said that the House would vote next month on extending the backstop program.

During a keynote address at the annual Insurance Reform Summit in Washington held by the Networks Financial Institute at Indiana State University, Rep. Frank noted that the extended program would be expanded to cover group life insurance. In addition, it would cover both domestic- and foreign-initiated acts of terrorism, he said.

Others who testified at the subcommittee hearing in New York included: Donald J. Bailey, chief executive officer of Willis North America; Edmund F. Kelly, chairman, president and CEO of Liberty Mutual Group Inc.; Warren Heck, president and CEO of Greater New York Mutual Insurance Co.; and representatives of World Trade Center Properties L.L.C. and S.L. Green Realty Corp.

Mark A. Hofmann contributed to this story.

total of \$2.91 billion in debt and equity capital.

The report, "The Catastrophe Bond Market at Year-End 2006, Ripples into Waves," is available at www.guycarp.com.

Cat bond: Record total of \$4.69 billion issued

CONTINUED FROM PAGE 4

marked the first time that U.S. hurricane risk was the most securitized peril, accounting for \$2.29 billion in risk capital, followed by U.S. earthquake at \$2.23 billion.

In addition, Australian typhoon and earthquake, Mexican earthquake and U.S. tornado and hail were all securitized for the first time.

There was also an expansion of the risk profile of the catastrophe bond market, according to the report. While Standard & Poor's Corp.'s BB rating or equivalent remained the staple, there was also a notable increase in the number of B-rated and unrated issuances, and the first AA-rated catastrophe bond was issued as well.

The report also discussed the increase of securitization in non-bond form, including sidecars and industry loss warranties. According to the report, there were 11 sidecar transactions in 2006, which raised a

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White House opposes permanent backstop

WASHINGTON—The Bush administration is willing to work with Congress regarding the federal government's role in guaranteeing terrorism insurance, but remains committed to the eventual elimination of the terrorism insurance backstop program, says one of the president's key economic advisers.

"The president believes in the long run, TRIA is not needed," said Allan Hubbard, director of the White House's National Economic Council, referring to the Terrorism Risk Insurance Act that created the backstop in 2002.

The terrorism backstop was one of a series of insurance issues Mr. Hubbard discussed last week during an address to the annual Insurance Reform Summit in Washington, sponsored by the Networks Financial Institute at Indiana State University.

In general, "we should be very careful about getting the federal government involved in insurance," he said.

Regarding the terrorism insurance backstop, the administration thinks insurers should take higher deductibles and make higher copayments before tapping the program, Mr. Hubbard said.

The administration also believes the program should not be expanded, he said.

The White House is not declaring that the terrorism backstop, which is scheduled to expire on Dec. 31, be eliminated "immediately," but Mr. Hubbard stressed that the administration believes it should be eliminated eventually.

He was more adamant regarding proposals to create a natural catastrophe insurance

fund. "It's totally inappropriate," Mr. Hubbard said. Many of the property insurance problems experienced in the post-Hurricane Katrina Gulf Coast are "self-inflicted," as state insurance regulators have held rates artificially low, he said.

The private sector cannot compete against the government when rates are subsidized, he said. "We think this is a problem that should be dealt with at the state level" and state officials should bear in mind the implications of subsidization.

Regarding possible federal insurance regulation, "We very much believe in the state insurance system." Yet, "we wish it were easier to sell from state to state," he said.

"You can tell I'm punting," he added.

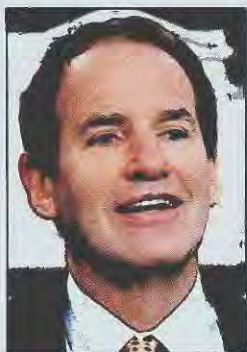
An earlier summit speaker, House Financial Services Committee Chairman Barney Frank, D-Mass., declined to make a firm commitment for or against federal insurance regulation.

Rep. Frank said good arguments exist for uniformity, and having multiple state regulations can result in inefficiencies.

But he stressed that any federal system to regulate insurers must contain significant consumer protections to be acceptable.

Rep. Frank said he would support a federal role in insurance regulation "as long as they hit a pretty high level" of what's already being done by the states in terms of consumer protection. That will be the context in which Congress will debate the idea of an optional federal charter for insurers, he said.

—By Mark A. Hofmann



AP PHOTOS

'We should be very careful about getting the federal government involved in insurance.'

Allan Hubbard, National Economic Council



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Diabetes: Employers must accommodate

CONTINUED FROM PAGE 3

a reasonable accommodation to a worker's disability unless it imposes "undue hardship" on business operations.

A diabetic also is protected under the ADA even if the person is not disabled, but is treated as disabled by his or her employer, such as being refused a job solely because of the diabetes.

Complicating the legal issues surrounding ADA is a lack of consistency among courts as to when a worker could be considered disabled. Virtually identical sets of facts can lead to opposing court decisions, say observers.

Employers can ask a worker questions or require a medical exam if there is a legitimate reason to suspect diabetes may be affecting the worker's ability to do the job, according to the Equal Employment Opportunity Commission, the federal agency that enforces the ADA's employment provisions.

The employer can also ask questions if there are safety concerns that pose a "direct threat" to the employee or others, according to the EEOC.

But employees are not required to reveal their medical background, and diabetes frequently comes to the employer's attention only when the worker requests accommodation.

The issue typically arises when an employee asks for breaks to test their insulin levels, to give them-

selves an injection or to eat food to control their blood sugar when it is in violation of normal workplace rules, said Ruth Colker, a law professor at the Michael E. Moritz College of Law at Ohio State University in Columbus, Ohio.

'If the employee requests an accommodation, the employer should take it seriously.'

Ryan K. Buchanan,
Helms Mulliss & Wicker P.L.L.C.

"If the employee requests an accommodation, the employer should take it seriously" and honor the request if it is feasible, said Ryan K. Buchanan, an attorney with Helms Mulliss & Wicker P.L.L.C. in Charlotte, N.C.

"Employers are charged with making a reasonable accommodation that allows an employee to complete the task that is central to the job, and diabetes is difficult in that regard, because the symptoms vary from person to person, so what is a reasonable accommodation for one person with diabetes may not be reasonable for another person," Mr. Buchanan said.

As a result, a blanket policy "may lead to problems," despite the fact

that a policy based on the individual "is tough in this age, when we want everything to be objective," he said.

Frank Alvarez, an employer attorney with Jackson Lewis L.L.P. in White Plains, N.Y., agreed. "It requires an individualized assessment and it's all going to turn on the type of job the person has, how controlled the diabetes is and the nature of the accommodation that they might need."

Part of this process involves "obtaining objective medical evidence and input," Mr. Alvarez said. A decision "cannot be based solely on (the employer's) lay opinion about an individual's capabilities."

Mr. Alvarez added, though, that by engaging in an interactive, good faith dialogue with an employee, employers "may be better able to anticipate the operational challenges that they have and work out a mutually agreeable accommodation that helps everyone."

None of these problems is insurmountable, say observers.

Santa Monica, Calif.-based solo attorney and diabetic Kriss Halpern remembers his first job with a major law firm. "I was terrified to tell my employer" and said nothing about being a diabetic during the interview process.

"But once I got the job, I told them," said Mr. Halpern. "They were fine with it, and it was no big deal at all, and I think most employers who are smart would handle it the same way."

Sporadic leave hard to manage under FMLA

Observers say the primary problem associated with diabetes and the Family and Medical Leave Act is intermittent leave.

Under FMLA, an employee at an organization with at least 50 workers can take up to 12 weeks of unpaid job-protected leave a year for several specific reasons, one of which is recovery from a medical condition.

Employers must permit employees to take intermittent FMLA leave in increments that are the smallest time period the employer uses in its payroll system to account for absences.

Because of the nature of the disease, diabetic employees may need relatively brief periods of time off, which creates scheduling problems for employers, say observers.

Frank Alvarez, an employer attorney with Jackson Lewis L.L.P. in White Plains, N.Y., said FMLA "becomes a particular challenge for employers when diabetic employees need intermittent leave because they are having episodic-type bouts of diabetic problems—either their blood sugar becomes uncontrolled, or they have other related health conditions—because it's not under control and they may need to be out for work a

day here or a day there, or maybe even part of a day here or part of a day there."

A frequently related problem is that the need to take time off because of diabetes is unforeseeable, and the employee can give as short a notice of the need for leave as is practical under the circumstances. "This results often

'Most of the time, diabetic patients are able to adjust and to manage their diabetes without taking FMLA leave.'

John W. Griffin,
Marek, Griffin & Knaupp

in unscheduled, unplanned absences, and employers have great difficulty managing their operations when they have little notice of an individual's absence from work," Mr. Alvarez said.

Careful recordkeeping is important, said Craig A. Crispin,

of Portland Ore.-based Crispin Employment Lawyers, who primarily represents plaintiffs. "I've caught more than a few employers violating FMLA on intermittent leave simply because they failed to keep records. They simply put down absences" and then say the employee was fired for excessive absenteeism.

Mr. Crispin said if he can prove that even one of those absences should have been covered by the FMLA, "then they've violated the law and I can win that case pretty easily."

Employers sometimes mistakenly believe that eligibility for FMLA requires a minimum three-day period of incapacity, when in fact that is not required for chronic serious health conditions including diabetes, said Loring N. Spolter, a Fort Lauderdale, Fla.-based solo attorney.

However, John W. Griffin Jr., an attorney with Marek, Griffin & Knaupp in Victoria, Texas, said he has not found FMLA to be an issue in about 20 years of representing diabetics.

"Most of the time diabetic patients are able to adjust and to manage their diabetes without taking FMLA leave," Mr. Griffin said.

—By Judy Greenwald

UnitedHealth: Restatement resolves accounting issues

CONTINUED FROM PAGE 1

ment was partly due to a boost in revenues stemming from its 2005 acquisition of PacifiCare Health Systems Inc.

"Becoming current in our financial filings is a significant step forward for UnitedHealth Group, and it comes as the board and the company have advanced substantial improvements in our governance processes and administrative business practices," said Stephen J. Hemsley, UnitedHealth's president and chief executive officer, in a statement. Mr. Hemsley succeeded longtime company head Dr. William McGuire following his departure in the wake of an independent review that found evidence of backdating of stock option grants at UnitedHealth (*BI*, Oct. 23, 2006).

That report, conducted by a special committee of UnitedHealth's board of directors and its independent counsel, Wilmer Cutler Pickering Hale & Dorr L.L.P., focused on 29 distinct option grants made by the company from 1994 through 2006, comprising nearly 85% of the options issued by UnitedHealth during that period.

Among other things, the report said that the measurement dates used by the company for most of the 29 options grants "were not correct, and many of these grants were likely backdated," and option grants made to newly hired employees and employees receiving promotions "were backdated as a matter of policy." The report also said UnitedHealth's internal controls related to option grants were "inad-

quate," and senior management "failed to ensure that option granting practices were appropriate."

The practice of so-called backdating involves turning back the clock to deliberately grant stock options on the most favorable date for a recipient, to boost the value of the option.

As part of its 10-K filing, UnitedHealth noted that it has "fully remediated" its previously reported material weakness in internal control as of Dec. 31, 2005, relating to stock option plan administration and accounting for and disclosure for stock option grants.

"We are pleased to have resolved the financial reporting and control-related issues stemming solely from historic stock option programs," said Mike Mikan, UnitedHealth's chief financial officer, in the statement. "We have used this process to create a stronger enterprise in all aspects of administration, including our governance, control environment and commitment to modern corporate social responsibility."

Going forward

"It's a big first step...they needed to get the statements current and resolve the accounting issues," related to its historical stock option program, said Stephen Zaharuk, vp and senior analyst for Moody's Investors Service Inc. in New York. "Now they can move on with running the business."

Becoming current in their financial filings will permit UnitedHealth to go back to things it could not do before, for example, "deploying

See **UNITEDHEALTH** next page

UNITEDHEALTH UNDER FIRE

- **MARCH 2006:** The first of several shareholder derivative actions are filed against certain current and former officers and directors of UnitedHealth in the U.S. District Court for the District of Minnesota. That action has since been consolidated with six other actions, and the amended complaint alleges that defendants breached their fiduciary duties to the company, were unjustly enriched and violated the securities laws in connection with the company's historic stock option practices.
- **APRIL 2006:** The company announces an informal inquiry by the SEC relating to the company's stock option practices.
- **MAY 2006:** UnitedHealth receives a subpoena from the U.S. Attorney for the Southern District of New York requesting documents from 1999 onward relating to the granting of stock options, as well as a request from the Internal Revenue Service for documents from 2003 onward relating to stock options and other compensation for certain executive officers in the

company's annual proxy statements.

- **JUNE 2006:** The company receives a civil investigative demand from Minnesota's attorney general requesting documents from January 1997 onward concerning executive compensation and stock option practices. UnitedHealth files a motion for a protective order, which is denied by the trial court.
- **OCTOBER 2006:** The company releases an independent report examining historical stock options practices, and makes a series of management changes, among them Dr. William W. McGuire steps down as president and chief executive officer, to be succeeded by Stephen J. Hemsley.
- **DECEMBER 2006:** UnitedHealth receives a formal order of investigation from the Securities and Exchange Commission.

- **MARCH 2007:** The company completes the financial restatement process and reports 2006 earnings.

Source: Company reports

Health care: Legislation faces opposition

CONTINUED FROM PAGE 1

It calls for a secondary source of funding to pay for an expansion of coverage through a tax on businesses' gross receipts as well as a reinsurance program to provide an incentive for insurers to offer affordable, guaranteed-issue coverage.

The proposed employer assessments also vary. In California, under Gov. Arnold Schwarzenegger's plan, employers with at least 10 employees that do not offer health insurance would pay an annual assessment of 4% of payroll. In Pennsylvania, Gov. Ed Rendell has proposed an annual assessment of 3% of payroll on employers with 50 or more employees that do not offer coverage.

By contrast, Gov. Blagojevich is proposing a 3% payroll tax on employers with 10 or more employees that do not spend an amount equal to at least 4% of payroll on health care benefits.

The three proposals, none of which has been formally introduced as legislation, have triggered significant opposition from the business community, whose members are most concerned about the employer assessments.

Additionally, legal experts say the assessments might run afoul of the federal Employee Retirement Income Security Act, which preempts state laws and rules that relate to employee benefit plans.

Indeed, a federal appeals court in January ruled that a 2006 Maryland law, which required any employer in the state that did not spend at least 8% of payroll on health care to pay the difference to a state fund, was pre-empted by ERISA.

On the other hand, the Massachusetts law has not been challenged, possibly because the assessment—for those that would be affected—is relatively small, said J.D. Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates Inc.

"Most employers aren't paying it," Mr. Piro said referring to the Massachusetts assessment.

All three proposals face an uphill battle to win enactment, some say.

In California, for example, "I've heard the governor is having trouble because there are no Republican lawmakers willing to support 100% of his proposal," said Amy Bergner, a principal with Mercer Human Resource Consulting in Washington.

In Illinois, the Democratic governor's proposal has ignited stiff opposition from some employer groups.

"What's going on in Illinois has done more to bring the business community together than anything else," said a spokesman for the Illinois Manufacturers' Assn., which announced its opposition to a mandate or new tax on business even before the governor gave an impassioned speech to the General Assembly stating the case for his proposal.

"That's not belittling the cause, but no one likes the idea of new taxes," the IMA spokesman said. "It seems to have landed in the General Assembly with a thud."

A pay-or-play mandate also would create an administrative nightmare for many Illinois employers whose workers come from neighboring states, observed Larry Boress, president of the Midwest Business Group on Health, a coalition of employers based in Chicago.

"In Illinois, there are a number of bi-state communities, and employers would have to go through the hassle of paying tax for certain employees, but not for others," Mr. Boress.

In a statement, Illinois Chamber of Commerce President and Chief Executive Officer Doug Whitley called the governor's proposal "a reckless and irresponsible affront to every employer and worker in Illinois" by eliminating jobs and forcing businesses to leave the state.

Moreover, "moving more people into taxpayer-provided health care is not prudent for long-term public policy," Mr. Whitley's statement said. "Government-run programs stymie innovation and flexibility. This plan does not address quality of care, rising health care costs or how expansion of subsidized health care may disrupt the system for those who already have insurance."

The governor's proposal was characterized as "the largest tax increase in the history of Illinois" by the Springfield, Ill., office of the National Federation of Independent Business, a national organization comprised primarily of small employers, and the "largest tax hike in history on the people of Illinois" by the IMA.

Others say even if the Illinois proposal were enacted, implementation could be difficult.

"It's an easy political rhetorical device. It makes it look like they're doing something. But, in reality, they're going to find out the marketplace is not going to make

Boosting state pension plans

Addressing another pressing benefits-related issue, Illinois Gov. Rod Blagojevich has proposed selling bonds and leasing the state lottery, with the proceeds of both transactions shoring up the state's underfunded pension plans for state employees and public school teachers.

The pension obligation bonds and lottery-leasing revenues would put about \$26 billion into the flagging state retirement sys-

tems, bringing funding ratios to approximately 83%.

The plans currently are only 60.5% funded, with more than \$40 billion in accrued unfunded pension liabilities.

The governor's plan also calls for restructuring the pension systems' statutory funding mechanism and boosting annual funding requirements to ultimately achieve 90% funding in 2040.

—By Joanne Wojcik

UnitedHealth: Legal issues still remain

CONTINUED FROM PREVIOUS PAGE

capital back into the business," or engage in mergers and acquisitions, noted Carl McDonald, an analyst with CIBC World Markets in New York.

"We anticipate that (UnitedHealth) will immediately begin its share repurchase program," said Morgan Stanley analyst Christine Arnold in a research note. The company has more than \$1.9 billion in available cash on hand.

From a financial perspective, the restatement was "largely meaningless for the company, the reason being is that it's just an accounting charge, it doesn't impact the company's cash flow," Mr. McDonald said.

"The bigger issue was the amount

of cash they would have to use to pay the IRS for underreporting taxes," he said. "That amount turned out to be \$100 million...the market's expectation was that it would be in the \$200 to \$300 million range," Mr. McDonald said.

The total \$155 million in extra taxes and charges for employees who exercised options "is a big number...but it's a very big company and they are able to absorb that," noted Moody's Mr. Zaharuk.

Additionally, "we thought (the stock-options issues) might be a distraction and it might hurt their earnings in 2006 but that hasn't proved to be the case," he said.

However, "issues still remain with what the ramifications of legal settlements will be," Mr. Zaharuk said.

The SEC's enforcement division in December 2006 notified UnitedHealth of a formal investigation into the company's historic stock options practices, and the company has also received related document requests from the U.S. Attorney for the Southern District of New York, U.S. Congressional committees and the Minnesota Attorney General. The company further faces consolidated shareholder derivative litigation.

"The last question is going to be what is going to be the impact on the company as far as the customers go," Mr. Zaharuk said. "If (the legal issues) get ugly and messy and are in the press a lot, there may be some pressure for providers in the network to leave," he said, but that is probably "unlikely."

HOW STATE HEALTH INSURANCE REFORM PROPOSALS AFFECT EMPLOYERS

LAWS:

MARYLAND: Annual assessment equal to 8% of payroll on employers with 10,000 or more employees in the state that do not offer health coverage and spend at least 8% of payroll on those benefits.*

MASSACHUSETTS: Annual assessment up to \$295 per employee imposed on employers with at least 11 employees that do not offer health insurance.

VERMONT: Annual assessment of \$365 per employee imposed on employers with nine or more employees that do not offer health coverage. The employer assessment excludes the first eight employees.

*Overturned by a federal appeals court which ruled the statute is pre-empted by the Employee Retirement Income Security Act.

PROPOSALS:

CALIFORNIA: Annual assessment equal to 4% of payroll on employers that do not offer health coverage and have at least 10 employees.

PENNSYLVANIA: Annual assessment equal to 3% of payroll on employers with 50 or more employees that do not offer coverage. The employer assessment excludes the first 50 employees.

ILLINOIS: Annual assessment equal to 3% of payroll on employers with 10 or more employees that do not offer health coverage and spend the equivalent of 4% of payroll on those benefits.

affordable coverage available," said Steve Wojcik, vp of public policy at the National Business Group on

Health, a consortium of large, national employers based in Washington.

Commissions: Contingent replacement criticized

CONTINUED FROM PAGE 1

Contingent commissions are not illegal, and the arrangement continues to be used throughout the industry.

But their image has been severely tarnished in the wake of client-steering and bid-rigging investigations by state attorneys general that ensnared several large brokers and insurers. Authorities charged that brokers based their account placement decisions on how the placements would maximize their contingent commissions rather than what would best serve their clients.

As a result of the investigations, the four largest brokers agreed to abandon contingent commissions. Several insurers also agreed to either abandon or limit the use of contingent commissions.

The agreements have wiped out more than \$1 billion of combined annual revenue for the world's four largest brokers, and several brokers and insurers have been trying to develop a replacement compensation system since then.

Since December, insurers Chubb Corp. of Warren, N.J., and Travelers Cos. Inc. of St. Paul, Minn., have developed new supplemental commission arrangements that provide brokers fixed compensation based on the brokers' prior performance with the insurers (BI, January 8).

Neither insurer will outline in detail its commission formula; each says its formula is proprietary. But state attorneys general have reviewed both programs and have said they do not represent contingent compensation as defined in settlements of client steering charges.

Attorney General Richard Blumenthal of Connecticut, who said he would like contingent commissions banned, said he is not troubled by supplemental commissions generally, because they would be

based on a broker's past performance and must be disclosed to insurance buyers before a placement is completed. However, he said he would not issue a blanket pass to "every supplemental plan that could be devised."

Meanwhile, the New York Insurance Department is "actively studying the issues presented by both contingent commissions and supplemental commissions," a department spokesman said.

Willis' Mr. Plumeri and some risk managers are not convinced that supplemental commissions are substantially different than contingent commissions.

"I can't tell the difference, frankly, between that and a contingent," Mr. Plumeri said during a presentation last week at the Assn. of Insurance and Financial Analysts'.

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Commissions: Replacement for contingents debated

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conference in Boca Raton, Fla., according to a recording provided by Willis.

Unless the commission formulas he has seen are modified or he comes to understand them better, Mr. Plumeri said he will not accept them.

Mr. Plumeri, though, said Willis is not swearing off supplemental compensation paid by insurers.

Some risk managers say any performance-based compensation arrangements between brokers and

insurers present inherent conflict-of-interest problems for risk managers.

"The new framework of the commissions is not different from contingent commissions enough to remove the inherent conflict of interest," because the broker performance element of the arrangement is still designed to influence broker behavior, said Beaumont Vance, senior enterprise risk manager for Sun Microsystems Inc. of Broomfield, Colo.

"If brokers aren't influenced, then why would insurers do it?" he asked.

Mr. Vance compared the arrangement to allowing one's attorney to accept a form of remuneration from an opposing party.

Sheila Small, assistant vp-risk management and insurance at New York-based Verizon Communications Inc., said performance-based supplemental commissions would put brokers "back in a place they don't want to be."

"Any type of arrangement that could be perceived as attracting a broker to one carrier more than to another carrier is not good. That's the bottom line," said Ms. Small.

Janice Ochenkowski, vp of the New York-based Risk & Insurance Management Society Inc., said she is "very puzzled" by the commission vehicle that Chubb and Travelers have developed and their unwillingness to divulge their commission formulas. In an environment of "transparency and open disclosure," their approach appears to be "a step backward."

But Ms. Ochenkowski, who also is a managing director at Chicago-based Jones Lang LaSalle Inc., said, ultimately, she does not need to know the formulas. She said she needs her broker to disclose only the amount of commission her account generates and how big a piece it is of the broker's overall supplemental commission revenue.

Defending commissions

Supplemental commissions already are in use at Gallagher and have not created a stir among the broker's clients, Mr. Gallagher said.

Over the past year, Gallagher has negotiated such commissions with 25 insurers—including Chubb and Travelers, he said. The commissions have replaced "some, not 100%" of the nearly \$30 million of contingent

commissions Gallagher has lost, Mr. Gallagher said.

While attorneys general have approved of brokers receiving remuneration for the services they provide insurers, if a client is not happy with the commission, it is "negotiable," he said. "As long as they're willing to pay me a decent wage to do my business, I'm happy."

Two agency consultants agree that supplemental commissions should not alarm risk managers and suggested that any discomfort risk managers might have with them could be allayed by demanding full disclosure, negotiating a fee arrangement or changing brokers.

Timothy J. Cunningham, a partner with OPTIS Partners L.L.C. in Chicago, described supplemental commissions as being "like a contingent in a different wrapper."

But neither commission is "evil," and risk managers' criticism of them now is "disingenuous" because they knew their brokers were receiving that compensation, he said.

John Wicher, a principal with John Wicher & Associates Inc. of San Francisco, does not agree that supplemental commissions based on a broker's past relationship with an insurer is anything like a contingent commission.

He also said varying supplemental commissions would not influence an account representative's behavior because the market is too competitive to risk losing an account over minor differences between the commissions.

Although that kind of behavior did occur at Marsh, Mr. Wicher said the difference is that some Marsh employees were engaged in outright illegal behavior—not just placing coverage only for a small additional amount of commission.

sharing requirements for mental health care services as they do for other medical conditions, and both would exempt some employers. But differences exist in proposed pre-emption of state laws, among other issues.

Insured cat losses total \$16B in 2006

Developing countries with little insurance penetration bore the brunt of natural and man-made catastrophes in 2006, according to a study by Swiss Reinsurance Co. Of the \$48 billion in economic losses caused by natural catastrophes last year, one-third—\$15.9 billion—was covered by insurance, notes Swiss Re's latest sigma study.

Equity firm merges TPAs Gates, Attenta

Third-party claims management providers Frank Gates Cos. and Attenta have merged in a deal that gives a majority ownership stake to private equity firm KRG Capital Partners L.L.C. along with minority stakes to the combined company's senior management. In 2006, total revenues amounted to \$88 million for Gates and \$23 million for Attenta, according to a spokeswoman.

HCA expands sharing of cost information

Hospital chain HCA Inc. is sharing out-of-pocket cost information with patients prior to admission. Initially, HCA provided out-of-pocket cost ranges for 22 of the most common procedures administered at its 10 Dallas-area hospitals. HCA expanded the program last week to include 15 additional hospitals in San Antonio and Austin, Texas. The pricing program will be available at all 165 HCA hospitals in 20 states by the end of June, a company spokesman said.

News In Brief

CONTINUED FROM PAGE 1

antitrust issues comes just days after Express Scripts raised its offer for Caremark Rx Inc. to \$26.3 billion. CVS matched the offer. CVS shareholders are to vote on the deal March 15, followed by Caremark shareholders March 16. In submitting its sweetened offer for Caremark, Express Scripts said that it expected to receive a "second request" from the FTC but that it should pass muster.

Premera scraps bid to become public

Premera Blue Cross said it will end its effort to become a publicly traded, for-profit corporation by withdrawing an appeal to Washington's Supreme Court. Premera said the move came largely in response to opposition from Washington's medical community. In 2002, nonprofit Premera sought to convert to a public company, but Washington Insurance Commissioner Mike Kreidler denied the request. An appeals court ruled against the health plan last year, leading to the Supreme Court appeal.

House, Senate differ on mental health parity

Mental health care benefits parity legislation introduced in the House last week takes a different course than a bill approved last month by a Senate panel, potentially setting the stage for a future battle between the two congressional branches. Both bills would require group health care plans to provide the same cost-

Amazon: Coverage dispute

CONTINUED FROM PAGE 3

that Atlantic "will pay those sums that the insured becomes legally obligated to pay as damages because of 'personal injury' or 'advertising injury' to which this insurance applies. We will have the right and duty to defend any 'suit' seeking those damages."

According to the Atlantic Mutual filing, Amazon notified its insurer of the IBM suits. But Atlantic holds that it is not obligated to provide a defense or to indemnify Amazon because in part, "the IBM suits

do not and cannot seek damages caused by an offense during Atlantic's policy period." Although the policy covers copyright infringement under the advertising injury, it says nothing about patent infringement.

Atlantic Mutual asks the court to hold that it is not obligated to defend or indemnify Amazon.com in the IBM action, for court costs or whatever other relief the court would provide.

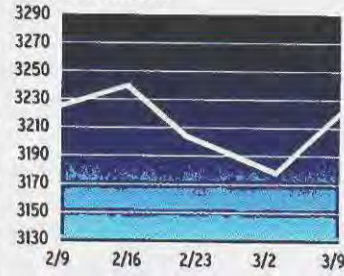
Attorneys for the parties did not return calls for comment by publication time.

Stock Index

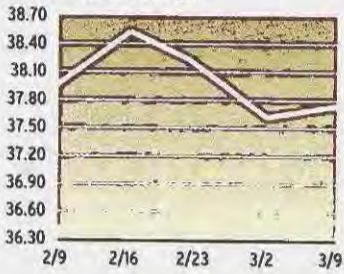
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

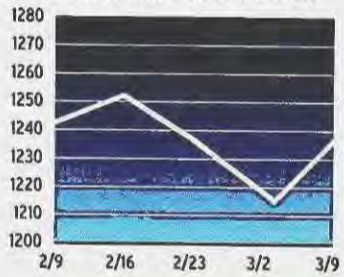
BI STOCK INDEX



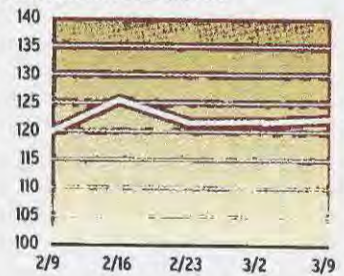
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	3219.65	↑ 1.41%
DOW JONES	12276.32	↓ 1.34%
S&P 500	1402.85	↓ 1.13%

LARGEST GAINS

Meadowbrook Insurance	6.54%
NYMAGIC Inc.	5.77%
AEGON N.V.	5.11%
SCPIE Holdings Inc.	4.85%
SCOR S.A.	4.45%

LARGEST LOSSES

Sierra Health Services	-3.88%
Markel Corp.	-3.51%
UNICO American Corp.	-3.37%
EMC Insurance Group	-3.01%
American Financial	-2.51%

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

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Business Insurance END PAGE

Contributing: Judy Greenwald,
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Flippin' out for flippin' off his flippin' boss. He's not flippin' happy

A Los Angeles Department of Water and Power employee, who was caught napping in a hammock suspended under his city-owned truck—and then gave a supervisor the finger when he was awakened—was rightfully fired, a state appellate court has ruled.

The March 1 decision by the California Court of Appeal in Los Angeles in *Kenneth Flippin vs. Los Angeles City Board of Civil Service Commissioners* overturned a lower court ruling that the board should reconsider Mr. Flippin's termination.

According to the opinion, a dispatcher and a supervisor—acting on a complaint called in to the department in April 2003—approached Mr. Flippin, who was sleeping soundly in the hammock and could be heard snoring.

After his name was called loudly, "Respondent woke up and gestured at the two men by raising his middle finger," says the decision.

Later, when the dispatcher told the worker to remove the plastic container containing the hammock, which was affixed to the truck, Mr. Flippin replied, "You should rattle." When asked what he meant, Mr. Flippin replied, "You're a snake."

The department terminated the 16-year worker's employment on grounds that he was sleeping while on duty in public view, was insubordinate and "had engaged in misconduct seriously reflecting on the City of Los Angeles and its employees."

Among the appeals court's findings, it noted that Los Angeles departmental rules state that sleeping on the job is grounds for dismissal even if it is a first offense.



REUTERS

California Sen. Sheila Kuehl, D-Santa Monica, once a sitcom actor, has introduced single-payer health care legislation a third time. Former actor and Gov. Arnold Schwarzenegger vetoed the previous bill last year.



Convicted thief to lose pension to restitution

Crime victims can get restitution for their losses by tapping their assailant's pension funds, says the 9th U.S. Court of Appeals in a divided opinion.

The issue in the Feb. 22 decision by the San Francisco court in *United States vs. Raymond P. Novak* was how the Employee Retirement Income Security Act of 1974, which protects employee's pension funds, can be reconciled with the Mandatory Victims Restitution Act of 1996, which governs the payment of restitution to crime victims.

In upholding an earlier ruling by a panel of the appeals court, the full court said in its 10-5 ruling that "crime restitution orders can be enforced by garnishing retirement funds, but with the funds only payable when the defendant has a current, unilateral right to receive payments under the terms of the retirement plan."

The case involves Mr. Novak and former wife Norma Ortega Nance, who from 1995 to 1999 engaged in a scheme to steal telephone equipment from Glendale, Calif.-based Nestle Food Co., resell the equipment and pocket the proceeds. Ms. Nance, a Nestle employee, had access to the equipment, which she passed along to Mr. Novak to sell. The scheme cost Nestle more than \$3.3 million, court records state.

Mr. Novak was sentenced to 24 months in prison and three years supervised release in connection with the scheme. The government moved to garnish the pension of Mr. Novak, who worked from 1990 to 2003 at May Department Stores Co., a unit of Cincinnati-based Federated Department Stores.

The appeals court returned the case to the district court to determine whether, based on the terms of May's retirement plans, the government has to wait until Mr. Novak reaches retirement age to garnish the retirement funds.

Mr. Novak will turn 65 in 2012.

Ex-actor vs. ex-actor in single-payer effort

Will Dobie Gillis' true love prevail over "The Terminator" in attempting to solve California's health care conundrum?

Calling GOP California Gov. Arnold Schwarzenegger's health reform proposal a giveaway to insurers, Sen. Sheila Kuehl, D-Santa Monica, has introduced single-payer legislation for the third time in the State Assembly.

Like the governor, Ms. Kuehl broke into California's political scene after an acting career in which her most memorable portrayal was that of the intelligent but homely Zelda Gilroy, Dobie Gillis' wanna-be girlfriend in the 1959-63 sitcom.

As many baby boomers may recall, each episode of "The Many Loves of

Dobie Gillis" usually concluded with Dobie making a philosophical observation while sitting by a reproduction of Auguste Rodin's "The Thinker," with actor Dwayne Hickman mimicking the sculpture's pensive pose.

Although Zelda relentlessly pursued Dobie in the original series, she succeeded only in confusing him with her intellectual banter. By the 1977 "Whatever Happened to Dobie Gillis," however, Zelda and Gillis had married and had a teenage son. By comparison, Mr. Schwarzenegger's onscreen characters have generally had more brawn than brains.

In their post-acting years, the governor spurned Ms. Kuehl's most recent single-payer effort with a veto last year.

TV GUIDE

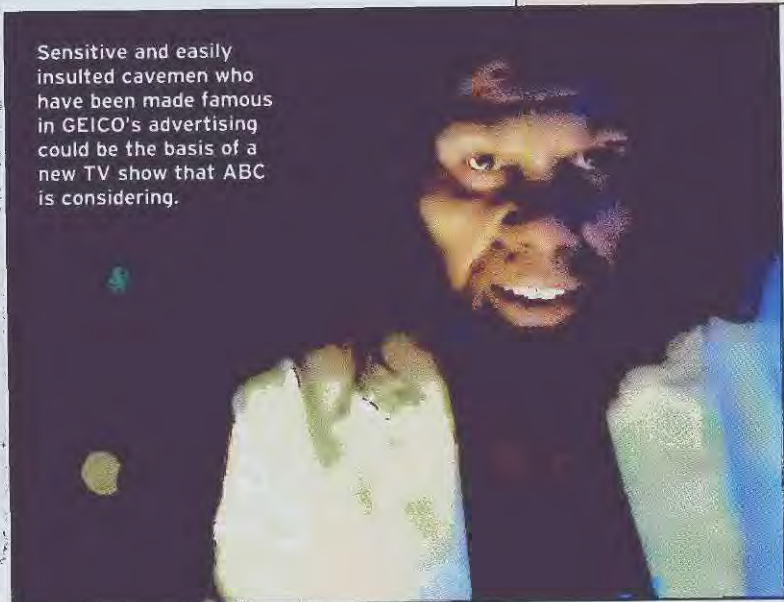


Ms. Gilroy



Mr. Terminator

Sensitive and easily insulted cavemen who have been made famous in GEICO's advertising could be the basis of a new TV show that ABC is considering.



Cavemen pitchmen so popular even a network thinks prime time

GEICO's insulted cavemen have reason to cheer—they may be going prime time.

ABC is exploring development of a TV series based on the insurer's popular characters featured in some of its commercials.

Tentatively titled "Cavemen," the pilot—one of hundreds currently being shopped around TV networks—will focus on three, thirtysomething prehistoric characters battling prejudice on a daily basis in modern day Atlanta, according to a

source familiar with the situation.

The pilot, which had neither script nor cast, will be shot by May, which is when the networks convene to hammer out the 2007/2008 schedule, the source said.

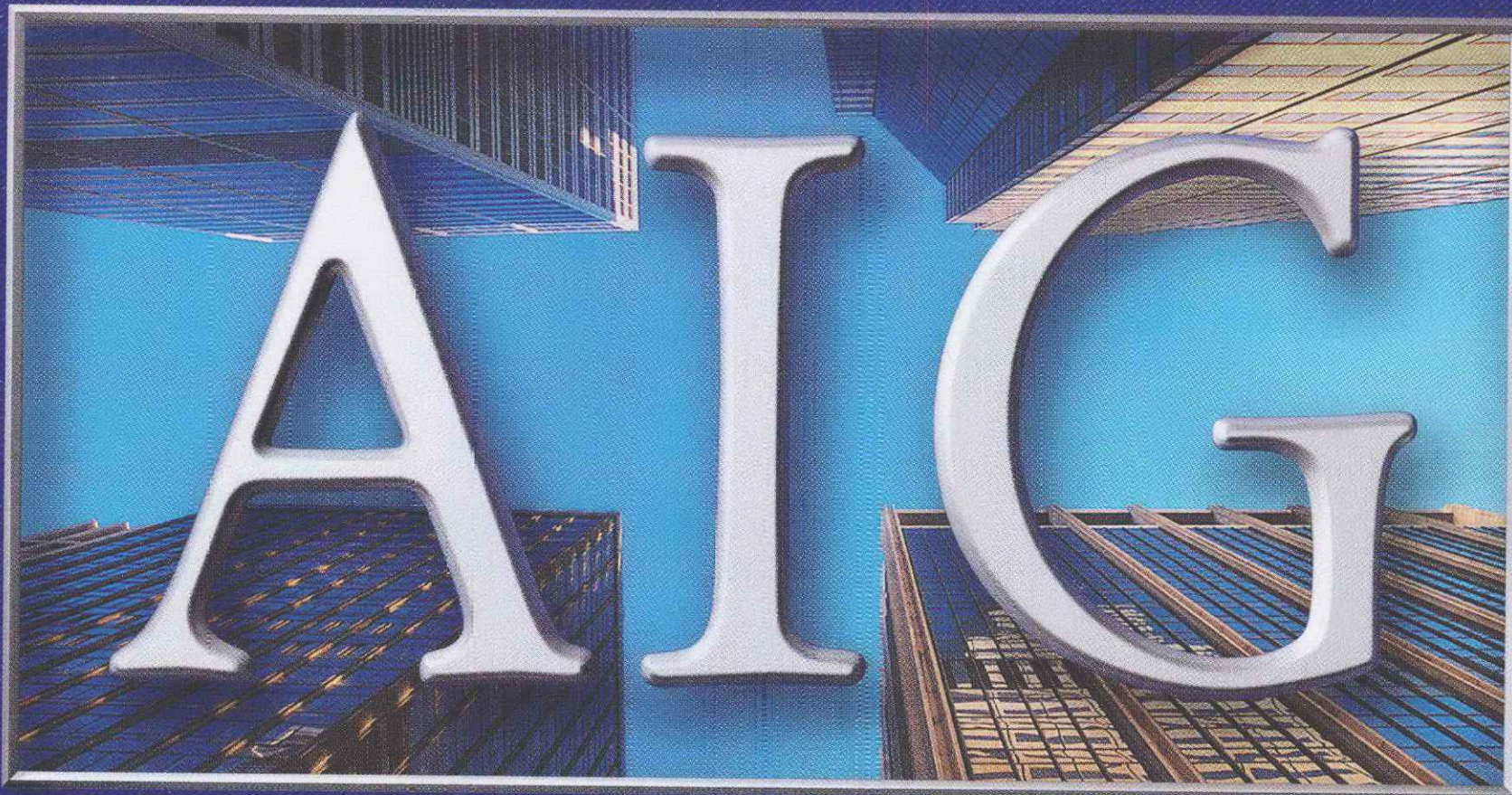
At this point, GEICO has no creative control over the potential show, but it would receive a royalty payment for the use of the characters should the show get picked up, the source said.

GEICO introduced its cavemen in spots in 2005, initially to promote

its Web site, in which they appear insulted by a pitchman who claims the insurer's Web site is so easy to use "even a caveman can do it."

Ted Ward, GEICO's vp-marketing, said the TV show is "one of many" ideas the insurer is exploring for its cavemen characters.

The cavemen have been seen recently at the Academy Awards, playing golf with TV football analyst Phil Simms in a Super Bowl pregame show and online at www.cavemanscrib.com, he said.



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