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Late News

UnitedHealth results may be restated

UnitedHealth Group Inc. may be required to restate several years of results due to improper oversight and accounting for stock option grants, the insurer said in a regulatory filing last week. UnitedHealth of Minnetonka, Minn.–which along with its top management faces shareholder lawsuits alleging harm caused by backdated stock options–also reported in the filing that it was the subject of an "informal inquiry" by the Securities and Exchange Commission over its options granting practices. If forced to make an earnings restatement, UnitedHealth could see its earnings reduced by as much as $286 million, the company said.

Comp combined ratio improves to 102%

The combined ratio for workers compensation insurance improved to 102% in 2005 from 107% a year earlier, according to the annual preliminary market analysis by the National Council

See **LATE NEWS**/page 23

Inside

Hartford settles annuities probe

Deal limited to contingent payments on life business

By DOUGLAS McLEOD

HARTFORD, Conn.—New York and Connecticut officials opened a new avenue in their insurance industry probes last week, announcing a $20 million settlement with Hartford Financial Services Group Inc. over its compensation of brokers placing group annuity business.

Hartford will reimburse pension fund customers and pay fines to settle charges by the states' attorneys general that it fraudulently paid millions of dollars in undisclosed commissions to four brokers to steer group annuity business to it.

Pension fund customers, including PricewaterhouseCoopers L.L.P., a Tenet Healthcare Corp. unit and Benetton Sportsystem USA Inc., unknowingly paid tens to hundreds of thousands of dollars in added premiums to cover the commissions, complaints filed against Hartford charge.

Hartford and a handful of other life insurers—including Principal Financial Group of Des Moines, Iowa, and New York-based MetLife Inc.—have been subpoenaed over the past 18 months by New York and Connecticut regulators investigating annuity brokerage compensation, the companies have reported in their Securities and Exchange Commission filings.

Hartford has taken $107 million in aftertax charges against earnings since the beginning of 2005 for expected settlements of annuity and mutual fund probes.

Hartford's is the first annuity-related compensation settlement, and more charges and settlements are likely in coming months, a source

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States lead the way on health care reform

Vermont seeks to cut uninsured

By JERRY GEISEL

MONTPELIER, Vt.—The states-led drive to reduce the number of individuals without health insurance is accelerating.

Last week, the Vermont Legislature, in the closing days of its session, passed a sweeping measure that is intended to cut in half the number of uninsured in the state.

Vermont's action comes just one month after neighboring Massachusetts passed a trailblazing bill to expand coverage.

And more states are considering following the two New England states. Last week, for example, Michigan Gov. Jennifer Granholm unveiled an outline plan whose foundation, like the reform measures passed in Vermont and Massachusetts, is state subsidies of health insurance premiums for lower-income, uninsured state residents.

Health care experts say more states are certain to join the drive to expand coverage.

"This is an area where states feel they have to accomplish something," said Brian Klepper, presi-

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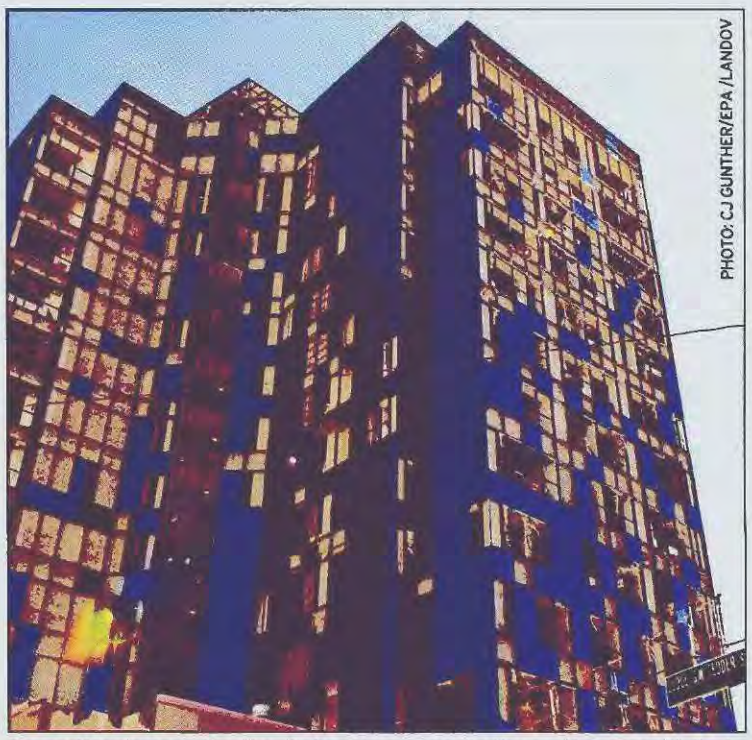

PHOTO: CJ GUNTHER/EPA /LANDOV

Properties damaged by the chain of hurricanes in the southeastern United States over the past several years could find it even tougher to obtain insurance coverage as insurers withdraw capacity from the market.

Catastrophe cover capacity shrinking

RSUI Group joins list of insurers curbing windstorm exposures

By ROBERTO CENICEROS

ATLANTA—RSUI Group Inc.'s decision last week to join those insurers that have stopped writing new wind coverage for catastrophe-exposed coastal properties will leave some buyers with gaps in program layers, several brokers say.

Buyers already face rapidly escalating pricing and larger deductibles as the market for wind coverage continues to tighten, they add.

RSUI, an Atlanta-based specialty insurer and unit of New York-based Alleghany Corp., in a May 9 letter to its producers cited a "shortfall in our reinsurance protection" and said its catastrophe treaty "is presently placed short of plans."

While the company joins several other insurers that have stopped writing new wind coverage in catastrophe-exposed regions, its capacity will be especially missed by large commercial policyholders. RSUI provided large excess layers, such as $150 million in coverage, several brokers said.

"There are not a lot of carriers out there that can offer that capacity in single-layer chunks," said Tish Booty, a broker in Baton Rouge, La., for Risk Placement Services Inc., a wholesale brokerage unit of Arthur J. Gallagher & Co. "I don't know of anybody waiting in the wings that is able to fill that."

Even before RSUI said last week it would stop writing new coverage while taking "more conservative positions" with windstorm-exposed renewals, some policyholders encountered difficulties filling out the limits they sought, Ms. Booty said.

RSUI's action will leave a huge void, agreed Joseph Messina, chief executive officer for excess and specialty broker Maximum Independent Brokerage L.L.C. in Chicago.

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INTERNATIONAL NEWS

AON

"WHAT SHOULD I DO WITH MY OFFSHORE PROPERTY PROGRAM?"

Bruce Jefferis is the managing director of Aon's Natural Resources Group in the United States. You can reach Bruce at +1.832.476.6964 or bruce_jefferis@aon.com.

"After the Gulf Coast region's devastating losses in 2004 and 2005, rates and deductibles are up and windstorm limits are down. In this challenging environment, it is critical to consider new program structures and every other financial tool in the box.

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Visit www.aon.com/ask for Bruce's full perspective on coverage for offshore properties in the Gulf Coast region.

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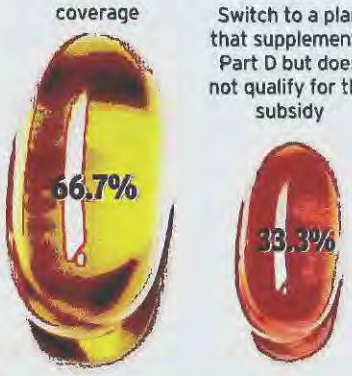
Inside

Online poll - [5/8 - 5/12]

If your retiree prescription drug plan currently qualifies for the Medicare Part D claim subsidy, for 2007 will you:



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Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Delay could aid pension plan reform

Employers hoping for postponement on start of new funding rules

By JERRY GEISEL

WASHINGTON—Amid a lack of apparent progress by a congressional conference committee in hammering out a final pension funding reform measure, employer groups are urging legislators to delay the effective date by at least one year.

Earlier this year, congressional leaders informally set a deadline of mid-April for pension conferees to reach an agreement to resolve differences between funding reform bills passed last year by the House and Senate, and then send the compromise measure back to each legislative branch for final approval.

Not only was that deadline missed, but the next informally set deadline—by Memorial Day—also seems unlikely to be met.

"Given the number of tough, complex issues to be resolved, an agreement by the end of May, while not impossible, would be very difficult to reach," said Janice Gregory, a senior vp with the ERISA Industry Committee in Washington.

In fact, benefit lobbyists say, conferees have not come close to making decisions on what are regarded as the most politically difficult issues to resolve. Those include:

- The conditions that cash balance plan sponsors must meet to be protected from age discrimination suits regarding the design of those plans.
- Whether employers with low credit ratings and underfunded pension plans should be required to make extra contributions to those plans.
- The period of time over which interest rates would be averaged to determine the rate employers use to value pension plan liabilities.

An agreement on a tax bill will help "speed up the process of getting agreement on the pension bill."

John Boehner, R-Ohio

"Everything is in flux. There has not been a comprehensive (compromise) proposal put forth," said Bob Shepler, director of corporate finance and tax at the National Assn. of Manufacturers in Washington.

Lobbyists say they are not concerned about the slipping timetable. "Rather than meeting artificial deadlines, we want legislators to get it right," he said.

In fact, another conference committee's agreement on a tax bill last week could help to speed up consideration of the pension legislation. Many of those conferees also are on the pension

See **REFORM** / page 20

U.K. bank unbiased in firing gay exec, but process faulted

By SARAH VEYSEY

LONDON—A London-based bank did not discriminate against a former executive on the basis of his sexual orientation when it fired him for alleged gross misconduct, but elements of its investigation into the alleged misconduct were discriminatory, an employment tribunal has found.

The finding that HSBC P.L.C. did, in part, discriminate against Peter Lewis, its former head of global equities trading, should be taken as warning to employers that, in addition to their employment policies, their processes and procedures should be nondiscriminatory, experts say.

This is the highest profile case to be brought since rules preventing discrimination on the grounds of sexual orientation were enacted in the United Kingdom in 2003.

Mr. Lewis, an openly gay man, was dismissed from HSBC in 2004 after another male staff member complained of alleged sexual harassment at the company's health club—a claim Mr. Lewis denied.

Mr. Lewis sued the bank seeking £5 million ($9.3 million) in damages, claiming that he was fired because he was gay. The three-person tribunal ruled that the bank had not been discriminatory on the grounds of Mr. Lewis' sexual orientation, but it ruled that "the claim of unlawful discrimination on the grounds of sexual orientation is in part well-founded," in respect of certain elements of the investigation into the incident.

In its ruling, the tribunal said that in an internal report of the incident, Mr. Lewis' evidence was treated less credibly than it might otherwise have been, that a second alleged incident—which was never the subject of a complaint—was unfairly included in the report, and that a member of the team investigating the incident had, at times, a "closed mind" towards the case, among other things.

A hearing to decide compensation for these breaches will be set for a later date, according to the tribunal ruling.

In a statement, London-based HSBC said it welcomed the tribunal's finding that Mr. Lewis was not dismissed on the grounds of his sexual orientation.

"HSBC has always maintained that Mr. Lewis was dismissed for gross misconduct following a complaint of sexual harassment made against him by another member of staff and for no other reason," the bank said in a statement.

The bank said it was disappointed that the tribunal had ruled there were flaws in the disciplinary process and that it was considering an appeal on these points.

In a statement, Mr. Lewis' at-

See **DISCRIMINATION** / page 20

Reinsurers' sidecar arrangements

The four known sidecar arrangements.

Sidecar	Cedent	Underlying risk	Capital in millions
Blue Ocean Reinsurance Ltd.[1]	Montpelier Re	Former Retro book	$300
Cyrus Reinsurance Ltd.[1]	XL Re	Property/ catastrophe XOL	$500[2]
Flatiron Re Ltd.[1]	Arch Capital	Property/ catastrophe XOL	$900[2]
Rockridge Reinsurance Ltd.[3]	Montpelier Re	High layer/ short-tail XOL	$90[2]

1 Domiciled in Bermuda. 2 Capital not confirmed. 3 Domiciled in the Cayman Islands.
Source: Moody's, Guy Carpenter

Reinsurers attach sidecars to expand catastrophe capacity

By JUDY GREENWALD

Reinsurance sidecars are providing some much needed catastrophe capacity in the aftermath of Hurricane Katrina, but their long-term prospects once the market softens remain unclear.

Sidecars are special purpose vehicles—often capitalized by hedge funds—that provide capacity to existing reinsurers by assuming risk, typically through multi-year quota share reinsurance contracts. The sidecar assumes a percentage of premiums in return for assuming the risk, which is generally property catastrophe reinsurance.

"It's a way to bring some quick capital and capacity into the marketplace," giving investors the opportunity to capitalize on favorable market con ditions, said Mark Rouck, senior insurance analyst at Fitch Ratings in Chicago.

A report issued by rating agency Moody's Investors Service last week says in many respects, reinsurance sidecars are based on traditional structures. Where they differ is that they include private ownership, a defined risk period and a finite lifetime, a highly structured and limited-purpose nature, defined risks, a business relationship that is typically limited to a single reinsurance cedent or contract, and the absence of an active staff.

According to Moody's, four sidecar arrangements that have been established recently in Bermuda and the Cayman Islands (see chart above). None of

See **SIDECAR** / page 21

Lack of support in Senate dooms malpractice bills

Measures that would cap damages die amid filibuster threats

By MARK A. HOFMANN

WASHINGTON—Enactment of major medical malpractice reform legislation appears extremely unlikely after the Senate failed to cut off threatened filibusters against two reform bills last week.

The failure to invoke cloture on the debate over the Medical Care Access Protection Act and the Healthy Mothers and Babies Access to Care Act effectively killed the bills' chances of passage in the current Congress. The Medical Care Access Protection Act—S. 22—would have capped the amount of noneconomic damages a plaintiff could recover from any health care provider at $250,000, but would have allowed plaintiffs to recover the same amount in noneconomic damages from up to two health care institutions, such as hospitals, for a potential total of $750,000.

The Healthy Mothers and Babies Access to Care Act—S. 23—would have applied similar caps in cases involving obstetricians and gynecologists. Both bills had the support of the White House.

But both measures, neither of which underwent review by the appropriate Senate committees before being brought to the floor, faced unified Democratic opposition as well as that of a handful of Republicans. In the end, neither came close to winning the 60 votes needed to limit debate.

Supporters said the measures are unlikely to be considered again by this Congress.

"I don't see it coming back up in the Senate; the action precludes further debate," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. She pointed out that although the House has passed medical malpractices reform legislation in both the current and previous Congresses, the Senate never considered medical malpractice reform legislation in committee during the last two Con-

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Court bars Aetna bid to recover $72 million from liability insurers

By GLORIA GONZALEZ

HARTFORD, Conn.—A Pennsylvania court has ruled against Aetna Inc. in its attempt to recover insurance proceeds from its third-party insurers related to a settlement reached with physicians regarding the health insurer's claims payment practices.

Aetna's lawsuit sought recovery of $72 million it paid toward settling a major class action lawsuit regarding its claims payment practices. The Hartford, Conn.-based health insurer received notice last week that a trial court issued a summary judgment ruling dismissing all of its claims against its insurers: Lexington Insurance Co., a unit of American International Group Inc.; Fireman's Fund Insurance Co.; Liberty Mutual Group Inc.; and Starr Excess Liability Insurance International Ltd.

While Aetna disagrees with and intends to appeal the ruling, the company has concluded it is unlikely that it will be able to collect the $72 million in insurance proceeds it planned to recover from its insurers. The health insurer will take a charge to net income for this amount during the second quarter, according to a company filing with the U.S. Securities and Exchange Commission.

PHOTO: AP

A court ruling against Hartford, Conn.-based Aetna Inc. prohibits it from collecting $72 million from its third-party insurers.

In May 2003, Aetna announced the settlement of allegations against the company featured in a class action lawsuit over the claims payment practices of several managed care companies.

The company agreed to pay $170 million to more than 700,000 physicians and their lawyers and invest funds in improving its business practices. Aetna then filed a claim for $72 million with its insurers under policies that it said provided broad coverage for litigation contesting its business operations. But the insurers denied the health insurer's claims, leading to the current coverage dispute.

Representatives of Aetna's insurers declined to comment.

PHOTO: BLOOMBERG NEWS/LANDOV

Berkshire Hathaway Inc. Chairman Warren Buffett said that the company could absorb a loss four times the size of Hurricane Katrina.

Berkshire Hathaway well-positioned to absorb huge cat losses: Buffett

By MARK A. HOFMANN

OMAHA, Neb.—Berkshire Hathaway Inc. could "comfortably pay" losses stemming from a catastrophic event four times the size of last year's Hurricane Katrina, Berkshire Hathaway Chairman Warren Buffett told shareholders at the company's annual meeting earlier this month.

But much of the insurance industry would be badly hurt by such an event, which could cause up to $240 billion in insured damage, said Mr. Buffett. Omaha-based Berkshire Hathaway, which owns General Reinsurance Corp. and Berkshire Hathaway Reinsurance Group, would bear about 4% of the industrywide losses, he said.

Mr. Buffett's assessment came only hours after Berkshire Hathaway released its results for the first three months of 2006. According to the company, Gen Re registered an underwriting profit of $71 million during the first quarter of this year, compared with $19 million during the same period in 2005. Berkshire Hathaway Reinsurance Group's underwriting profit for the first quarter was $94 million, down from $143 during the same period a year earlier.

"The underwriting results in the first quarter of 2006 reflect losses incurred of approximately $90 million attributed to pre-2006 catastrophes, primarily hurricane Wilma in 2005," said Berkshire Hathaway in its report.

The company's insurance operations, which also include personal lines insurer GEICO and Berkshire Hathaway Primary Group, generated net earnings, including investment income, of $1.03 billion during the first quarter of this year, compared with $873 million during the same period a year earlier.

Insurance issues did not appear to be first and foremost on the minds of Mr. Buffett or the approximately 24,000 people who

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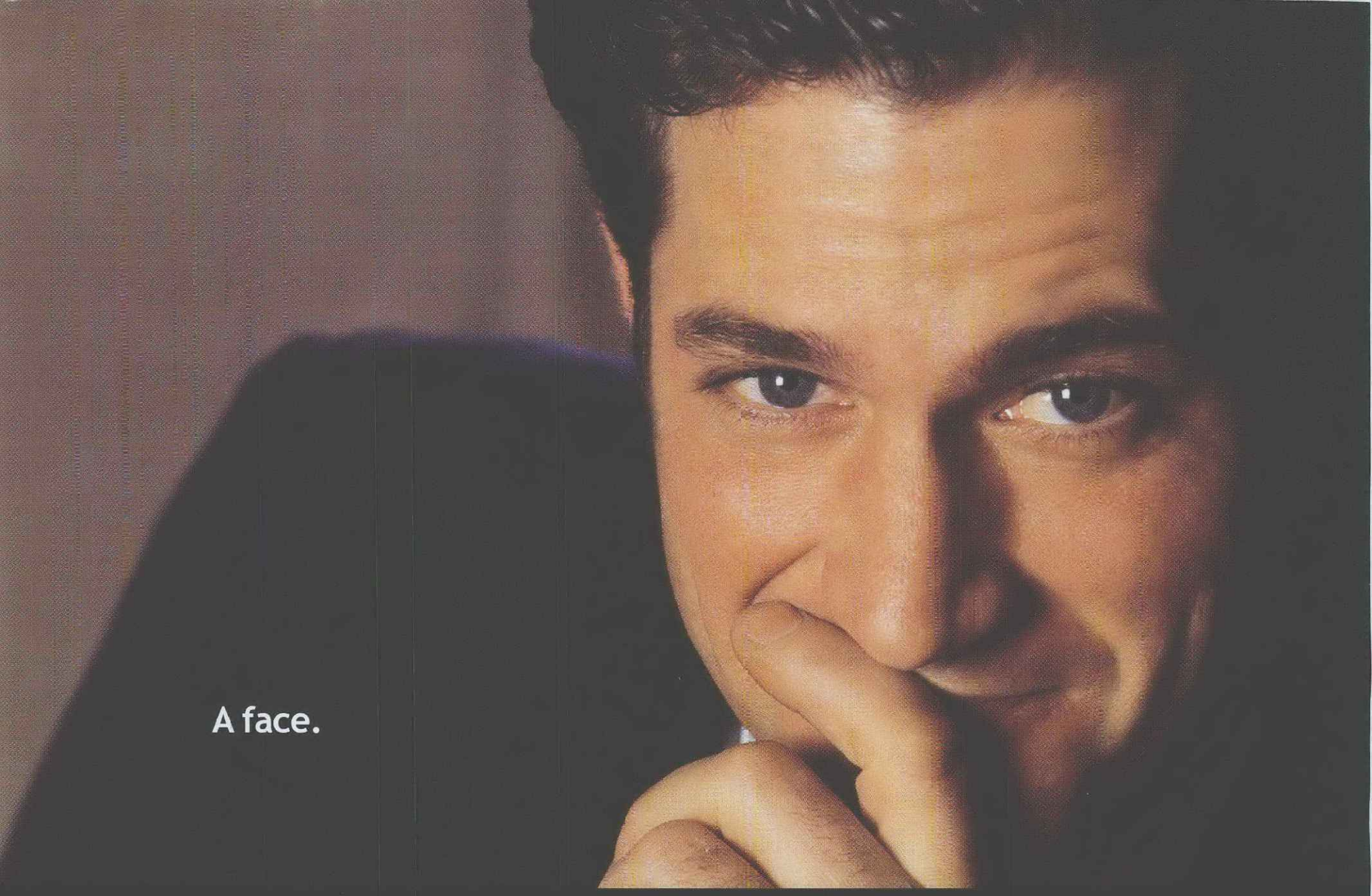

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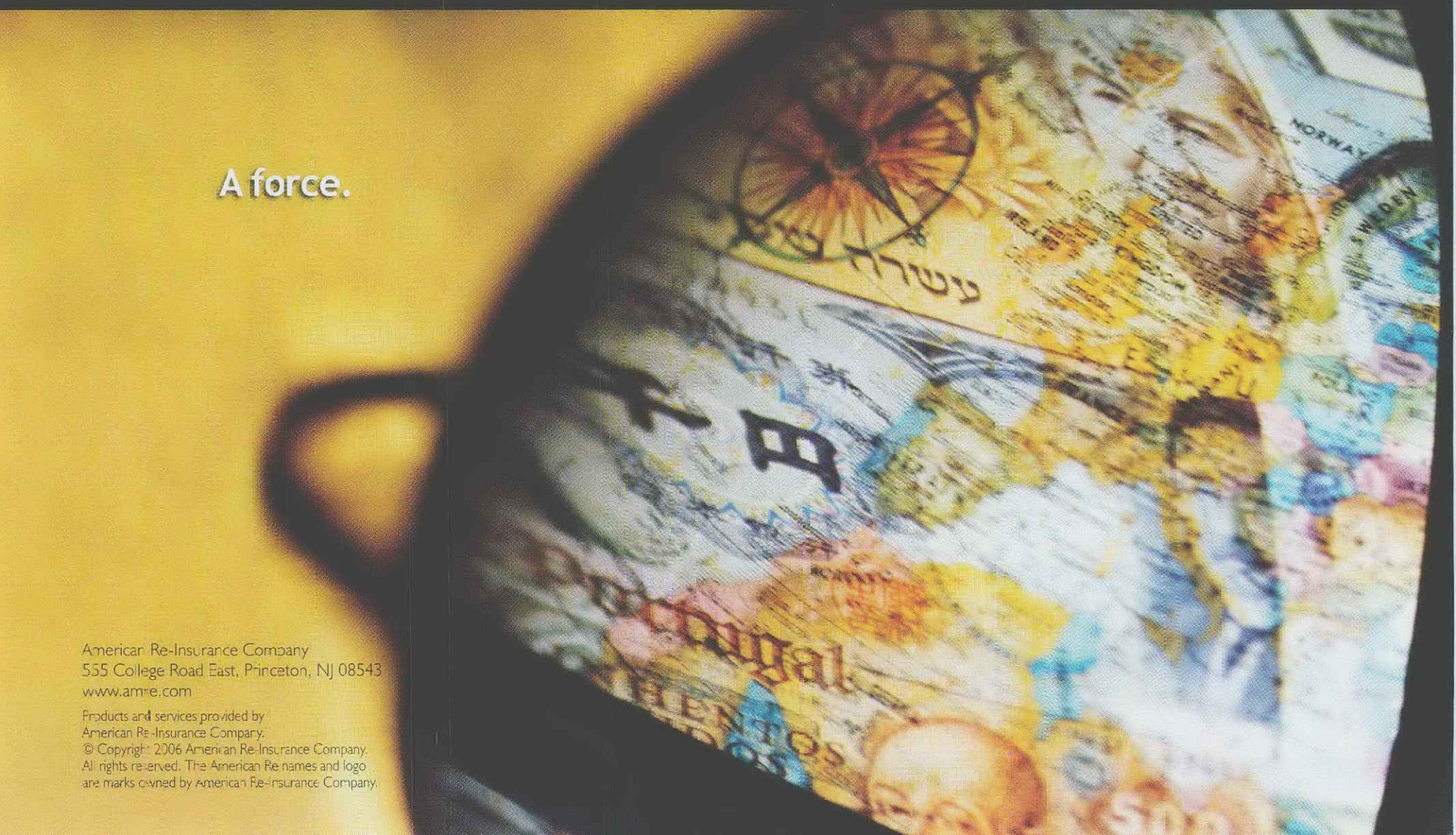

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Employers benefit from drug law

By JERRY GEISEL

Employers with prescription drug plans are receiving federal subsidies to partially offset drug costs incurred by nearly 7 million former workers and dependents, according to government statistics.

The Department of Health and Human Services reports that 6.8 million people are enrolled in employer-sponsored retiree drug plans that are at least as generous as Medicare Part D and thus eligible for a special subsidy.

That subsidy, part of a federal law that added, effective Jan. 1, 2006, a prescription drug benefit to Medicare, provides tax-free reimbursement to employers of 28% of drug costs between $250 and $5,000 per Medicare-eligible beneficiary. The subsidy is expected to cost the government more than $70 billion over 10 years.

Employers not eligible for the subsidy also are benefiting from the Medicare drug law. Some have cut back their retiree prescription drug benefit plans so that the plan supplements what Medicare Part D provides. HHS estimates there are 1.4 million people in such plans.

These enrollment figures come as the Bush administration is encouraging the millions of people who are eligible for Medicare Part D coverage, but have not yet enrolled, to do so before a May 15 deadline.

Those who don't make that deadline will have to wait until the next open enrollment period—between Nov. 15 and Dec. 31—to choose a plan, with coverage starting Jan. 1, 2007. Those late enrollees will pay a penalty equal to about 7% of the monthly Part D coverage premium.

Federal subsidy

Department of Health and Human Services reports that **6.8 million people are enrolled in employer-sponsored retiree drug plans** that are at least as generous as Medicare Part D and thus eligible for a special subsidy.

NAIC interstate compact nears completion

The National Assn. of Insurance Commissioners said it expects its Interstate Insurance Product Regulation Compact to become operational soon, once Alaska and Ohio become the latest states whose governors sign such legislation into law.

A minimum of 26 participating states was needed to create an interstate commission that gives the states the ability to collectively use their expertise to develop uniform national product standards. That will afford "a high level of protection to consumers of life insurance, annuities, disability income and long-term care insurance products," according to an NAIC statement.

The compact member states, which include the territory of Puerto Rico, represent 39% of the premium volume in those lines, the organization said.

"The compact will establish a central point of filing for these insurance products, enhancing the speed and efficiency of regulatory decisions based on strong product standards and allowing companies to compete more effectively in the modern financial marketplace," the NAIC said.

NAIC President Alessandro Iuppa said in a statement, "The path to implementation has come at a much faster pace than many expected and demonstrates that states working together can deliver a system of insurance supervision that meets the needs of the modern economy while enhancing protections for policyholders."

The other compact member states are Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Nebraska, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, Wyoming and West Virginia.

—By Meg Fletcher

Gallagher files suit against Palmer & Cay

By DOUGLAS McLEOD

ST. LOUIS—Arthur J. Gallagher & Co. has filed a lawsuit charging former rival Palmer & Cay Holdings Inc. with wrongfully hiring away the head of Gallagher's St. Louis health care brokerage operation in 2003.

Palmer & Cay—acquired by Charlotte, N.C.-based Wachovia Insurance Services Inc. last year—improperly induced Jeffrey Combs to leave Gallagher in 2003 and to solicit his former clients and Gallagher co-workers to move to the rival broker, according to the suit, filed last week in U.S. District Court in St. Louis.

Mr. Combs began discussing a job with Palmer & Cay in September 2003. Gallagher fired him in November 2003 and he joined Palmer & Cay a few days later, the suit says.

Mr. Combs' solicitation of Gallagher clients violated a two-year noncompete clause in his employment agreement, the terms of which Gallagher provided to Palmer & Cay shortly after it hired Mr. Combs, according to the complaint.

Gallagher originally filed its suit in a Missouri state court in 2004, but voluntarily dismissed the complaint last month and refiled it in federal court, according to Ronald L. Hack, a lawyer with Gallop, Johnson & Neuman in St. Louis, representing Gallagher.

Mr. Combs has previously been a focus of other legal action: The Missouri Insurance Department obtained an injunction against him in August 2005 for promoting an offshore medical malpractice insurer while he was still at Gallagher. Regulators found that Mr. Combs marketed malpractice coverage offered by Security Trust Insurance Co. Ltd., an unlicensed insurer based in St. Croix, U.S. Virgin Islands. The Missouri Department barred Security Trust from doing business in the state in June 2003, and Gallagher paid a voluntary $50,000 forfeiture to settle charges over the marketing effort in early 2004.

The injunction consented to by Mr. Combs barred him from promoting unauthorized insurers and required him to be supervised by another licensed insurance producer.

Mr. Combs, who is no longer employed at Wachovia, could not be reached.

A Wachovia spokesman declined to comment.

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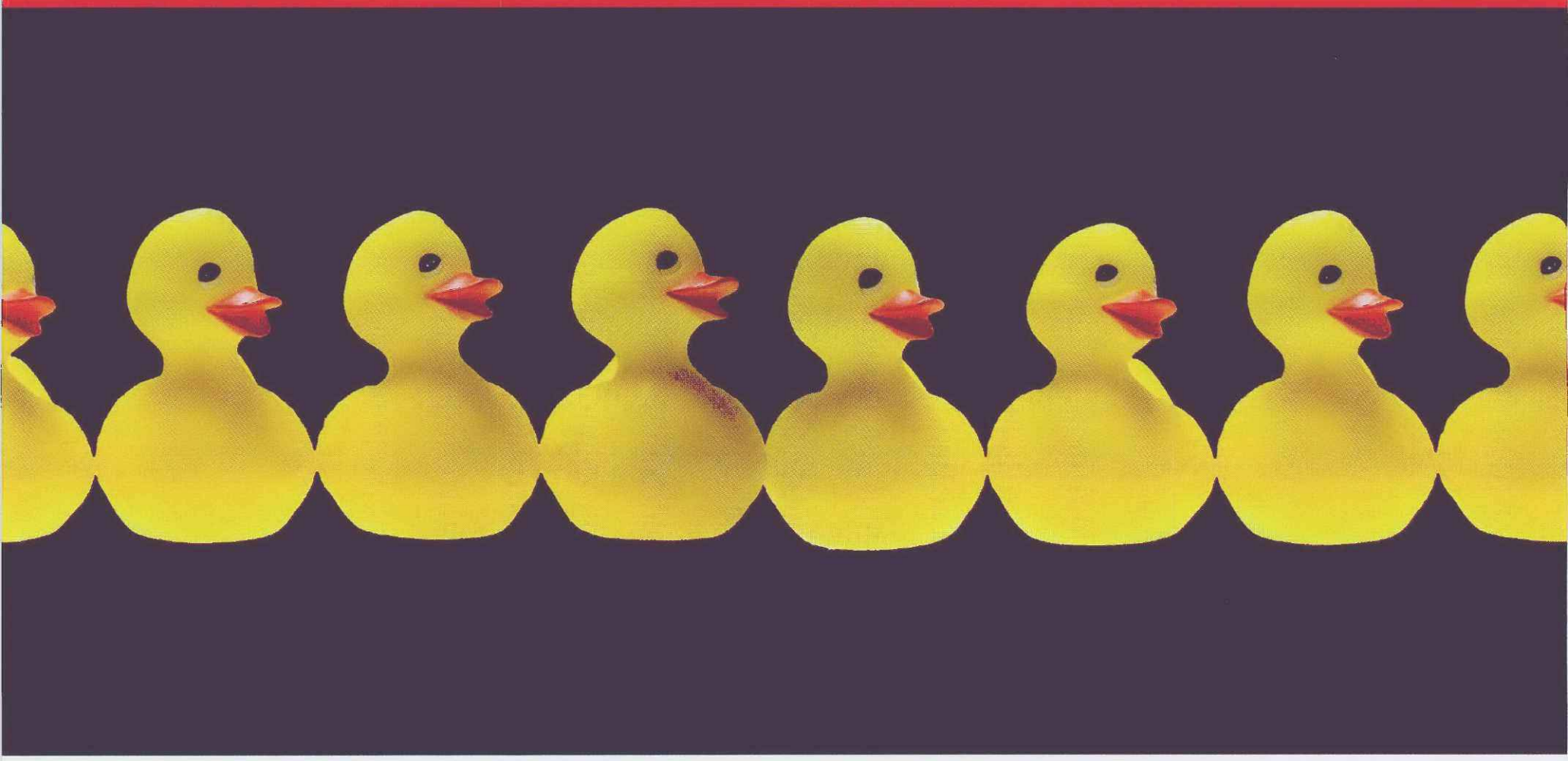

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Editorial

Meaningful health reform possible with cooperation

WE HOPE FEDERAL LEGISLATORS and the Bush administration grasp what is, we think, the obvious lesson to be learned from the enactment of comprehensive health care reform measures in Massachusetts last month and last week in Vermont.

That lesson is: meaningful reform to extend coverage to a big chunk of the uninsured is possible, but only through bipartisan cooperation.

In both Vermont and Massachusetts, Republican governors actively worked with legislative branches controlled by Democrats to come up with measures all could agree on.

Contrast that with the partisan-charged atmosphere in Washington. The order of the day is for each party to bash the other and to exclude the other in drafting legislation.

Regrettably, this divisive and ultimately self-defeating approach to governing has been going on in Washington for some time. Perhaps the best example was the Clinton administration's health care reform package. That plan failed because of the administration's take-it-or-leave-it approach.

No attempt was made to bring in Republicans for their views so, of course, bipartisan support never developed.

Republicans and Democrats worked together a few years ago on legislation to add a prescription drug benefit to Medicare. But look at the situation today: Democrats are exaggerating the administrative problems associated with the law, and the Bush administration is exaggerating enrollment figures. Couldn't both sides work together to try to resolve whatever problems there are?

Fortunately, the legislative and executive branches in Massachusetts and Vermont saw the value and absolute necessity of bipartisan cooperation. Simply put, one party does not have a monopoly on good ideas.

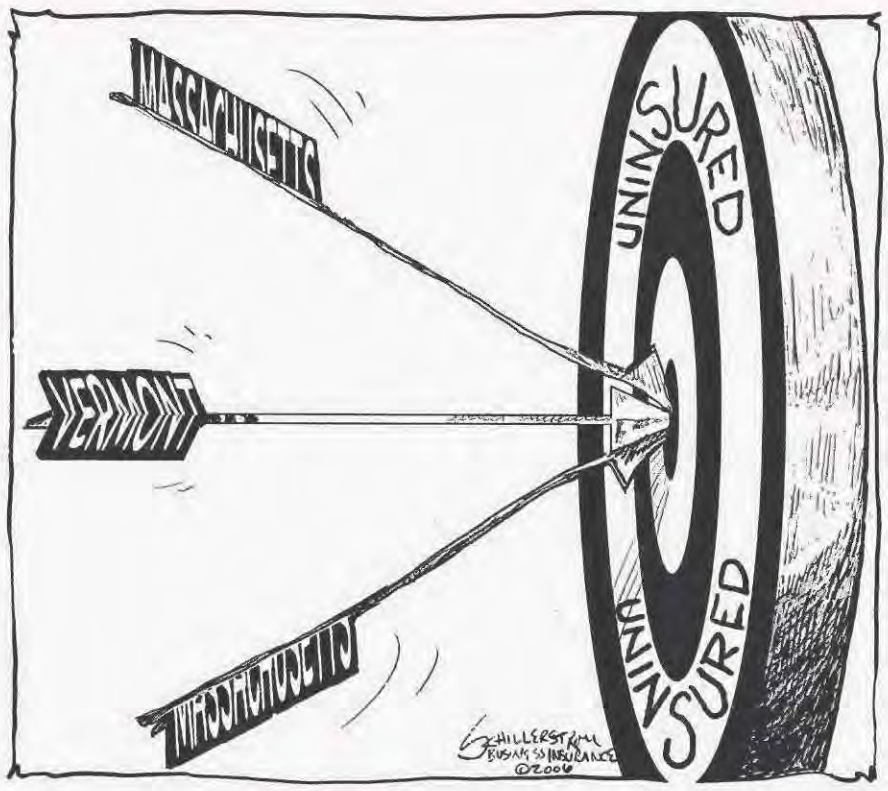
While the Massachusetts and Vermont measures differ in many ways, they do share some common and important features. Both measures recognize that a key way to reduce health care costs is to expand coverage and the measures would do that by heavily subsidizing health insurance premiums for lower-income individuals.

If more people have health insurance coverage, that will mean care will be delivered in more cost-efficient settings: doctor's offices rather than emergency rooms.

And minor medical problems—because they more likely will be treated sooner—will be less likely to mushroom into major and costly complications.

That's common sense and we hope the examples set by Massachusetts and Vermont inspire legislators in other states and in Washington to put aside differences and work together to resolve the nation's health care crisis.

Schillerstrom



Letters

Umbrella liability broader than underlying coverage

To the editor: Phillip C. Bly's April 24 letter regarding umbrella policies is just plain dead wrong. In fact, umbrella policies are almost always broader than the underlying coverage. Umbrella policies were copied from London "bumbershoot" (a slang term for umbrella) policies shortly after the end of World War II.

Insurance Co. of North America likened its umbrella coverage to a circus tent because it covered so much. The difference between an umbrella policy and an excess policy was that the umbrella policy was broader than the underlying, while the excess policy simply provided greater limits for the underlying.

Eugene R. Anderson
Partner
Anderson Kill & Olick P.C.
New York

Market can find private solution to cat capacity shortage

CLEANUP OPERATIONS for the damage caused by last year's devastating hurricanes may be well underway, but the insurance market for many catastrophe-exposed areas is still a mess.

As we report on page 1, a lack of affordable reinsurance capacity is causing some insurers to cut back on windstorm coverage in the southeastern United States. In addition to a dearth of reinsurance capacity, the withdrawals are being driven, in part, by changes to catastrophe models that are being updated in light of the 2005 losses.

And it's not just windstorm insurance capacity that is shrinking. The higher loss estimates that are being incorporated in the models are also driving capacity away from earthquake risks.

Given the importance of insurance coverage for catastrophe risks, it might be tempting to see some form of federally-backed catastrophe fund as the answer to the capacity problem. Indeed, there have already been some proposals for the creation of a catastrophe fund for personal lines risks.

Although we can see the benefit of federally-backed coverage for risks that defy most underwriting methods, such as terrorism risks, we would urge extreme caution against extending the approach to provide a broad-based backstop for natural catastrophes.

While policyholders will no doubt face some short-term discomfort when trying to find cat coverage in a tight market, the insurance market should, as it has done in the past, fairly quickly find its own solution to the capacity problem. In fact, innovative cat reinsurance vehicles are already being created to provide more capacity. As we report on page 3, so-called "sidecar companies" are being established by existing reinsurers, with the backing of hedge funds, to take advantage of reinsurance rate increases.

Commercial insurance markets may on occasion need help to solve economic problems, as was and still is the case with terrorism insurance. Natural catastrophe insurance presents no such case.

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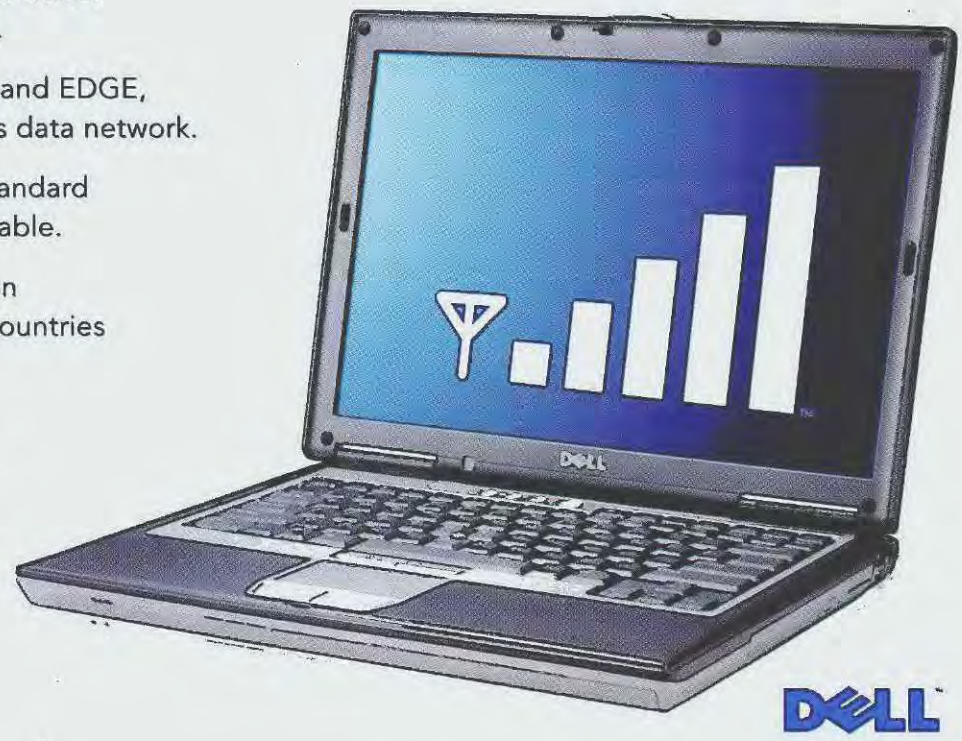

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Retirement resources fade away

Prompt action must be taken to secure retirement programs

By Lawrence J. Sher

Both of my parents are now 91. My father retired at 60 after working for the same company for almost 30 years. He has been receiving not only a generous lifetime pension from his company's defined benefit pension plan but also company-provided medical coverage to supplement Medicare. And, of course, both parents have been receiving Social Security benefits.

Unfortunately, when it comes to retirement, there's all the difference in the world between my father's generation and mine. As things stand now, we Baby Boomers—and even more so our children—will likely get less from Social Security and Medicare, and less in the way of pensions and retiree medical benefits from our employers. We will have to make up the shortfalls through our 401(k) savings plans and other personal savings. But will that be enough?

Probably not for many of us, unless we change our behavior and expectations. For starters, Baby Boomers have not been good savers. Many assumed that 401(k) plans would provide the "miracle cure" for this problem, but they likely won't in many cases, for a variety of reasons. Many prospective retirees never were eligible to participate in a 401(k) plan. Many other workers, especially low wage earners, have been eligible but do not make the maximum contribution or take full advantage of matching company contributions. And some workers withdraw funds early to meet nonretirement needs.

There is also the real danger that an account will "run dry" if investment returns are poor or the retiree lives "too long." Even when that danger seems remote, many retirees, as they age, find the management of 401(k) accounts burdensome, and prefer to give up the investment and distribution flexibility of their accounts in exchange for the certainty of a lifetime pension.

On the brighter side, Baby Boomers fortunate enough to have participated in the housing boom might be able to tap those assets to supplement their retirement income, assuming that those values hold up.

Yes, the world today is far different than my father's world. Although many more Baby Boomers will live to age 91 or beyond than did so in my father's generation, how many of them will be able to retire at age 60 or 65 or even 70, confident that they will not outlive their retirement resources? And how many will have to return to work after "retiring"?

> We Baby Boomers consumed more conspicuously and saved less than our parents, and so we will have to work longer. We cannot look to younger generations to bail us out.

These are serious questions. So how do we address them? The best answer is a national savings and retirement income policy—something our country has never had. This policy would clearly define the roles of government, employers and individuals, as well as the role of tax policy, in promoting retirement security. A national savings and retirement income policy offers at least one big benefit: all future legislative proposals can be measured against it, thereby discouraging the inconsistent, short-term congressional "fixes" that actually harm retirement security.

Policymakers could begin by addressing the causes for the shift away from retirement security programs. These causes include the aging of our population, changing competition and workforce characteristics, as well as rising and volatile program costs. And if a national policy provides a place for voluntary, employer-provided retirement programs, then policymakers also need to determine what motivates employers to sponsor and support those programs.

But we cannot hold our breath waiting for a national policy—drastic change is needed now. We can start with Congress, which inadvertently has been pushing private sector employers out of the voluntary pension system. Right now, Congress is seriously considering pension reform legislation that in some ways could make that problem even worse. Under one proposal, yearly contributions to pension plans would become more volatile and less predictable, making it harder for companies to forecast their cash needs.

Another proposal would impose harsh mandates—i.e., government restrictions—on how an employer can switch its pension plan to a cash balance design, a move that more than 1,000 employers already have made. Cash balance plans combine the account-like features of a 401(k) plan with the benefit and life annuity guarantees of a traditional pension.

Once in place, these kinds of federal mandates could easily be extended to other pension plan changes as well as to programs such as 401(k) and retiree medical plans. Mandates are inconsistent with a voluntary system and can drive employers away from sponsoring retiree benefit programs altogether.

It's time for two groups to face facts. We Baby Boomers consumed more conspicuously and saved less than our parents, and so we will have to work longer. We cannot look to younger generations to bail us out. And Congress has to break out of its habit of providing piecemeal legislation and quick fixes. It needs to lead—or at least participate in—a serious national discourse on retirement security.

Lawrence J. Sher is principal and director of retirement policy for Buck Consultants Inc. in New York.

Doubt over insurer's policy coverage resolved in policyholder's favor

Legal Briefs

The Supreme Court of New Hampshire ruled that a business liability insurer owed its policyholder a duty to defend it in a business defamation suit.

C. Edward Broom, Thomas P. Broom, Christopher J. Broom and Nicholas Brunet, the appellants, were named in a lawsuit filed in 2001 in federal court. They were sued in their capacities as principals at Strategic Timbers Trust Inc. The underlying suit arose from a failed business transaction between STT and certain plaintiffs. Those plaintiffs alleged that once the business venture collapsed, the appellants engaged in a campaign to slander them to lenders and other parties to the transaction. STT was covered under a business liability insurance policy issued by Interstate Fire & Casualty Co. The policy covered damages arising from personal injury, which was defined as including oral or written publication of material that slanders or libels a person or organization. The appellants requested the insurer to defend that suit. The insurer denied coverage. The appellants then brought this suit seeking a declaration from the court that the insurer had a duty to defend and indemnify it from the underlying lawsuit. The trial court ruled for the insurer. The appellants appealed.

The appellate court said that when there is doubt as to whether a policy covers a liability, the doubt must be resolved in the policyholder's favor. Because a reasonable intendment of the initial complaint in the underlying suit alleged injuries potentially within the scope of the insurer's policy coverage, the court concluded that the insurer owed the appellants a defense at the time it was requested and had breached that duty by denying coverage. The trial court decision was reversed.

Broom vs. Interstate Fire & Casualty Co., Supreme Court of New Hampshire, Nov. 16, 2005, Rehearing denied Dec. 22, 2005 (BI/04/Ju.-$10)

Broker ruled ERISA fiduciary

The U.S. Court of Appeals for the District of Columbia ruled that an insurance broker who misappropriated insurance assets from employee benefit plans covered by the Employee Retirement Income Security Act was a "fiduciary" under ERISA.

The Secretary of Labor, Elaine Chao, filed a complaint in federal court against the A&D Insurance Agency and its president, Brittain P. Day, alleging that he violated his fiduciary responsibilities through an illegal scheme to misappropriate insurance assets. Specifically, the labor secretary alleged that Mr. Day accepted hundreds of thousands of dollars from 29 ERISA-covered employee benefit plans for the purpose of purchasing insurance for the plans. Under his brokerage scheme, Mr. Day sent invoices to the plans for various insurance policies, the plans paid the bills by sending checks to Mr. Day, and Mr. Day deposited the checks into his corporate account. Instead of using the money to purchase insurance, however, Mr. Day kept it and provided the plans with fake insurance policies. Mr. Day sought to have the labor secretary's complaint dismissed, arguing that he did not fall within ERISA's definition of "fiduciary." The trial court ruled for the secretary, and Mr. Day appealed.

The appellate court said that, contrary to Mr. Day's assertion, he was far more than a mere custodian. The court said that he was a broker who solicited, accepted and then pilfered the plans' assets by reneging on his promise to purchase insurance for the plans' members. On the facts here, the court said, Mr. Day exercised sufficient "authority or control" over the disposition of the plans' assets to qualify as a fiduciary under ERISA. The trial court decision was affirmed.

Chao vs. Day, U.S. Court of Appeals for the District of Columbia, Jan. 24, 2006 (BI/05/Ju.-$10)

Trip was exception to going, coming rule

An employee, who left his worksite to retrieve keys to open a warehouse, was on a business errand when a traffic accident occurred, so his injuries were compensable under the Workers Compensation Act, according to the Court of Appeals of Kansas.

Chad D. Ridnour was employed as an operations and warehouse manager for Kenneth R. Johnson Inc. He was responsible for a five-man crew at the warehouse, and he was also responsible for setting up operations. On Aug. 15, 2001, Mr. Ridnour had arranged for his crew to begin work at the warehouse at 7 a.m., an hour earlier than usual. He arrived at the warehouse at 6:45 a.m.; the crew was waiting for him. He realized that he had left the warehouse keys at home. Although other employees with keys to the warehouse were likely to arrive within an hour, Mr. Ridnour decided to drive home and get his keys because his crew consisted of hourly employees who would have to be paid even though they could not get into the warehouse. On the return trip from his home, Mr. Ridnour was injured in an auto accident. He applied for and was awarded compensation. His employer appealed.

On appeal, the employer argued that the "going and coming" rule, that precludes an employee from recovering benefits for injuries sustained while going to or coming from work applied here. The court said that Kansas law recognizes several exceptions to the going and coming rule. One such exception, the court said, provides that injuries incurred while going or coming from places where work-related tasks occur can be compensable when the traveling is required in order to complete some special work-related errand or special purpose trip in the scope of the employment. According to the court, Mr. Ridnour was on a business errand at the time of the accident and, thus, his injuries arose out of and in the course of his employment. The court confirmed the award of benefits.

Ridnour vs. Kenneth R. Johnson Inc., Court of Appeals of Kansas, Dec. 16, 2005 (BI/03/Ju.-$10)

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at $10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion ordered.

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Emerging Risk Strategies

Try a two-executive approach to ERM

By John J. Hampton

Proponents of enterprise risk management should pay attention to the fundamental difference between organizational risks that are managed and those that are influenced. Senior executives manage risks directly in the areas of production, marketing, finance and technology. Other enterprise risks, including alignment of strategies and operations in changing environments, are better addressed by influencing various components of an organization.

Within this context, an ERM process can be quite valuable to individuals responsible for production, marketing, finance and technology exposures. The managers in these areas understand the importance of coordinating risk management and would welcome help from the ERM process. At the same time, they do not want to be annoyed by it. Thus, ERM must provide real value identifying internal and external risks that affect the entire organization.

To get it right, a large organization should consider appointing two senior executives with responsibilities in two specific areas—strategy and nonfinancial enterprise risks.

Chief strategy officer

Strategic risk factors threaten a firm's ability to align goals, strategies and the external environment. Underlying exposures are a lack of vision, faulty planning, aggressive competitors and inflexible responses to changing conditions. Most existing C-level officers are busy people with significant responsibilities. They lack the time to consider strategic risks that cross all functions and lines of business.

This situation encourages organizations to appoint a "chief strategy officer" responsible for scanning the horizon for trends and unexpected developments and influencing the board, CEO and senior executives to address emerging exposures. The role is to encourage coordinated strategies to manage risk. The individual should have broad qualifications. As examples, he or she could have many years of experience in the industry, prior experience as a senior vp or other C-level officer, an advanced degree and participation in continuing professional education and a reputation for innovative and creative problem solving.

The key to success is that the individual would be responsible solely for identifying and sharing strategic risks facing the entity. The incumbent would have no day-to-day deadlines, time pressures or distractions. Once an exposure is identified, the knowledge would be shared with all interested parties to allow the organization to develop coordinated strategies to manage critical risk factors.

What would a chief strategy officer look at today? How about the emergence of India in production, computer programming and service operations such as call centers? How about the fact that a Detroit production worker costs $40 an hour while a Mexican worker across the border from El Paso costs $4 an hour? Is there anything that China cannot produce to world-class standards at a low production cost? What will be the impact as the world's consumption of oil grows by 20% in the next five years? Is the company prepared for the changing demographics and diversity of the workforce? How will it manage far-flung operations and supply chains? By all indications, a company has plenty of work for a chief strategy officer.

Chief risk officer

The second high-level position brings us into a controversial ERM discussion point—the title and role of chief risk officer. The term first appeared a 1988 Peat Marwick study on global capital markets. The first CRO was James Lam, who was given the title at GE Capital in 1993. Since then, the term CRO has led to diverse meanings and little agreement on responsibilities. Financial institutions—banks and insurance companies—were early adopters of the title in the 1990s. CRO most frequently described a position primarily concerned with three areas:

- Portfolio risk, or balancing risk across financial investments and holdings.
- Compliance with regulatory and statutory requirements.
- Security, ensuring strict internal controls on flow of data and access to information.

Since 2001, the title has made slow progress in nonfinancial organizations. The trend may speed up in the largest publicly traded corporations. A 2004 report by Forrester Research forecast that 75% of companies in fields such as utilities and energy will soon have a CRO in place. A 2005 survey by the Economist Intelligence Unit showed that 45% of 137 companies had a CRO, with 24% planning to create the position by 2007.

More online on ERM

In a recent interview with *BI* Associate Publisher and Editorial Director Paul Winston, columnist John J. Hampton discusses how interest in enterprise risk management approaches is growing. To read the interview and past discussions, please visit *www.BusinessInsurance.com/EmergingRiskStrategies.*

As we acknowledge that a chief risk officer position is growing in popularity, we can also recognize that the title is used with two meanings that involve different roles and require different skill sets. Maybe we need two titles: financial CRO and nonfinancial CRO.

A financial CRO would manage financial or internal control functions such as portfolio risk, compliance and the security of data and systems. The financial CRO would be trained in finance, actuarial science, auditing or accounting and would have major experience in financial positions such as financial or investment analyst, treasurer and controller. In many cases, he or she would report to the CFO. Alternatively, the title could reflect an additional duty of a senior finance executive.

A nonfinancial CRO would manage risk retention and transfer, culture, structure, governance and ethical factors. This individual could have any kind of training, including finance, business administration, engineering or law and would have major experience in operations. This CRO position would coordinate addressing risk factors in business units through an indirect process of influence as opposed to the direct controls of portfolio management and compliance. The only direct risk management would involve insurance (risk mitigation, retention and transfer), which could be handled by a subordinate professional with an insurance background.

The model of identifying both a chief strategy officer and nonfinancial chief risk officer recognizes that corporate strategies evolve from focusing on opportunities, not risk. The CRO has much to contribute once a strategy is identified. The CRO role is to ensure that the internal enterprise risk factors are identified and assessed. The development of the strategy itself, with its innovation and creativity aspects, is not necessarily a skill of a CRO.

From this foundation, the company has a role for a nonfinancial CRO who influences and integrates risk management without interfering with operating and functional areas. The responsibilities could include gathering centralized information on how senior executives manage risks in their areas, recommending actions to better coordinate direct, indirect and functional risk management, and advising the CEO and board on exposures and responses to them.

The key to the position is to help the organization understand critical risks that are not the specific responsibility of business units. Examples are:

- Cultural risk arising from the values and beliefs of the organization.
- Life cycle risk emerging as a result of a business unit's position in the organizational life cycle.
- Employment practices risks developing from interactions with employees and others in the workplace.
- Structural risk from behaviors, attitudes, linkages and decision-making processes.
- Fiduciary and reputation risk, as a result of failures to fulfill expectations of stakeholders.
- Compliance risk from omissions when fulfilling official requirements imposed by laws or regulatory bodies.

Meeting ERM challenge

Now we have a pathway that can lead senior executives to participate fully in enterprise risk management. Operating units can get help from these two senior executives. The chief strategy officer scans the horizon for changing conditions that call for new strategies. The nonfinancial CRO works across departmental lines to help managers understand risks that cross all business and staff units.

Most observers recognize that large, publicly traded companies need enterprise risk management. To get the maximum benefit, companies must devise a customized structure with senior leaders involved in a broad process of risk identification and mitigation. To do this properly, the organization should consider seriously the value of appointing chief strategy and risk officers who know the business of the entity and who help everyone coordinate the management of risks.

John J. Hampton is the KPMG Professor of Business and Director of Graduate Business Programs at Saint Peter's College in Jersey City, N.J. He specializes in business ethics, legal liability and enterprise risk management. He is a former executive director of the Risk & Insurance Management Society Inc.

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With our second annual Readers Choice Awards, *Business Insurance* will let our readers again choose the top industry companies in 11 different categories relating to risk management and employee benefits. The winners will be announced and profiled in the Aug. 21 issue.

The categories are:

- Best overall commercial lines retail insurance brokerage.
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- Best property/casualty reinsurer.
- Best reinsurance intermediary.
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- Best insurance wholesaler.
- Best risk management consulting firm.
- Best employee assistance program provider.
- Best third-party claims administrator.

The 2005 Readers Choice winners were identified through confidential balloting by subscribers of the magazine. While *Business Insurance* provided alphabetical lists of the 10 largest companies in each category for convenience, voters were able to write in candidates if their top choice was not on the lists. Companies receiving the highest vote totals were declared the winners in each category, and profiles appeared in the Oct. 10, 2005, issue.

This year, voters will have the opportunity to explain why they consider a company to be the best in its field. Voting for the 2006 Readers Choice Awards will again be confidential but must be completed by the end of Friday, July 28.

To see a list of the 2005 winners and cast your vote this year, please visit *www.BusinessInsurance.com/ReaderAwards*, where registered subscribers also have access to a wealth of daily news and resources from the leading weekly magazine covering risk management, insurance and employee benefits.

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Between the Lines

Compiled by Joanne Wojcik

Pat Ryan goes for the gold

Mr. Ryan

One of Chicago's favorite sons, Aon Corp. Executive Chairman Pat Ryan, has been tapped by Mayor Richard Daley to head a committee that will study the feasibility of bringing the Olympic Games to Chicago in 2016.

Mr. Ryan's interest in athletics is well documented. He holds a minority interest in the Chicago Bears and Northwestern University named its football and basketball arenas after Mr. Ryan, who is an alumnus of the Evanston, Ill.-based member of the Big Ten Conference.

A spokesman for Aon said Mr. Ryan declined to comment about his appointment.

Battles over apples

Corporations today are becoming increasingly protective when it comes to their logos, whether it involves a piece of common fruit or the insipid smiley face that was ubiquitous throughout the 1970s.

Like the unwavering knight in Monty Python, London-based Apple Corps Ltd. sees its loss to Cupertino, Calif.-based Apple Computer Inc. as a mere flesh wound and is appealing last week's ruling by a U.K. judge that the record label founded by the Beatles cannot bar the other Apple from using a kaleidoscopic version of the fruit as the trademark for its iTunes online music store.

PHOTO: SIPA PRESS

Wal-Mart has challenged a French citizen's claim to own the smiley face the retailer uses as a logo.

Meanwhile, Wal-Mart Stores Inc. is challenging a Frenchman who asserts sole possession of "le smiley," an image that bears a remarkable resemblance to the smiling yellow sphere that magically rolls back prices in the Bentonville, Ark.-based retailer's television ads.

Though Franklin Loufrani has secured trademarks for the happy face around the world, he has yet to get the nod from the U.S. Patent and Trademark Office, which is reviewing his claim this summer.

But the fight should not dissuade Internet users from adding the popular symbol to their electronic correspondence, because if Wal-Mart wins, it says it will only control its use in the retail industry.

Mr. Loufrani's attorney, Steven Baron of Mandell Menkes L.L.C. in Chicago, did not return calls inquiring to what extent his client plans to take his claim.

Insurance makeover

In addition to receiving a new home, the Py family of Philadelphia, featured on ABC-TV's "Extreme Makeover: Home Edition" is getting free homeowners insurance for the next year.

Harleysville Insurance, whose motto is "Good People to Know," issued the policy free to William and Carole Py, whose home was rebuilt to accommodate their three young grandchildren, whom they took in after their daughter and son-in-law died. The project involved leveling and rebuilding the couple's 50-year-old split-level in Northeast Philadelphia in less than a week.

William and Carole Py, left, got free insurance from Harleysville President and CEO Michael Browne, second from right, and insurance agents Dennis Keating and Michele Taylor of Sylvester & Keating.

"Just as these grandparents stepped up on behalf of their family, we felt it was important for Harleysville Insurance to step up and provide them with a year of free homeowners insurance," said Michael Browne, president and chief executive officer of the Harleysville, Pa.-based insurer.

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

N.H. judge overturns denial of benefits to same-sex partners

By JUDY GREENWALD

CONCORD, N.H.—Same-sex couples in committed relationships who are denied the same benefits as married heterosexual couples are victims of unlawful employment discrimination, says a New Hampshire judge.

In her May 3 decision, Presiding Justice Kathleen A. McGuire of Merrimack County Superior Court in Concord, N.H., overturned a New Hampshire Commission for Human Rights decision in two consolidated cases brought by two lesbians.

The cases were *Patricia Bedford vs. New Hampshire Community Technical College System and State of New Hampshire Division of Personnel;* and Anne Breen vs. the same defendants.

Both plaintiffs are state employees who work at the New Hampshire Technical Institute in Concord, are in committed relationships, and they are each raising a child.

As full-time employees, they are qualified to receive employee benefits themselves under their collective bargaining agreement, including health and dental insurance, sick time, dependent care and bereavement leave, but were denied these benefits for their partners and children.

Justice McGuire wrote in her decision that the commission was incorrect in deciding that the plaintiffs were similarly situated to unmarried, heterosexual employees—who also cannot receive domestic partner benefits—and therefore had not been the victims of discrimination.

New Hampshire law "prohibits marriage between persons of the same sex and does not otherwise provide means for same-sex couples to legally sanction their committed relationship," said the court decision. "Thus, same-sex partners have no ability to ever qualify for the same employment benefits unmarried heterosexual couples may avail themselves of by deciding to legally commit to each other through marriage."

Justice McGuire said she also disagreed with the state's position that because the state employees' collective bargaining agreement was approved by the Legislature without a provision for same-sex domestic partner benefits, the Legislature must not have intended to provide those benefits.

Nothing within state statutes "indicates that the state may negotiate even with the approval of the (State Employees Association) a (collective bargaining agreement) that violates the anti-discrimination statute," says the opinion.

In reversing the commission's decision, the opinion says, "Nothing in this order prohibits the state from adopting reasonable administrative rules to establish criteria by which to determine whether a same-sex couple is in the type of committed relationship intended to qualify for the employment benefits sought by the petitioners. Parenthetically, the Court can think of no such reasonable criteria which the petitioners in this case would not meet."

A spokesman for New Hampshire Attorney General Kelly Ayotte could not be reached for comment as to whether she plans to appeal the decision.

Germany to boost pension protection

Insurance fund's financing to be changed from pay-as-you-go structure

By RICK MILLER

BERLIN—To avert a potential shortfall down the road, the German government is moving to shore up an insurance fund that protects promised pension benefits of employees and retirees who worked for insolvent companies.

A draft law, expected to pass Germany's parliament by early summer, calls for changing the way the fund is financed, from the current pay-as-you-go approach to a capital-backed system.

"The law makes the company pension scheme more durable and more attractive," said a spokesman for Germany's labor and social affairs ministry, which wrote the law that was recently approved by the federal cabinet.

Under the present system, companies with book-reserve and so-called support-fund type defined benefit plans are mandated by law to insure them by contributing annually into the fund run by the Pension-Sicherungs-Verein, a Cologne-based mutual insurance company.

Some 55,000 employers contribute to the fund, which protects about 3.8 million retirees and 4.7 million employees with vested benefits.

The money collected pays for single-premium annuities for retirees of companies that went bankrupt in any given year. However, money is not put aside for nonretirees with deferred vested benefits. Their annuities are paid for out of the fund only once they reach retirement.

A record number of corporate insolvencies in Germany have sad-

See GERMANY / next page

A hike in annual pension insurance fund contributions last year was attributed to the insolvency of Augsburg, Germany-based Walter Bau A.G.

Governance among top Aussie risks: Poll

By SARAH VEYSEY

Corporate governance issues are the biggest risks facing Australian corporations, according to a recent study.

When asked to rank a series of risks in order of seriousness, respondents ranked corporate governance as their top risk concern for 2005 and 2006, followed by computer systems, brand and image, human resource and legal.

Respondents then ranked liquidity, information management, business interruption, capital structure and lack of innovation as the next most important risks facing their organizations.

Aon Australia, the Sydney-based arm of Aon Corp., questioned executives from 230 Australian publicly-traded and privately-owned companies during late 2005 for its "2005/2006 Risk Management and Total Cost of Insurable Risk" survey.

Just over half of the companies surveyed said they had a formalized risk management, risk financing and insurance department, and a third of respondents said their organization had created a "chief risk officer" role.

In those organizations that said they did not have a formalized risk management department, responsibility for risk management largely fell to either the chief executive officer or chief financial officer, according to Aon.

More than 60% of respondents said they undertook risk management training with senior executives in the areas of corporate governance and regulation.

When asked to cite the benefits of investment in risk management, 70% of respondents said it enabled them to make more informed decisions on risk taking and risk retention.

The same percentage of respondents said investment in risk management improved internal costs, while just over 60% said it improved standards of governance.

About 55% of respondents said that investment in risk management resulted in a lower total cost of insurable risk—either in the form of lower premiums or reduced costs of retaining risk.

Almost a third, 30%, of respondents said that investment in risk management had resulted in reduced compliance costs, while just over 30% said it had resulted in improved shareholder value, and a similar figure said it had led to an improved business strategy.

The survey will be available at, *www.aon.com.au*.

Ontario puts pensions under more scrutiny

By GLORIA GONZALEZ

TORONTO—Sponsors of defined benefit pension plans in Ontario will have to report detailed information about their plans' investments under a new mandate that observers fear may place more plans under increased regulatory scrutiny, even in situations where additional review is unwarranted.

The Toronto-based Financial Services Commission of Ontario, the provincial insurance regulator, is implementing risk-based monitoring of defined benefit pension fund investments this year. All defined benefit plan sponsors will be required to file an investment information summary form with the regulator every year. The form inquires about the nature and type of investments and requires the plan administrator to certify the accuracy of all responses.

FSCO—the regulator of more than 2,800 defined benefit plans in Ontario—will be looking to identify irregularities such as significant breaches of investment regulations, unusual investment in under-performing assets and serious asset/liability mismatches, the regulator said. Plans that are identified as having such irregularities will warrant further review, which may or may not result in follow-up action being taken by regulators.

The agency said its goal is to ensure that the interests of plan members are protected following the equity market downturn between 2000 and 2002 and the decline in long-term interest rates that caused funding problems for many defined benefit plans.

Observers, though, say there are problems with FSCO's approach. For example, the form only collects investment information, which is only part of the overall risk picture and can be taken out of context, according to a statement about the regulator's decision issued by Mercer Human Resource Consulting.

Plan sponsors are concerned that nontraditional investment strategies, such as hedge funds, may raise flags under FSCO's program, said Becky J. West, chair of the advocacy and government relations committee for the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada. "There's a danger of identifying plans at risk incorrectly," she said.

The ACPM is concerned that plan sponsors may hesitate to pursue these nontraditional investment options, even when appropriate, due to the FSCO requirement, Ms. West said.

The new system also will add to the reporting burden for plan sponsors, which already are filing financial statements and the new form will increase filing responsibilities, she said. In addition, all defined benefit plan administrators would be required to spend time and resources to complete the form.

Regulators did make some changes in response to concerns expressed by plan sponsors during the consultation process, Ms. West said. For example, they removed requirements for third-party certification of the form and for the inclusion of expenses related to the investment management of the plan that sponsors were concerned would have made the compliance process onerous, she said. "We do applaud them for having listened to us," Ms. West said. "They did address a lot of our concerns, but not all of them."

One beneficial aspect is that the program should motivate plan administrators that are not following good due diligence and governance practices to improve their processes, according to Mercer. It also may be a way to utilize FSCO's limited resources efficiently, the firm suggested.

Despite these potential benefits, observers suggest a more targeted approach so that all plans do not incur substantial costs to identify a small number of plans perceived to be at risk. They propose a system that establishes a solvency test where a plan would fall under increased scrutiny from regulators if its funding position fell below a minimum threshold.

Updates

Overfilled fuel tank led to explosion

An overfilled fuel tank caused the explosion at the Buncefield, England oil depot on Dec. 11, 2005, according to a committee set up to investigate the incident. In its third progress report, an investigation board appointed by the government's Health and Safety Commission said that a tank was overflowing for more than 40 minutes before the blast. This led to an escape of fuel that formed a vapor cloud that subsequently ignited, according to the report. No one was killed in the blast, but 40 people were injured and the area around the plant was evacuated, causing business interruption losses for some local firms.

Munich Re profits rise in first quarter

Munich Reinsurance Co. has reported a profit of €979 million ($1.18 billion) for the first quarter of 2006, a 41.7% improvement over the same period last year. Munich, Germany-based Munich Re said the profit was due in large part to its "strict profit orientation and prudent underwriting policy." The result was also boosted by improved performance at the group's primary insurance arm, ERGO, which accounts for about 94% of the premium volume of primary insurance written by the group. Munich Re said that it had recorded claims of €50 million ($60.5 million) from Cyclone Larry, which hit northern Australia earlier this year.

Hannover Re posts increase in income

Hannover Re Group posted net income of €105.7 million ($128.0 million) for the first quarter of 2006, up 7.6% over the same period last year. The Hannover, Germany-based reinsurer said the increased profit was due in part to favorable underwriting conditions in the property/casualty reinsurance market. The reinsurer's gross written premiums increased 8.9% to €2.8 billion ($3.39 billion) compared with the first quarter of 2005, some of this increase was caused by exchange rate movements, Hannover Re said. Hannover Re said it had recorded major losses totaling €40.0 million ($48.4 million) during the first quarter of the year, including losses from Cyclone Larry in Australia.

RSA profits remain unchanged in quarter

London-based insurer Royal & SunAlliance Insurance Group P.L.C. announced a post-tax profit of £122 million ($212.0 million) for the first three months of 2006, unchanged from the profit recorded in the same period last year. The insurer said that its operating profit rose 29% to £207 million ($359.7 million) for the quarter. The company's net written premiums fell by

Germany: Pension protection fund strengthened

Continued from previous page

dled the fund with future liabilities totaling €2.2 billion ($2.8 billion), the amount needed to cover the vested benefits of about 170,000 former employees.

Meanwhile, annual contributions into the fund have been increasing. In 2005, for example, contributions from employers totaled €1.2 billion ($1.52 billion), up 36% from €882 million ($1.12 billion) in 2004. That hike is attributed largely to the insolvency of one company with large pension liabilities, Augsburg-based Walter Bau A.G., according to the ministry spokesman.

Under the new system, contributions to the PSV fund will include the current pensions and deferred pensions in the year of the insolvency, so that there is no gap that has to be covered in the future. Still, to make up for the existing €2.2 billion deficit, companies will have to kick-in an extra amount over the next 15 years.

"There was no crisis," said Stefan Oecking, a worldwide partner and head of the international retirement group for Frankfurt-based Mercer Human Resource Consulting, Germany. "It is a stable system, and it has always been, but it will be more stable."

The system could have continued if not for the trend that has seen more and more German companies move away from PSV-insured plans toward funded pensions, like defined contribution plans, said Axel Heitkamp, chief executive officer of Aon Jauch & Hübener Consulting in Mülheim, Germany.

"The problem is putting deferred liabilities, from year to year, into the future as fewer companies are participating in the PSV system," said Mr. Heitkamp. "In 10 or 15 years it could leave the system with a big problem."

Companies who contributed to the PSV through 2005 will have to pay their share of the deficit, even if they have since switched to other plans. "They are possibly not happy with this law, because they have to pay during the 15-year transition period," Mr. Heitkamp added.

Generally, employer groups such as the Berlin-based employers coalition Bundesvereinigung der Deutschen Arbeitgeberverbände, are in favor of the new system. Although employers may pay more initially, a pool of capital earning interest may lower annual contributions in the long-term, pension experts said.

"From the point of view of the employers, they recognize that there will be a slight increase in the contribution rate," said a spokesman for Gesamtverband der Deutschen Versicherungswirtschaft e.V. in Berlin, Germany's insurance and pension association.

"But the security, overall, will be better, and probably the volatility of the contribution rate will be less in the future."

Mercer's Mr. Oecking thinks the funding change may lead some employers to stick with their plans. "Perhaps the stabilization of the protection and annual contributions will make it a little bit easier for employers to decide to provide pension benefits," he said.

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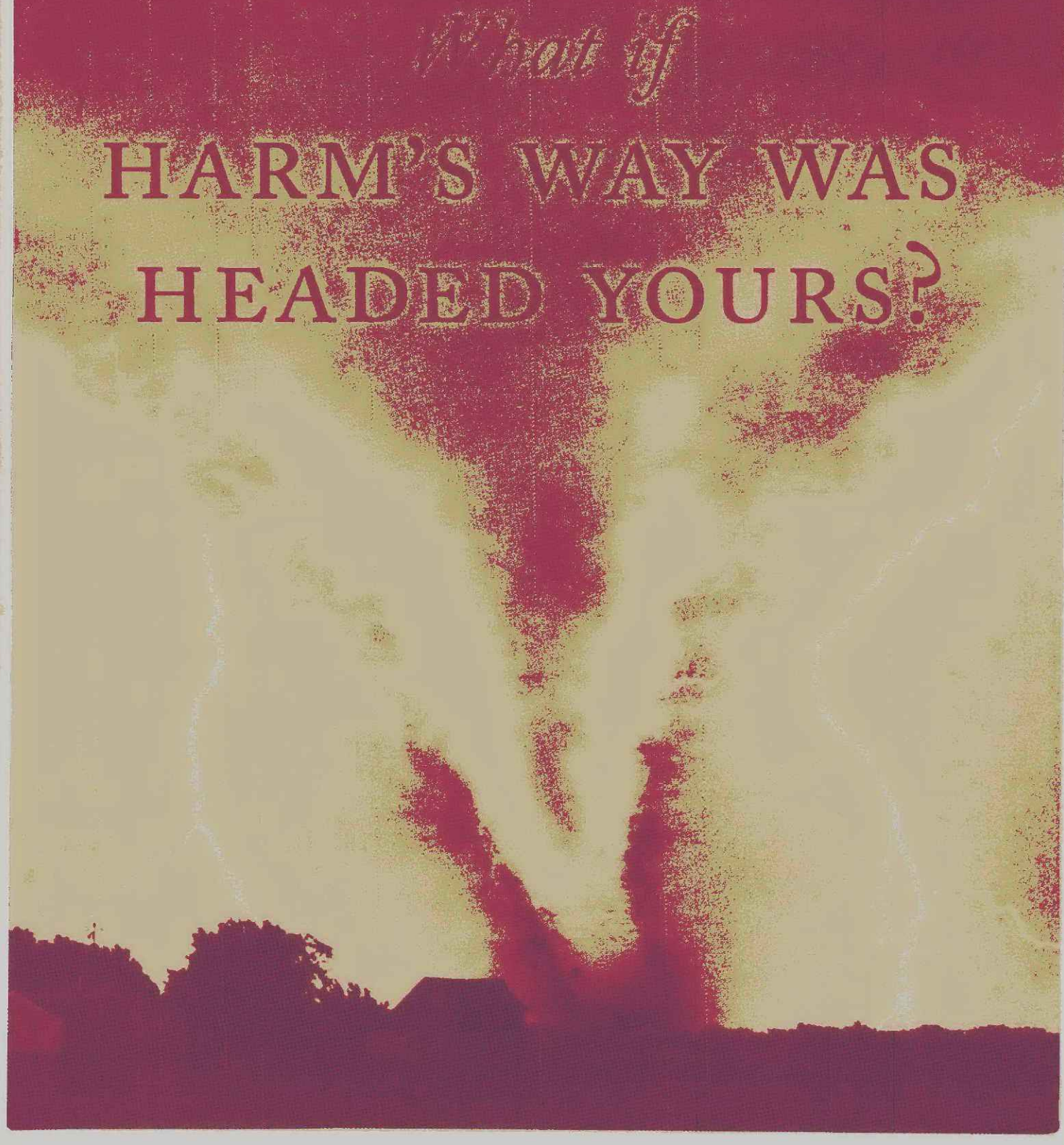

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Reform: Lobbyists seek legislation delay

Continued from page 3

conference panel, and those members now should have more time to focus on the pension bill.

"The freeing up of members' time should help," said Bill Sweetnam, a principal with The Groom Law Group in Washington.

Congressional leaders concur with that assessment.

An agreement on a tax bill will help "speed up the process of getting agreement on the pension bill," said House Majority Leader John Boehner, R-Ohio, during a briefing last week.

Regardless of when an agreement is reached, benefit lobbyists say the earliest effective date of the legislation should be Jan. 1, 2008, a year later than the current proposals. They say there simply would not be enough time for the regulatory agencies to develop rules and guidance that employers would need to comply with the new law.

"You are talking about a complete rewrite of the funding rules. There is not a chance that rules could be developed in time," said Ms. Gregory, who believes legislators are receptive to delaying effective dates.

Discrimination: Bias investigation faulted

Continued from page 3

torney, Alison Downie, a partner and head of the employment department at London-based law firm Bindman & Partners, said the tribunal's finding of instances in the disciplinary process which were discriminatory vindicated her client's decision to bring the claim, and said "we will be seeking full compensation for my client's losses flowing from the discriminatory treatment of him by HSBC."

The case underlines the importance to employers of ensuring that their investigatory procedures and disciplinary processes are not "tainted by any preconceived notions or stereotyping, conscious or unconscious," said Simon Jeffreys, a partner in the employment and human resources team at London-based law firm CMS Cameron McKenna L.L.P.

The tribunal carried out a highly detailed review of the process and into the motivations of the personnel involved in the investigation and subsequent disciplinary action, he said.

> "It is worth remembering that there are alternative ways of pursuing resolution in cases where the matter (at hand) is such a personal one," such as mediation.
>
> **Rachel Dineley**
> **Beachcroft L.L.P.**

In light of the decision, companies, and individuals within those companies, should ensure that their processes for dealing with such allegations are fair and dispassionate, according to Rachel Dineley, a partner in the employment group and head of the national discrimination unit at law firm Beachcroft L.L.P. in London.

"It is worth remembering that there are alternative ways of pursuing resolution in cases where the matter (at hand) is such a personal one," such as mediation, she added.

The case highlights the need for employers to seek to achieve a cultural shift to embrace diversity in the workplace, said Dinah Worman, head of diversity at the London-based Chartered Institute of Personnel and Development.

Malpractice: Efforts to revive measures resume

Continued from page 4

gresses.

"We think this probably is the end of med mal for this Congress, which is too bad because this was a good, common-sense approach to solving the medical liability crisis," said Ben McKay, acting head of the Property Casualty Insurers Assn. of America's Washington office.

"From a RIMS standpoint and my own standpoint—and I'm a health care risk manager—it's always a bad day when some bill regarding medical malpractice reform is defeated," said Michael Liebowitz, president of the New York-based Risk & Insurance Management Society Inc. and director, risk management for Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn. He said RIMS supports any bill that reforms medical malpractice litigation. Rather than call the bills dead, he said they are "probably in suspended animation."

One supporter said his organization will push for the enactment of medical malpractice liability legislation despite the odds against it.

"This fight is far from over," Tom Donohue, president and chief executive officer of the U.S. Chamber of Commerce in Washington said in a statement issued shortly after last week's votes. "The Chamber is going to redouble its efforts to win common sense medical malpractice liability reforms that benefit patients and doctors, drive down health care costs and help reduce the number of uninsured."

Berkshire: Biggest exposure comes in second-half

Continued from page 4

attended Berkshire Hathaway's May 5 annual meeting. In fact, Mr. Buffett directed much attention to Berkshire Hathaway's May 4 acquisition of a controlling interest in Tefen, Israel-based Iscar Metalworking Cos., a metal-cutting tool manufacturer that became Berkshire Hathaway's first non-U.S. acquisition.

But Mr. Buffett did note that the first quarter underwriting results of Berkshire Hathaway's insurance and reinsurance operations didn't present a total picture of what the company faces in terms of catastrophe losses.

"I would caution you that in insurance underwriting," the first quarter is not going to be the worst, said Mr. Buffett. "The real exposure to loss" is usually in the third and to a lesser extent the fourth quarter of most years, he said.

> "We don't believe in modeling at all –it's silly,"... "We get paid" to make guesses.
>
> **Warren Buffett**
> **Berkshire Hathaway Inc.**

When looking at trends, Mr. Buffett said he didn't know if the last two years of unusually destructive hurricane activity are more relevant than a century of hurricane activity in determining price. "If the last two years are the relevant years," Berkshire Hathaway isn't getting enough money for its products, he said.

He said the company is dealing with its exposures. During this year's third quarter, "we will have a lot of exposure to wind," but not as much as was the case a few years ago, he said.

"We don't believe in modeling at all—it's silly," said Mr. Buffett, reiterating past criticisms of catastrophe modeling. "We get paid" to make guesses, he said.

Hartford: Settlement limited to broker payments on annuities business

Continued from page 1

familiar with the investigations said.

A spokesman for New York Attorney General Eliot Spitzer would say only that Mr. Spitzer's office has a "continuing interest" in potential conflicts of interest created by other life insurers' broker compensation practices.

The Hartford annuity deal, meanwhile, is unrelated to Mr. Spitzer's earlier allegations that Hartford participated in alleged bid-rigging by Marsh Inc.

Hartford was one of several insurers cited in Mr. Spitzer's 2004 suit against Marsh and related filings for helping the world's largest broker rig excess casualty renewal bids. American International Group Inc., ACE Ltd. and Zurich Financial Services Inc. have settled the Marsh-related charges, while Liberty Mutual Insurance Co. announced earlier this month that it will go to court rather than settle on the terms Mr. Spitzer offered.

The annuity-related charges against Hartford are a separate issue, and its settlement is "not an all-encompassing deal," a Hartford spokesman said.

He would not comment on the status of any Marsh-related settlement discussions with the New York attorney general.

Hartford's settlement was announced simultaneously with the filing last week of civil fraud complaints by Mr. Spitzer and Connecticut Attorney General Richard Blumenthal.

Under the agreement, Hartford will pay $16.1 million into a fund to compensate pension fund sponsors and others who bought group annuities between 1998 and 2004 through four brokers cited in the suits.


PHOTO: ZUMA PRESS

Mr. Spitzer

The brokers, which are not named as defendants, are Dietrich & Associates Inc. of Plymouth Meeting, Pa.; Brentwood Asset Advisors of Santa Monica, Calif.; BCG Terminal Funding Co. of Austin, Texas; and USI Consulting Group Inc. of Glastonbury, Conn., a unit of USI Holdings Corp. Officials of the four companies could not be reached.

Hartford will also pay fines of $1.95 million each to New York and Connecticut.

The insurer has also agreed to a number of business reforms as conditions of the settlement, including a ban on paying contingent commissions on group annuity business through May 10, 2009.

The deal imposes limits on contingent commissions after that date: If insurers writing 65% of gross premiums in the group annuity market do not pay contingent commissions, for example, Hartford may not offer them either. The 65% test is identical to the threshold Mr. Spitzer set for excess casualty lines in his settlements of Marsh-related charges with AIG, ACE and Zurich.

The complaints filed against Hartford by Mr. Spitzer and Mr. Blumenthal note that the insurer competes in the single premium group annuity market with several other companies, including Principal; MetLife, which acquired the life and annuity business of Travelers Insurance Co.; AIG Life Insurance Co.; John Hancock Life Insurance Co.; the Continental Assurance Co. unit of CNA Financial Corp.; and United of Omaha Life Insurance Co., a unit of Mutual of Omaha.

Hartford, though, paid the four annuity brokers a total of $4 million in undisclosed commissions between 1998 and 2004 to steer pension fund clients to its annuity products, the suits charge.

The insurer disguised the payments by using allegedly sham "expense reimbursement agreements," under which it was to cover over-

See HARTFORD on next page

Sidecar: Reinsurance vehicles provide extra catastrophe capacity

Continued from page 3

the sidecar sponsors returned calls seeking comment.

In addition, other vehicles with sidecar-like structures that previously have been established include Top Layer Reinsurance Ltd., a joint venture of Bermuda-based Renaissance Reinsurance Ltd. and Bloomington, Ill.-based State Farm Mutual Automobile Insurance Co.; Da Vinci Reinsurance Ltd., whose investors include RenaissanceRe, State Farm and Bermuda-based Max Re Ltd.; and Channel Reinsurance Ltd., whose investors include RenaissanceRe, Bermuda-based Partner Re Ltd. and Armonk, N.Y.-based MBIA Inc., a financial guarantee insurer.

Among the ways these differ from sidecar structures in that they tend to have an indefinite lifetime, a reinsurance structure that may include excess-of-loss coverages or portfolio carve-outs rather than a simple quota share, an open-ended portfolio and a more flexible strategic plan, according to the Moody's report, "Reinsurance Side-Cars: Going Along for the Ride."

"That said, the intended purpose of such vehicles is largely the same: to enable the ceding company greater flexibility to manage a portfolio of risks by laying off a portion of its exposures to a special purpose reinsurer," says the Moody's report.

One of the reasons why sidecars have evolved after the 2005 hurricane season is that—unlike the period following the Sept. 11, 2001, terrorist attacks, when there were many startups and a strong supply of management—many talented managers are already involved in other entities and held in place by noncompete agreements, said John L. Ward, chief executive officer of Cincinnati-based Cincinnatus Partners L.L.C., an advisory firm that specializes in the insurance industry. "The sidecars emerged as a way to piggyback on the existing management talent, but still provide fresh capital to the industry," said Mr. Ward.

Observers say they are welcome. "In general, we feel that there is a need and a positioned place for sidecars in the industry," said Patrick J. Denzer, president and CEO of reinsurance intermediary John B. Collins & Associates in Minneapolis.

"There's clearly a lack of supply for reinsurance capacity in certain segments of the market, notably peak catastrophe zones, and retro, and there is a need for alternative capital to come in and meet that need that is not currently getting met" by the traditional market, said Mr. Denzer.

> "It's a vehicle by which capacity can enter and exit the market very quickly. It's in the market when pricing is at a peak, and it can leave the market once pricing starts to soften."
>
> **Robert DeRose**
> **A.M. Best Co. Inc.**

Observers say an advantage of sidecars is that while they provide the needed immediate capacity, because they remain separate from the reinsurer, they leave it unburdened by excess capacity once the market softens, thus removing the temptation to chase business at low rates.

"It's a vehicle by which capacity can enter and exit the market very quickly. It's in the market when pricing is at a peak, and it can leave the market once pricing starts to soften," said Robert DeRose, assistant vp at Oldwick, N.J.-based A.M. Best Co. "It's not such a bad position to be in."

"Cat bonds are another alternative too," he added.

Steven P. Bolland, president of reinsurance intermediary Gill & Roeser in New York, said without sidecars, "If you want to take advantage of the peaks in the cycle, theoretically you are significantly overcapitalized for the troughs, unless you keep writing through the trough, which is a very dangerous thing to do."

Reinsurance sidecar duration questionable

Are sidecars here for the long haul?

It all depends on market conditions, say observers.

Conditions are right for them at present, said Mark Rouck, senior insurance analyst with Fitch Ratings in Chicago. "When those conditions are no longer present, you kind of have to ask yourself, are the sidecars going to be around?"

"That's largely a function of the markets," said John L. Ward, chief executive officer of Cincinnati-based Cincinnatus Partners L.L.C., an advisory firm that specializes in the insurance industry.

"It's evolved as sort of a one-shot, limited source of capital at a time when there was a niche need for certain types of capital, and it's possible that it will fade as the cycles change and not be a factor for the long term," Mr. Ward said.

"It can ramp up if market conditions indicate, or go away if it's not needed, and that's one of the things that make it a flexible source of capital and something that's good for the industry," he said.

Paul Schultz, president of Aon Capital Markets in Chicago, said, to some degree, the capital that has flown into the market has done so following some sort of dislocation, whether it is hurricanes or the Sept. 11, 2001, terrorist attacks. "I still think those kinds of events, the market dislocating events, will be the driver for these types of deals," said Mr. Schultz.

"Having said that, with the changes in the rating agency models, and expected changes in the underlying catastrophe models, I think capital will be in demand for the foreseeable future, and I do not think these might be as temporary as some others might say they are," said Mr. Schultz.

Sean F. Mooney, senior vp and chief economist at reinsurance intermediary Guy Carpenter & Co. Inc. in New York, said, "We think alternative forms of investment in the insurance and reinsurance markets are going to be a feature of insurance markets into the future."

"Even if you do not have a shortage of capacity," the fact that these investment vehicles are more suitable to the needs of investors, who are short-term oriented and want more flexible arrangements, should assure them of an ongoing life, he said.

"You have to think of insurance markets as...moving towards the flexibility and variety that you have in standard investment markets," Mr. Mooney said.

—Judy Greenwald

Fitch's Mr. Rouck said the days of pure property cat reinsurers popping up in Bermuda are over. "Clearly, the rating agencies prefer to see more diversification for a new startup reinsurer, and so, therefore, the alternative capital through sidecars, for example, can be directed to those areas where there is a supply and demand imbalance."

More sidecars are likely, say some observers. "I do think there's a good probability there will be more sidecars that have been put in place prior to the 7/1 renewals," said Paul Schultz, president of Aon Capital Markets in Chicago.

"I think between now and the end of the year there will be a lot more sidecar activity," said Gregory T. Doyle, Shelton, Conn.-based executive chairman of BMS Vision Re, a reinsurance intermediary. The pace will be dictated by "how quickly companies use up their capacity this year, and what the actual hurricane season looks like," he said.

"The peak market for property business is June 1," Mr. Denzer said. "I really don't see any new ones being started before June 1, but as the industry gets a better sense of what the supply and demand balance is, there may be some that are created after the renewals, but before we get into the heart of the wind season."

Most observers say they expect, at least for the near future, that sidecars will remain focused primarily on property cat business.

"I don't think there's a need for them in other areas," said Mr. Denzer. "The reinsurance market is providing sufficient capital at reasonable prices in virtually all segments of the industry with the exception of peak zone property and retro."

"I think property cat is probably the most likely area" for the sidecars, agreed Mr. Rouck. In contrast, in casualty, people can see the need for capacity building up over time and there is typically no need "to bring capacity into the marketplace in such a quick manner," he said.

However, Mr. Ward said the sidecar trend may move beyond property cat "if it gains momentum and becomes more commonplace." While catastrophe was a logical place for sidecars to "cut its teeth, it could evolve into other forms of capital market involvement with the insurance industry," he said.

Hartford: Settles lawsuit over compensation of group annuity brokers

Continued from previous page

head expenses of brokers placing the annuities, the complaints allege.

Payments under the ERAs were typically tied to premium volume production. A Dietrich ERA, for example, provided a maximum $37,500 quarterly reimbursement if annuity volume was below $5 million for the three months, but would pay up to $375,000 if volume hit $15 million for the quarter, according to Mr. Spitzer's complaint.

Hartford also paid brokers under "consulting agreements," the suits say. Brentwood, for example, received $30,000 per quarter at one point under an agreement to provide marketing and other services to the insurer, Mr. Spitzer's suit says.

The ERA and consulting agreements did not actually serve their stated purposes, though, but instead were intended to induce the brokers to funnel their annuity business to Hartford, state officials charge.

An internal Hartford e-mail cited in the complaints notes that the arrangements were intended "to change the buying habit of the intermediary.... That is what we are trying to accomplish."

Hartford and the brokers understood that the payments were essentially volume-based contingent commissions: In another e-mail, a Hartford executive referred to the payments as a "'bonus' (or ERA or whatever we call it)," according to Mr. Spitzer's complaint.

The insurer and the four brokers concealed the ERA and consulting payments from their clients, the suits charge. For benefit plans governed by the Employee Retirement Income Security Act of 1974, Hartford also failed to report the payments even though Department of Labor rules require it.

Clients unwittingly covered the cost of the ERA and consulting payments in the form of higher premiums, Mr. Spitzer and Mr. Blumenthal allege.

For example, Cincinnati-based paper manufacturer Crown Vantage Inc., which filed for bankruptcy protection in 2000, hired Dietrich & Associates in 2001 to place an annuity for its terminated defined benefit pension plan, according to the complaint.

Dietrich placed the business with Hartford—even though it was the high bidder at $81.4 million—and received a commission of 0.20%, or $168,288, which was disclosed to Crown Vantage.

Later, though, Hartford secretly paid Dietrich an additional $841,438 for the business, purportedly to cover payroll expenses, preparation of bid specifications, credit research and other costs, Mr. Spitzer's suit says.

Hartford had priced the ERA payment to Dietrich into Crown Vantage's annuity premium. "Thus, without knowing it, Crown paid twice for the same services," the complaint charges.

Vermont: State's health care reform would tax employers that don't offer coverage

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dent of the Center for Practical Health Reform in Atlantic Beach, Fla.

"The drive is only going to get stronger," said Helen Darling, president of the National Business Group on Health in Washington.

The move by states to try to reduce the ranks of the uninsured through legislation is being fueled by several factors—including years of soaring costs that only recently have begun to slow—that have led more employers to drop coverage. That has resulted, despite a strong economy, in a sharp decline in employment-based coverage and a rise in the uninsured, which has put more pressure on states to do something.

Additionally, state legislators are being propelled to act, experts say, by their recognition that the federal government will not, as intense and growing partisan differences between the two major political parties has all but ruled out a bipartisan effort in Washington to enact health care reform legislation.

"Health care legislation has not gone anywhere on Capitol Hill and the states know it," said John Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

"States feel Congress is not going to do this anytime soon," said Ms. Darling.

Indeed, last week, legislation that effectively would have allowed trade associations to offer lower-cost health insurance plans to their members was defeated in the U.S. Senate on a largely partisan vote, with most Democrats opposed and most Republicans voting in favor of the bill (see story, page 4).

For large employers already providing health insurance to their employees, the state legislative drive to reduce the number of uninsured could be a boon. If more people have coverage, that could mean less cost-shifting by providers, who now inflate the bills of insured patients to try to recover the costs of uncompensated care.

On the other hand, those employers that currently do not provide coverage, typically smaller firms, will likely be hit with new costs. Both the Vermont and Massachusetts measures, for example, impose fees or assessments on those employers that do not provide health insurance to their employees.

"It is quite a hit on small employers," said William Shouldice III, a lobbyist in Montpelier, whose clients include the Vermont Grocers Assn.

Others worry that once an assessment is imposed on employers that do not provide coverage, it will be the start of escalating fees if the revenues needed to subsidize coverage for the uninsured prove higher than predicted.

"We have taken a step on what surely will be a slippery slope," said William Driscoll, vp of the Associated Industries of Vermont in Montpelier.

"We have put in a good framework to expand coverage, but the biggest unknown is is there enough funding to pay for the expansion of coverage," said Beatrice Grause, president of the Vermont Assn. of Hospitals and Health Systems in Montpelier.

While the answer to that question will not be known for some time, experts are focusing on the details of the latest state—Vermont—to pass a coverage bill.

Under the measure, low-income residents without coverage would have access to a health insurance plan—dubbed Catamount Health—offered through commercial insurers. The premiums paid by individuals would be heavily subsidized by the state, with the amount of the subsidy linked to income.

Additionally, premium subsidies would be provided by the state to lower-income individuals with access to an employer-based plan if that approach would be more cost-effective for the state than subsidizing coverage through Catamount.

Through these subsidies, Vermont legislators hope to increase the percentage of state residents who have health insurance coverage to about 96% from 90%.

This expansion of coverage would be funded by increases in tobacco taxes, as well as an assessment on employers that do not provide health insurance, and on employers who offer coverage but whose employees decline it and don't have coverage elsewhere.

Initially, the annual tax would be $365 per employee. In calculating the amount of tax, which would begin next year, an employer would exclude eight employees. For example, if an employer had eight employees and did not offer coverage, it would be exempt from the assessment.

Additionally, if a company not offering health insurance coverage had, for example, 20 employees, its assessment would $4,380.

In future years, the assessment would apply to yet smaller employers. In 2009, employers will be able to exclude only six employees in calculating the assessment, and in 2010 employers will be able to exclude only four employees.

While the so-called premium contribution assessment would start at $365 per employee, that amount would likely increase.

Under the measure, which Gov. Jim Douglas is expected to sign, the premium contribution assessment will rise each year in tandem with the percentage change in premiums for the Catamount Health program.

Vermont, Massachusetts bills differ

While the Vermont and Massachusetts health care reform measures have a key common element—state health insurance premium subsidies of lower-income state resident—they differ in several ways. Those differences include:

- Individual mandate. Massachusetts mandates that all state residents have health insurance coverage, if affordable coverage is available. The residents that don't comply with this requirement are liable for stiff financial penalties. The Vermont measure lacks such a requirement.
- Employer exemption. While both the Massachusetts and Vermont measures impose an assessment on employers that do not provide health insurance coverage to their employees, the Massachusetts law exempts more employers from the assessment. The Massachusetts assessment would not apply to employers with 10 or fewer employees, while the Vermont assessment, initially, would not apply to employers with eight or fewer employees, with that number decreasing first to six in 2009 and four in 2010 and succeeding years.
- Assessment. The two states also differ on the size of the assessment paid by employers not offering health insurance coverage. The Massachusetts law sets the annual assessment at $295 per employees, while the Vermont measure sets the fee at $365 per employee.

How the fee is calculated also differs. In Massachusetts, if an employer is liable for the fee because it has at least 11 employees and does not offer health insurance coverage, the $295 fee is based on the number of its employees. Under the Vermont measure, an employer excludes eight employees in calculating the assessment amount it must pay.

—By Jerry Geisel

Insurance to cover reservoir flood losses

ST. LOUIS—Insurance will cover nearly all of the $53 million to $73 million of damages that Union Electric Co. says it expects it will face from the collapse of a mountaintop hydroelectric plant reservoir in December 2005.

More than 1 billion gallons of water cascaded from the Taum Sauk Reservoir and down Proffit Mountain in the Missouri Ozarks about 90 miles south of St. Louis. The flood destroyed the home of a nearby park's superintendent, swept away the superintendent and his family—though all survived—and damaged the state park.

Union Electric, a subsidiary of St. Louis-based Ameren Corp., said in its quarterly report, filed Wednesday with the U.S. Securities and Exchange Commission, that it already has paid $18 million in damages and has accrued $35 million more in liabilities related to the flood. Of that amount, the utility said it expects to recover all but a $1 million deductible from its insurers.

A separate insurance policy with a $15 million deductible would be available to cover the cost of replacing the reservoir if Union Electric decides to build a new one, according to the company, which would not identify its insurers.

Problems with the reservoir's original design and construction rules out the possibility of repairing the existing reservoir, the company says.

—Dave Lenckus

ADVERTISER INDEX

Issue of May 15

RSUI: Insurer won't write new coastal windstorm coverage

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"It's a big deal because you can't get business done," Mr. Messina said. "They have been the major player in Florida and Louisiana and other areas. It's not good for anyone in the market because you can't get capacity."

RSUI declined to discuss the matter. Its statement did not say whether it could not find catastrophe reinsurance, or if it could only find it at a price that was not acceptable.

But insurers that typically provide coverage for catastrophe-exposed properties are facing a lack of reinsurance coverage, said David J. Price, executive vp and chief underwriting officer for Burns & Wilcox Ltd., a wholesaler and a managing general agent in Farmington Hills, Mich.

Burns & Wilcox has been able to retain enough reinsurance to renew the business it had a year ago. But it can't write new accounts in Florida, Mr. Price said.

Other insurers have also stopped writing new coverage.

Scottsdale, Ariz.-based Scottsdale Insurance Co., for example, several months ago put on hold writing new wind coverage in Florida until it sees how negotiations for a July 1 treaty renewal shape up., said Gary L. Tiepelman, senior vp of underwriting for Scottsdale.

Reinsurance capacity is drying up, driving terms and conditions "through the roof," Mr. Tiepelman said.

With several reinsurance treaties up for renewal July 1, tightening market conditions are likely to grow worse before improving as insurers struggle to obtain reinsurance, Mr. Price and other observers said.

Following Hurricane Katrina, several insurers blew through their catastrophe reinsurance coverage, observers say. Now, as they seek to purchase reinsurance, many are encountering more cautious reinsurers.

In addition, insurers and reinsurers alike are using enhanced catastrophe models that now forecast the potential for far greater commercial losses than anticipated before Katrina.

At the same time, rating agencies are demanding that insurers and reinsurers maintain higher surpluses as Katrina has pushed up expectations for future losses.

As a result, insurers must now purchase significantly more reinsurance than they did previously just to protect their existing books of business, Scottsdale's Mr. Tiepelman said.

Reinsurers, like insurers, also must now put up more surplus than before for the same reasons, Mr. Tiepelman added.

The need for reinsurers to hold on to more of their own capital, while insurers attempt to do the same, is creating greater demand for reinsurance capital, said Timothy Gardner, managing director and global leader of the property specialty practice for intermediary Guy Carpenter & Co. Inc. in New York.

Even though investors have recapitalized existing reinsurers and added billions of dollars in capacity to the market, Mr. Gardner said there still is not enough to keep up with the increased demand.

Just as insurance purchasers will find it difficult to fill certain layers of their programs, insurers are finding it harder to buy reinsurance, agreed Jim Rubel, executive vp and chief executive for property for Lockton Cos. Inc. in New York.

As a result, insurers that were purchasing $100 million in reinsurance coverage before are only able to purchase $50 million as they renew their treaties, Mr. Rubel said.

In response, many insurers are deploying their capital to the Midwest and regions where catastrophes are less likely, observers say.

Along with specialty writers, all-risk insurers also have cut back their offerings. Before Katrina, policyholders purchasing $400 million or $1 billion in property limits could obtain the same limits for wind coverage, Mr. Rubel said.

Now the insurers writing those accounts may offer sublimits for wind peril totaling perhaps $100 million.

As for RSUI, the company said last week in its memo to producers that it will not write new wind coverage for coastal properties stretching from North Carolina to just south of Houston.

It said its position applies to the entire state of Florida and south of Interstate 10 in Louisiana, but it will consider some exceptions in Georgia.

Additionally, the company said it is unable to accept any new earthquake business in several Southern California counties. The insurer's memo states that it will still consider new risks with "incidental exposure for wind and quake in the areas where we are not accepting new business."

"Please be advised that we recognize and appreciate the disruption and hardship this creates for you as well as for our mutual insureds," the memo said. "We are vigorously seeking solutions to the shortfall in our reinsurance protection and will keep you advised as to any adjustments we are able to make to the positions stated above."

According to Alleghany Corp.'s 2005 year-end statement, RSUI wrote $1.25 billion in gross premiums and $618.4 million in net premiums. RSUI writes casualty business, directors and officers liability and professional liability as well as property coverage.

It recorded an underwriting loss of $133 million primarily reflecting $287.3 million of pretax catastrophe losses, net of reinsurance, and $26.2 million of reinsurance reinstatement premiums, related to 2005 hurricane activity, the year-end statement shows.

In 2004, RSUI reported an underwriting profit of $83.2 million, despite $146.7 million in pretax catastrophe losses, net of reinsurance, and $10.5 million of reinsurance reinstatement premiums related to hurricane activity.

BI Stock Index [5/8 - 5/12]

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

Percentage change of *BI* Stock Index vs. key indicators

***BI* Stock Index**	2923.54	-1.47
Dow Jones	11380.99	-1.70
S&P 500	1291.24	-2.60

Largest gains

PXRE Group Ltd.	12.74%
United Fire & Casualty	9.60%
Humana Inc.	7.46%
Vesta Insurance Group	5.71%
UNICO American Corp.	4.82%

Largest losses

SCPIE Holdings Inc.	-8.12%
Berkley Corp.	-7.49%
USI Holdings Corp.	-6.93%
EMC Insurance Group	-6.27%
Baldwin & Lyons	-5.25%

Weekly change by market segment

Brokers	-1.92%
Insurers/Reinsurers	-1.72%
Managed Care Organizations	1.74%

Source: FinancialContent Inc. *(http://financialcontent.com)*

Late News

Continued from page 1

on Compensation Insurance Inc. According to the NCCI, that was the best result since 1997. Private net written premium grew by about 9% during 2005, according to the preliminary analysis, and private loss reserve shortfall fell to $9 billion at year-end 2005, from a $21 billion peak at the end of 2001.

House subcommittee blocks DOE action

A House of Representatives subcommittee approved an amendment to block the Department of Energy from implementing a plan to stop reimbursing its contractors for defined benefit pension plan costs associated with new employees. The DOE earlier said that, effective next year, it will not reimburse contractors for defined benefit plan costs associated with new employees. Instead, the DOE said that for new employees, it will only reimburse contractors for costs associated with defined contribution plans, such as 401(k) plans, so long as the costs of those plans don't exceed certain benchmarks.

Judge orders AIG not to operate Starr site

A federal judge ruled last week that American International Group Inc. must stop operating the cvstarr.com Web site, effective Sunday, in granting a preliminary injunction to C.V. Starr & Co. Inc, the firm headed by its former chairman Maurice R. Greenberg. U.S. District Judge Harold Baer said in the ongoing trademark case that CV Starr & Co., a unit of holding company New York-based C.V. Starr & Co., will vacate its shared office space with AIG by May 14, at which point most of the information on the Web site would become outdated and incorrect. "Thus, an injunction that prevents AIG from operating the site after it has separated from CV Star California would effectively maintain the status quo," said Judge Baer in his decision.

Mich. bill would OK health incentives

Small employers in Michigan would be able to offer financial incentives to employees to encourage healthy behaviors under legislation approved this week by the state Senate. Under Michigan's community rating law, health maintenance organizations and insurers underwriting fully insured health plans–which are purchased primarily by employers with 100 or fewer employers–cannot provide such incentives. The incentives include rebates or reductions in premiums or copayments for participation in any wellness or health maintenance program offered by an employer. The bill, which has support from both business and labor, has had a first read by the House Committee on Health Policy.

At BusinessInsurance.com

New **Online Poll**: How prepared is your employer for an avian influenza pandemic?

Items in the Late News column originally appeared in BI's Daily News feature on *www.businessinsurance.com.*

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