

# Business Insurance

May 21, 2007

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**MONTANA SEEKS TO LURE MORE CAPTIVES TO STATE WITH NEW LAW / PAGE 3**

**SOFT MARKET SET TO CONTINUE AMID ROSY OUTLOOK FOR PROFITS, INSURER EXECS SAY / PAGE 3**

**OS...S KEVIN KELLEY OUTLOOK PAGE 6**

## In Brief

Bank explores alternatives for brokerage arm

Bank of America has retained Banc of America Securities L.L.C. as a financial advisor to explore "strategic alternatives" for its commercial insurance brokerage business, Banc of America Corporate Insurance Agency L.L.C. The Bank of America subsidiary, formerly Fleet Insurance Services, was ranked 27th-largest U.S. broker by *Business Insurance* last year, based on its \$78.5 million in 2005 revenues.

ACE settles more bid-rigging allegations

ACE Ltd. will pay \$9 million to settle issues arising from alleged bid rigging and contingent commissions payments investigated by the Pennsylvania attorney general and insurance department. In

See **IN BRIEF** page 38

## D&O rates soften despite Tyco loss

*Full-limits payout not enough to change buyer's market*

By **DAVE LENKUS**

Risk managers should continue to count on a softening directors and officers liability market despite Tyco International Ltd.'s multibillion-dollar settlement of class action claims against the company and former officials, according to market experts.

Absent unforeseen market-turning factors, D&O insurance rates likely will continue to fall through the Jan. 1, 2008, renewals as plentiful capacity remains in the market, experts said.

Although Tyco reached a nearly \$3 billion settlement with class action claimants last week, insurers on the risk would have expected and reserved for a substantial or full-limits loss years ago and factored that into their current rating structure, experts said.

The highly diversified Pembroke, Bermuda-based company said last week that it would take a \$2.98 billion charge this quarter to account for the settlement it reached with

investors who purchased Tyco securities between October 1998 and June 2002.

The investors sued Tyco and numerous former officials and board directors in early 2003 after an investigation into the company's management and accounting practices revealed that former officials had looted the company of more than \$600 million.

Tyco replaced its senior management and board in 2002 after the scandal was exposed. Two top Tyco officials—former Chief Executive Officer L. Dennis Kozlowski and former Chief Financial Officer Mark H. Swartz—have since been imprisoned for looting the company. In addition, the Securities and Exchange Commission has fined other former officials for their roles in misleading investors through fraudulent accounting practices.

Tyco's former and current insurers and brokers would not comment on the company's D&O insurance.

Sources, however, said that Tyco can apply the bulk of its \$200 million of D&O coverage to the settlement. The remainder has been used to cover the legal costs of former

See **TYCO** page 38

**Now Inside**  
May Edition  
**Industry Focus**  
Information Technology  
For Strategic Decision-makers!

1. OxyContin  
2. ...  
3. ...  
4. ...  
5. ...  
6. ...  
7. ...  
8. ...  
9. Oxycodone HCL\*  
9. Naproxen  
10. Actiq

\* OxyContin and its generic brand Oxycodone HCL combine to make the number one prescribed drug  
Source: NCCI

## OxyContin settlement may curb narcotic use

*Insurers say expensive drugs often not needed*

By **ROBERTO CENICEROS**

Workers compensation observers say they hope that a \$635 million settlement of criminal and civil charges against the maker of OxyContin will help deter overuse of addictive and costly painkillers.

The workers comp industry has warned for years that OxyContin and other narcotics have been prescribed too often to workers suffering from injuries not severe enough to require the use of such potent drugs.

Following a four-year investigation, the U.S. Food and Drug Administration, along with federal prosecutors, the IRS, Health & Human Services Department and state officials announced on May 10 that Stamford, Conn.-based Purdue Pharma L.P. and Purdue Frederick Co. Inc. had agreed to pay \$600 million as part of a settlement of allegations that Purdue sought to profit from "a long-term illegal scheme to promote, market and sell OxyCon-

See **OXYCONTIN** page 37

## Employers play third wheel in office romances

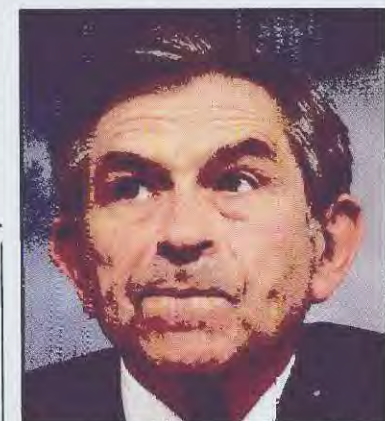
*Resignation of World Bank chief highlights problems companies face when employees date*

By **JUDY GREENWALD**

There are no ironclad guarantees that employers can protect themselves from liability as a result of workplace romance—an issue dominating recent World Bank news—

but experts say companies can take steps to minimize that risk.

The steps include policies on conflict of interest and sexual harassment, procedures to respond to complaints, and training for employees and supervisors.



LANDOV

Paul D. Wolfowitz, president of the World Bank, was forced to resign last week following allegations that his companion was given favorable treatment in 2005.

There has been considerable focus on the issue given the controversy surrounding World Bank President Paul D. Wolfowitz, who arranged a salary hike and supported a promotion for his companion. Last week, having secured from the bank board a statement that he did act ethically, he resigned effective June 30.

Observers say attempting to ban workplace romances altogether is unrealistic. For instance, about 40% of employees report being involved in a workplace romance at some point in their careers, according to the 2006 Workplace Romance survey by the Alexandria, Va.-based

See **ROMANCE** page 36

## SPOTLIGHT INFORMATION SECURITY

Vendors pose major data security concerns for many corporations; using ERM tools

to assess IT risks; stopping leaks from mobile devices as employees gain easier access to

sensitive information; data security coverage options vary; Kröll's Alan Brill discusses how to stop costly security breaches. Page 10



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### INDEX

Advertiser Index .....	37
Business Resources .....	32
Comings & Goings .....	6
Commentary .....	34
End Page .....	39
International .....	33
Opinions .....	8
Perspective .....	30
Professional MarketPlace .....	32
Stocks .....	38

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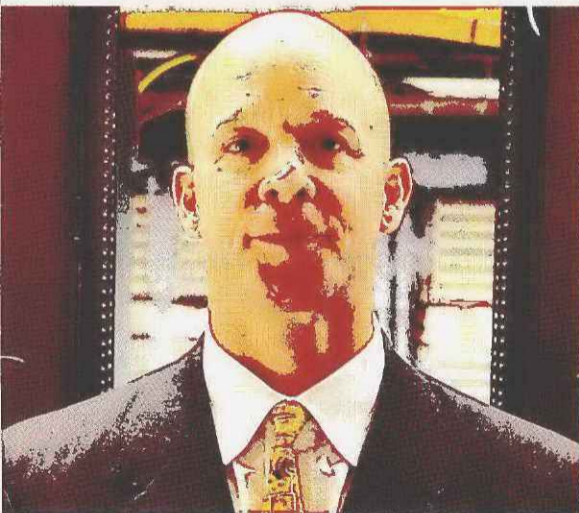
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# Is data privacy a big exposure for your organization?

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Breaches in network security have created unprecedented data theft, litigation and financial loss. Purchasing network risk insurance is one way to protect your company from liability for data privacy exposures. But before

you do, there are a host of other strategies to consider – behavioral risk mitigation, contractual limitations, IT security to name a few – that can make your network risk management program more efficient and effective.

- Kevin Kalinich,  
*managing director of Aon's Financial Services Group*

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**AON**

## On the Web

### QUESTIONS & ANSWERS

#### Hear podcast interviews of leaders online

This week's full Q&A interview with Alan Brill of security firm Kroll Inc. (page 26) is available online as a podcast. Go to [www.BusinessInsurance.com/QandA](http://www.BusinessInsurance.com/QandA) and click through to Mr. Brill's interview to access the podcast. Several other in-depth interviews with senior executives are also available as podcasts on the BI Web site.

### RIMS 2007

#### Log on to BI.com to see RIMS 2007 video reports

*Business Insurance* now offers expanded coverage of the RIMS 2007 conference with new online content. RIMS President

Michael Liebowitz of New York University, Wendy Baker of Lloyd's America,



Richard Marko of Liberty Mutual Group and others discuss their views of current risk management challenges. Visit [www.BusinessInsurance.com/RIMS2007](http://www.BusinessInsurance.com/RIMS2007).

### CONFERENCE EXTRA

#### See more online from Canadian conference

*Business Insurance* offers additional coverage from the "2007 Pensions Summit: Striking the Right Balance," presented by the Conference Board of Canada in Toronto. See [www.BusinessInsurance.com/extra](http://www.BusinessInsurance.com/extra).

### BENEFIT MANAGER OF THE YEAR®

#### Nominations wanted for top benefit manager

The deadline for nominations for the *Business Insurance* 2007 Benefit Manager of the Year® award is approaching fast. The winner will be profiled in the Sept. 17 issue of the magazine. To nominate a candidate by June 1, download a form at [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY).

## Business Insurance.

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

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# Montana spruces up the captive welcome mat

Industry-supported law would cut capitalization requirements, boost organizational flexibility

By JERRY GEISEL

**HELENA, Mont.**—Legislation on its way to the Montana governor would slash capitalization requirements for protected cell captive insurance companies as the state looks to continue its steady growth as a captive domicile.

The measure, supported by the Montana insurance and captive regulators, is the first change to the state's 2001 captive statute since legislators in 2005 capped the maximum annual premium tax paid by a captive at \$100,000.

Under the latest bill, S.B. 161, the

capitalization requirements for protected cell captives would be reduced by 50% to \$500,000, while a new and lower capitalization requirement of \$250,000 would be established for protected cell captives with 10 or fewer homogenous cells.

Additionally, capitalization requirements would be cut by 50% for captives that reinsure admitted insurers issuing policies. For example, the minimum capitalization requirement for a single-parent or pure reinsurance captive would be \$125,000, while the minimum capitalization requirement for an asso-

ciation captive that reinsures an admitted insurer would be \$375,000.

Other provisions in the legislation would give captive sponsors significant flexibility in how they legally organize their captives. For example, a captive could be set up as, among other things, a corporation, a limited liability company, a partnership or "other legal entity formed by an organizational document."

In addition, the measure would allow pure and branch captives to fund a parent's employee benefit risks, assuming the arrangement is

approved by the U.S. Department of Labor.

The measure also would make clear that captive records filed with state regulators are confidential, as well as allocate 5% of premium taxes paid by captives to a state fund used to promote the Montana captive industry.

Passage of the legislation, which state captive managers say is needed to keep Montana competitive with other domiciles, comes as Montana licensed a record number of captives in 2006, with captive regula-

See **MONTANA** page 37

## Who's industry's best? BI invites its readers to cast their votes

*Business Insurance* is pleased to invite its readers to vote for the best overall commercial insurance industry companies in our 2007 Readers Choice Awards.

Now in their third year, BI's Readers Choice Awards recognize the top-performing companies in 11 different categories relating to risk management, insurance and employee benefits. Readers of the newsmagazine along with visitors to [BusinessInsurance.com](http://BusinessInsurance.com) are invited to vote for companies that they believe offer the best combination of service, value, quality and innovation.

The categories are:

- Best admitted property/casualty insurer
- Best employee assistance program provider
- Best employee benefit consulting firm
- Best insurance wholesaler
- Best managed care organization
- Best property/casualty reinsurer
- Best reinsurance intermediary
- Best retail brokerage
- Best risk management consulting firm

- Best surplus lines insurer
- Best third-party claims administrator

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

### 2007 Readers Choice **Business Insurance**

To view profiles of the winning companies in the previous Readers Choice

Awards competitions, please visit [www.BusinessInsurance.com/ReadersChoice](http://www.BusinessInsurance.com/ReadersChoice).

As in the past, all votes are completely confidential, and BI's ballot provides lists of the largest companies in each category for convenience only; voters may write in other companies if they choose.

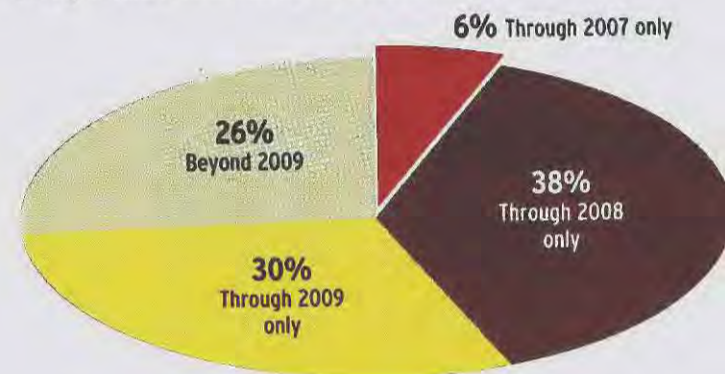
New for the 2007 awards is a revised electronic ballot, with results to be tabulated by Erdos & Morgan Inc., an internationally respected business-to-business market research firm.

To participate in this year's Readers Choice Awards, go to <http://ErdosSurvey.com/BI/ReadersChoiceBallot>.

All votes must be submitted by June 13.

### MARKET EXPECTATIONS

How regional and national insurers view the duration of soft market conditions.



Source: Munich Re America Corp.

## Executives foresee more rate reductions

Profits outlook rosy despite prolonged soft market conditions

By RUPAL PAREKH

Insurance buyers will enjoy soft market conditions at least another year or more, according to a group of insurer executives surveyed by Munich Re America Corp.

Despite that outlook, many insurers are optimistic about their financial results and expect earnings to be the same—if not better—this year, the survey found.

Princeton, N.J.-based Munich Re America, a unit of German reinsurer Munich Reinsurance Co., conducted the survey among attendees of its 13th annual Roundtable Forum earlier this month. Forty-eight chief executive officers and senior executives of regional and middle-market national insurers participated.

The survey showed that the executives overwhelmingly believe the soft market is here to stay.

While 6% said it will last only through the end of this year, 94% predicted the soft market will con-

See **FORUM** page 10



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

**APRIL 23, 1973** More than \$6 million of insurance coverage was assembled to cover mortality and bloodstock risks for Secretariat, the thoroughbred horse favored to win the Kentucky Derby. Johnson & Higgins engineered the slip, which was underwritten by several large insurers in the London market.

**MAY 7, 1973** The resignations of White House officials John Erlichman and H.R. Haldeman amid the Watergate investigation prompted legislative strategists to consider the reduced chances of passage for several insurance measures in Congress, including bills on no-fault auto insurance and national health insurance.

# Financial executives rate top challenges through 2009

## Competition, supply chain and property seen as greatest risks

By MARK A. HOFMANN

Competition, supply chain disruption and property-related risks are the three biggest threats that companies face through 2009, according to financial executives who participated in a study commissioned by Factory Mutual Insurance Co.

"Managing Business Risk Through 2009 and Beyond," released last week, found that 62% of the executives expect competition-related risk to increase through 2009, while only 4% expect it to decrease, according to the John-

ston, R.I.-based insurer, which does business as FM Global.

Twenty-four percent of the respondents expect supply chain risk to increase through 2009, while only 8% expect it to decrease, the study said. However, when it comes to property-related risks, a higher percentage of respondents—10%—expects such risk to decrease rather than increase—7%—through 2009.

The survey, which was based on the responses of 500 executives in North America and Europe, also found that a majority of the respondents—56%—say that their biggest risk management challenge through 2009 will be getting adequate resources of time, budget and personnel.

See **STUDY** page 36

## ISSUES THAT WORRY EXECUTIVES

Financial executives in North America and Europe ranked the top challenges in creating viable risk management programs through 2009.

Challenges	United States and Canada	France	Germany	United Kingdom
Obtaining adequate resources (time, budget, people)	72%	50%	36%	66%
Attaining organizational consistency	59	46	23	44
New product development	49	39	30	51
New technology	57	34	18	48
Mergers and acquisitions	53	40	29	34
Making it a top priority for senior management	54	29	18	38
Geographic expansion	42	28	26	35

Source: FM Global

## Nominations open for annual BI honor

Business Insurance is inviting nominations for its 2007 Benefit Manager of the Year award.

The Benefit Manager of the Year competition seeks to recognize excellence and innovation in employee benefits management. Any full-time employee of a corporation, nonprofit organization or government entity who oversees or administers employee benefit functions is eligible for the award. A nominee need not manage benefits as a sole responsibility but must be a full-time employee of the organization.

An independent panel of judges will score each nominee on how well he or she:

- Solved one or more major problems for his or her employer.
- Innovatively applies benefit programs to his or her organization's needs.
- Effectively uses benefit programs to help control costs.
- Exhibits leadership in achieving change within his or her organization.
- Established an effective system for communicating benefit programs to employees.
- Skillfully administers benefit programs through application of technology.
- Develops in his or her career and promotes advancement of the

benefits profession.

The value or generosity of specific benefits will not be judged; the award is intended to honor outstanding performance in managing and administering employee benefit programs overall.

As determined by the judges, the highest-scoring candidate, will be named Benefit Manager of the Year and will be profiled in the upcoming Sept. 17 issue of *Business Insurance*.

The panel of judges will include representatives of employee benefit consulting firms, brokerage firms, health insurers/managed care organizations, benefits industry vendors as well as prior winners of the award.

Candidates may nominate themselves or be nominated by a supervisor, colleague, broker, consultant or service provider, but the nomination must be accompanied by a letter from a superior who is familiar with the candidate's work.

The deadline for nominations is June 1.

To nominate a candidate for Benefit Manager of the Year, please download a nomination form at [www.BusinessInsurance.com/BMOY](http://www.BusinessInsurance.com/BMOY) or request one from BI Editor Regis Coccia at [rocchia@businessinsurance.com](mailto:rocchia@businessinsurance.com).

2007  
**Benefit  
Manager  
OF THE YEAR**

## Errors & Omissions

An asbestos claimants' attorney, August J. Matteis Jr. of Kelley Drye & Warren L.L.P., who was quoted in a May 14 article, "Ruling Favors Asbestos Contractors," was with

Gilbert Randolph L.L.P. in Washington when he represented the claimants. Gilbert Randolph continues to represent the claimants.

## Canadian pension plan sponsors receive and await court guidance

### Pending case focuses on administrative costs charged to fund

By GLORIA GONZALEZ

Canadian employers are seeing the impact of two high-profile Supreme Court of Canada rulings in pension disputes.

Plan sponsors and pension experts, though, are anxiously awaiting a decision from the Ontario Court of Appeal in a case that will decide several critical issues related to pension plan management, including the validity of charging administrative expenses to the plan fund.

Several recent court and administrative decisions have fac-

tored in the high court's analysis in the two pension cases, *Monsanto Canada Inc. vs. Ontario (Superintendent of Financial Services)* and *Rogers Communications Inc. vs. Buschau*, said Ian McSweeney, cochair of the pensions and benefits practice with Osler Hoskin & Harcourt L.L.P. in Toronto.

**FEARS EASE:** Survey finds fewer CFOs believe Canada is experiencing a pension crisis. Page 35

On a related front, a Federal Court of Canada judge ruled May 1 in *Cousins vs. Canada (Attorney General)* that federal pension legislation requires a proportional distribution of a surplus attributable to a partially wound-up pension plan. A partial wind-up refers to the termination

and distribution of pension fund assets related to that part of the plan.

The federal judge in the *Cousins* case referred to the Supreme Court analysis in the *Monsanto* decision in which the high court upheld a regulatory determination that the Ontario Pension Benefits Act requires distributing a proportional share of actuarial surplus when a defined benefit pension plan is partially wound up (*BI*, Aug. 9, 2004).

Although the Supreme Court analyzed Ontario's pension statute in the *Monsanto* case, the federal judge ruled that the high court's reasoning applies to the federal statute as well, meaning that surplus must be distributed

See **RULINGS** page 35

## Too many choices equals paralysis

### Pension plan sponsors advised to match options and employee needs

By GLORIA GONZALEZ

**TORONTO**—Offering pension plan members numerous investment options can paralyze them with indecision, resulting in their investments being placed in funds that may not be conducive to successful retirement planning.

Plan sponsors in Canada should focus on selecting investment options, and particularly default options, that best match the member's investor profile rather than focusing on providing numerous funds from which employees can choose, invest-

ment experts say.

Many Canadian capital accumulation plans—tax-assisted investment or savings plans—offer 25 to 100 investment options, said Clark Steffy,

**PENSIONS:** Ontario commission reviewing law that has changed little since its adoption in 1988. Page 29

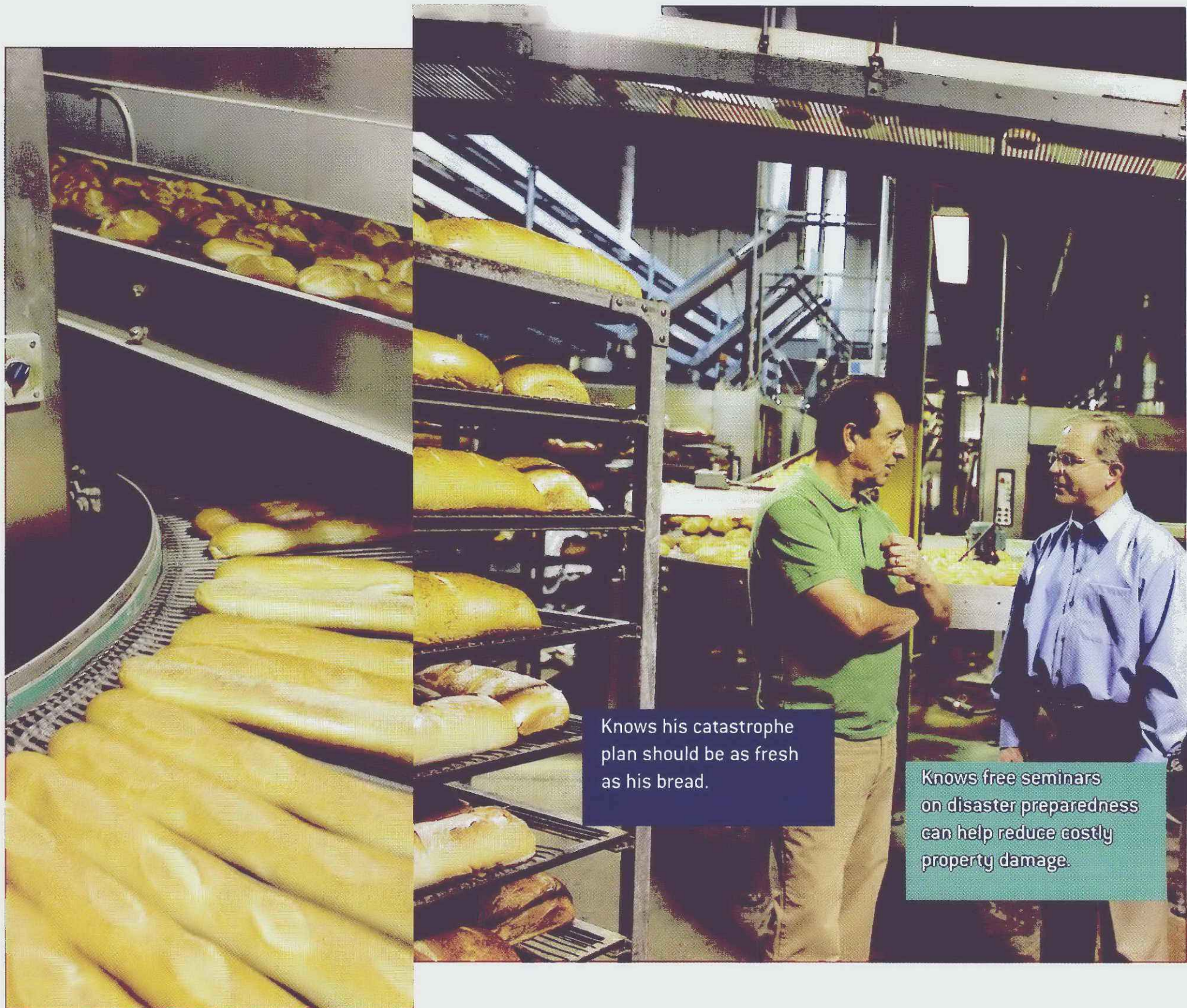
account executive in the Group Savings & Retirement Solutions practice of Manulife Financial in Toronto.

Plan sponsors feel compelled to

offer numerous investment options to plan members because of a common perception that people value the opportunity to make choices for themselves, Mr. Steffy said at the Assn. of Canadian Pension Management's regional conference held May 9 in Toronto.

When offered too many investment options, though, plan members often will choose the safest or easiest choice, such as a money market fund—a type of mutual fund that is required to

See **INVESTMENTS** page 28



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# Webinar: Real-world risk management

Have you ever wondered how to put the theory of enterprise risk management into practice? If you're looking for ways to make ERM a reality in your organization, join *Business Insurance* on June 27 for a live Online Executive Forum on "ERM in the Real World: A Practical Approach to Solving Enterprise-wide Problems."

The 60-minute free, interactive panel discussion will explore current trends in enterprise risk management as well as offer practical advice on ways that organizations can apply ERM techniques.

BUSINESS INSURANCE  
ONLINE EXECUTIVE FORUMS



Panelists are:

• John J. Hampton, KPMG Professor of Business and dean of the School of Professional and Continuing Studies and Graduate Business

Programs at St. Peter's College in Jersey City, N.J.

• Steve Saporito, managing director of the Enterprise & Risk Finance Practice at Willis Group Holdings Ltd. in Boston.

• Beaumont Vance, senior enterprise risk manager at technology company Sun Microsystems Inc. in Broomfield, Colo.

BI Editor Regis Coccia will moderate the discussion.

To sign up for this free Online Executive Forum as well as see prior archived events, visit [www.BusinessInsurance.com/webinars](http://www.BusinessInsurance.com/webinars).

## Special edition of *BI* available

To commemorate the 30th anniversary of the Risk Manager of the Year award, *Business Insurance* in April published a special issue, "30 Years of Risk Management Best Practices."

This special edition includes summary profiles of all 30 recipients of the Risk Manager of the Year award. *BI* created the Risk Manager of the Year award in 1978 to recognize excellence in risk management and commemorate the magazine's 10th anniversary of publication. In 1981, *BI* added the Risk Management Honor Roll.

A limited number of copies of the special commemorative edition are available for \$25 each by calling Customer Service at 1-888-446-1422 or 313-446-0450. A digital edition can be viewed at [www.BusinessInsurance.com/RMOY2007](http://www.BusinessInsurance.com/RMOY2007).

*BI* is accepting nominations for the **2008 Risk Manager of the Year**.

Anyone familiar with a candidate's work may submit a nomination. Please visit [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY) for information.



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## Questions Answers

Continuing volatility in risks is creating opportunities for surplus lines insurers, especially Lexington Insurance Co. Kevin H. Kelley, chairman and chief executive officer of the Boston-based unit of American International Group Inc., spoke recently with *Business Insurance* on why Lexington is increasing its appetite for business.



## Stability amid volatility

**Q: Lexington Insurance Co. is taking a vertical market approach to underwriting risks in various industries, such as real estate, education and health care. How did that vertical strategy originate?**

I don't think the concept is necessarily new. I think the application of the concept more broadly is probably what is different.

The whole idea of taking a look at an industry and trying to understand that industry and developing products and services for that particular industry has been around for 30, 40 years.

What has happened today, companies like Lexington, which is nonadmitted, really take that seriously. We're more able to design coverages and services, and put those together in a unique way that gives us an advantage for an industry group.

I think we'll continue to see the vertical industry-focused approach be instrumental in allowing us to innovate and allowing us to provide capacity, principally through the understanding of that business, as a business.

**Q: One area of volatility and uncertainty is terrorism, and Lexington recently raised its capacity for terrorism risks to \$250 million from \$100 million. How has the Terrorism Risk Insurance Act helped?**

TRIA is a government solution that has worked. Absent TRIA, there's no doubt in my mind that the market wouldn't have come to providing a terrorism product as quickly as it did.

What we've seen in how government may involve itself in our business is probably best illustrated by TRIA.

What it did was put a top cap on a company's loss, though excess of a very significant deductible. If companies were to play, they really did have an awful lot at risk, but at least they could cap their risk through this particular program.

That structure has allowed a private market to develop, and that private market continues to develop. In my view, there still is a need for a mechanism. Though the design of that coverage may be debated, the need for the coverage is clear.

**Q: The Nonadmitted and Reinsurance Reform Act could provide some uniformity and certainty to surplus lines operations. Are you in favor of the reforms?**

Yes, we are. We're in favor of it because it benefits all parties. It has some clear protocols on how to access the market. It provides a broader market for the policyholder. It clarifies to brokers and insurers how premium taxes should be

**VISIT** [www.BusinessInsurance.com/QandA](http://www.BusinessInsurance.com/QandA) to read other interviews with notable insurance industry leaders.

paid and allocated.

In my view, it's one of the few acts I have seen where there are no downsides, only benefits. But yet that has languished in Congress for several sessions now. It's very difficult to predict what can happen.

**Q: A controversial element of that legislation was the definition of a "qualified risk manager." Are such qualifications necessary to ease access to surplus lines?**

We have a view, because of our balance sheet, that the industry is in pretty good shape. Obviously, people who regulate the business are very concerned about solvency, as they should be. Therefore the sentiment is that one should be sophisticated before accessing our market. I understand that sentiment.

I personally do believe that most buyers who do are sophisticated. While one can argue over language, I don't think there's much substance to it. This bill is pro-consumer, and one would love to see passage before the wind season.

**Q: Lexington has had a London branch for years and recently opened an underwriting office in Bermuda. Why is it important for Lexington to be in those markets?**

Because there's business there. There's business in London and Bermuda. So we go to where the business is and we'll continue to do that. We continue to expand our footprint where business opportunities exist. That's a competitive advantage we have and we'll continue to exercise it. Plus it gives everybody something to talk about.

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# Business Insurance OPINIONS

## Insurers had warning of OxyContin abuses

IT CAN BE TEMPTING to write off insurer complaints about the overuse of certain drugs or other medical treatments as self-interested maneuvering by organizations whose primary concern is their own bottom line. But, as the OxyContin case shows, sometimes insurers are better placed than many others to make judgments about the need for certain medical treatments.

As we report on page 1, workers compensation insurers have been warning for years about what they saw as excessive prescriptions of OxyContin and other narcotics. Based on their analysis of the ballooning number of prescriptions for narcotics, insurers questioned the sudden need for such powerful drugs for routine pain-management needs.

In addition, again based on their experience, insurers had become accustomed to setting aside reserves to pay for detoxification programs once narcotics claims hit a certain number.

Aside from the well-known abuse that is associated with the so-called hillbilly heroin, it is clear that insurers had early warning indicators of potential problems with OxyContin's widespread use.

Numbers can tell at least part of the story and if they had been taken more seriously by all concerned, maybe doctors and patients would have been alerted earlier to potential problems with the drug.

*It is clear that insurers had early warning indicators of potential problems with OxyContin's widespread use.*

## Private equity capital a plus for the industry

PRIVATE EQUITY capital is positive for the insurance industry, a panel of experts suggested last week during the Harold H. Hines Jr. Memorial Symposium in Chicago.

While some observers dismiss hedge funds and other investors as "naive capital," the Hines panelists said the ebb and flow of capital is helpful to brokers and insurers—and the clients they serve.

One benefit is new capital providers generally are impatient for innovation and value creation. That means private investors are not shy about changing management, and they do so much sooner than publicly held companies do, noted Tom Golub, chief executive officer of Beecher Carlson Holdings Inc. in Atlanta. New thinking drives innovation, and consumers benefit, he said. Private capital also can enter and exit markets when conditions are favorable.

Alternate sources of capital enable insurers to meet higher capital requirements and lay off more risk, often for longer periods, than is possible through traditional channels, said Christopher Lewis, vp of alternative market solutions and property/casualty capital management at Hartford Financial Services Group Inc. in Hartford, Conn. New capital complements, but does not replace, conventional reinsurance, he said.

Investors over the last five years have become more informed, and insurance industry companies have been better managed, said John Waller, a principal at Cochran Caronia Waller in Chicago.

We agree that the industry needs innovation and growth, but smart companies shouldn't need pressure from investors to make that happen.



## Letters to the editor

### Article, letter show serious bias

TO THE EDITOR: The front-page article and the only letter published in the March 26 issue of *Business Insurance* show a serious bias toward abortion provider Planned Parenthood. Your article on contraception, on the occasion of the ruling by the 8th U.S. Circuit Court of Appeals in the *Union Pacific Railroad* case on the subject of who pays for contraception, was extremely one-sided and relied on the opinions of Planned Parenthood to establish the "correct" position. Planned Parenthood, as they would be pleased to tell you, is the pre-eminent killer of unborn children in the United States for many years.

But quoting Planned Parenthood on the subject of eliminating children was not offensive enough. *Business Insurance* solicited a letter from the Assn. of Reproductive Health Professionals, previously known as the Assn. of Planned Parenthood Professionals. This group not only supports

the entire abortion agenda of Planned Parenthood, but on its Web site, acts as an employment agency for abortionists to link them to clinics.

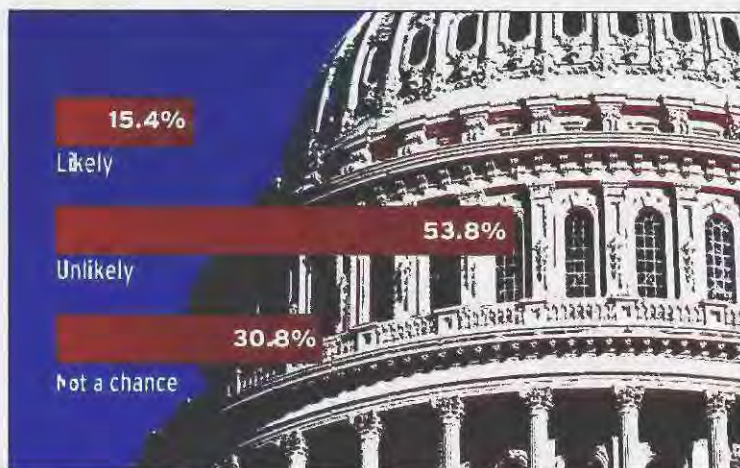
The letter by Wayne Shields and James Trussell ends by implying that corporations have a responsibility to become a party to the elimination of their employees' children. This opinion is drawn from some sort of national expense figures no doubt assembled by Planned Parenthood or their research arm. Hopefully the directors at most corporations are smarter than these representatives of ARHP and realize that attempting to become involved in the family planning decisions of their employees is a serious overreaching that wasn't even imagined by George Orwell.

If acting as a running dog apologist for Planned Parenthood is the new direction of *Business Insurance* maga-

See **LETTERS** page 37

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

How likely is Congress to act to help increase the availability of property catastrophe capacity?



**NEXT WEEK'S POLL:** How often does your organization's risk manager look at enterprisewide data security?

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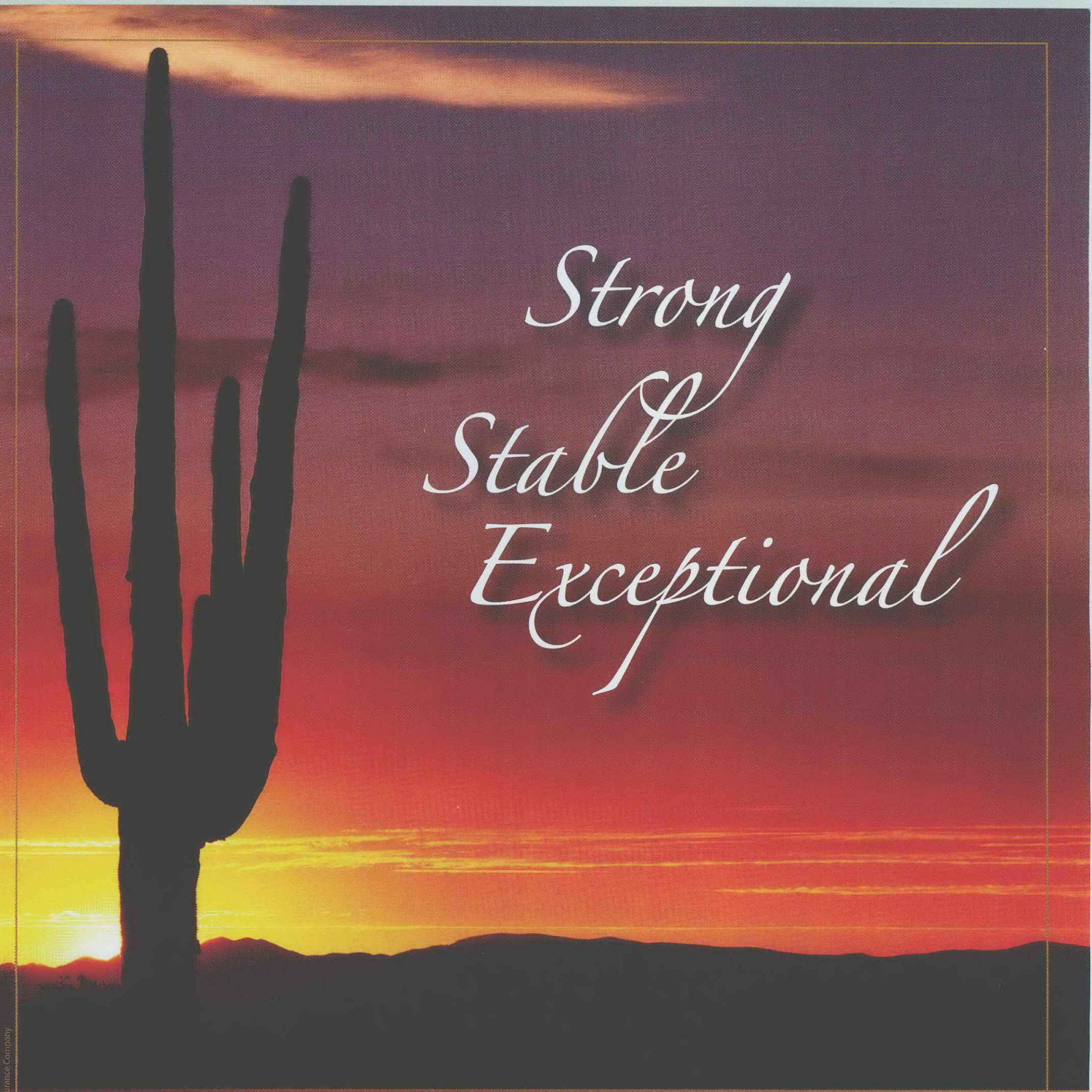
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## Loss of sensitive information prompts new data transfer agreement

After recovering an unprotected compact disc containing sensitive data on 75,000 mental health patients, WellPoint Inc. negotiated a new data transfer agreement with the mental health claims administrator involved in shipping the CD.

The CD, containing data on patients of WellPoint subsidiary Empire Blue Cross Blue Shield, was ground-shipped from Chicago to Philadelphia even though—in violation of WellPoint's

data management protocols—the data was not encrypted and the CD was not password-protected.

Under the new agreement, the claims provider Magellan Health Services Inc. in Philadelphia and data management vendor Health Data Management Solutions in Chicago will only electronically transfer data, said Shamlu Naidoo, chief information security officer for WellPoint in North Haven, Conn.

Ms. Naidoo joined WellPoint in January in the newly created position.

WellPoint does not stipulate with other vendors how data must be transferred because not all vendors have the same data-transfer capabilities, Ms. Naidoo said. "We allow any method that's secure," she said.

But Magellan has agreed not to arrange ground shipments of CDs containing health data if there is no need to do so, Ms. Naidoo

said.

Vendors, however, must adhere to certain safeguards to secure all protected health information, she said. Those safeguards include encrypting data and requiring passwords to access it.

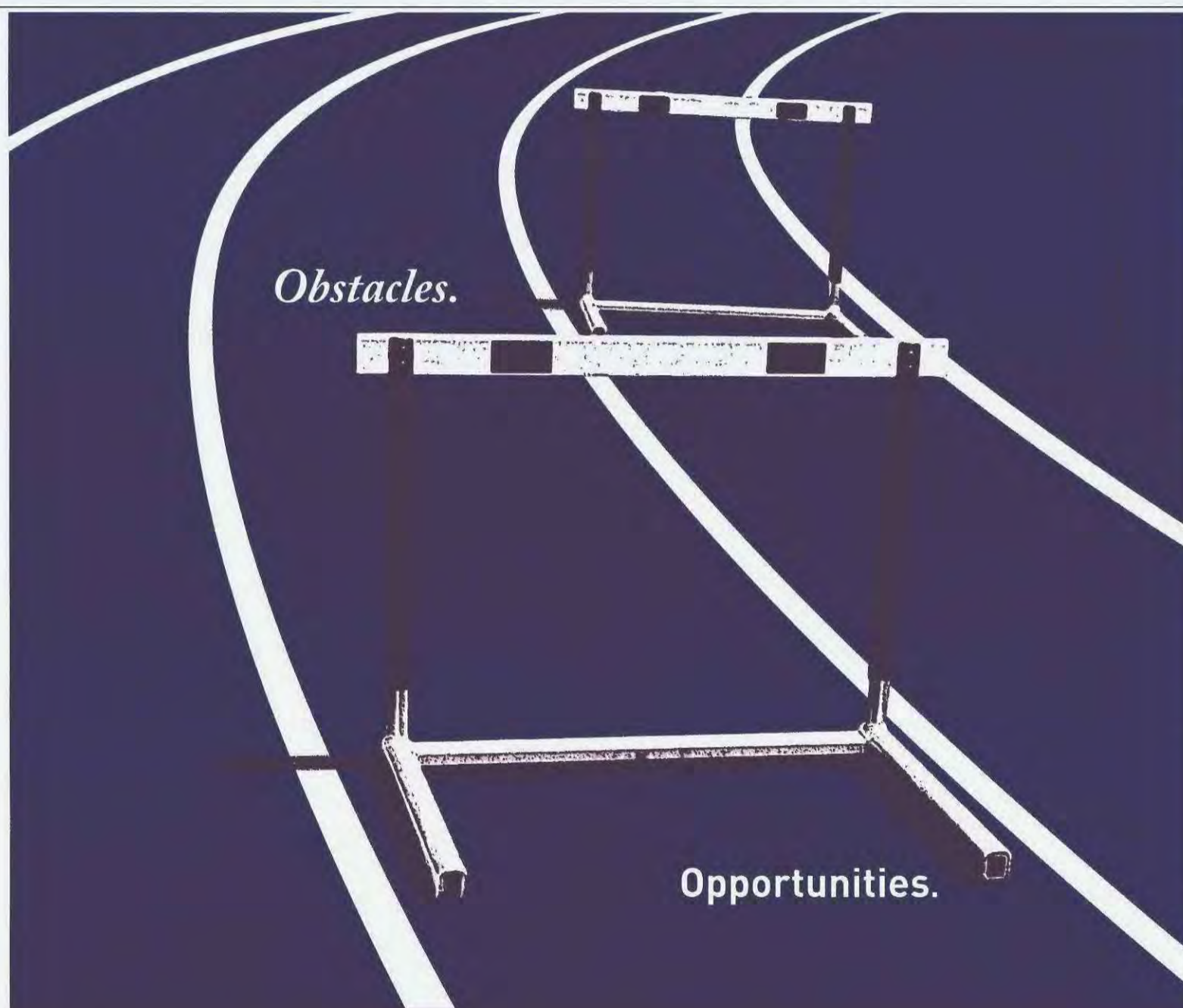
WellPoint reviews the security procedures of vendors before signing contracts with them and is reviewing criteria used to select vendors, Ms. Naidoo said. After those security reviews, there is a "significant amount of trust

we place in people we contract with."

But Wellpoint conducts onsite inspection of some of its vendors and is reviewing its risk-based model to determine which vendor relationships deserve greater supervision, she said.

Its contracts do not contain vendor liability provisions, but WellPoint does reserve the right to terminate contracts, Ms. Naidoo said.

—By Dave Lenckus



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## Vendors: Negotiating contracts

CONTINUED FROM PREVIOUS PAGE

cally verify that vendors are complying with contract terms.

Holding vendors to much tougher standards will not eliminate the risk they create, experts agree.

Even so, "Prudent and reasonable security practices can remove the burning plank issues," Mr. Greisiger said.

That's important because when data security fails, at least one of about three dozen state privacy laws and possibly federal privacy laws governing financial institutions and health providers come into play—exposing companies to penalties, fines, and costly customer notification and identity theft-monitoring requirements.

Regardless of their comfort level after completing their due diligence of a vendor, companies must negotiate vendor contracts that contain specific and stringent data security standards, experts said.

An important contract provision should require vendors to conduct background checks on all workers with access to sensitive data, experts said.

In addition, vendors should have a so-called "least privilege" policy, which restricts workers' data-access rights to the minimum level necessary to complete their work, said Anthony Hernandez, a partner and the head of the information risk management practice at SMART Business Advisory & Consulting L.L.C. in Philadelphia.

Of course, some vendors need to cross-train staff to handle multiple job functions in case of illness, Mr. Hernandez said. "What we look for in those situations are compensating controls to ensure there's no fraud" when employees must assume additional duties.

Mr. Greisiger recommended that contracts require vendors to both employ dedicated security teams and demonstrate they have strong security processes, such as software patch management.

See **VENDORS** page 16

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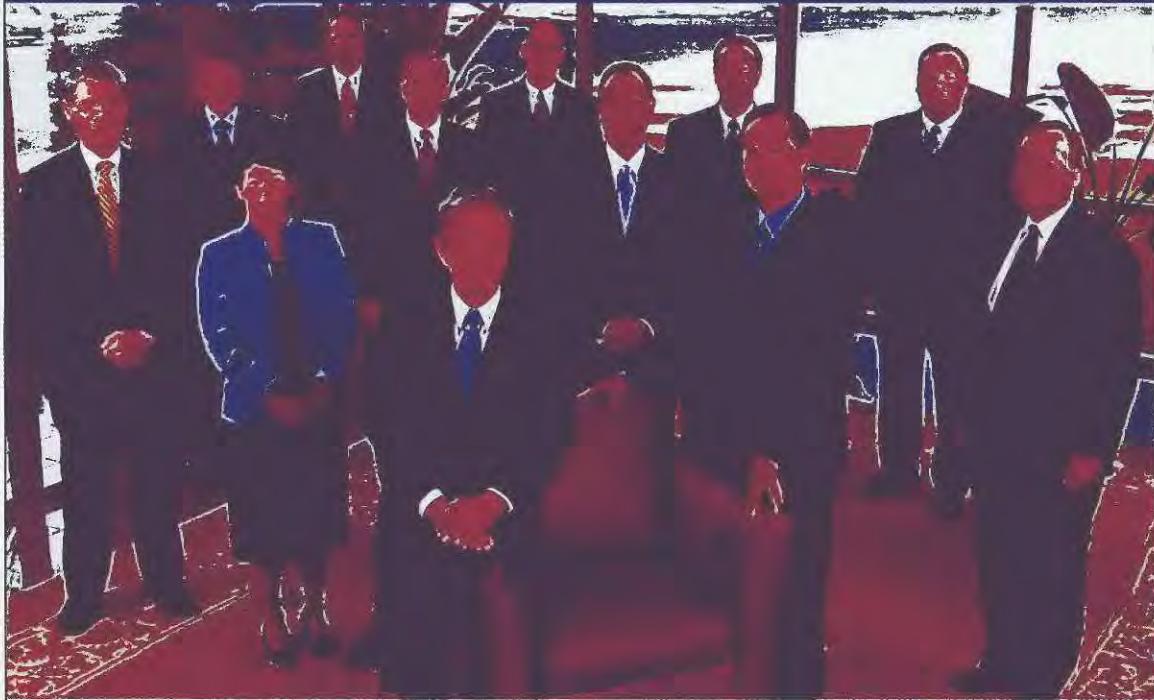
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## Vendors: Auditing may cut risk of data breaches

CONTINUED FROM PAGE 14

Patches can create numerous system problems, he noted. Therefore, they have to be tested before they can be installed, and that process that can take three to six months per patch, he said. "It's a very daunting process to keep on top of."

Mr. Greisiger also recommended requiring vendors to conduct tests to check whether their security can be penetrated. He noted that penetration tests his firm has conducted found 75% of clients with dedicated security teams and ample security budgets still have serious security problems.

Because data security cannot be 100% guaranteed, most vendors try to negotiate a liability provision of no greater than two or three times the value of their contract, Mr. Navetta said.

But contracts should hold vendors liable for the ultimate cost of any data breach that is the vendor's fault, Mr. Hernandez said.

Credit card companies, for example, typically fine card-issuing banks from the high six figures to seven figures when data breaches lead to cardholder losses. The card-issuing banks pass those fines along to the merchants responsible for the data breach.

But few merchants have had contractual stipulations that hold vendors liable for those fines, experts said.

A slowly growing number of companies, however, are imposing such provisions, Mr. Hernandez said.

But the success of including a liability contract provision will come down to "the power of the customer," Mr. Greisiger said. "If you're a small customer and you need that provider to conduct your business,

you can't negotiate."

Within the liability provision, companies should require vendors to purchase data security insurance and name the company as an additional insured, Mr. Navetta said (see story, page 24).

**The transition of data from one vendor to another is 'where bad things can happen.'**

Kevin Kalinich,  
Aon Financial Services Group

Contracts also should include provisions on how data would be protected if the company switches vendors once the contract ends, Mr. Kalinich said.

"Usually, people don't think about these terms upfront," but the transition of data from one vendor to another is "where bad things can happen," he said.

Even with a tough contract, vendors have to be audited, experts stressed.

Mr. Hernandez said auditing is the best way to minimize the risk of vendors' data breaches. "You just can't trust that they're doing what they say they're doing."

Mr. Hernandez noted, for example, that a company for which SMART Business conducted credit card data security work occasionally would randomly check the consultant's operations. The client's representatives would visit the consultant's offices unannounced periodically and examine a couple laptops to ensure the equipment was secure.

## Performing due diligence is key to evaluate vendors

Data security experts say the first step to ensure that a vendor is a worthy business partner is performing due diligence.

Before inking a deal, a company should verify that a vendor has a business continuity plan that specifies its data backup measures. The vendor also should be able to demonstrate how quickly it can resume business after a data breach or other peril interrupts operations, experts said.

Companies also should obtain a security assessment of the vendor, experts said.

"More vendors are doing their own security assessment, and that will suffice" if the vendor arranges for a qualified expert to conduct it, noted David J. Navetta, managing member of InfoSecCompliance L.L.C. of Denver. That way, the

vendor does not "have to reinvent the wheel every time they enter a transaction."

Companies should understand, however, that a security assessment firm could use one of several standards to assess a vendor's security because there is no universal standard.

Commonly used security standards, though, are the Statement on Auditing Standards No. 70 issued by the New York-based American Institute of Certified Public Accountants; standard 17799 from the Geneva, Switzerland-based International Organization for Standardization; and the Control Objectives for Information and Related Technology standard, or COBIT, issued by the IT Governance Institute, a Rolling Meadows, Ill.-based research think tank.

—By Dave Lenckus

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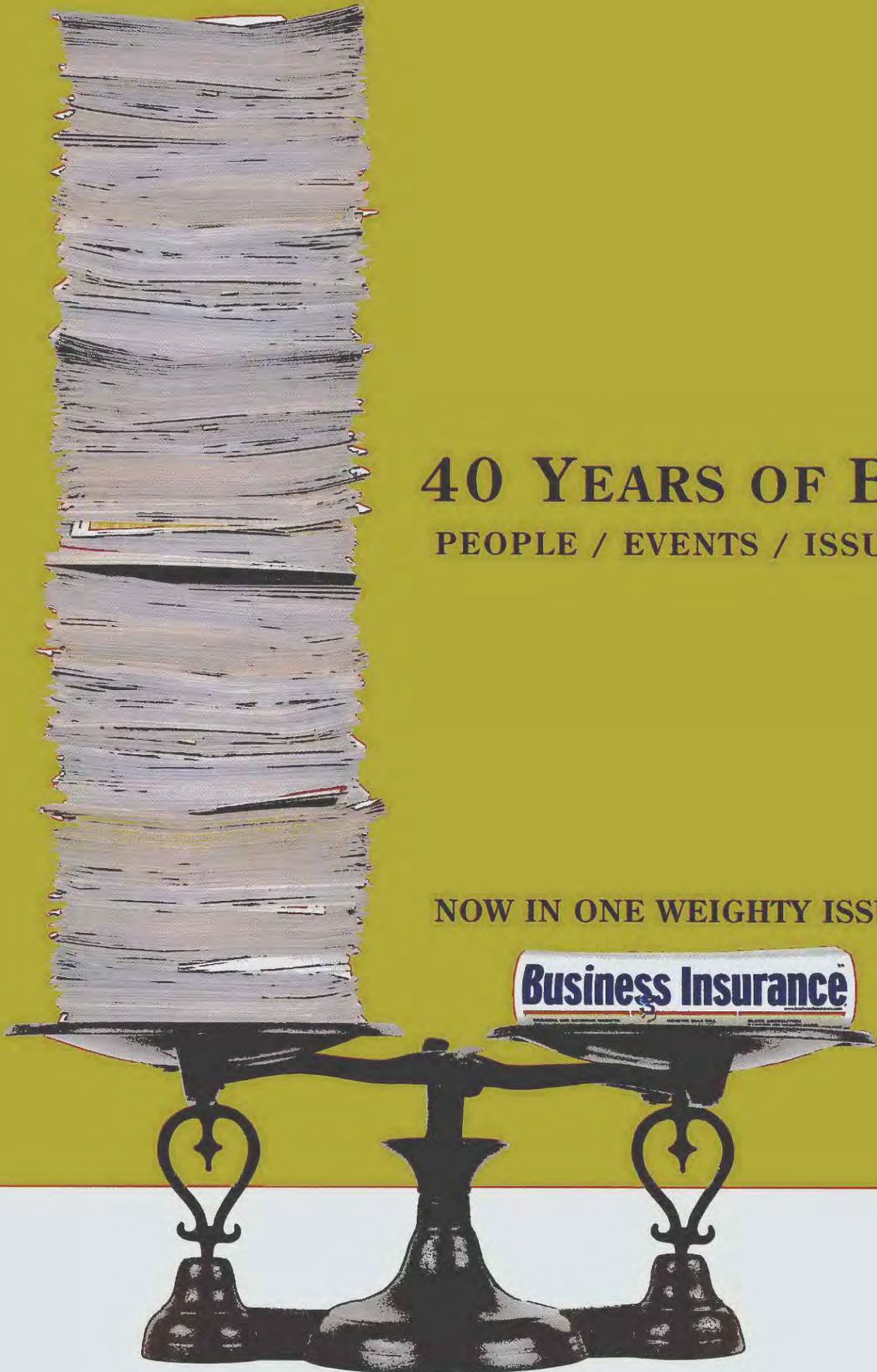
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# Threat of information theft grows for employees who work remotely

*Laptops, cell phones and other mobile devices also at risk*

By LOUISE ESOLA

In as little as two pounds of convenient, compact and portable plastic and wiring lie chunks of private data, confidential corporate documents and personal information.

It's all too easy for information thieves seeking to exploit personal data, experts say, and companies are looking for ways to protect sensitive data on such easy-to-snatch devices.

"The ballistic things right now are laptops," said Emily Q. Freeman, London-based executive director for Lockton Cos. Inc.'s technology risks professions division. "There are burglaries in the office, people lose their laptops, have them stolen out of their cars or in airports."

In 2006, more than a dozen companies and other organizations—Sovereign Bank, General Electric Co. and the Internal Revenue Service, to name a few—reportedly had laptop computers stolen, compromising private information such as social security and credit card numbers of thousands of clients or employees.

Threats to other devices—BlackBerries, personal digital assistants and even mobile phones—also are gaining momentum.

"Sometimes the technology advances at a faster rate than the security of these devices," Ms. Freeman said.

The risks extend beyond the lost or stolen device.

Increasingly, savvy Internet hackers are making it a risky venture to work remotely, as they access public wireless networks that are becoming more available at locations ranging from airports to coffee shops. Information, unbeknownst

to the worker typing away, can be tapped by thieves setting up phony wireless networks to track and steal data.

"We have all these road warriors and they are whipping out their laptops and PDAs for work and they really don't think there might be any risk associated with working in a public place," said Peter Davis, principal at Peter Davis & Associates, a Toronto-based information security consultant.

"You see people in Starbucks and they don't know if they are really on the Starbucks network," Mr. Davis said. "Sometimes people don't even know it's happening to them."

"Using the right tools that are free on the Internet, anyone gaining access to a laptop can crack practically any logon password within a matter of minutes and have a free-for-all," said Kevin

See REMOTE page 20



People who go online via their laptop at the local coffee shop can easily be the victim of a data thief. "Sometimes people don't even know it's happening to them," said Peter Davis, an information security consultant.

## How companies can protect data and other information

When it comes to securing corporate laptops, BlackBerries and personal digital assistants, the weakest link can be the person using the electronic device, and the best line of defense against theft and hacking is strong company policy, experts say.

"One of the most important things is policy," said Sean McDermott, a New York-based

how is often lacking among employees who work on such devices outside the office.

"You really have to aim to change behaviors," said Paul Stamp, a principal analyst at Boston-based Forrester Research, a Cambridge, Mass.-based technology research firm. "Sometimes when you are dealing with sensitive information, you should know you shouldn't be doing that on a public network."

An effective and comprehensive IT security training program for employees is key, said Emily Q. Freeman, London-based executive director for Lockton Cos. Inc.'s technology risks professions division.

"You have to provide information for employees on where these devices can be used and where they can be stored," she said. "There has to be a line between permissive use and prohibitive use."



Some advise adopting a policy on secure procedures for company electronic devices used outside the office.

manager of computer forensics with Aon Consulting. "The easiest and least expensive way to secure these devices is to have a written policy. If people know there can be a problem with security, they will try to avoid the problem."

Companies can control risks by regulating where and when an employee is allowed to use a device or apply automatic shut-off functions when an unauthorized person tries to gain access, experts say. Companies also can password-protect certain databases to track when information has been accessed and who has accessed it.

Awareness, however, is a top issue to address, say information technology risk management experts, who note that information security know-

Peter Davis, principal at Peter Davis & Associates, a Toronto-based information security consulting firm, said companies can eliminate some of their risk by forbidding employees to conduct business on public wireless fidelity, or WiFi, networks.

Companies can ensure their employees work only on hacker-protected networks by providing them access to a so-called virtual private network, he said. The cost for setting up such a network can run from \$200 up to hundreds of thousands of dollars, depending on the size of the company, he said.

Larger companies often need to hire full-time IT personnel to man a VPN, hence the inflated cost, Mr. Davis said.

—By Louise Esola

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# Remote: Encryption seen as the best defense against a data breach

CONTINUED FROM PAGE 18

Beaver, an information security consultant with Atlanta-based information security firm Principle Logic L.L.C. "You wouldn't believe the amount of information that can be gleaned off a laptop...to be used for ill-gotten gains."

Sometimes, however, a company may not even discover a data breach if it occurred over a bogus wireless network or if an employee fails to report an incident.

The threats, along with breach notification laws enacted in 26 U.S. states, are forcing companies to pay attention.

"We think companies are acting more strategically than tactically," said John Dasher, director of product management for PGP Corp., a Palo Alto, Calif.-based company that provides information and technology security for companies. "(Breach notification laws) have really driven the industry."

Previously, Mr. Dasher said, companies focused on IT risk management usually after a breach. "Now we are getting more phone calls before an incident happens," he said.

There are several practices now being deployed, including an overhaul of login procedures.

Lockton's Ms. Freeman said simple passwords are no longer an adequate line of defense. Procedures, such as thumb-print verification, and two-level signons are becoming popular.

In addition, Mr. Dasher said, some companies are being urged by security consultants to use "pass phrases" instead of passwords. "Passwords are poor security," he said. "So we say instead of using 'fox' as a password, use, 'The fox jumped over the fence.'"

Products already exist in the market that automatically shut down a device if the user is not authenticated, he added.

Experts say encryption, a more technologically advanced tactic, is one of the best ways to mitigate the risk of a data breach when a laptop or other device is stolen.

Encryption scrambles valuable data into indecipherable code when it is in transit or stored. If a laptop with encryption software is stolen, the thief will be unable to understand the information, thus lessening the risk.

Encryption, however, may not help if a person is working on a device while logged on to a public wireless fidelity, or WiFi, network, experts say.

To protect information in these

instances, a virtual private network is one solution. Companies with employees working remotely can set up a VPN—a private, password-protected network—that blocks hackers.

Such networks can work for most portable devices including laptops, BlackBerries and PDAs, Mr. Davis said.

With all the security measures currently available and evolving, could data theft via portable devices soon be a crime of the past?

Not likely, experts say.

"There's a lot of security issues that people just haven't addressed," said Michael Flanagan, Chicago-based managing director for Gallagher CyberRisk, a division of Arthur J. Gallagher RMS Inc.

Many companies are forgoing such practices as encryption because it can slow performance on

**'Any time systems are there to be taken advantage of, they will be eventually.'**

Kevin Beaver, Principle Logic L.L.C.

devices such as laptops, making it more time consuming for work to be completed.

"There are IT people out there that will fight to the end, saying they'd rather set up employee manuals that say, 'You're fired if you lose your laptop' than slow things down," Mr. Flanagan said.

According to a 2006 study by Forrester Research, a Cambridge, Mass.-based technology research firm, nearly 40% of companies surveyed said they had no immediate plans to use encryption tools on laptops.

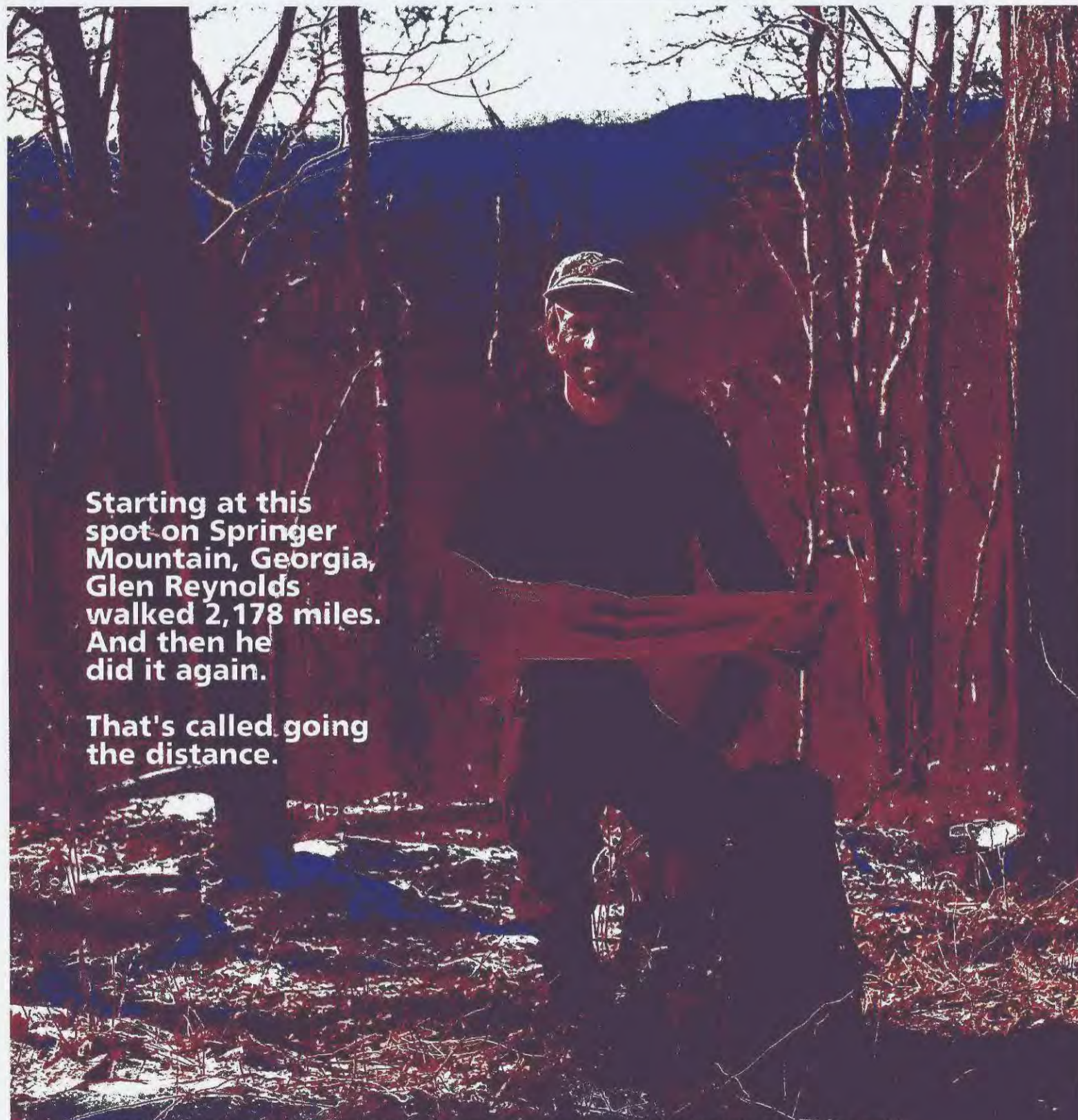
Most companies rely too much on logon procedures as a front-line defense, Mr. Flanagan added. Without encryption, a hard drive from a password-protected laptop can be removed and placed in another computer, providing access to data, he and others said.

Sean McDermott, a New York-based manager of computer forensics with Aon Consulting, said cost has much to do with companies' slow adoption of encryption. It can cost up to \$250 to install encryption on any one device, and the cost can add up quickly for corporations with armies of employees who conduct business on the road.

"Cost is the problem with the C-level executives who say their IT budgets are already high," Mr. McDermott said. "They ask, 'OK, do we really need this?'"

Principle Logic's Mr. Beaver said another top issue regarding information security is the "lack of management taking the problem seriously."

"The bottom line is that companies, nonprofits and government entities all have to meet various government and industry regulations to protect sensitive information," Mr. Beaver said. "Any time systems are there to be taken advantage of, they will be eventually."



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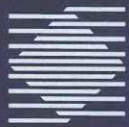
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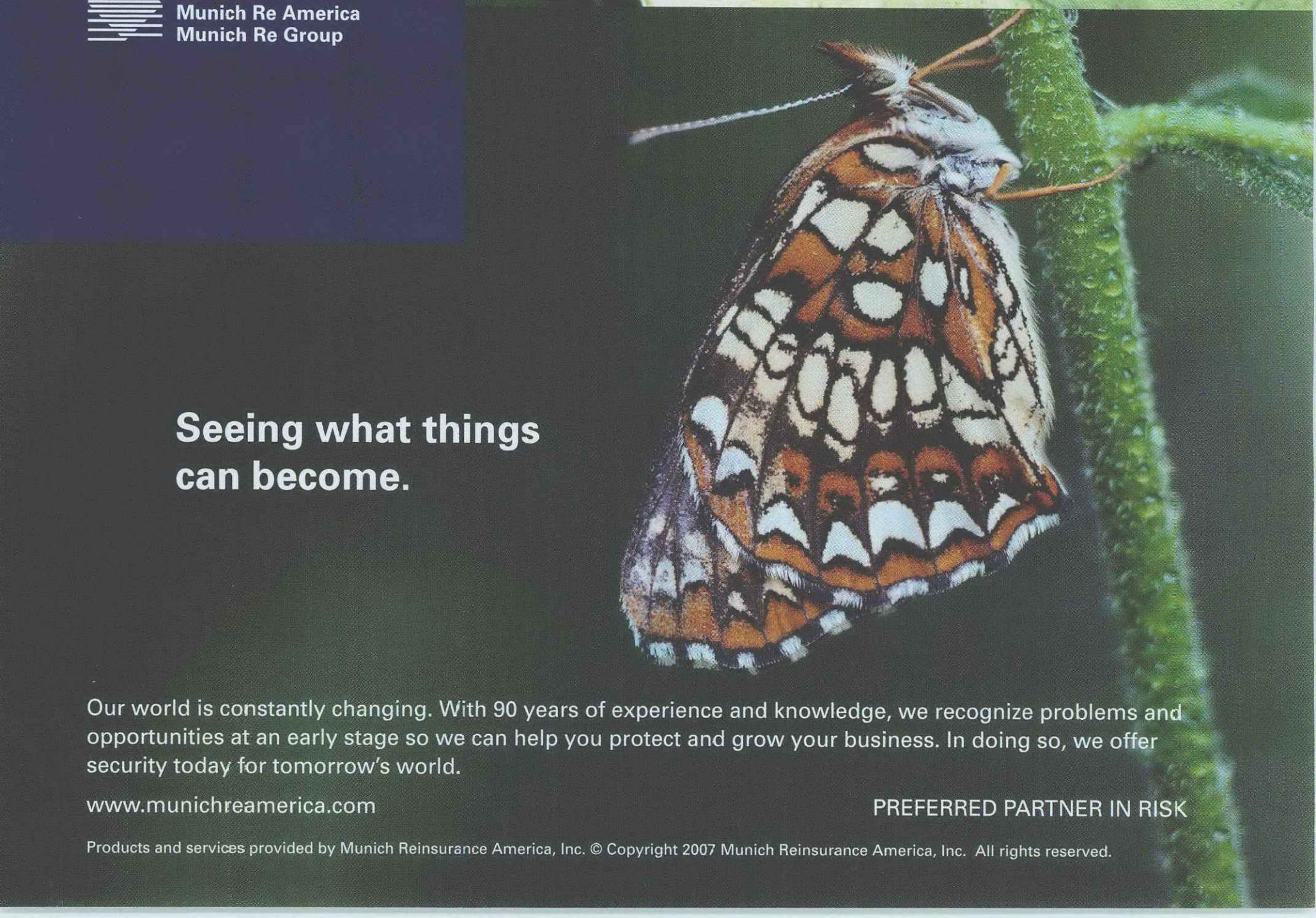
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# Enterprise risk management for IT

*Technology issues demand increased attention from risk managers*

By ROSEANNE WHITE GEISEL

Risk managers' role in information technology security is becoming clearer as more companies embrace enterprise risk management.

Under the ERM approach, all of a company's risks—whether financial or strategic, liability or regulatory compliance—are examined together with an eye toward their potential consequences for the ongoing operation.

Information technology underlies many processes and core func-

tions, said Baljit Dail, Chicago-based global chief information officer for Aon Corp. and global chief administrative officer for Aon Consulting. "Clearly any risk in IT has a significant impact on the business," Mr. Dail said.

Two key areas closely linked to IT are disaster recovery and business continuity, which overlap with corporate risk management, according to risk managers and consultants.

Additionally, IT risks potentially raise liability issues in other areas of a company. For that reason, even

risk managers not involved in ERM are seeing the need to have at least some involvement in IT security.

That is important given at least six major highly publicized data breaches in the past year.

"IT security can be defined as maintaining the confidentiality, integrity and availability of your company's information assets and ensuring compliance with legal, contractual and regulatory constraints," said Jeff Stolle, director of risk management at Career Education Corp. in Hoffman Estates, Ill.,

**'Risk managers are very good at looking at exposures...IT tends to be about fixing problems.'**

Lori S. Nugent, Cozen O'Connor P.C.

and chair of the Risk & Insurance Management Society Inc.'s Technology Advisory Council.

Mitigation or elimination of IT security exposures command a high priority, particularly at technology-based businesses such as Career Education, which runs online universities, Mr. Stolle said.

While the need for risk managers to participate in IT security is evident given ERM as well as the fallout from public and private sector breaches that gained media attention, the technological aspects must remain with the IT staff.

Just as other areas under the ERM umbrella, the risk manager's role is to identify and assess IT risks, said Carol A. Fox, senior director, risk management and business continuity planning at Convergys Corp., a Cincinnati customer and employment management consultant and service provider. Responsibility for designing and implementing IT risk mitigation efforts belongs to "someone with deep technical knowledge," Ms. Fox said.

### **Mitigation vs. execution**

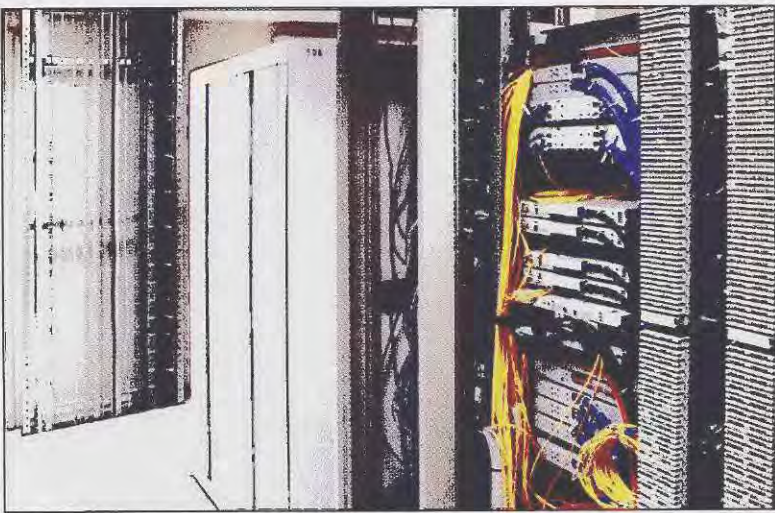
The roles of risk management and IT security "are different but complementary," said Mr. Dail.

Risk management is much more analytic and strives for proactive mitigation, Mr. Dail said. The IT function is focused on "execution around processes working well, monitoring the network and patches in the right places," he said.

Ms. Fox said risk managers "offer the perspective of a broad spectrum of risks and can assess the consequences to the company." The IT staff, on the other hand, may be focused on compliance.

Similar sentiments were offered by Lori S. Nugent, an attorney and chair of the enterprise risks practice at law firm Cozen O'Connor P.C. in Chicago. "I think risk managers are very good at looking at exposures and allocating them or shifting them," Ms. Nugent said. "IT tends

See **ERM** page 24



Today's risk managers need to improve their understanding of the corporate server room—once the exclusive realm of IT professionals—as well as procedures and coverage to protect the security of a variety of sensitive data.

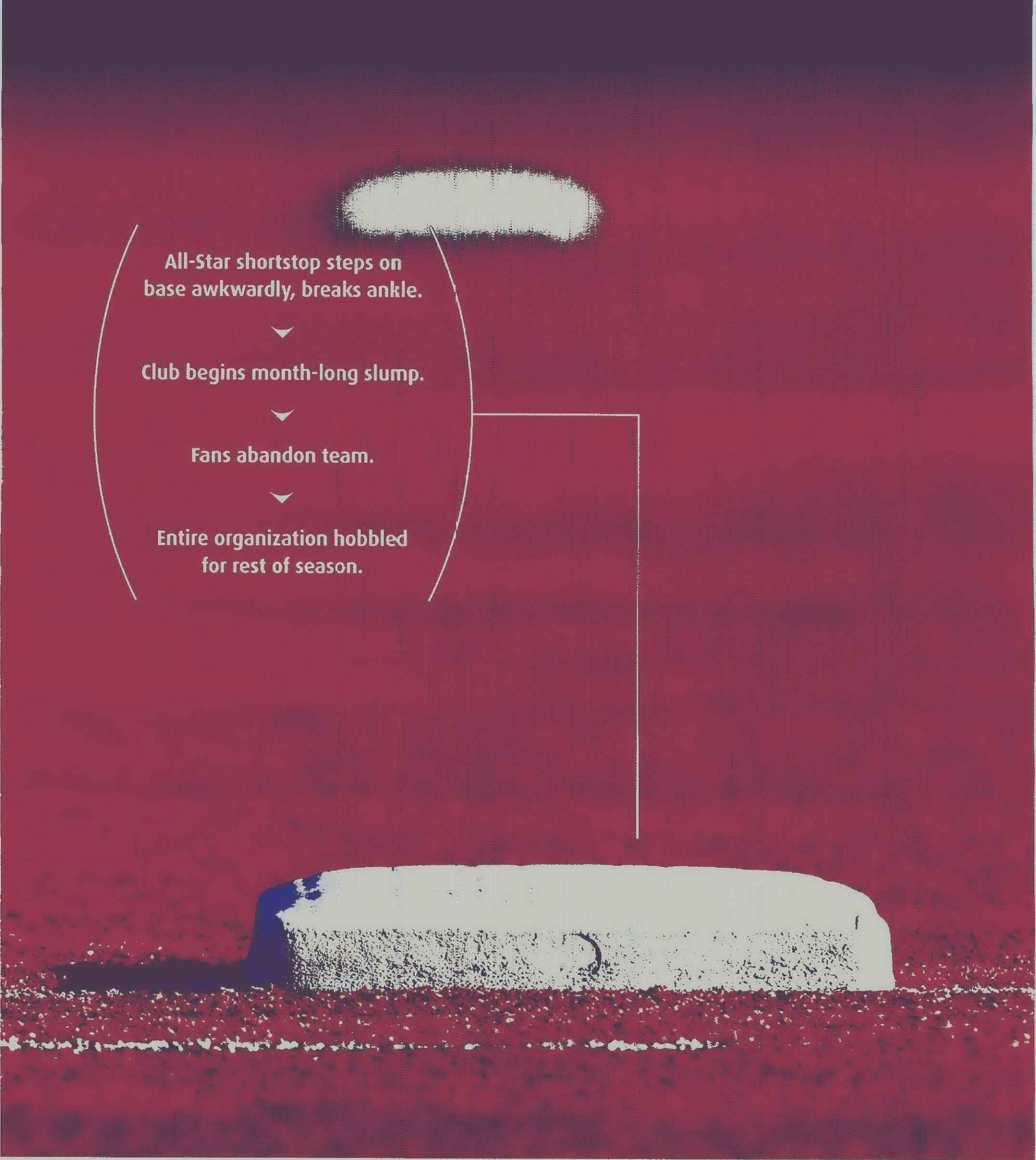


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## ERM: Liability, reputational risks of data

CONTINUED FROM PAGE 24

to be about fixing problems.

"All risk managers, even those not involved in enterprise risk (management), should be aware of ERM as a risk identification tool and develop an action plan to contain (IT security) exposures. With the kinds of issues arising in enterprise risk, it's very hard for a technical unit operating alone to fully address the liability and reputational risks that arise," Ms. Nugent said. "The best situation is when IT works with others to address not just the IT structural issues but liability and reputational risks as well."

Risk managers bring to IT security not only different skills but also relationships with specialized resources of which the IT staff may be unaware. For example, said Career Education's Mr. Stolle, risk managers may have relationships with consultants that are focused on risk identification.

Perhaps the most important resource is that risk managers often report to top financial officers and, consequently, can offer visibility to the board and help raise funds for IT security, said Ms. Fox. If a company is practicing ERM, the risk manager has access to the board's risk and audit committees, she said.

John Phelps, chair of RIMS' ERM committee and director of risk management at Blue Cross & Blue Shield of Florida Inc. based in Jacksonville, sits on the insurer's technology incident response team in addition to leading its enterprise

operations center, which includes representatives from finance, human resources and other areas of the company. When the incident response team is activated, "I'm sitting there knowing I can pull in any of those resources," he said.

Risk managers say a collaborative relationship with IT staff is possible if both groups stay within their areas of expertise. "There tends to be a good working relationship as long as you're not telling them technically what to do," said Mr. Stolle.

### Building a relationship

Ms. Fox suggests risk managers can overcome resistance from IT by developing an understanding of its mission and forging personal relationships based on support. "Even taking (an IT executive) out to lunch and talking it over can help build a foundation." Ask questions, she said, particularly those beginning with "Would it help you if...?" At BCBSF, Mr. Phelps helped overcome differences in perspective between the risk management and IT departments one year ago by teaching ERM concepts to the IT protection and controls staff. They have "aptly applied" that training, he said.

In the financial services arena, "there's a growing trend in demand for a more holistic view of IT risk management," said Mark Steinhoff, a principal with consultant Deloitte & Touche L.L.P. in New York and leader of the national financial services and security and privacy practice.

Factors driving that trend include demand for increased transparency and accountability related to risk and risk control, he said.

"We believe IT risk management needs to connect with and be integrated into the broader ERM program," said Mr. Steinhoff.

More companies in the financial services arena are "hiring, developing or importing an IT risk management officer" with an IT security background, Mr. Steinhoff said.

While corporate structures differ, it is important "to have an effective mechanism in place to identify the overarching responsibility," Ms. Nugent said.

One responsibility that rests with the risk manager is to monitor vendor contracts within the risk management department, whether it is the information systems vendor, a broker or insurer, said Mr. Stolle. Know the vendor's security policies and review the contract language concerning security, he said.

Whatever corporate structure and risk management approach is in place, "All risk managers should understand their company's relationships with business partners and the ways in which data is maintained, shared and secured," said Mr. Steinhoff.

Risk managers also should know how mobile devices affect exposures, Mr. Dail said.

And, said Mr. Phelps, a risk manager cannot participate in the business continuity processes "without having some knowledge of how things plug together."

## Risk managers scared straight—into IT

Judith Camp attended a conference session about three years ago and "came out of there scared out of my wits" after learning about risks related to information technology security.

Ms. Camp, director of insurance and risk management for Triad Hospitals Inc. in Plano, Texas, turned her fear of liability into action. "I just made myself get educated," she said.

Articles about IT security-related exposures became her regular lunch companion. "I was like a sponge," Ms. Camp said of her voracious appetite for knowledge on these issues.

The research proved one major assumption wrong. Ms. Camp said that since Triad's 1999 spinoff from Hospital Corp. of America and purchasing IT services from HCA, she incorrectly thought HCA was responsible for any IT security liability stemming from its systems. "Once I gleaned that, I had some concerns," Ms. Camp said.

She called a friend, who introduced her to an expert on IT security risks. Meanwhile, Triad put its IT services contract out for bids, eventually drafting a contract with Perot Systems Corp. Ms. Camp wanted to require the vendor to cover third-party con-

sequential damages. She also shopped for errors and omissions coverage as a backup for Triad. She found that third-party consequential damage is available, but must be specifically requested.

"Make sure whomever you're getting information from understands the risks," she said.

Many brokers have products to cover or mitigate such exposures, but they don't necessarily understand the new and specialized IT security risk, she said.

Ms. Camp tapped resources to assist her, including a law firm specializing in enterprise risks and a consultant, before she met with Triad's vp of information technology. "I didn't want to go barging in and say, 'Are you doing this? Are you doing that?'"

As a result of the dialogue she started with the IT department, the hospital system hired an IT security officer. "I put together issues that I thought we needed to talk about," Ms. Camp said of the dialogue that's ongoing.

For Triad's system of 53 hospitals and 13 outpatient surgery centers—particularly under the privacy provisions of the Health Insurance Portability and Accountability Act of 1996—IT security is a "big part of our everyday lives," Ms. Camp said.

Risk managers' involvement with IT security is likely to vary by industry and company, she said. However, after organizing conference sessions for the Risk & Insurance Management Society Inc. and the American Society for Healthcare Risk Management on IT security exposures, Ms. Camp found that most risk managers now are informed about the issues but "feeling a little overwhelmed with what they don't know."

Major factors of that awareness come from the enterprise risk management approach that is putting greater emphasis on unfunded risk, including IT exposures, because of the Sarbanes-Oxley Act corporate governance law that requires senior management to certify financial reports.

Ms. Camp believes that IT departments "are very good at identifying true IT risks," but risk managers can spot other exposures. For example, she said, the IT staff would see the technical risks of making patients' rooms computer accessible, but may not consider that it could create a stressful environment for patients who are supposed to be resting rather than working.

—By Roseanne White Geisel

## Enterprise risk manager needs technology grounding

Jeff Stolle has dealt with technology issues for many years. But the risk manager is in his current post because he also has a background in enterprise risk management.

Mr. Stolle, who is director of risk management at Career Education Corp. in Hoffman Estates, Ill., was hired in March to lead the ERM initiative that the board of directors espoused.

One of Mr. Stolle's first meetings after joining the company, which hosts online universities among other activities, was the steering committees on IT disaster recovery and identity theft/privacy concerns, he said. The risk management department chairs those steering committees.

Technology "is something that risk managers need to understand, especially if they want to be truly an enterprise risk manager" because IT impacts all aspects of a company, said Mr. Stolle, who chairs the Risk & Insurance Management Society Inc.'s Technology Advisory Council.

Risk management depart-

ments can function in an oversight role, "making IT think from an enterprise perspective" and understand how the IT operation and exposures tie into the business and shareholder value, he said.

Just as Mr. Stolle currently is doing for his company, risk managers can develop metrics to assess IT security processes.

The actual IT security plan, on the other hand, should be written by the chief information officer and the IT security team. Risk managers can review the plan, but the technical aspects and how the plan would be executed must be left to the experts, he said.

Mr. Stolle gained his ERM background at American Electric Power in Columbus, Ohio, where he served as principal analyst in the risk management department from 2000-2005. During that time, "they had a robust ERM program" with both the chief risk officer and chief security officer sharing responsibility for IT security, he said.

—By Roseanne White Geisel

## Insurance options vary as much as cyber attacks

*Despite major data breaches, businesses slow to seek coverage*

By DAVE KAISER

So-called cyber attacks threaten businesses of all sizes, yet business use of various insurance products to protect against such attacks substantially differ among insurers, industry experts say.

According to American International Group Inc., cyber attacks compromised nearly 90 million identities in the United States since 2005.

Of 200 data breach claims, AIG said 33% were from hacking, 25% were from stolen equipment, 10% were from missing or lost data, 7% were from dishonest insiders and 22% from "other security failures," with 3% unaccounted for.

"The victim must determine what happened, how information was accessed, what was accessed and if it was criminal," said Nancy Callahan, vp of AIG's identity theft and fraud division. "If it was criminal, they have to bring in law enforcement."

"The sheer magnitude of the loss of almost 90 million customer records and the variety of causes is shocking," Ms. Callahan said. "It's urgent to protect middle-market

companies and small businesses against the aftermath of an identity breach theft."

Experts estimate indirect costs for lost productivity from stolen or misplaced data average \$15 per customer record, while lost customers and recruiting new customers costs \$75 per customer record.

Ms. Callahan said the average total cost of an information breach is \$50 million.

Data security breaches pose an enormous threat and cost businesses a huge amount of money, said Kate Armfield, co-chair of RiskProNet International's marketing/placement practice group, a network of 28 independent brokers in the United States and Canada. She is also principal-account marketing at brokerage Armfield, Harrison & Thomas Inc. in Leesburg, Va.

### Examine differences

"We have reviewed multiple forms that provide this type of coverage and caution there are differences that need to be reviewed during the placement process," Ms. Armfield said. "Some, for example, provide coverage for 'Dumpster diving' or data from stolen laptops and others do not."

Businesses have been slow to buy technology and cyber liability cov-

Continued on next page

CONTINUED FROM PREVIOUS PAGE

erage for several reasons, said Patrick Deaver, vp of operations at digital media company i-Mark Inc. in Holly Springs, N.C.

"This is still a concept. There is a lack of awareness due to slow roll-out and penetration among business insurers," Mr. Deaver said.

"Where the coverage has been promoted, the value of the coverage has yet to exceed the cost. The insured is still willing to accept the risk of exposure due to a lack of monumental cases that illustrate true impact dollars resulting from security breaches," Mr. Deaver said.

Kirk Sexton, former chief information officer with CHOICE Medical Management Services L.L.C., a

trading partners to carry a minimum of a \$10 million policy as well."

Data security breach coverage can be purchased as part of a technology liability policy or on a stand-alone basis, said Joshua Gow, vp of Philadelphia-based ACE Professional Risk, a unit of ACE USA.

"We are seeing a lot of demand from a lot of industries that do not have full-line professional liability exposure like retail, hospitality, restaurant chains," he said.

"Companies outsource a ton of different tasks from payroll to accounting to consulting contracts and call centers," Mr. Gow said. "The natural result is that they are taking their confidential client information and entrusting it to

third parties."

"If I am entrusting my payroll to an outside company, I say, 'Fine, as part of our contract you are required to maintain \$5 million coverage in private liability limits,'" Mr. Gow said.

Data security policy limits are available from \$1 million to \$50 million.

#### Responsible outsourcing

"It's a matter of going in and transferring liability," Mr. Gow said. "Even though I have outsourced that service to a third party, if that third party loses my customer data, the customers are going to sue me. I'm the one who trusted this third party to handle the data."

"So I want my own insurance and

I want them to have insurance to subrogate against in case there is a problem," Mr. Gow said.

Numerous insurers write data security coverage.

Mark Ware, director of IMA Financial Group Inc.'s technology industry practice, a Denver-based brokerage, said the market penetration is low because some brokers do not understand the issue and companies with strong information technology departments think they are beyond claims.

"Cost of such insurance depends on what a company considers to be its exposure," said David Halstrom, an underwriter at Beazley Group P.L.C. in Farmington, Conn. "A risk manager and a company protecting stakeholders (are) going to have

elaborate and technologically related controls available to fend off these risks.

"It's going to be a risk/reward related to the premium vs. the protection you get," Mr. Halstrom said. "Also, it is a matter of do you include that into your total risk management process as a risk manager."

"There are a lot of moving parts to these issues. At the end of the day, the good guys in network security are having trouble keeping up with the bad guys," Mr. Halstrom said. "At the end of the day, that is when insurance is there to protect against those types of situations, where the companies we insure did all that they could, but weren't able to fend off."

**'At the end of the day, the good guys in network security are having trouble keeping up with the bad guys.'**

David Halstrom, Beazley Group P.L.C.

Tampa, Fla.-based workers compensation and disability management services provider, has used data breach insurance provided by Unisource Administrators Inc., its parent company in Sarasota, Fla. Mr. Sexton, now an independent consultant, said data breach claims were part of a roll-up technology/Internet rider attached to a general liability policy.

"There were some general conditions that we put into internal policy that helped protect ourselves and lower the premium cost as well," Mr. Sexton said. "Among those were the policy of requiring our

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## Q&A: Common-sense IT security tactics

CONTINUED FROM PAGE 26

information loss of 250,000 credit cards. They assumed that the company that provided their software had encrypted everything and it came as something of an unpleasant surprise when their IT people discovered that it was not encrypted.

**Q: Have you found that companies have had problems—either correcting the breaches or trying to compensate for the fact that there have been breaches—criminally or civilly?**

We had one client, a financial ser-

vices company, that had a hacker get through their firewall. They thought that the firewall had closed off certain holes that a hacker could get into, but because of the way their code was written, the hole had been reopened. And we showed them how to fix it.

About four months later, we get another call from the same organization and we go there and discover they had another breach, a lot more serious this time. When we do the root-cause analysis, we discovered they never fixed the hole and the next hacker came through the same well-documented, well-understood and very fix-

able hole.

**Q: Describe some of the more unusual security breaches you've seen.**

We get some that actually make you shake your head—people who believe what they're told even when it doesn't make sense. Somebody is told that a visitor has shown up and is picking up the laptop of a vacationing executive. They give it to them. They walk out the door and you later discover that the executive didn't expect anybody to be picking up their laptop. It just got stolen with all of the company's information on it.

## Investments: Quality focus urged for Canada sponsors

CONTINUED FROM PAGE 4

invest in low-risk securities, he said.

Research by Columbia University has shown that for every 10 additional funds offered to plan members, allocations to money market funds increased about 4%, while allocations to money market and bond funds combined increased about 5.4%. In contrast, allocations to equity funds dropped about 7%, the research found.

Rather than focusing on the quantity of fund options, plan

sponsors should concentrate on the quality of the funds, ensuring that they offer funds that meet members' varying degrees of investment sophistication, said Nadia Savva, an account executive in Manulife's Group Savings & Retirement Solutions practice.

"Don't focus on the number," she said.

If plan sponsors believe their members are hands-off investors—those that either do not have the time or do not feel they have enough investment knowledge to properly select funds—they should

**'If I'm not a sophisticated investor, I don't have to think about it. Somebody is taking care of my investments for me based on a time horizon.'**

Nadia Savva, Manulife Financial

consider offering either asset allocation funds and/or retirement date funds, Ms. Savva said. The majority of CAP members likely fall into this category of investors, she said.

For asset allocation funds, employees complete a questionnaire to determine their risk tolerance and a prepackaged fund that meets their profile is selected, Ms. Savva said. Plan sponsors must realize, though, that members in asset allocation funds need to periodically reassess their investment profile because their risk tolerance will likely change over time, she said.

Retirement date funds are new to the Canadian marketplace, but may be a viable option for individuals who are unable or unwilling to choose among the numerous investment options, she said. For a retirement date fund, a member chooses a retirement date and invests in a fund that closely matches that date. The asset mix automatically rebalances and becomes more conservative as the retirement date approaches. "If I'm not a sophisticated investor, I don't have to think about it," Ms. Savva said. "Somebody is taking care of my investments for me based on a time horizon."

A high percentage of employees have their investments automatically enrolled in the default option, some operating under the belief that the plan sponsor chose that option because it makes the most sense, she said.

If plan sponsors think their members will simply default to a plan rather than making an informed decision, they may want to consider a balanced fund or a retirement date fund as the default option, she said. A balanced fund is a mutual fund that buys a combination of stocks and bonds to provide income and increase capital value but avoids excessive risk.

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## Ontario's pension commission to explore updating plan regulations

**TORONTO**—Ontario's pension legislation is overdue for a major revamp that addresses the pressures driving employers away from defined benefit pension plans, a Canadian pension expert says.

The Ontario Expert Commission on Pensions is taking a hard look at the Ontario Pensions Benefits Act, which has not changed substantially since 1988 despite an aging workforce, the repeal of mandatory retirement in the

province and the volatility of defined benefit plan costs that has led a number of Canadian employers to switch to defined contribution plans.

The statute "needs updating," said Robert Brown, director of research for the commission, a professor of actuarial science and director of the Institute of Insurance and Pension Research at the University of Waterloo.

The commission also is exploring the role of Ontario's pension

guarantee fund, considering whether it is still appropriate in its current format, how well it is funded and what impact the fund has on defined benefit plans in the province, Mr. Brown said at the Assn. of Canadian Pension Management's regional conference in Toronto on May 9th.

Ontario is the only Canadian jurisdiction with a pension guarantee fund.

A critical issue that the commission will address relates to the dis-

pute over who owns plan surpluses, which has been the basis of extensive litigation for employers in Ontario, he said.

Many issues, while critical to the health of defined benefit plans in Ontario, may be outside the commission's jurisdiction, Mr. Brown noted. Any discussion on funding, for example, would be incomplete without mentioning that federal tax laws limit contributions that employers can make to their plans.

"That is one of the issues we are grappling with," he said. "Where is our fence and where would we like it to be?"

The commission will hold public hearings in Toronto Oct. 17-19 to give stakeholders an opportunity to present oral arguments relating to pension issues. The commission will file its report with Ontario Minister of Finance Greg Sorbara in the summer of 2008.

—By Gloria Gonzalez

## Toronto hosts conference

**TORONTO**—More than 90 people attended the Assn. of Canadian Pension Management's May 9 regional conference, "Threats to Income Protection: Where are they coming from and how do we mitigate them?" in Toronto.

The event featured sessions on employer and employee views on retirement plan design, employee investment knowledge and behavior in capital accumulation plans, and the future of pension plans in Ontario.

The organization will hold its national conference Sept. 10-13 in Charlottetown, Prince Edward Island.

—By Gloria Gonzalez

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# Risk cost: Hinges on finding efficient nexus of retention vs. transfer

CONTINUED FROM PREVIOUS PAGE

companies, often can provide their capital at a lower cost than can the company considering the huge risk retentions. This might sound counterintuitive, especially in light of the fact that most large firms faithfully follow the orthodoxy. The problem, of course, is that without a way to calculate a capital charge for your hedging strategy, there is no way of knowing where the most

efficient nexus of risk retention and transfer exists.

### Current practices

A quick review of current practices illustrates the problem. Most large companies retain most of their actuarially expected losses, as well as significant amounts of risk for which no predictive methodology exists; directors and officers liability is one example:

Company A purchases \$100 mil-

lion of D&O insurance for \$3 million in premium, in excess of a \$10 million deductible. In total, Company A has \$107 million in risk capital from two sources of capital: retained losses (equity) and purchased insurance limits, and one use of capital—the insurance premium. Let us further assume that Company A is a public company. As we know, public companies' stock prices should reflect all of the risks investors assume when purchasing

the stock. This is the basis upon which all markets operate.

In this case, however, the shareholders are unaware that a significant D&O loss may impair the company's equity, as the chief financial officer did not include an appropriate capital charge, also known as a risk premium, in the company's weighted average cost of capital. So the stock price does not reflect its potential.

We can debate the relative mate-

riality of the amount of additional risk created by the potential D&O loss, but it exists nevertheless.

As I noted above, a risk capital charge involves more than just retained risk; it should reflect the company's entire hedging strategy. In the next article I will discuss the concept of *marginal utility*, its impact on the retention/transfer decision and its importance in calculating a capital charge for insurable risk-hedging strategies.

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# International NEWS



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The cause of the crash of a Kenya Airways jet earlier this month is still under investigation.

## Cameroon crash unlikely to affect airline rate drop

*Liability depends on nationality, ticket of passengers*

By STACY SHAPIRO

**DOUALA, Cameroon**—The crash of a nearly new Kenya Airways Boeing 737-800 jetliner in the swamps of Cameroon earlier this month killed 114 passengers and crew in what was the ninth insured airline incident this year.

The crash is not expected to change the continued decline in insurance rates in the aviation market, market observers say.

Rates should continue to slide in double digits as they did in the last quarter of 2006 when more than 70% of the world's airlines renewed their insurance programs, brokers say. The rates dropped by 20% during April 1 airline renewals, before the Kenya Air disaster.

Kenya Airways Flight KQ507 to Nairobi, Kenya, crashed shortly after takeoff from Douala Airport in Douala, Cameroon, on May 4. All 105 passengers and nine crew died in the disaster. The aircraft is valued at \$52 million, sources in the London market said.

Though it took two days to find

the crash site, the jetliner plummeted only three miles from the end of the runway. Experts have speculated that there may have been an unseen storm cell just off the runway that caused the disaster. However, other reports have said that both engines failed on takeoff. Official investigators are still searching the wreckage for clues.

The Boeing 737-800 aircraft has an excellent safety record, according to aviation data analysts Ascend, part of the Airclaims Group of Cos. in London.

Most of the passengers on the Kenya Airways flight were from Cameroon, South Africa, and other African countries, though some were from Europe, India, China and the United States, news reports say.

The liability loss will depend on each passenger's nationality and/or ticket, which will dictate what international convention applies to damages as a result of the death, of a passenger, legal experts say.

For some passengers, the Warsaw Convention will apply which would limit liability to 100,000 Special Drawing Rights (\$152,144) per passenger unless willful misconduct can be proved. For others, the Montreal Convention could apply,

See **CRASH** page 35

## Proposed pollution cover criticized

*German buyers group says insurers must address gaps in model wording*

By RICHARD MILLER

**BONN, Germany**—Germany's commercial insurance buyers association says there are shortcomings in a new model wording to cover exposures under the European Union's Environmental Liability Directive—and it is up to insurers to address the gaps.

The Bonn, Germany-based Deutscher Versicherungs-Schutzverband e.V., or DVS, gave a presentation at a May 9 committee meeting on the nonbinding insurance model developed by the Berlin-based Gesamtverband der Deutschen Versicherungswirtschaft e.V., Germany's insurance association.

The model—officially unveiled at the end of April—is designed to be a basis for German insurers to create products to cover the new exposures under the E.U.'s Environmental Liability Directive.

While the DVS commended the GDV on developing the model wording, it said that the model falls short in some areas.

"Not surprisingly, the approach

taken in the model is rather cautious, and a number of points will need further discussion, especially the limitation of the cover to sudden and accidental incidents," said Günter Schlicht, managing director of the DVS, last week.

The GDV model, he noted, excludes environmental damage resulting from the normal operation of a plant for which companies are liable under the new liability system.

"At this point the cover offered is not sufficient," Mr. Schlicht continued.

"It is now up to the market, to the individual insurers, to develop concepts which fully meet the clients' needs," he said.

Another area of concern expressed by at least one German risk manager—and echoed by Mr. Schlicht—is the model's apparent exclusion of product-development risk.

The directive, which E.U. member states were supposed to transpose into national law by April 30, provides a common framework for

the prevention and remediation of environmental damage to natural habitats and resources. The directive imposes tough new requirements on cleanup, such as restoration of biodiversity, which up to now have not been covered by insurance, experts have noted. However, in light of the directive, some specialty environmental insurers say they have adopted wordings to handle the new liabilities.

Germany transposed the directive in a new environmental liability law passed at the end of March, but the law will not go into force until later this year.

The GDV's model goes beyond what is currently available in the German market, experts said, but brokers and specialty insurers have previously pointed out that any policy using the model wording would not fully cover the liabilities under the directive.

Under the model, the GDV is suggesting the insurance industry cre-

See **POLLUTION** page 35

## Outgoing FSA chief executive urges 'lead regulator' for insurance in E.U.

By ETTIE SCHMITT

**LONDON**—John Tiner, outgoing chief executive of the Financial Services Authority, urged the European Commission to move towards a more unified approach to insurance regulation, in a speech to insurers earlier this month.

"Moving towards a 'lead regulator'—as the United Kingdom has proposed—will reduce the regulatory duplication and, hence costs, reduce the cost of capital, foster access to all markets across the Union and make our firms more competitive globally," he said.

Mr. Tiner argued that Solvency II, the risk-based capital regulatory system for insurance slated for introduction in 2010, offered the industry "a unique opportunity...to break out of the old fashioned, some might say protectionist, system of single entity prudential supervision," to move towards a lead regulator for insurance, which, he said, would be cost efficient.

Mr. Tiner said that, "one significant benefit of the Solvency II pro-



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John Tiner will step down as FSA chief executive July 1.

posals is that they better align regulatory capital with the economic capital needs of the business," because that reduces the costs of capital for firms.

Mr. Tiner will step down as chief executive of the London-based FSA, the U.K. insurance regulator, in July.

In a speech to the Assn. of British Insurers' annual conference in Lon-

don, Mr. Tiner summarized his achievements of the last six years in relation to the solvency system and the regulation of Lloyd's of London.

Mr. Tiner paid tribute to the management of Equitas Ltd., the runoff reinsurer for the pre-1993 longtail liabilities of Lloyd's syndicates, for reaching a deal with a unit of Berkshire Hathaway Inc. to assume Equitas' liabilities.

He said "through their management of the run-off of liabilities over the past few years and by closing the deal...they have significantly reduced the risks—to names, policyholders and Lloyd's—from one of the darkest chapters in the history of Lloyd's."

In addition, Mr. Tiner called for more to be done in relation to the "unreasonable imposition" made by the collateral requirements for inward business to the United States and said that the progress was "painfully slow." He said that a change in the requirements would increase reinsurance capacity in the United States and reduce premiums.

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# News In Brief

CONTINUED FROM PAGE 1

addition to the payment, which includes a \$6 million penalty, the insurer agreed to comply with the business practice guidelines it established in 2004 after the insurance industry investigations spearheaded by then-New York Attorney General Eliot Spitzer. To settle those investigations by New York and other states, in April 2006, ACE agreed to pay \$80 million in restitution and penalties related to its participation with Marsh Inc. in rigging excess casualty bids and for executing half a dozen allegedly sham reinsurance contracts designed to improperly enhance earnings.

## OSHA to inspect 4,150 high-hazard sites

The Occupational Safety and Health Administration will focus this year's site-specific targeting plan for unannounced comprehensive inspections on about 4,150 high-hazard worksites, the agency announced. "Over the past nine years, OSHA has used a site-specific targeting inspection program based on injury and illness data," Assistant Secretary of Labor for OSHA Edwin G. Foulke Jr. said in a statement announcing this year's program. "This approach allows us to focus our enforcement efforts on those workplaces with the highest numbers of injuries and illnesses."

## AIG, Mass. reach Big Dig workers comp settlement

American International Group Inc. agreed to pay \$58.5 million to settle accusations that it failed to pay surplus workers compensation funds to Massachusetts. An investigation by the Massachusetts attorney general's office found that AIG failed to pay certain surplus monies, related to residual market pool coverage, to the state as required under its contract as the workers comp insurer for the Central Artery Tunnel Project—a massive transportation project known as the Big Dig. AIG has been the workers comp insurer for the project that began in 1991.

## ERISA doesn't pre-empt misrepresentation lawsuit

An employee who gave up certain benefits when he switched jobs based on his new employer's misrepresentation of his monthly pension can seek damages without his lawsuit being pre-empted by the Employee Retirement Income Security Act, said a federal appellate court. According to the May 8 decision by the 6th U.S. Circuit Court of Appeals in *Dr. Dale Thurman vs. Pfizer Inc.*, Dr. Thurman, a veterinary pathologist, was told if he joined Pfizer Inc., he would receive about \$3,100 a month in a pension allowance. Relying on Pfizer's promised benefits, Dr. Thurman left his former job. But he was told shortly afterwards that the pension information he had received was incorrect, and that he would receive only \$816 in monthly benefits.

## Ontario court rules mosquito bite an accident

A man who contracted West Nile virus suffered an accident and is entitled to damages under his group accident insurance policy, an Ontario appeals court ruled. Being bitten by a mosquito carrying the West Nile virus constitutes an unforeseen, unexpected event caused by an external source—the mosquito—that falls within the ordinary definition of an accident, according to the decision.

## Wash. governor signs paid family leave bill

Washington State Gov. Christine Gregoire signed into law last week a measure that will require employers to offer employees up to five weeks of paid leave after the birth or adoption of a child. Effective Oct. 1, 2009, employees becoming new parents would be entitled to receive up to \$250 a week for up to five weeks. The law, though, does not identify how the new benefit would be funded, leaving it to a state task force to address the issue in the future.

## Willis relocates New York offices

Willis Group Holdings Ltd. has moved to a new location in New York. Effective May 21, Willis is at: One World Financial Center, 200 Liberty St., New York, N.Y. 10281. E-mail addresses for Willis associates are unchanged, but telephone and fax numbers are new. Willis' main phone number is 212-915-8888.

# Tyco: D&O rates expected to fall despite \$3B settlement

CONTINUED FROM PAGE 1

Tyco officials who have not been convicted of crimes for their roles in the scandal, sources said.

Warren, N.J.-based Chubb Corp. leads the coverage. American International Group Inc. of New York and Bermuda-based ACE Ltd. participate on excess layers, sources say.

Chubb unit Federal Insurance Co. filed suit in New York state court in January 2003 in an effort to rescind its coverage, arguing that Tyco had obtained coverage on the basis of fraudulent financial disclosures. But

rates are falling 10% to 15%.

"I would be shocked if underwriters didn't reserve their full limits years ago," said Steve Shappell, managing director of the legal and claims practice for Aon unit Aon Financial Services Group in Denver.

As a result, "this really should have zero impact on the D&O market," he said.

Plus, the loss does not skew the market's loss expectation for 2007, Mr. Shappell said. It would be the sixth full-limits loss this year, so "we're pretty much on pace" with the number of full-limits losses over the past few years, he said.

"In our view, it's not something that makes us re-examine the marketplace or our strategy," said Carol A.N. Zacharias, senior vp and chief counsel for ACE USA in New York.

As for the marketplace, "I think it's already had its impact," Ms. Zacharias said.

Much of the impact has been a change in risk managers' buying habits, she said, pointing to the recent popularity of Side A-only towers of limits and the elimination of professional liability and employment practices liability coverages from D&O programs.

While the settlement "obviously takes everyone's breath away, it's not totally unexpected," said Lou Ann Layton, a managing director and the national D&O practice leader for Marsh Inc. of New York.

Ms. Layton said the market might have tightened somewhat if another company had announced a similar settlement that underwriters had not expected.

Despite the market's expectation of the Tyco loss, it still is "a little bit of a wakeup reminder that significant cases remain outstanding," said Gary Dubois, a New York-based senior executive with Bermuda-based Ariel Reinsurance Co. Ltd.

But, Mr. Dubois, who is working on setting up a U.S. operation for Ariel, said he "certainly doesn't see the announcement changing the competitive environment" of the D&O marketplace through next year's January renewals, "absent other external factors."



Former Tyco CEO Dennis Kozlowski leaves court in New York in June 2005 following his conviction on charges of looting the company.

Federal halted that effort five months later, after Tyco paid a total of \$92 million of additional premium to its D&O insurers to maintain and extend coverage (*BI*, May 19, 2003).

London-based Willis Group Holdings Ltd. placed the coverage.

Tyco's D&O coverage would amount to less than 10% of the cost of the company's settlement, which must be approved by a court. But, the settlement still results in a full-limits loss for the D&O market. In addition, the loss far exceeds the 2006 average settlement of \$86.7 million, according to figures developed by Securities Class Action Clearinghouse, a joint project between Stanford Law School and Cornerstone Research of Boston (*BI*, Jan. 8).

### Declines up to 15%

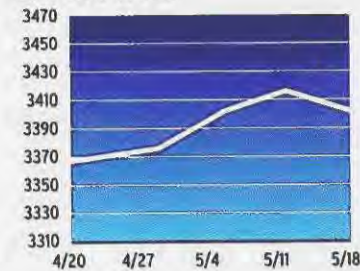
Even so, market experts say they do not expect the loss to have any impact on the D&O market, where

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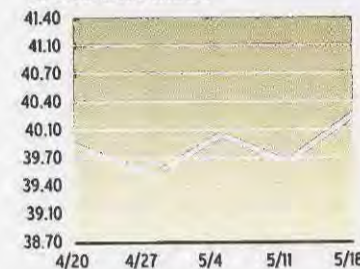
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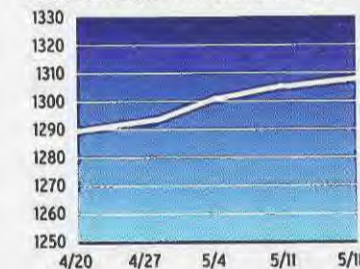
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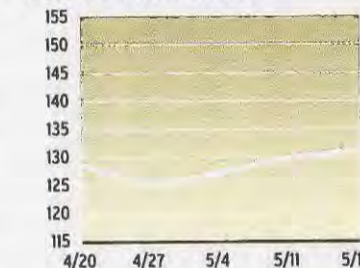
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DOW JONES	13556.53	1.73%
S&P 500	1522.75	1.12%

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Markel Corp.	5.04%
Aetna Inc.	4.60%
Citi	3.56%
Everest Re Group Ltd.	3.15%

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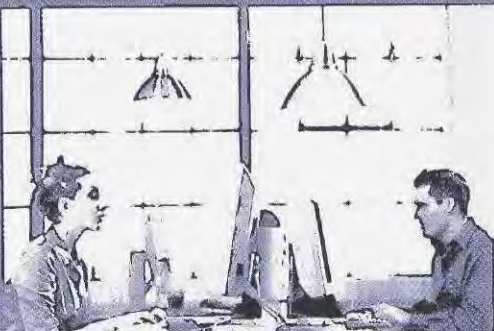
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# Business Insurance END PAGE

Contributing:  
Judy Greenwald,  
Rupal Parekh,  
Sally Roberts,  
Joanne Wojcik

## Irate doctor swears off lawmaker patients

One doctor is so irate over Oklahoma Gov. Brad Henry's veto of a medical malpractice reform bill that he's vowed to never accept anyone as a patient, unless it's an emergency, who has voted against lawsuit reform. And he's urging other doctors to do the same.

"They can go to Texas for their surgery where doctors are not victimized by the malpractice lawyers," wrote Dr. Peter S. Hedberg in an op-ed piece sent to several newspapers, in an attempt to grab state lawmakers' attention.

The doctor said he pays more than \$72,000 a year in medical malpractice premiums, a sixfold increase over the \$12,000 he paid when he came to Durant, Okla., more than 10 years ago. Never, he said, has he had a claim.

"We doctors in Oklahoma live in fear of losing everything we own in lawsuits. That's why so many of us are leaving the state," he wrote.

S.B. 507 would have capped noneconomic damages at \$300,000, eliminated joint and several liability, and abolished the collateral source rule.

In his recent veto message, Gov.



Henry said some provisions were unconstitutional and restricted state ability to seek justice through the court system. He said he would work with sponsors of the bill on a compromise.

In an interview, Dr. Hedberg said that because Durant is a rural area, going on strike would not have gotten the attention of lawmakers. "So I did sort of a targeted strike."

He noted that while he has cared for one family member of a state legislator, he currently is not treating any.

"It certainly has gotten some attention," he said of his pledge. While some responses have been angry, he said he's also heard from two other doctors in the community who plan to follow suit.

Durant Rep. John Carey and Sen. Jay Paul Gumm, both Democrats, voted against S.B. 507.

"I don't really have a comment. I think the letter speaks for itself," Rep. Cary said.

Sen. Gumm declined comment, but reportedly said: "I think it is probably fair to say that at this point it is good that he is not my doctor, nor does he treat any member of my family."



Aon's Gregory C. Case (left) and Aspen Insurance Holdings' Chris O'Kane rang the NYSE closing bell last week.

## Industry anniversaries ring out at the NYSE

The insurance industry was popular on Wall Street last week, as two top executives were invited to the New York Stock Exchange to ring the closing bell on separate days.

First, Aon Corp. President and Chief Executive Officer Gregory C. Case rang the closing bell May 14 to honor the 20th anniversary of the day that the Chicago-based brokerage's shares started trading under the Aon banner on the NYSE.

Then Chris O'Kane, CEO of Hamilton, Bermuda-based Aspen Insurance Holdings Ltd., rang an end

to the NYSE's trading day May 16 to celebrate the fifth anniversary of Aspen's existence.

"It's five years since the foundation of the company, two and a half years since I was last on the floor of the New York Stock Exchange (on the day Aspen went public)...and we have done a lot in that time," Mr. O'Kane remarked in an on-air interview after he rang the bell. "We started with 39 staff. Today it's about 440. We started with a very narrow, focused book of business on property catastrophe risk. Today we are a diversified player."

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## Libel-proof? Not this convicted criminal

Some people have such a bad reputation that they're "libel-proof," but that's not the case for a convicted criminal, the Massachusetts Supreme Court has ruled.

The case involved Terry T. Thomas, who sued Telegraph Publishing Co., a reporter and the publisher of the Nashua Telegraph, and police for a 1999 article that said he was suspected of 1,000-plus burglaries since the mid-1970s.

Mr. Thomas' suit claimed 58 of the article's 90 statements were defamatory.

A lower court ruled Mr. Thomas, now imprisoned in New Hampshire on charges of receiving stolen property, was "libel-proof." But a Massachusetts Supreme Court panel disagreed in its May 1 decision in *Terry T. Thomas vs. Telegraph Publishing Co.*

"A convicted criminal may have such a poor reputation that no further damage to it is possible at the time of an otherwise libelous publication," but Mr. Thomas is not "libel-proof," the state Supreme Court ruled.

Triggering issue-specific libel requires publicity, which the court said "is often the means...and the most effective evidence of that damage." But with one article and no other reportage cited, "no such publicity is present in this case."

The high court reversed the lower court's summary judgment on some points, and said it is up to a jury to determine the "substantial truth" of the newspaper and police characterizations of Mr. Thomas.

The high court did uphold other lower court rulings, including denying Mr. Thomas' motion to amend his complaint to hold police cited in the article personally liable for any potential damages.



## Whittle while you work

Researchers at Mayo Clinic in Rochester, Minn., have designed a vertical workstation fixed to a treadmill that enables desk jockeys to get a workout during their workday.

The walk-and-work desk is the brainchild of Mayo Clinic researcher Dr. James Levine, an endocrinologist who wanted to create an office environment that prevents desk spread and instead transforms obese employees into lean working machines.

In testing the device on 15 overweight people who had sedentary jobs and never exercised, Dr. Levine and his team of researchers found that the workers burned about 100 calories an hour—twice their normal metabolic rate. So walk-working an entire eight-hour shift has the potential of burning an extra 800 calories per day, leading to a weight loss of more than 50 pounds a year.

Surprisingly, none of the participants suffered injuries during the experiment, and most needed only a few minutes to get used to it, researchers said.

The desks are also fairly economical, costing less than \$2,000 apiece, plus the cost of a treadmill.

Dr. James Levine and Mayo Clinic colleagues combined a desk with a treadmill as one part of their Office of the Future efforts.

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