

# Business Insurance

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\$5

## Late News

### Duperreault to retire as ACE chairman

ACE Ltd. Chairman Brian Duperreault will retire from the company on June 1. Mr. Duperreault—who joined Hamilton, Bermuda-based ACE in 1994 as chairman, president and chief executive officer—will continue to serve as nonexecutive chairman of the board, ACE said. During his time as head of the insurer and reinsurer, ACE significantly expanded its lines of business and geographic reach, in large part through its 1999 acquisition of the property/casualty business of CIGNA Corp.

### Blumenthal, R.C. Knox settle pay probe

Broker R.C. Knox & Co. Inc. will pay more than \$750,000 to settle allegations by Connecticut Attorney General Richard Blumenthal that it improperly accepted contingent commissions from insurers in connection with fee-based insurance placements for the state. Hartford-based R.C.

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## Stock-option probes spark D&O concerns

### Underwriters wary over compensation practices

By RUPAL PAREKH

**NEW YORK**—Regulatory scrutiny over stock-option practices will trigger more intense questioning from directors and officers liability insurers at renewals, market sources say.

Several high-profile companies, including managed care giant UnitedHealth Group Inc. of Minnetonka, Minn., have come under fire for their options practices—including alleged backdating—spurring a flurry of shareholder lawsuits, management shake-ups and possible earnings restatements at the firms in question (see box, page 26).

The Securities and Exchange Commission and the U.S. attorney's office in the Southern District of New York have launched separate stock-option probes into several

companies, and observers expect that additional companies will be implicated. Spokespeople for the SEC and the U.S. attorney's office declined to discuss their investigations into the matter.

The D&O market is not expected to make significant changes to policy terms and conditions as a result of the probes, but insurers likely will increase underwriting diligence regarding options practices, brokers and insurers say.

"Compensation issues have become more prevalent in the underwriting process than they have in the past, and this is a hot compensation topic," said Steve Shappell, managing director in Aon Financial Services Group's legal and claim

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Airlines in Asia are drawing on their experiences in the 2003 SARS outbreak to prepare for a possible avian flu pandemic.

## Airlines get ready to defend against avian flu outbreak

By J. NILS WRIGHT

Often viewed as the likely vehicles to transport avian flu across borders should the virus mutate into one that is easily passed between humans, many airlines in the Asia-Pacific region are preparing for the worst.

Building on their experience of reacting to the severe acute respiratory syndrome—or SARS—epidemic that hit Asia in 2003 killing nearly 800, according to the World Health Organization, many of the airlines have put together contingency plans for future virus-related crises.

"Most corporations, airlines especially, are using business continuity planning," said Ryad Dhahi, Marsh Inc.'s Hong Kong-based avian flu taskforce leader for Asia. "And prevention is probably one of the most important parts of their plans. They'll use the same strategies that they used in 2003 with SARS."

Airlines in the region are likely

the most prepared of all businesses to deal with an avian flu threat, according to Mr. Dhahi. And East Asian corporations as a whole appear to be concentrating more resources on battling a potential outbreak compared with their counterparts elsewhere, according to a recent study by Mercer Human Resource Consulting. Mercer found that 25% of companies surveyed in Asia reported that they had allocated budgets for a possible pandemic, compared with 12% in Europe and 7% in the United States. (BI, April 3).

In countries that were affected by SARS—Canada, Hong Kong, China, Taiwan, Singapore and Vietnam—58% of respondents reported that they had already taken steps in planning for a deadly flu epidemic.

Airlines would, in part, rely on high-efficiency particulate air recirculation filters, which sift out airborne contaminants,

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## Health plan wins fight over costs recovery

### Ruling benefits employers

By MARK A. HOFMANN

**WASHINGTON**—The Supreme Court's ruling last week holding that health benefit plans can seek reimbursement of medical expenses from beneficiaries who receive third-party settlements is good news for plans and the employers that sponsor them, say benefits experts.

In its unanimous decision in *Joel Sereboff et ux. vs. Mid Atlantic Medical Services Inc.*, Chief Justice John

Roberts wrote that the Employee Retirement Income Security Act considers such reimbursement equitable relief. The case arose when Joel Sereboff and his wife, Marlene, suffered injuries in a car accident in California. Ms. Sereboff's employer-provided health care plan covered their medical costs, but the Sereboffs sued several third parties in connection with the accident and ultimately received a tort settlement of \$750,000.

MAMSI, which administered Ms. Sereboff's employer's plan, sought reimbursement for the \$74,869 in benefits it had paid the couple.

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Court rules for policyholder in WTC business interruption claim.

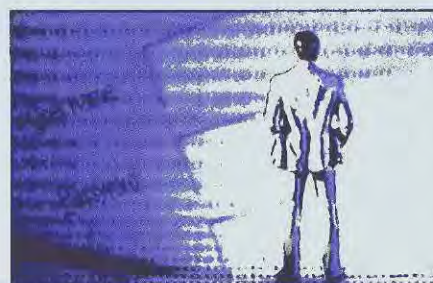
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### A GOOD START

P/C insurers report profitable first quarter.

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Leading Risk Management Information Systems

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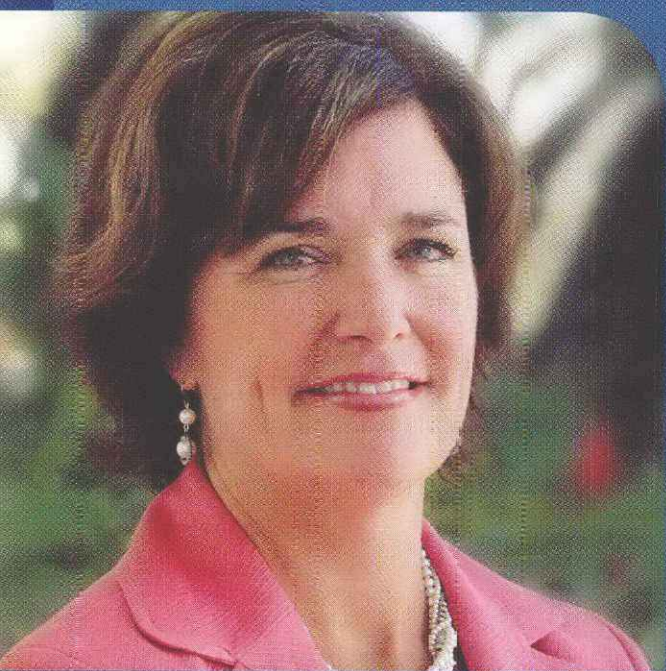
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# “HOW CAN WE GET CONTROL OF OUR RISK DATA?”



Kathy Burns is the CEO of Aon's eSolutions Group in Aon Risk Services – Americas. You can reach Kathy at +1.312.381.3092 or [kathleen\\_m\\_burns@aon.com](mailto:kathleen_m_burns@aon.com).

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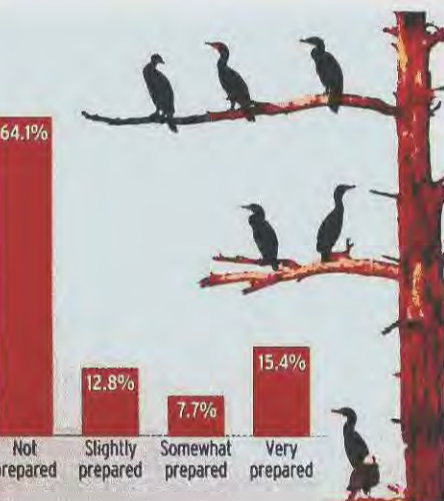
An editorial says backdating stock options invites increased scrutiny.  
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## Online poll - [ 5/15 - 5/19 ]

How prepared is your employer for an avian influenza pandemic?



Participate in *BI's* online polls at [www.businessinsurance.com](http://www.businessinsurance.com).

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

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# Investments boost P/C results

## First-quarter profits up 13% over 2005

By JUDY GREENWALD

Restrained competition, strong investment returns and moderate catastrophe losses all contributed to a strong first quarter for commercial property/casualty insurers, a trend that is expected to continue throughout the year, barring major catastrophes, say observers.

"The industry is off to a good start in 2006," said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry.

Nearly all the insurers "posted very strong investment income results," either in the form of increased investment income or capital gains. Furthermore, "there are signs that underwriting discipline remains strong in the industry" despite the trend towards softening prices, said Mr. Ward.

The 14 insurers surveyed by *Business Insurance* posted a 13% increase to \$7.79 billion in net income for the first quarter vs. the comparable period a year ago. This compares with a

7.8% increase in 2005.

Among other results from *BI's* survey:

- Insurers reported a 90.4% combined ratio, vs. a 92.4% combined for 2005's first quarter.

- Net premiums written increased a modest 2.4%, to \$34.54 billion.

- Policyholder surplus for the 12 companies that reported this data increased 13.2%, to \$72.78 billion.

"It was definitely a very strong quarter," said John Iten, a director at Standard & Poor's Corp. in New York. "There were a lot of very strong earnings reports in the first quarter, and they benefited from a number of factors," including a light catastrophe quarter.

And, although rates in most lines seem to be declining, "that seems to have been offset, at least so far, by favorable development in terms of frequency of losses, so net, a lot of companies reported record underwriting results for the first quarter," said Mr. Iten.

Insurers met analysts' earning expectations for the quarter, said Michael Dion, senior equity analyst at Sandler O'Neill & Partners L.P. in New York. Results were helped by "a combination of better underwriting margins fueled by redundant reserve releases and higher

investment income, as a result of the increase in short-term interest rates, primarily."

James B. Auden, senior director at Chicago-based Fitch Ratings, said, "The first quarter doesn't tell you much about the whole year because most of the surprises are in the third and fourth quarter, with catastrophe losses and reserve adjustments tending to be later in the year." Results are nevertheless encouraging, said Mr. Auden. "It's a demonstration that pricing's still adequate in the market."

Results have been helped by investment income and that trend should continue, say observers. Investment income has been a bright spot for the industry, said John D. Gwynn, managing director at Morgan Keegan & Co. in Memphis, Tenn.

"Companies have relatively short asset durations, and they've done that because two years ago, it didn't matter where you were on the yield curve. All rates were pretty darned low." Now, however, "a lot of companies are showing strong rates of growth in investment income, which is helping to ease the pain, obviously, of what is going on in the underwriting

Insurers are making changes in their operations after a rough year in 2005

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## Insurers maintain full coverage duties Oregon court rules

By DAVE LENCKUS

PORTLAND, Ore.—Reversing a trial court's pro-insurer decision, an Oregon appellate court has ruled that an allocation of a policyholder's loss among multiple insurers cannot leave the policyholder partially uncovered if the insurers have not agreed to pay their full limits.

Insurers maintain their full coverage obligations in such situations even if the policyholder has settled with other insurers on the risk for less than full policy limits, the appeals court unanimously ruled on May 17.

The decision generally aligns Oregon case law with Washington's and Wisconsin's but places it at odds with that in New York and New Jersey over the increasingly contentious coverage allocation issue, according to one policyholder attorney, who declined to be identified.

An attorney for Kansas City, Mo.-based Employers Reinsurance Corp., the only insurer in the Oregon case that has not settled with policyholder Cascade Corp. of Fairview, Ore., would say only that the insurer has not decided whether to appeal.

Cascade's attorney did not return calls.

A representative for a liability insurance group that filed an amicus brief in the Oregon case said she hopes the ruling is appealed.

"We think that the court made a mistake here," said Lau-

ra A. Foggan, counsel for the Complex Insurance Claims Litigation Assn. Policyholders should not be able to establish one insurer's liability in a settlement that is for less than the insurer's proportionate share of a loss and less than its full policy limits and then force a nonsettling insurer to cover more than its proportionate share, said Ms. Foggan, a partner with Wiley, Rein & Fielding L.L.P. in Washington.

The Oregon case stems from a federal court's decision that Cascade is liable for most of the cost to clean up groundwater on neighboring property.

Cascade sought coverage from numerous primary and excess general liability insurers and then sued them after it could not resolve its claim. Before the coverage trial went to the jury, Cascade settled with all but two insurers, including excess insurer Employers Re.

The jury ruled that the defendants owed Cascade the more than \$3.8 million the company sought. The remaining primary insurer then settled for its \$50,000 limit, leaving Employers Re as the lone defendant.

But, in entering the judgment, the trial court judge factored in a decades-old state Supreme Court precedent established in a case that resolved how two insurers should allocate a policyholder's loss



ABM Industries Inc., a janitorial services contractor for the World Trade Center, could recover more than \$127 million for business interruption losses stemming from the destruction of the buildings.

## Contractor can regain business losses: Court

### Claim arises from WTC destruction

BY ROBERTO CENICEROS

NEW YORK—The janitorial services contractor for the World Trade Center could recover up to \$127.4 million in business interruption payments after a federal court ruled that the company should be compensated for lost income for the "hypothetical length of time" required to rebuild the complex.

While the actual covered period will be decided by a jury, the recovery could be significantly more than if the claim was limited to the length of time it took WTC tenants to find alternative locations after the Twin Towers were destroyed by terrorist attacks on Sept. 11, 2001, as the company's insurer argued should be case.

The May 10 ruling is the latest twist in ongoing litigation between San Francisco-based ABM Industries Inc.—which contracted with Silverstein Properties L.L.C. and the Port Authority of New York and New Jersey to provide janitorial and building services in the WTC, employing more than 800 people there—and its insurer, Zurich American Insurance Co.

The decision departs from a 2005 federal appeals court ruling that struck down a lower court decision that business interruption losses for drugstore Duane Reade Inc. should continue until another store could be rebuilt at its former WTC site, noted Ed Joyce, a partner with Heller

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# Many workers don't take full 401(k) match

By JERRY GEISEL

A significant percentage of 401(k) plan participants aren't contributing enough to obtain the full amount of their employers' matching contribution, according to a study.

The study, conducted by Hewitt Associates Inc. of Lincolnshire, Ill., found that nearly 22% of 401(k) plan participants did not contribute enough to get the full company match. Typically, companies match 50% of employees' deferrals, up to the first 6% of pay.

## Money left on the table

Nearly 22% of 401(k) plan participants did not contribute enough to get the full company match.

22%

Source: Hewitt Associates Inc.

Additionally, about 30% of plan participants contribute just enough to get the full match, but don't put in more money even though their

plan gives them the right to do so.

The failure of employees to contribute as much as possible to their plans could mean that those individuals aren't saving enough for retirement, Hewitt said.

And that outcome is especially serious as more employers phase out defined benefit plans, which promise—based on employees' income and length of service—a fixed benefit and only offer defined contribution plans in which the final benefit is based on contributions and investment results.

The study found that employee

contribution rates are tied closely to salary and tenure. For example, employees earning between \$20,000 and \$39,999 a year contributed, on average, 5.7% of pay to their 401(k) plans. By contrast, employees earning between \$80,000 and \$99,999 a year deferred an average of 10.1% of salary to the plans, while those earning at least \$100,000 deferred an average of 10.3%.

Looking at tenure, the study found that employees working for employers for between two and three years deferred an average of 6.8% of pay to the plans. That com-

pared with an average deferral rate of 9.2% for those with 20 to 30 years of tenure and 9.8% for those with more than 30 years of service.

The survey is based on an analysis of 130 defined contribution plans administered by Hewitt. The plans have about 2.6 million participants.

Copies of the report, "How Well Are Employees Saving and Investing in 401(k) Plans, 2006 Hewitt Universe Benchmarks," are available for \$350 by contacting the Hewitt Information Desk at 847-295-5000 or [infodesk@hewitt.com](mailto:infodesk@hewitt.com).

## ERM plans cut costs, help risk managers bring added value

**CHICAGO**—Enterprise risk management is a process that not only can reduce loss costs but also offer competitive advantages, according to a panel of risk experts.

During an interactive panel discussion at the annual Harold H. Hines Jr. Memorial Symposium last week in Chicago, the speakers explored some of the advantages ERM can provide.

ERM is "embedding risk man-

agement services at Lockton Cos. Inc. in Chicago. "If we understand our risks better than our competitors, we can beat our competitors in a variety of ways."

"To the extent you're doing a better job managing risk, at the end of the day that allows you to take on more risk.... A well-managed risk is a competitive advantage," Mr. Kilburg said.

Dan R. Anderson, the Leslie P. Schultz Professor of Risk Management and Insurance at the University of Wisconsin-Madison School of Business, said the three main benefits to ERM are identifying risk areas, reducing the cost of those risks and increasing profits. "The first step in enterprise risk management is risk mapping. I can't imagine that's not a positive step for companies," he said.

ERM at Deerfield, Ill.-based Baxter International Inc. encompasses hazard, financial, operational and strategic risks, said Donald J. Sullivan, vp of risk management. "We don't want to create this to be a program. It has to be a process," he said. Any risk management program, whether focused on hazards or enterprisewide risks, must add value, he said. "Risk is what gives us reward at the end of the day."

Paul D. Winston, associate publisher and editorial director of *Business Insurance*, moderated the panel. The symposium is sponsored by the Chicago chapter of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*.

—By Regis Coccia

## Safety awareness is key

*Employees have role in ensuring healthy worksites*

By MARK A. HOFMANN

**WASHINGTON**—Employees as well as employers must assume some responsibility for workplace safety, according to an attorney specializing in occupational safety and health.

While the Occupational Safety and Health Act of 1970, which established the Occupational Safety and Health Administration, spelled out employers' responsibilities, it did not adequately address employees' responsibilities, said David G. Sarvadi, a partner in the Washington law firm Keller and Heckman L.L.P. As a result, employees face no sanctions for failing to follow safety procedures, he said.

Mr. Sarvadi's observation came during a discussion at the U.S. Chamber of Commerce in Washington last week on the best ways to implement safety programs at a conference examining the Occupational Safety and Health Administration 35 years after its founding.

"We've got to look harder at the employee," said Scott Mugno, management director-corporate safety, health and fire protection for FedEx Corp. in Memphis, Tenn. Employees need to deal with factors

such as obesity that impact health and safety at the workplace, he said.

Instilling a general "culture of safety" is important, said Bobby Jackson, senior vp-national program for the Itasca, Ill.-based National Safety Council. He noted that while "the nation has made considerable progress" in reducing workplace deaths, off-the-job deaths have actually risen, as have off-the-job injuries. In 2004, the last year for which statistics are available, about 80 million days of production time were lost due to on-the-job injuries, while 165 million days were lost due to off-the-job injuries, said Mr. Jackson.

"The impact of off-the-job injuries" on employers is now greater than that of on-the-job injuries, he said.

"You don't turn safety on and off" when an employee goes on or off the job, said Mr. Mugno.

But getting workers more involved in safety matters is far from the only change needed to help assure safer workplaces.

"We've got to free OSHA from its own statutory

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## OSHA takes balanced approach

By MARK A. HOFMANN

**WASHINGTON**—A "balanced approach" that incorporates both enforcement and cooperative efforts between regulators and employers remains "the right model" for the Occupational Safety and Health Administration, according to a former head of the agency.

John Henshaw, who served as assistant secretary of labor for occupational safety and health from 2001 to 2004, said OSHA strives to achieve a "triple bottom line" of reducing workplace injuries, illness and fatalities. And doing so requires a balanced approach, he told a panel at a U.S. Chamber of Commerce conference last week in Washington examining OSHA's record and future after its 35 years of existence. The panel was moderated by Randel Johnson, the Chamber's vp-labor, immigration and employee benefits.

The balance involves several components, including strong, fair and effective enforcement, he said. There must also be "responsible" standards development; outreach, education and compliance assistance; and voluntary programs, partnerships and alliances, said Mr. Henshaw, who is now president of Henshaw & Associates Inc., a Sanibel, Fla.-based consulting firm.

Mr. Henshaw stressed the importance of assisting employers in an effort to enhance workplace safety. "Our customer is the employer—the employee is the



Mr. Henshaw

beneficiary," said Mr. Henshaw.

"The issue, as I see it, is OSHA saves lives," said Joseph A. Dear, who headed OSHA from 1993 to 1996. "I think the United States is better off with OSHA than without it."

But OSHA can be improved, said Mr. Dear, who is now executive director of the Washington State Investment Board. One

problem has been "misaligned incentives" stemming from a general "governmental preoccupation with process," he said. The federal budget process rewards size rather than measuring results, he said. "You tightly control what everyone can do," rather than focusing on outcomes. As a result, "you punish innovators," said Mr. Dear.

Mr. Dear said his "life became interesting" with the publication of Philip K. Howard's book "The Death of Common Sense," which criticized, as Mr. Dear put it, "stupid" regulations and regulators. That

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agement thinking in the organization—it's really nothing more than that," said Gary F. Kilburg, assistant treasurer, risk management, at Whirlpool Corp. in Benton Harbor, Mich. "We look at enterprise risk management as a systematic process" so that "people in all our corporate functions are in essence risk managers" and factor risk into business decisions, he said.

"One of the traps people fall into is we have to do this because of" the Sarbanes-Oxley Act, said Frank W. Strenk, senior vp of risk



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## Change: Objective safety standards required

Continued from page 4

and regulatory handcuffs," said Mr. Mugno. He noted that much has changed since OSHA was established in 1971, and that maybe some regulations should be subject to sunset provisions.

Mr. Sarvadi said that OSHA's approach stressing assistance as well as enforcement, which has been in use for about the past six years, re-

sents an improvement over the more stringent approach taken previously by the agency.

Employers "want clearly defined standards" and then be given adequate time to comply with them, he said.

Employers that are honestly trying to comply are often saddled with penalties, he said.

OSHA needs to set objective stan-

dards and work with employers to implement them, he said.

Mr. Jackson said there are two key reasons for having workplace health and safety program. From a social standpoint, "it's the right thing to do," he said. And it's also "a sound investment" for employers, as each dollar devoted to health and safety results in a savings of between \$3 and \$6, he said.

## Regulation: Safer workplaces benefit business

Continued from page 4

part of Mr. Howard's critique drew quite a bit of attention, but few paid attention to Mr. Howard's other main point, which was that the public had to trust regulators to make sound decisions, said Mr. Dear.

A "common-sense regulatory system" depends on trust, said Mr. Dear. Workplace safety is often the issue that helps build trust between labor and management as well, he said. A safe workplace is "good for business," said Mr. Dear.

Earlier in the conference, a cur-

rent high-ranking OSHA official said that the agency would become more involved in emergency preparedness.

That would be "a new role for us," said Jonathan Snare, a deputy assistant secretary of labor who served as acting head of OSHA for more than a year following Mr. Henshaw's resignation. The agency will play a key role in dealing with avian influenza if a pandemic strikes U.S. workplaces, he said.

Mr. Snare also said that the agency would continue to target "really bad actors," employers that refuse to maintain safe workplaces. The agency also plans to provide more health and safety information on its Web site in an effort to meet the needs of small employers and the construction industry in particular, he said.

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**PAUL WINSTON**

Associate Publisher and Editorial Director

## Frequent buyer plan rewards customers

Paul Winston is traveling. This column first appeared in 2003.

While flying between Chicago and New York, I had an idea for insurance companies: Develop a frequent buyer program that rewards policyholders for the money they spend on insurance.

Instead of buyers feeling lousy for paying through the nose, such a program would help make them feel that their premiums were earning them membership in an elite club. Instead of griping about the high cost of coverage, they would be looking to spend more in order to earn special rewards and upgrade the quantity and quality of the perks they receive from insurers.

Just like travelers, who tend to overlook the value of being delivered safely across thousands of miles in an aluminum tube at an altitude of 30,000 feet, insurance customers want more than the promise to make them whole in case of a covered calamity. Giving them rewards—let's call them Premium Points—for spending more would make them think they were winning a prize. Think back to how eager you were to get to the cheap prizes with an amazingly short life span that came in Cracker Jack boxes and you'll know what I mean. It's diabolical. It's brilliant.

Under the frequent buyer plan, customers with a certain number of Premium Points could spend the points they earn to get free coverage enhancements, similar to the frequent flyer upgrades that allow individuals in the airline programs to fly first-class while paying only for coach tickets. Really big spenders might even be able to purchase free policies with their points, though it might cost them all of the points they've earned in a given decade. Even though an insurance company would, in effect, be providing a policy for free to those frequent buyer club members, they could be assured that the policyholders would likely spend more on other policies to rebuild their point totals.

And, as is the case with airline reward programs, those paying their insurers the most would be eligible for a variety of elite classes of membership. Those at the top would get the best rewards, including, for example, the ability to upgrade their policies weeks before other policyholders at lower levels, and well ahead of the wannabes who aren't even in the program.

Certain other perks for elite club

members would also be available, such as the ability to get faster claims payments, the ability to buy down coverage disputes and the right to spend their points on extra coverage, such as rare and expensive terrorism endorsements.

Insurers could even create special exclusive clubs like those the airlines have for their members. These special clubs could be set up in key offices worldwide for their elite members to gather in comfort while they obtain coverage or file claims. The exclusivity of the clubs would make those individuals feel superior to the huddled masses who have to wait in sterile reception areas.

Not only would such a reward system help ease the mental pain of buyers spending so much on their insurance coverage but it also would boost customer loyalty.

Policyholders who have accrued significant Premium Points with Insurance Company A, for example, would be unlikely to jump ship to Insurance Company B, where they have no points. Of course, as with airline frequent flyer plans, some insurers might be willing to accept the transfer of a policyholder's points to win their business. But, as is also true with the airline programs, if an insurance company goes belly up, a policyholder's points would then be worthless.

Hooking customers is the reason airlines adopted their frequent flier programs two decades ago. Today the programs are so successful that many travelers are unwilling to switch airlines—even if they are dissatisfied with the service or find themselves paying more than they would for other carriers—for fear of losing the value of their accumulated mileage points.

There is, though, one possible problem with adopting this sort of frequent buyer plan. And that is the fact that not only would this plan benefit the largest customers but also that usually those paying the most in premiums are often the worst risks. A moral hazard may develop that would see some policyholders perversely abandoning their loss prevention efforts in order to boost their Premium Points.

But with some clever engineering—such as debiting points for frequent claims, or, for that matter, for any claims—the downsides could be overcome. Now, with prices soaring and buyers sorely in need of a perk, is a great time for insurers to launch Premium Point systems for their customers.

Associate Publisher and Editorial Director Paul Winston can be reached at [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com).

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**Yes-men don't carry  
a briefcase. They carry  
the whole office.**

## Editorial

# Openness on options may reduce litigation risks

BACKDATING OF STOCK OPTIONS by several public companies has drawn the attention of investors, securities regulators and, not surprisingly, underwriters.

Once again, we are seeing questions about compensation practices that are not illegal but that will require more disclosure in the future. As we report on page 1, the Securities and Exchange Commission may be taking a stricter view on the dates for which option grants become effective.

Options are a widely used compensation tool intended to reward executives for creating shareholder value. The greater the spread between the market price of a share and the strike price of an option, the more valuable that option is for the holder. There is nothing wrong with this approach, and it promises great wealth to executives who succeed in building their companies' value.

If a company turns back the clock, though, in an effort to boost the value of an option, it is inviting scrutiny—and rightly so. Failure to disclose such practices won't make every shareholder happy and may trigger litigation. That's understandably a concern for directors

and officers liability insurers.

Insurance experts don't believe the recent cases of backdating options will alter D&O policy terms or harden the market, but they agree underwriters will be asking more questions of companies offering stock options.

In an era of heightened attention to corporate governance and a widening gap between the compensation of top executives and that of lower-paid workers, companies must expect to face questions about how much they're paying to whom and whether it's overly generous.

Nobody likes to be put under a microscope—particularly about something as potentially sensitive as compensation practices—but the discomfort is more than justified in today's litigious environment.

Full disclosure of compensation practices won't stop the questioning, but it may help reduce companies' litigation risk. And anything that reduces the risk of litigation ought to be welcomed by risk managers and underwriters alike, even if it does make a few highly compensated executives a bit uncomfortable for a while.

# Subrogation ruling good for employers, health plans

THE SUPREME COURT'S recent decision reaffirming health care plans' right to seek reimbursement from beneficiaries who've received payment for the same services from third parties is good news for employers indeed.

After all, benefits aren't presents. Both employers and employees pay into plans for coverage. They don't pay into plans so that other beneficiaries can, in effect, double dip if they receive reimbursement for already covered and paid-for services from another source.

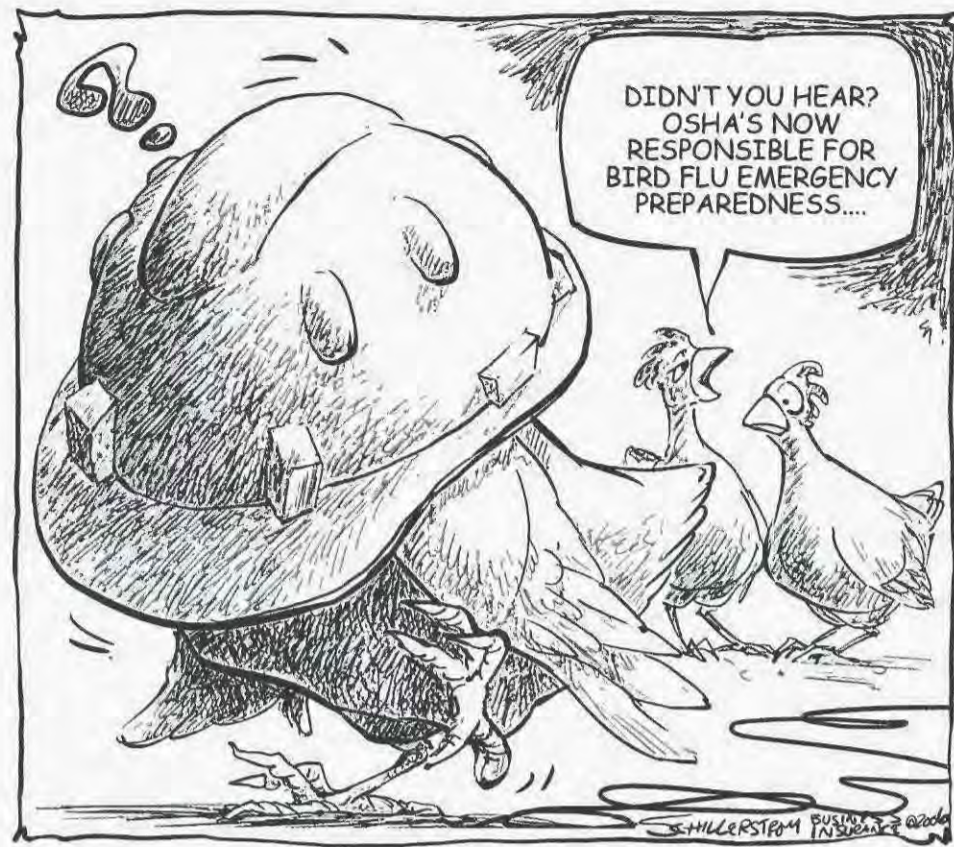
As we report on page 1, the Supreme Court unanimously upheld the ability of plans to recover money paid under such circumstances in its May 15 decision in *Joel Sereboff et ux. vs. Mid Atlantic Medical Services Inc.* While it's not a blanket right of reimbursement—money paid by third parties into trust

funds for injured beneficiaries remains outside the reach of the plans—it is a welcome restatement of plans' rights.

Without the right of reimbursement, plans would have to make up the lost cash elsewhere. That can mean only one of two things—fewer benefits or higher prices. Neither works in the best interests of the employers that sponsor plans nor of the beneficiaries who depend on the plans.

In the current—and no doubt future—environment of ever escalating health care costs, anything that helps keep costs in check even a bit is worth pursuing. The Supreme Court's affirmation that health plans can pursue reimbursement for benefits delivered but then provided again by a third party is good news for both employers and the employees who receive coverage from the plans their employers sponsor.

## Schillerstrom



In an effort to ensure continuing timely coverage of risk management, insurance and benefit-related news, *Business Insurance* has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to *BI* readers. *BI* welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

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**Insurance fraud:** Douglas McLeod.  
**Latin American markets:** Roberto Cenicerros.  
**Marine risks:** Sarah Veysey.

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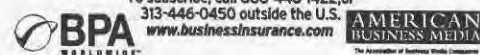
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# PRODUCTS & SERVICES

## RMS partners to create China earthquake model

**NEWARK, Calif.**—Catastrophe modeler Risk Management Solutions Inc. is partnering with the China Earthquake Administration's Institute of Engineering Mechanics to produce a China earthquake risk model.

The model, which will be released in early 2007, will be designed to provide assistance in quantifying and managing earthquake risk in China. It will consist of a fully probabilistic earthquake model covering all of China, and it will utilize hazard, inventory and vulnerability data. The model

will build on RMS' Taiwan earthquake and Hong Kong typhoon models.

For more information, visit RMS' Web site at [www.rms.com](http://www.rms.com).



Figure 1 Tectonics/historical earthquake recurrence intervals

RMS' earthquake model

## Hartford adds E&O for law firms

**HARTFORD, Conn.**—The Hartford Financial Services Group Inc. has introduced professional liability coverage for law firms with 20 or more lawyers.

The Premier Lawyers Professional Liability policy provides coverage for large law firms and individual lawyers rendering professional legal services on behalf of those firms. The policy is offered on a standalone

basis and features coverage for the firm's attorneys who are working as independent contractors; coverage for various services the firm performs, such as arbitration and mediation; and coverage for defense costs of up to \$10,000 in disciplinary proceedings, among other offerings.

This policy is underwritten by the company's Hartford Financial Products division.

For more information, contact Patricia Fitzgerald, national marketing director, at 212-277-0457 or visit: [www.hpinsurance.com](http://www.hpinsurance.com).

## XL adds combined policy to fine arts program

**NEW YORK**—XL Insurance America Inc., a unit of XL Capital Ltd., has launched a combined property and fine art insurance policy for cultural institutions.

The combined policy is part of XL Insurance's ArtWorks program, which offers a collection of art coverages and protects against the loss or damage of valuable property. The additional policy allows cultural institutions to combine their fine art coverage with their all-risk property insurance program.

Property coverage is available with limits up to \$600 million for those institutions seeking coverage from one

insurance company, up to \$300 million where XL Insurance companies are a co-insurer and fine art coverage up to \$150 million in liability limits.

For more information, visit [www.xlinsurance.com](http://www.xlinsurance.com).

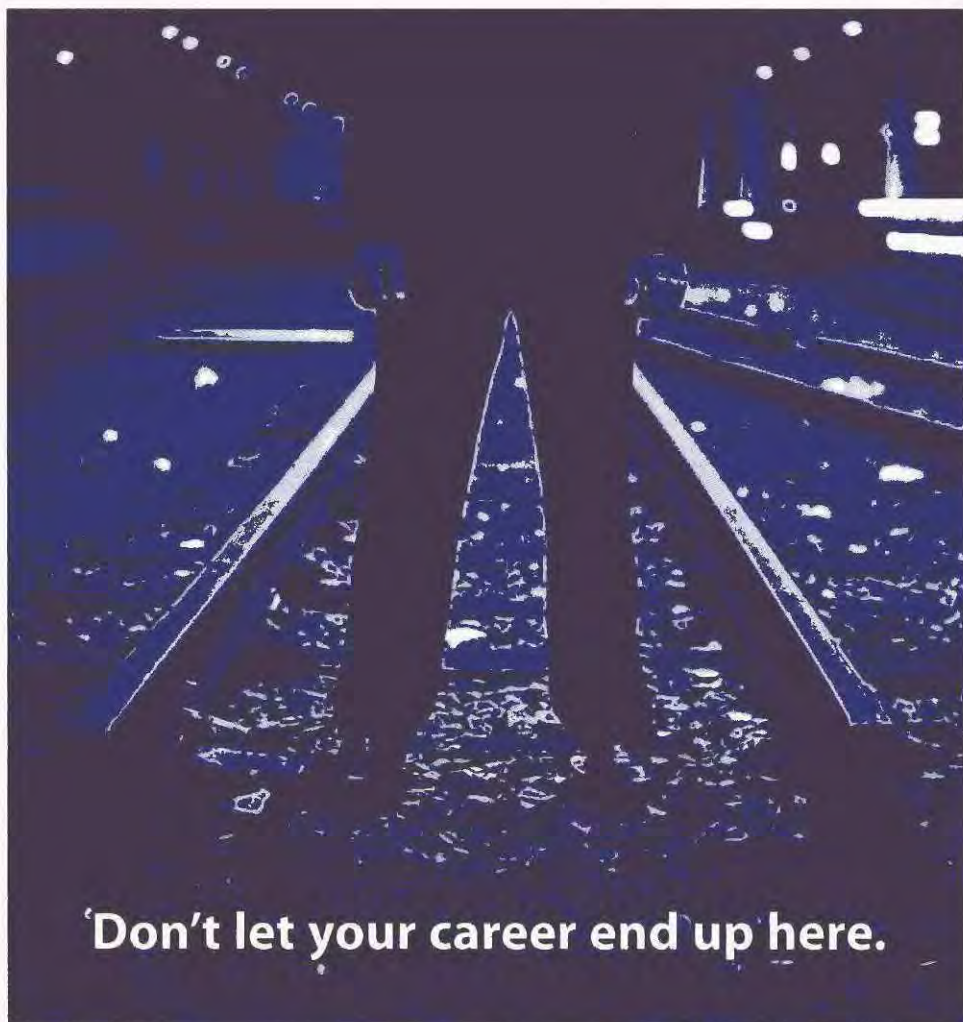
## Principal enhances disability claims reporting

**DES MOINES, Iowa**—The Principal Financial Group has enhanced reporting capabilities for long- and short-term disability claims.

The new report design provides employers with daily access to information such as claim status and trend data. The programs provide employers with more detailed disability claims information to help reduce claims going forward. Reporting data is available at an individual claim level and as summary information, including current and pending claims by employee status and total amount of benefits paid for active claims, among others.

For more information, visit the company's Web site at [www.principal.com](http://www.principal.com).

*We'd like to report on new risk management and employee benefit products and services offered by your company. Send information about your new offerings to: Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: [cpeinado@businessinsurance.com](mailto:cpeinado@businessinsurance.com).*



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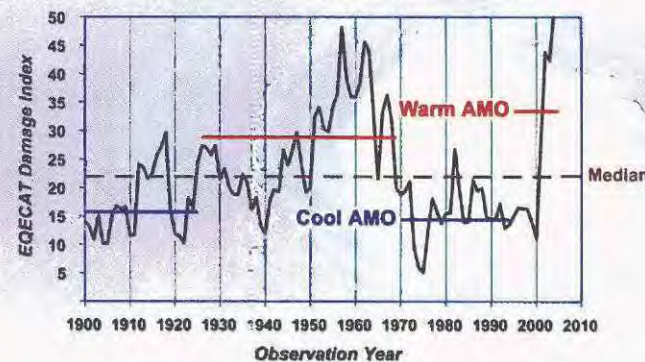
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### Trended EQECAT Insurance Risk Index with AMO Cycles Highlighted

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\*NOAA Attributes Recent Increase in Hurricane Activity to Naturally Occurring Multi-Decadal Climate Variability." (<http://www.magazine.noaa.gov/stories/mag184.htm>)

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**WAUSAU PROPERTY AT WORK.** A building material supply customer of ours recently moved into a larger building. Despite the extra space, it still had inventory stacked nearly to the ceiling. This presented a bit of a problem for the existing sprinkler system, which was not designed for high-pile storage. The system didn't have the necessary water and pressure to combat the type of intense fires that could result from the primarily wood materials. Our loss prevention experts estimated the entire \$4 million inventory could be lost in a fire. Working together, we found a solution



that appealed to both the company and its landlord. The existing system was replaced with one designed for high-pile storage and the building was outfitted with new heaters to prevent the pipes from freezing. In addition to protecting its inventory, the company saved almost \$30,000 a year in premiums. It's all part of Wausau TotalValue™ and our commitment to lowering our customers' total cost of risk. A commitment backed by the financial strength of the Liberty Mutual Group. To learn **PRICE ≠ COST** more, visit [wausau.com](http://wausau.com) or contact your Wausau representative.

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## RISK MANAGEMENT SERVICES FOR CLIENTS EVERYWHERE

### RISK MANAGEMENT INFORMATION SYSTEMS

At RIMS 2006, ESIS introduced expanded capabilities for Global RiskAdvantage<sup>SM</sup>, its leading edge loss information system, including new graphics, document imaging, access to essential non-claim information and new user-designed reports. Here is an update on those new features.

### CLIENT DASHBOARD

ESIS recently released client Dashboard received high marks from risk management professionals for its ease of set up and streamlined functionality.

Selecting from a menu of enhanced reporting options, users customize and personalize their Dashboard using graphical displays to highlight current claim information. In addition, by personalizing key performance measures, Global RiskAdvantage users can identify emerging trends and key drivers of loss costs. A listing of all claims registered since last log on can also be set in the Dashboard. Users can customize their Dashboard to display automatically upon logging onto the system.

### DIRECT ACCESS TO IMAGED DOCUMENTS

ESIS has taken document imaging to a new level. Global RiskAdvantage users were introduced to this new technology earlier this year.

Like all good document imaging systems, ESIS document imaging technology creates a permanent electronic record of all claim data and information, virtually eliminates paper and protects documents from loss or damage. But, unlike other systems,

ESIS has integrated imaging technology into Global RiskAdvantage enabling clients to view the entire claim file – not just excerpts or summaries. This means greater control over claims and better information for better results. It also reduces the need for customers to travel to a claims office to view individual claims files.

### RISK MANAGER'S PORTAL

ESIS Risk Manager's Portal enables Global RiskAdvantage users to enhance their risk management activities and communications in a secure environment.

Customized to each user, the Risk Manager's Portal is a tool offering several unique capabilities. The Portal acts as a centralized repository for account handling instructions, PPO directories, state-specific workers compensation statutes etc. The Portal offers single sign on for ESIS applications and navigation tools enabling users to quickly access risk control links within ESIS and across the internet. It also enables posting account specific information on events, news and non system reports such as benchmarking.

### GLOBAL CLAIMS INFORMATION

ESIS clients with global exposures can use the full reporting capabilities of Global RiskAdvantage to manage global claims. Global claim information can be displayed in local currency and sorted by country.

In addition, companies with operations in other countries can locally access their Risk Manager's Portal through a secure internet connection to access claims status, post reports and information.

For more information on these services, please check our website at [www.esis.com](http://www.esis.com).

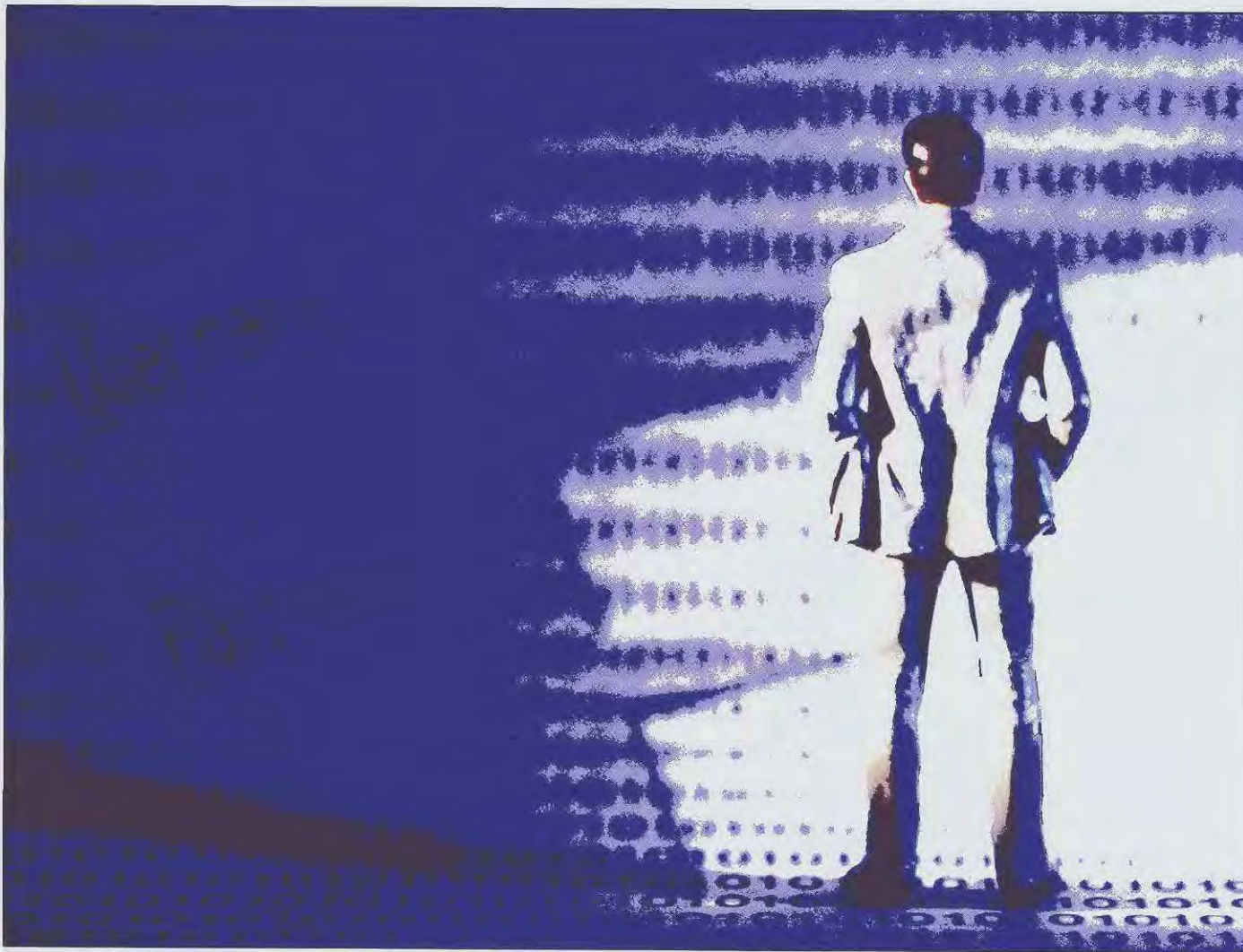


# Spotlight

## RISK MANAGEMENT: TECHNOLOGY & ONLINE SOLUTIONS

Sarbanes-Oxley tools  
offer more than compliance / 19

ACORD standards evolve  
to meet needs / 20



## Online risk management services move beyond information systems

By RUPAL PAREKH

For everything from enhanced claims functions to quick access to research, risk managers are increasingly finding that Web-based tools can make their jobs a little easier.

And the number of Web-based risk management services available in the marketplace is burgeoning, experts say. "There are certainly a lot of these tools out there now, and as with all things related to the Internet, it's growing," said John W. Schaefer, president of Global Risk Advisors, a Redwood City, Calif.-based risk management consulting firm.

While Web-based risk management information systems for claims continue to comprise a significant portion of the market, a broader range of resources—including

ing risk management benchmarking tools, online surveys, questionnaires, sample workbooks or sample insurance policies—are becoming much more plentiful, and are really useful for risk managers that want to go beyond the traditional insurance-buying role," Mr. Schaefer said.

Karl Zimmel, director of risk management at Alberto-Culver Co. in Melrose Park, Ill., draws on the Web largely to access two claims databases through service provider, ESIS Inc., the risk management services subsidiary of ACE USA in Philadelphia. The Web-based system, which Alberto-Culver has had in place since December 2003, "not only enables us to access the claims databases to create reports, but also to look at adjusters' notes on individual files" and evaluate examiners' treatment of claims, Mr. Zimmel said.

In addition, ensuring Web access to this type of information "is becoming a big backbone of our business continuity planning," Mr. Zimmel said. "If something happened where I couldn't get to work, whether that was a serious catastrophe, or if I was just sick...it makes it easier to work from home," he said.

Houston-based Parker Drilling Co.'s director of risk management, Reed Wykes, has been using a Web-based RMIS for about three years. Mr. Wykes agreed that the biggest advantage to Web-based systems is "international access" and the ability to access his claims repository even while he's away from the office. "My assumption is most people will be going to Web-based RMIS systems, if not already,"

See ONLINE / next page

## RMIS backup deemed vital as technology becomes part of the routine

By MICHAEL BRADFORD

A risk management information system that crashes might not bring down the house, but it could certainly make life miserable for a risk management department that isn't prepared for such a problem.

Routine tasks, such as cutting checks for workers compensation payments or issuing insurance information to third parties, would all become much more difficult to execute should a RMIS go down, experts say.

As a result, risk managers that are becoming increasingly dependent on their systems are looking at ways to protect themselves in the event of a technology breakdown.

"Some of the tools in the system you might be able to do without for a few days," said Richard S. Betterley, president of Betterley Risk Consultants Inc. in Sterling, Mass. "But I would hate to see a sophisticated risk manager be without the system for long."

Data protection  
remains a big  
exposure, a survey  
shows

PAGE 19

"If risk management is important, the risk management information system is just as important," said Mr. Betterley.

A RMIS might not be considered as critical within an organization as some other systems, such as payroll or accounts payable, but for a risk management department, it can be a "critical part of your day-to-day operations," said Elizabeth Morrell, senior risk analyst with Southern Co., an Atlanta-based electric utility holding company.

There are any number of problems a downed RMIS could trigger, sources point out. In a worst-case scenario, an inoperable system would not only cause administrative headaches, it would cost money.

A system that handles self-administered workers comp claims, for example, could mean checks aren't cut if computers are down. If the system is out of commission and "you don't get income benefits or medical bills paid on time, you can quickly run into statutory fines," Ms. Morrell said.

See CRASH / page 18

## Online: Risk management services moving beyond information systems

Continued from previous page

Mr. Wykes said. "There is a learning curve, as with any new program," he said, "but it's doable."

When Connecticut Interlocal Risk Management Agency in New Haven, Conn., in January 2005 decided to implement a Web-based system for claims processing and put out a request for proposals if candidates "didn't have a Web-based system, we didn't even look at them," said Bruce H. Clinger, vp of claims at CIRMA. CIRMA operates two risk-sharing pools for workers compensation and liability for automobile and property risks and provides risk

management services to self-insured municipalities and public agencies.

"Internet systems are easier to use and more intuitive and you can design best-practices rules, so when something happens on a claim, it will trigger flags or notices," said Mr. Clinger, who ultimately wound up selecting San Ramon, Calif.-based Valley Oak Systems Inc.'s browser-based claims and risk management product, "iVos," which was introduced in 2002.

Electronic claims submissions are an area of rapid growth, noted Steve Schmutz, Kaysville, Utah-based vp

of sales and marketing for MountainView Software, a division of Gallagher Bassett Services Inc. MountainView's Web-based claims software called "ClaimZone Reporter" has seen a tremendous increase in popularity with the number of Web-based claims jumping from 7,225 in 2001 to 109,838 in 2005, Mr. Schmutz said.

Risk managers are finding that Web-based risk management services can be useful beyond claims functions too.

Kathleen Pickard, insurance risk manager at Milpitas, Calif.-based Solectron Corp., has been using a risk management system from CS

STARS, Marsh Inc.'s RMIS unit, for more than one year. What Ms. Pickard likes best about using the system, she said, is that "we have complete transparency in how our company is being presented to underwriters, and transparency on what underwriters are expressing" regarding the company's specific exposures.

Furthermore, utilizing the Web system has upped her efficiency. "I'm a person that operates a worldwide (risk) program by myself with no support...I don't have someone to do filing," Ms. Pickard said. "I'm trying to go paperless."

"We really are using (Web tools)

a lot compared to five years ago," said Lea Gerber, director of risk management and benefits at Gardena, Calif.-based manufacturer Elixir Industries. "I'm still blown away by what's available on the Web."

"Where we find it a tremendous help has to do with research, education and helping us with our training of employees, especially in the safety area," Ms. Gerber said. "We refer them to the (Occupational Safety and Health Administration) Web site, or my department researches the OSHA Web site and then communicates" that to employees at different worksites, she said.

"In the past, we used to hire consultants to educate and train employees on these issues, but now you can just research and do it on your own...and actually save a lot of money," Ms. Gerber said.

**"We really are using (Web tools) a lot compared to five years ago." I'm still blown away by what's available on the Web."**

**Lea Gerber  
Elixir Industries**

Global Risk Advisors' Mr. Schaefer pointed out that risk managers can take advantage of a variety of Web services that are now being made available free or at low cost to risk managers.

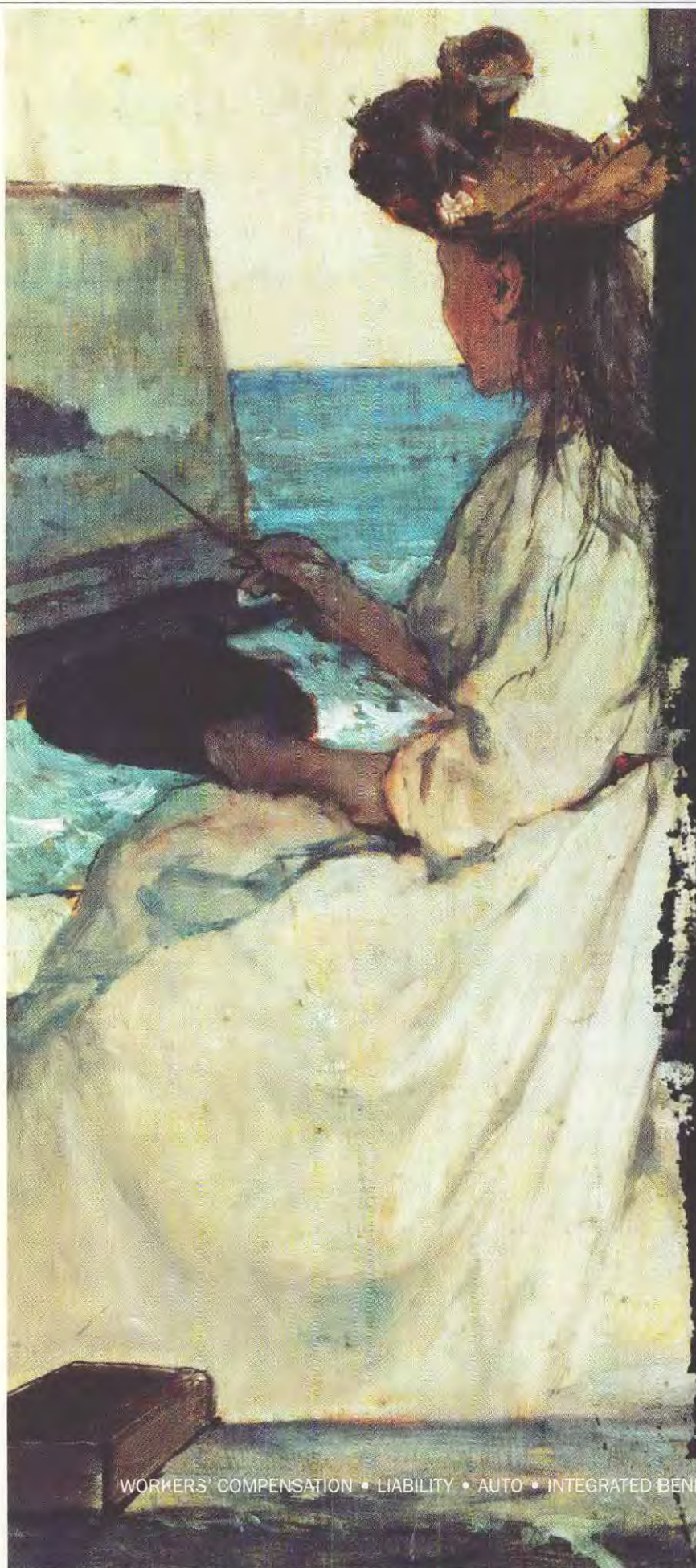
"Cost is still a huge barrier" to the usage of Web tools by risk managers, Mr. Schaefer noted. "Risk management departments do not have huge discretionary funds. They are under a lot of pressure to manage costs."

"You would think the companies that use (Web-based risk management tools) the most would be the biggest ones," said Chuck Galas, president and manager of Managerial Technologies Corp. in Downers Grove, Ill., which operates the RMIS.com Resource Library, providing reference material and other tools over the Web to risk managers. But smaller and midsize companies are showing increased interest in tapping into online risk tools as well, Mr. Galas said.

Overall, however, Mr. Schaefer has seen that "most risk managers are less interested in extremely sophisticated tools, and just want tools that help them to get their job done effectively."

Eric H. Larson, chief risk officer at Bonneville Power Administration in Portland, Ore., recently considered implementing a Web-based risk assessment program, but after looking at some options, he realized that the type of Web interface he needed "was just a glorified database, and I can do that myself."

While Mr. Larson has not ruled out the possibility of drawing upon Web-based risk management services in the future, "it has to be a compelling value proposition," he noted.



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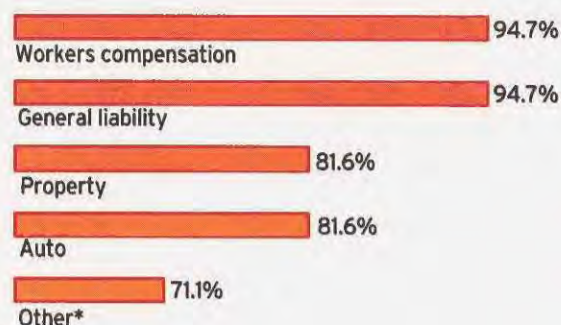
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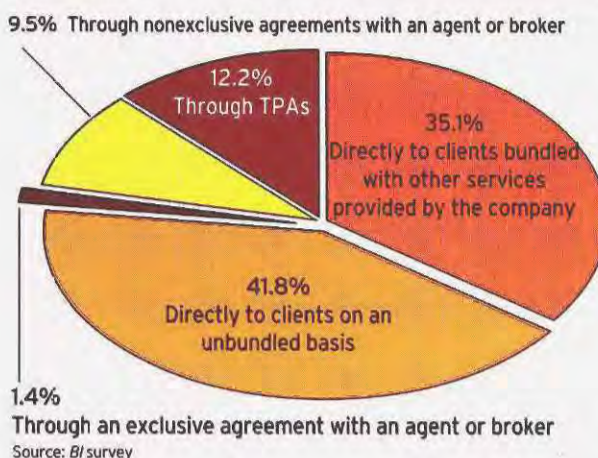
### Types of claims managed

Most common claims handled by RMIS



\* Includes accident and health, aviation, marine, professional liability and U.S. Longshore and Harbors Workers Compensation Act claims.  
Source: BI survey

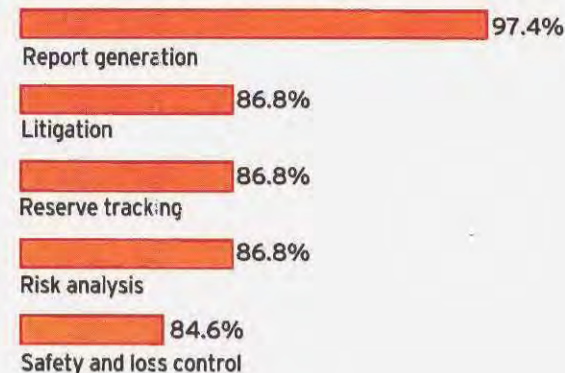
### How RMIS are sold



Source: BI survey

### Most common standard features

Percentage of all RMIS offering these features



Source: BI survey

# Largest risk management information systems

## Ranked by installations in risk management departments\*

Rank	System name	Company/Address	Phone/Fax/Web site	2004 number of installations	Price	First installation	Principal officer
1	STARS	CS STARS 500 W. Monroe St., Chicago, Ill. 60661-3630	800-927-3343 Fax: 312-627-6590 <a href="http://www.csstars.com">www.csstars.com</a>	22,000	NA	1967	Robert G. Petrie III, CEO
2	RISKMASTER	Computer Sciences Corp. 200 W. Cesar Chavez, Austin, Texas 78701	800-345-7672 <a href="http://www.csc.com/riskmanagement">www.csc.com/riskmanagement</a>	15,000	NA	1982	Van B. Honeycutt, chairman/CEO
3	risxfacs.com	Gallagher Bassett Services Inc. The Gallagher Centre, 2 Pierce Place, Itasca, Ill. 60143-3141	630-773-3800 Fax: 630-285-4000 <a href="http://www.gallagherbassett.com">www.gallagherbassett.com</a>	12,300	NA	1983	Richard J. McKenna, president
4	e-CARMA	St. Paul Travelers Cos. Inc. 1 Tower Square, Hartford, Conn. 06183	860-277-2770 Fax: 860-277-2876 <a href="http://www.travelers.com/commercial/rmis/">www.travelers.com/commercial/rmis/</a>	9,367	NA	1983	Matthew L. Carden, vp
5	Sigma Encore Suite	Risk Sciences Group Inc. 1900 E. Golf Road, Suite 700, Schaumburg, Ill. 60173	800-619-0224 Fax: 847-619-3079 <a href="http://www.risksciencesgroup.com">www.risksciencesgroup.com</a>	3,379	\$50,000 to \$500,000	1978	Robert Kulbick, president
6	Chubb RMIS Suite of Products	Chubb Corp. 202 Hall's Mill Road, P.O. Box 1650, Whitehouse Station, N.J. 08889-1650	800-715-7475 Fax: 908-572-4380 <a href="http://www.chubb.com">www.chubb.com</a>	3,100	Up to \$22,000	1994	Michele Fincher, senior vp-worldwide risk management
7	RISKTRAC	Liberty Mutual Insurance Co. 230 Commerce Way, Portsmouth, N.H. 03801	603-422-0444 Fax: 603-433-4676 <a href="http://www.libertymutual.com">www.libertymutual.com</a>	2,993	NA	1999	Diane Fandrich, managing director
8	IVOS	Valley Oak Systems Inc. 5000 Executive Parkway, Suite 340, San Ramon, Calif. 95129	925-242-4600 Fax: 925-901-1020 <a href="http://www.valleyoak.com">www.valleyoak.com</a>	2,930	NA	1994	Randy Wheeler, CEO
9	Global RiskAdvantage	ESIS Inc. 436 Walnut St., Philadelphia, Pa. 19106	215-640-1001 Fax: 215-640-5538 <a href="http://www.esis.com">www.esis.com</a>	2,700	\$5,000 to \$10,000	1998	David Patterson, president
10	RiskConsole	Aon-Global eSolutions Group 200 E. Randolph St., Chicago, Ill. 60601	877-755-7475 Fax: 847-953-2633 <a href="http://www.aonriskconsole.com">www.aonriskconsole.com</a>	2,240	\$75,000	1995	Kathy Burns, CEO-Americas

\* Licensed users. NA=Not available.  
Source: BI survey

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

A photograph of a crowded store aisle. In the center, a woman in a denim jacket and patterned scarf is pushing through a turnstile. Other people are pushing through the turnstile behind her, some looking towards the camera. The scene is brightly lit, suggesting a retail environment.

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## Online systems

Percent of risk management information systems based online



Source: Bf survey

# Crash: Risk managers look for way to protect systems

Continued from page 13

Or it could mean disruptions are spread beyond the risk management department to third parties that depend on the information provided by a RMIS.

"If you are a franchisor with a captive program with franchisees participating," Mr. Betterley said, getting insurance and risk management information to those participants could be nearly impossible during an outage. "You're losing a customer service there," he said.

Risk managers, who often are responsible for making sure all of an organization's systems are safe, have to determine how critical their

own systems are when considering how to protect them, experts say.

"I don't think you need to treat a risk management information system any different than you would any core system," said Les McMonagle, director of information security and risk management practice at USInternetworking Inc., an application service provider in Annapolis, Md.

That means carrying out a "business impact analysis" he said, to determine the "criticality of a system in the organization. Is it something that, if it's lost for three or four days, would cost money? Do you need it up and

running right away?"

Such planning allows a risk manager to determine whether a RMIS should receive attention ahead of other systems if a business is affected by an incident that takes computers down.

A system's importance hinges partly on the nature of the company's business and the functions carried out by the RMIS.

"Our claims and risk management system is way up there" in terms of criticality, said Brian Mulligan, data security officer at ACE USA in Philadelphia. "In our business, it's pretty high," he said of the priority a RMIS takes among the in-

surer's systems.

Mr. Mulligan said ACE emphasizes "four general areas" of protective measures for its RMIS. Those cover employee awareness of threats, physical measures to stop intrusions and other steps to safeguard the system.

Mr. Mulligan said ACE takes steps to:

- Ensure that protections are in place to guard critical information, computer hardware and desktop equipment. Personal firewalls, software patches and other protections are some of the ways equipment is protected, according to Mr. Mulligan.

- Communicate security policies and tips regularly to employees. "Desktop users are always the first and last lines of defense for corporate information," said Mr. Mulligan.

- Monitor networks at all times.
- Have in place a detailed business continuity plan that covers data backup procedures, teams that will respond to disruptions, testing of the plan and other safeguards.

At other companies, RMIS functions may not be so highly ranked in terms of systems priority because their functions are not as critical to overall operations.

Sun Microsystems Inc. can address other system problems first if a crash occurs because its RMIS functions are handled by Marsh Inc.'s CS STARS system, said Kevin Hoskinson, Sun's director of global risk management in Broomfield, Colo.

"Our access is once a quarter to run reports," Mr. Hoskinson said of the claims system. "So from a criticality function, it's not been high on our radar."

Experts differ on whether a system can be best protected by an in-house IT staff or a vendor that provides RMIS services. And that question is one that is batted across the breakfast table at one household.

Southern's Ms. Morrell is a risk management professional whose company chooses to operate an in-house RMIS. Her husband, Bob Morrell, is chief technology officer in Marietta, Ga., at Aon's eSolutions Group, a unit of Aon Corp. He encourages risk managers to let his company take the worry out of operating and protecting a RMIS.

While Southern Co.'s IT department is responsible for making sure information is backed up and protected, Aon eSolutions takes care of that task and others for clients, Mr. Morrell explained. "That highlights the difference" in using an in-house system or contracting with a company such as his, he said.

Mr. Morrell said most risk managers turn to service providers to handle RMIS functions because risk management departments generally are "pretty small fish in a big pond" within their organizations and need help to handle the technology tasks.

IT departments at many companies are shrinking, Mr. Morrell added, which means risk management in some cases "gets very little support" from the technology staff.



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Continued on next page

Continued from previous page

Southern Co. is up to the challenge, according to Ms. Morrell. "Our RMIS is a client-server system and we have a dedicated database server maintained in-house," she said.

Backups are performed nightly, and "we rely on our IT organization" to ensure that the system is not vulnerable to hackers or viruses, Ms. Morrell noted.

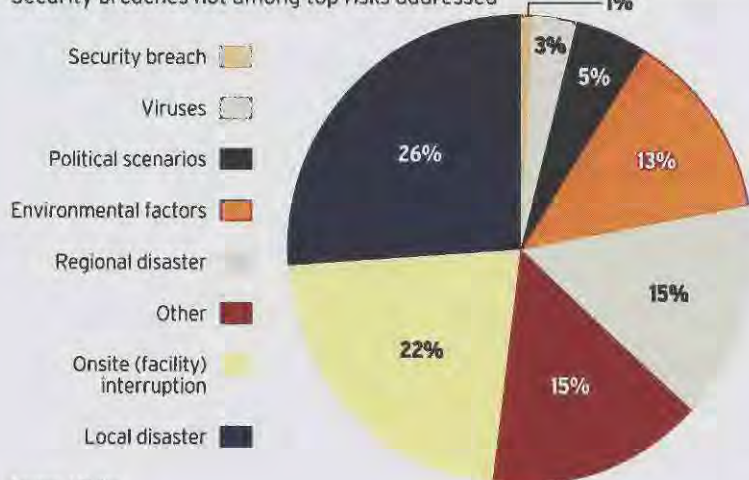
But not all in-house databases actively manage security exposures, according to a survey conducted by AFCOM, an Orange, Calif.-based association for data center professionals.

The survey, in which data was collected from approximately 200 AFCOM members responsible for managing data at Fortune 1000 companies, found that many of the respondents have no plans to address security breaches and viruses (see related story).

Protecting a RMIS from hackers and viruses "is like an arms race," with intruders constantly developing new methods to break through the barricades that companies put in their way, said Mr. McMonagle of USinternetworking. "You clearly need to stay on your toes," he said of risk managers, "and stay in that arms race."

## What risks are data protection plans addressing?

Security breaches not among top risks addressed



Source: AFCOM

## Few companies plan for security breaches

By MICHAEL BRADFORD

**ORANGE, Calif.**—At many companies, valuable data is at risk from viruses, hackers and other threats because no one has developed a plan to protect the data, a survey of data center managers reveals.

Despite high-profile crimes involving information hacked from company databases, as well as the threat of blackouts and storms that destroy computer systems, many data centers have no risk management plan in place to protect against those contingencies, according to a survey released in March by AFCOM, an Orange, Calif.-based association for data center professionals. The survey respondents—approximately 200 members—are responsible for managing data at Fortune 1000 companies.

"There are still a lot of companies that don't treat this as something that is very serious," said Chris Caprio, a board member of AFCOM's Data Center Institute and technical services manager for the Americas at Imation Corp., an Oakdale, Minn.-based maker of removable data storage products.

The survey showed that 17% of the survey respondents had no risk management plan to protect their data centers.

But the result that was "really shocking to us," said Mr. Caprio, was that less than 5% of the respondents have plans that address security breaches and viruses.

It's a loss control oversight that is hard to understand, Mr. Caprio said. "While there have been a number of horror stories" regarding data lost to hackers and viruses, some employers practically ignore those threats, with an attitude of "as long as we have firewalls, we're protected," he said.

The survey also found that more than 60% of respondents spent 10% or less of their budgets on data center risk management. Just 18% of the respondents said they dedicate 25% of their budgets to that area.

Mr. Caprio said that managers in charge of protecting data need to understand that threats to their information systems "are not make-believe. This is a real thing to be concerned about."

"Business disruptions can put companies out of business," Mr. Caprio said. "Accept the fact that that can happen and plan what to do if it does."

The survey is available at [www.afcom.com](http://www.afcom.com) as part of the *Five Bold Predictions Data Center World Keynote*.

# Financial compliance programs offer help beyond scope of SOX

By DAVE LENCKUS

For all of the corporate hand-wringing over the Sarbanes-Oxley Act's financial reporting requirements, some companies are finding that software designed to help them comply with the act also can help them run more efficiently by addressing more than Sarbanes-Oxley compliance issues.

The compliance software also can help organizations keep on top of their internal operational and compliance controls, and monitor all of them on a single platform so that data from across the organization is defined and measured uniformly, vendors, risk managers and a consultant say.

At the same time, some software can help companies ensure they keep in compliance with various federal and state laws, including tax, environmental, labor and the Patriot Act statutes.

And, in some cases, software can go beyond detecting where weak controls have failed to prevent past nefarious activities and expose current rogues within the organization, according to vendors.

The largest U.S. companies already have made their software selections and likely will only upgrade those tools with their current vendors, said Tom Eid, vp, research director, for Gartner Inc., a Lowell, Mass.-based information technology research and consulting company.

But license revenues for vendors in this software market are expected to grow 19% annually for the next several years as other organizations turn to these tools, he said. Small to midsize companies that face their first Sarbanes-Oxley compliance deadlines will contribute to that growth, but so will many large foreign-based companies with U.S. operations, which also, eventually, must comply with Sarbanes-Oxley.

In addition, many privately held companies that are not required to comply with Sarbanes-Oxley will do so to avoid falling behind in efficiency compared with their publicly held competitors, software vendors predicted.

Gartner and vendors predict that even large foreign-based organizations that do not have U.S. operations will turn to the software. Noting that Canada, Japan and many European nations have enacted legislation similar to Sarbanes-Oxley, the consultant and vendors predict that foreign-based companies will see the efficiencies their U.S. counterparts have realized from using the software to integrate financial reporting with other processes.

But with dozens of vendors in a young industry offering products that range widely in scope, choosing the right software can be challenging, according to Gartner.

The consultant says companies are confused by the large number of vendors, product options and technologies that are available. In addition, mergers and consolidations in

the industry have begun to generate some uncertainty over vendor selection and product offerings, according to Gartner.

## Advantages

Compliance software can help companies:

- Standardize processes across their organizations
  - Monitor internal controls and financial reporting and link with enterprise risk management processes
  - Operate more efficiently
- Detect unauthorized or inappropriate activities

Still, sorting through those uncertainties can lead to significant dividends for the companies, Mr. Eid said.

"The benefit of these tools is helping organizations in the standardization of processes across their organizations," Mr. Eid said.

In addition, Gartner predicted in an October 2005 research advisory, "through 2010, companies that select individual solutions for each regulatory challenge they face will spend 10 times more on the IT portion of compliance projects than companies that take a proactive and more integrated approach."

In an August 2005 research advisory, Mr. Eid and other Gartner researchers advised eyeing "any stand-alone or Sarbanes-Oxley-specific solution with skepticism."

For Walter N. Coleman, senior vp-risk, control and audit at Atlanta-based First Data Corp., a stand-alone product was never a consideration.

"We have thousands of processes. Only a certain number are financial reporting" that are related to the Sarbanes-Oxley requirements, he said.

Sarbanes-Oxley does not impose reporting requirements on operational and compliance processes, but Mr. Coleman noted that he is responsible for ensuring that "all processes are well managed and well controlled" at First Data.

The software that First Data selected from Waltham, Mass.-based OpenPages Inc. helps the company monitor its internal controls on operations and compliance as well as financial reporting and link all of that with its enterprise risk management processes—all of which are subject to the COSO II standards that the company, like many others, has voluntarily adopted.

The COSO II standards, developed by the Committee of Sponsoring Organizations, is an updated version of the effort by the voluntary group of accountants, auditors and financial executives to improve financial reporting through business ethics, internal controls and corporate governance. With the updated standards, published in September 2004, COSO took its 25-year-old original framework and laid it on a foundation of enterprise

risk management.

Cruise line operator Carnival Corp. of Miami, which also selected OpenPages software, likewise uses the tool not only to help it comply with Sarbanes-Oxley but also to support its enterprise risk management program, noted Murtuza Vasowalla, director of product marketing.

For example, if Carnival management wanted to add some Caribbean cruises to its schedule to boost revenue, the company's software would aid management in factoring in the cancellation risk due to poor weather in a specified week as well as how booked its ships are in a given week, Mr. Vasowalla said.

As part of helping companies run more efficiently, some Sarbanes-Oxley software also is designed to facilitate internal control management for detecting unauthorized or inappropriate activities that might indicate fraud.

For example, many types of records that are not part of financial reports are subject to the Sarbanes-Oxley records retention requirements. To that end, the software from Addison, Texas-based Systemware Inc. monitors e-mails, analyzes them to ensure they do not run afoul of corporate rules and governance, quarantines messages that appear problematic and notifies the sender of violations, according to Al Griffin, director of product planning. E-mails recovered from Enron Corp. after it collapsed revealed the financial machinations that contributed to the company's financial meltdown, Mr. Griffin noted.

Even some e-mails that do not have to be quarantined will be retained as a record if the software determines it should be kept as a formal record, Mr. Griffin said.

Detecting inappropriate activities at the time they are occurring rather than only after the fact is an important software feature, according to Jasvir Gill, chief executive officer and founder of Virsa Systems Inc. of Fremont, Calif.

For example, Virsa's software would prevent companies from recognizing revenue too early—a fraudulent income-enhancement activity uncovered after WorldCom Inc. collapsed—by barring that accounting entry if other entries do not show the company received the revenue, Mr. Gill said.

In sorting through all of the software vendors and their myriad products, companies should bear in mind that some products might offer redundant protection that the company may not need or want to pay for, according to Christina S. Kite, senior director, global risk management for Cisco Systems of San Jose, Calif.

For example, Ms. Kite noted, Cisco completes a virtual closing of its financial records daily. As a result, its existing processes already are set up to detect revenue recognition problems as quickly as any software could, Ms. Kite said.



## COMMENTARY

Senior Editor Dave Lenckus

# ERM an opportunity for risk managers

Risk managers looking for a new, exciting direction in their careers have long been attractive pickups for consultants and brokerages.

With new challenges presented by every client, higher compensation, and, perhaps, greater appreciation, many talented risk managers had little professional incentive to remain with the organization where they had built a strong program to avoid, minimize, transfer and retain risk.

Now, because of the emergence of enterprise risk management, risk managers have an opportunity to bulldoze a rewarding career path through the more familiar landscape at their current organizations.

They have an opportunity—but for many risk managers, the chance to lead their organizations' ERM program is far from a sure thing.

Indeed, at many organizations, the risk manager is the dark horse in the field of candidates to lead the program as chief risk officer or whatever title is selected for the position.

Is this unfortunate fact just one more piece of evidence that risk managers are underappreciated as they toil away protecting their organizations?

Probably, in some cases.

But, it also demonstrates that many risk managers have not taken charge of their own fate by demolishing the notion that they are just the company insurance guy or gal.

That's a shame, because ERM is surely a management concept that is here to stay and could be the kind of professional leg up for risk managers that recorded sound gave music artists.

The ERM concept has been discussed and examined for years, but its inclusion as a key element of corporate management's strategic planning is just beginning to explode. Fueling that growth are the financial reporting requirements established by the Sarbanes-Oxley Act and the September 2004 publication of the COSO II voluntary financial reporting standards, which are underpinned by the ERM concept.

To their credit, many risk managers who attended the Risk & Insurance Management Society Inc. conference in Honolulu last month packed the numerous sessions devoted to ERM.

That was encouraging to see, because ERM is a tool that senior management could use just as easily to either build a bridge that would allow risk managers to cross over to their domain or erect a cell to lock risk managers into their current roles.

That is evident from discussions with some top brokerage officials and consultants.

The good news for risk managers is that, according to some of those observers, many companies have turned to their risk managers to implement ERM programs.

Elsewhere, though, senior management has turned to others outside of risk management to head the ERM process. At those organizations, observers noted, not only was the incumbent risk manager passed over for the top risk management position, management's choice often has been someone without risk management experience.

So, packed sessions at RIMS—especially on the next-to-last day of a conference on a tropical island—was a good sign that risk managers are recognizing the importance that ERM will play in their professional lives.

But, there are a couple of additional important measures that risk managers must take to shed the insurance guy or gal label at their organizations, observers said.

One is developing a command of senior management's language—finance. Earning a formal degree is one approach, but that professional asset also can be acquired by rotating through various corporate departments, such as auditing and accounting.

But just as important, observers said, is learning to do what 10-year-old Little Leaguers are taught on the baseball field: Charge the ball; don't let the ball play you.

Risk managers who want to lead their organizations' ERM effort have to find a way to grab senior management's attention. Senior management wants to see leadership abilities as well as results, observers said. Taking the initiative and approaching a business unit with an ERM solution to a problem the unit faces shows management both.

It's not too late to begin charging in.

Senior Editor Dave Lenckus can be reached at [dlenckus@businessinsurance.com](mailto:dlenckus@businessinsurance.com).

# Association strives to enhance industry standards and methods

By JUDY GREENWALD

ACORD, the Assn. of Cooperative Operations Research & Development, is continuing to pursue its strategy of enhancing its ACORD Standards Framework and expanding the implementation of its standards throughout the insurance industry.

"Our standards strategy is really to bring together our existing content from a standards perspective and to expand that to support the industry" as it moves forward with different types of business priorities and needs, such as enterprise information, enterprise risk management and enterprise architecture, said Denise Garth, Omaha, Neb.-based vp, membership and standards, for ACORD, which is based in Pearl River, N.Y.

This also involves the "ability to have interoperability within (participants') own system and with other industries and parts of financial services," said Ms. Garth.

"Our standards today really reflect what the industry has been for the last 20, 30 years, which has been a very silo-based industry," said Ms. Garth. There is a need to integrate the industry within itself as well as with other industries and other types of businesses, she said.

"We've got to be able to bring our standards together in a unified fashion that can support that change in the industry," and future changes as well, said Ms. Garth.

ACORD, a global, nonprofit insurance association, now has three "standard domains": property/casualty and surety, life and annuity and reinsurance and large commercial insurance. The standards are in-

tended to allow different companies to transact business electronically with agents and brokers and others in the insurance, reinsurance and related industries with whom they need to share data.

Cindy Maike, ACORD's Kansas City, Kan.-based director of standards planning, said traditional insurance companies have separate administrative systems for each line of business, and for certain aspects,

**"We've got to be able to bring our standards together in a unified fashion that can support that change in the industry."**

Denise Garth  
Assn. of Cooperative Operations  
Research & Development

such as claims handling, even within products.

"Systems were built by line of business and by business function, and the desire is to be more integrated in the business process regardless of line of business and function and take more of a process perspective," Ms. Maike said.

"The industry is kind of bringing together and looking at their processes, where their processes need to be more efficient," she said. Pointing to data sharing, she added, "Our standards also need to evolve to support that change in business needs."

ACORD has looked at different layers of the issue. In the past, the focus has been on the forms and messaging standards and corresponding data. Right now, the focus is on the business architecture. "The goal is to have a draft that can be usable by our membership by the end of the year," said Ms. Maike. In addition, ACORD is "also right now working on a common business dictionary," she said.

The response to ACORD's efforts so far from research analysts as well as leaders in the insurance industry has been positive, said Ms. Garth. The industry "is very supportive of our effort" because it recognizes the need to have the ability to have a service-oriented architecture backed by ACORD standards, she said.

"At the same time, we've also uncovered another group of people that just don't quite understand what this all means," said Ms. Garth though. "There's a real lack of understanding of what Web services and service-oriented architecture are and what they do for the business," she said.

It is not just about technology, "It's really about business strategies, and I think what this will offer is an opportunity to really educate" on this issue.

So, does all this mean risk managers get their policy forms faster and claims paid sooner? The ACORD executives believe ultimately it will. "I think at the end of the day, standards can help achieve those efficiencies and effectiveness in a real-time type of model," said Ms. Garth. "The only way to achieve that is, the companies have to put a plan together and implement it."

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# Buncefield report spurs litigation activity

*Businesses, homeowners seeking compensation for damages from U.K. explosion*

By CAROLYN ALDRED

**HEMEL HEMPSTEAD, England**—A third progress report by a U.K. government-appointed committee set up to investigate the explosion at the Buncefield oil terminal last December has instigated a flurry of legal activity by lawyers representing businesses and homeowners seeking compensation for damage caused by the blast.

According to the report produced by the London-based Health and Safety Executive, the explosion was caused when a fuel tank was overfilled following the failure of two safety devices (*BI*, May 15). A gauge to determine the level of fuel in the tank failed and a protection system installed in the tank failed to activate valves intended to prevent overfilling, according to the report.

The blast from the Dec. 11, 2005, explosion at the Hemel Hempstead, England-based terminal was felt more than 150 miles away, according to the British Geological Survey. Although the resulting fire, which took several days to extinguish, largely was contained onsite, shock waves from the explosion damaged commercial and residential buildings within five miles of the site, and smoke and soot was dispersed across southeast England.

The oil terminal, operated by Hertfordshire Oil Storage Ltd.—a joint venture owned 60% by Total U.K. Ltd., a London-based unit of French oil company Total S.A., and 40% by Texaco Ltd., a unit of San Ramon, Calif.-based Chevron Corp.—was the fifth largest oil terminal in the United Kingdom.

Total S.A. is a member of Bermuda-based oil industry mutual Oil Insurance Ltd., which provides per-occurrence coverage of up to \$250 million for its members.

Following the publication of the HSE report, John Hanson, partner in the commercial risk and property insurance team at London-based law firm Barlow Lyde & Gilbert, said, “we have written to the site’s operators seeking disclosure of documents relating to operational and ownership issues.”

BLG is acting for more than 40 commercial claimants seeking compensation from the terminal’s operators. Several of the claimants are seeking compensation for uninsured business interruption losses.

An application for pre-litigation disclosure will be made to the court in the next few days if the defendants do not agree to disclose the documents, said Mr. Hanson.

Meanwhile, Des Collins, a lawyer



Claims arising from the Buncefield oil terminal explosion have been estimated to be as high as \$1.89 billion.

acting for about 200 local residents whose properties were destroyed or damaged by the blast, is applying to the High Court for an earlier hearing as to whether a class action filed against the site’s operators can proceed. On March 17, the court adjourned a hearing on the issue until October, and asked for a progress report by July.

“As a result of the conclusions of the HSE’s third report into Buncefield, we will be trying to persuade the court to bring forward the October hearing,” said Mr. Collins, senior partner of Watford, England-based Collins Solicitors.

“We will also be pressing the defendants for admission of liability,” he said, pointing out that the report “gives enough to establish liability.”

A Hertfordshire Oil spokesman said in a statement that while “the report is vital in that it goes a long way to explaining what happened at the Buncefield Terminal on Dec. 11, until we know why it happened, it is not possible to determine legal liability.”

Estimates of the total claims arising out of the explosion vary between £300 million (\$567.9 million) and £1 billion (\$1.89 billion), said Mr. Hanson.

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The magazine will begin with a pilot issue on June 12, 2006, and will publish every two weeks beginning in September 2006.

The print edition will be published in English. Some or all of the content of *Business Insurance Europe* will be translated into several languages on the publication’s Web site.

For a limited time, you may register online for a free subscription to *Business Insurance Europe* by visiting [www.BIEurope.com/subscribe](http://www.BIEurope.com/subscribe).

## Former HIH executive loses appeal of prison sentence

By SARAH VEYSEY

**SYDNEY, Australia**—A former director of collapsed insurer HIH Insurance Ltd. last week lost his appeal of a prison sentence imposed for his role in the company’s collapse.

In addition, the Australian insurance regulator last week banned two former nonexecutive directors of HIH from taking senior positions at any nonlife insurer.

The New South Wales Court of Appeal dismissed an appeal by Rodney Adler of his sentence to four-and-a-half-year in prison with no parole for two years.

The Supreme Court of New South Wales last April imposed the sentence after Mr. Adler pleaded guilty to four criminal charges of making false statements and failing in his duty as a director.

Mr. Adler was one of two HIH directors sentenced to prison. Last May, Ray Williams, former chief executive of HIH, was sentenced to a four-and-a-half year term, with no parole for two years and nine months, for his role in the company’s downfall.

Meanwhile, last week, the Australian Prudential Regulation Authority banned two HIH nonexecutive directors, Justin Gardener and Alexander Gorrie, from “being or acting as a director or senior manager of a general insurer, nonoperating holding company or agent of a foreign general insurer.”

According to an APRA statement, Mr. Gardener was a nonexecutive director of HIH between December 1998 and March 2001, a member of

the group’s audit committee and chairman of that committee from February 2001 and a member of the company’s human resources committee. He was disqualified for his role in the insurer’s collapse in 2001.

APRA said in a statement that Mr. Gardener failed to disclose to the board that HIH’s auditors had assessed the company as a maximum audit risk, compromised the independence and operation of the audit committee and failed to make sufficient inquiries about transactions undertaken or proposed by HIH, among other things.

Mr. Gorrie was an alternate nonexecutive director of HIH from August 1995 to May 1997, a nonexecutive director between May 1997 and November 1999 and a member of the company’s human resource committee.

APRA said that Mr. Gorrie also failed to disclose to the company’s board that HIH had been assessed as a maximum audit risk, did not conduct proper internal

reviews of the remuneration and performance of senior management, failed to raise concerns about the implications of the refusal by the chief executive of FAI Insurance Ltd.—who later became a director of HIH—to allow HIH to conduct due diligence into FAI prior to acquiring the company and failed to raise concerns about the adequacy of HIH’s claims provisions, among other things.

Several other former executives of HIH have been banned by the Australian insurance regulator for their part in the company’s collapse.



Former HIH executive Rodney Adler was sentenced to more than four years in prison.

## Updates

### JLT obtains consent for China-based unit

Jardine Lloyd Thompson Group P.L.C. has been granted permission to begin operations in China, the company announced. London-based broker JLT said it had received approval from the China Insurance Regulatory Commission to start operating as an insurance and reinsurance broker throughout China via a majority-owned joint venture company. JLT has entered into a joint venture with Chinese technology company Guangdong Ricsson Enterprises Co. Ltd. The joint venture company, to be named JLT Lixin Insurance Brokers Co. Ltd., will be headquartered in Guangdong and will focus primarily on large industrial risks, JLT said in a statement.

### Zurich sees first-quarter profit

Zurich Financial Services Group posted profits of \$785 million for the first quarter of 2006, a 1% increase over the comparable period last year, despite the effect of a \$262 million charge for a settlement deal with several U.S. attorneys general and state insurance commissioners over allegations of bid rigging and price fixing.

### AIG to expand Chinese operations

American International Group Inc.’s life and general insurance subsidiaries in China have received permission to expand their operations into two of the top three Chinese provinces in terms of total economic activity, according to the insurer. American International Assurance Co. Ltd. and AIU Insurance Co. have received approvals from the China Insurance Regulatory Commission to expand throughout Guangdong province. AIG has also received approval for its life insurance subsidiary to expand throughout Jiangsu province.

### SCOR profits rise 61% in first quarter

French reinsurer SCOR S.A. posted net income of €53 million (\$64.3 million) for the first quarter of 2006, up 61% compared with profits for the same period last year. The reinsurer’s investment income increased 31% to €124 million (\$150.5 million) in the first quarter of 2006, thanks in part to a favorable investment environment and an active investment management policy, the company said in a statement. For the first quarter of 2006, SCOR recorded gross written premiums of €734 million (\$891.0 million), an 18% increase over the comparable period in 2005.

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## REQUEST FOR PROPOSALS

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### THE PORT AUTHORITY OF NEW YORK & NEW JERSEY

#### REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL BROKERAGE FIRM SERVICES FOR OWNER CONTROLLED ENVIRONMENTAL INSURANCE PROGRAM

The Port Authority of New York and New Jersey is seeking proposals, from insurance brokerage firms, for the administration of the Authority's existing Owner Controlled Environmental Insurance Program ("OCEIP"), and for the placement of environmental liability insurance as required to provide appropriate protection for the Authority's and the United States Army Corps of Engineers' ("Corps") dredging contracts, related to channel improvement projects in The Port of New York and New Jersey.

The OCEIP provides the Authority with a comprehensive policy form providing Contractor's Operations and Professional Services Environmental Insurance (COPS) for scheduled Corps and Port Authority dredging contracts, in a coverage limit of \$20 million per contract, with a \$150 million total policy aggregate, and Pollution Legal Liability Insurance (PLL) in a limit of \$20 million for each incident with a \$40 million policy limit.

The specific proposal information is set forth in the document entitled "Request For Proposal for Performance of Expert Professional Brokerage Firm Services for Owner Controlled Environmental Insurance Program". A copy of this RFP is available via download at [www.panynj.gov](http://www.panynj.gov). A copy can also be requested via e-mail, at [askforbids@panynj.gov](mailto:askforbids@panynj.gov). Upon requesting the RFP, please reference RFP Number 9569 in the subject line. Your e-mail should include the following information: full legal firm name, e-mail address, contact person, mailing address, and telephone number. Joint Ventures/teams are acceptable.

Proposals in response to this RFP are due by 2:00 P.M. on **Monday, June 12, 2006** and must have the RFP Number and full legal firm name clearly indicated on the outside package.

## REQUEST FOR PROPOSALS

## REQUEST FOR PROPOSALS

### NEW YORK CITY HOUSING AUTHORITY

#### REQUEST FOR PROPOSALS (RFP)

#### Investigation Firms to Investigate Personal Injury Claims and Investigate and Adjust Property Damage Claims and Provide other Claims Adjustment Services

The New York City Housing Authority (the "Authority") is soliciting proposals from investigative and claims adjustment firms to investigate and adjust claims for personal injury and property damage asserted against the Authority, and to adjust certain property damage claims and claims arising under the New York State No-Fault Law.

The Authority seeks to establish a panel of firms capable of delivering high quality investigation and adjustment services in a cost-efficient manner. The panel will work under the direction of the Tort Division in the Authority's Law Department and will provide investigative and adjustment services for the Tort Division and outside counsel that have been retained by the Authority to represent it in the defense of personal injury and property damage claims.

Interested firms may obtain copies of the Request for Proposals from **David Littman, 250 Broadway, 9th Floor, New York, New York 10007, Telephone: (212) 776-5226, on any business day between the hours of 10 a.m. and 4 p.m. or via e-mail on NYCHA's website at <http://nyc.gov/nycha>. A proposer's conference will take place on June 7, 2006, at 2 p.m., at 250 Broadway, Board Room, 12th Floor. The deadline for submitting proposals is 3 p.m., July 7, 2006.**



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## LEGAL NOTICE

### UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re: ) In a Case Under  
 Petition of Alan Boyce, as ) Chapter 15 of the  
 foreign representative of NRG ) Bankruptcy Code  
 Victory Reinsurance Limited. ) Case No.  
 Debtor in a Foreign Proceeding. ) 06-11052 (JMP)

#### NOTICE OF FILING AND HEARING ON PETITION UNDER CHAPTER 15 OF THE UNITED STATES BANKRUPTCY CODE

**PLEASE TAKE NOTICE** that on May 12, 2006, Alan Boyce (the "Petitioner"), acting at the direction of the Board of Directors of NRG Victory Reinsurance Limited ("NRG Victory") filed a Petition Under Chapter 15 For Recognition Of A Foreign Main Proceeding And Motion For Permanent Injunction (the "Petition and Motion"), pursuant to chapter 15 of title 11 of the United States Code (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

**PLEASE TAKE FURTHER NOTICE** that among other things, the Petition and Motion seeks the entry of an order giving full force and effect in the United States to the Scheme of Arrangement, pursuant to section 425 of the Companies Act of England and Wales, of NRG Victory (the "Scheme of Arrangement") and injunctive and related relief in aid thereof.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing with respect to the Petition and Motion for 10:00 a.m. on June 12, 2006.

Copies of the Scheme of Arrangement, the Petition and Motion, the Declaration of Alan Boyce in Support of the Petition and Motion, the Memorandum of Law in Support of the Petition and Motion, and the form of order requested are available to parties-in-interest on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> (a PACER login and password are required to retrieve a document) or upon written request to the Petitioner's United States counsel (including by facsimile or email) addressed to:

**Clifford Chance US LLP**

31 West 52nd Street  
 New York, New York 10019  
 (212) 878-8375 (facsimile)  
 Attn: Sara M. Tapinekis, Esq.  
 sara.tapinekis@cliffordchance.com

**PLEASE TAKE FURTHER NOTICE** that any party-in-interest wishing to submit a response or objection to the Petition and Motion or the relief requested by the Petitioner must do so in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, and in writing and setting forth the basis therefor, which response or objection must be filed electronically with the Court by registered users of the Court's electronic case filing system in accordance with General Order M-242, (a copy of which may be viewed on the Court's website, <http://www.nysb.uscourts.gov>) and by all other parties-in-interest on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, which disc shall be sent to the Office of the Clerk of the Court, Room 534, One Bowling Green, New York, New York 10004-1408. A hard copy of any response or objection shall be sent to the Chambers of the Honorable James M. Peck, United States Bankruptcy Judge, and served upon Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attention: Sara M. Tapinekis), United States counsel to the Petitioner, so as to be received no later than 4:00 p.m. (Eastern Time), June 7, 2006.

**PLEASE TAKE FURTHER NOTICE** that all parties-in-interest opposed to the Petition and Motion or the Petitioner's request for relief must appear at the Permanent Injunction Hearing at the time and place set forth above.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely filed and served as provided above, the Court may grant the recognition and relief requested in the Petition and Motion without further notice.

**PLEASE TAKE FURTHER NOTICE** that the hearing with respect to the relief requested in the Petition and Motion may be adjourned from time to time without further notice other than an announcement in open court of the adjourned date or dates at the hearing or any other further adjourned hearing.

Dated: New York, New York, May 16, 2006  
**Clifford Chance US LLP**, Attorneys for the Petitioner,  
 31 West 52nd Street, New York, New York 10019, (212) 878-8000, Attn: Andrew P. Brozman, Esq., David A. Sullivan, Esq., Sara M. Tapinekis, Esq.

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Contact Nick White, Associate Publisher/Advertising Director  
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## Property/casualty insurers' 2006 first-quarter results

Ranked by net income. All amounts are in thousands of dollars.

	Corporate			Property/casualty operations		Property/casualty operations		Policyholder surplus	
	Net income	Percent increase (decrease) 2006-2005	Consolidated revenues 2006	Combined ratio 2006 <sup>1</sup>	Combined ratio 2005 <sup>1</sup>	Net premiums written 2006	Percent increase (decrease) 2006-2005	Policyholder surplus 2006	Percent increase (decrease) 2005-2006
American International Group Inc.	\$3,195,000	(15.9)%	\$27,259,000	89.2%	93.5%	\$11,255,000	4.3%	N/A	N/A
The St. Paul Travelers Cos. Inc.	1,006,000	374.5	6,050,000	88.9	90.5	4,774,000	(0.1)	\$18,522,000	20.0%
Hartford Financial Services Group Inc.	728,000	9.3	6,543,000	88.8	88.6	2,629,000	.9	7,300,000	4.3
Chubb Corp.	672,000	43.0	3,506,000	82.9	89.4	2,925,000 <sup>2</sup>	(4.3)	9,650,000	17.3
Cincinnati Financial Corp.	551,987	282.4	1,607,102	92.0	88.9	828,775	4.0	4,333,849	6.6
ACE Ltd.	489,000	11.9	3,181,000	90.6	88.9	3,310,000	(1.7)	12,157,000	21.9
Liberty Mutual Insurance Co.	292,000	(26.3)	5,448,000	100.0 <sup>2</sup>	99.3 <sup>2</sup>	3,890,000 <sup>2</sup>	10.5	10,096,000	5.9
CNA Financial Corp.	229,000	23.8	2,501,000	96.9	99.0	1,758,000	(0.4)	N/A	N/A
SAFECO Corp.	208,200	(1.8)	1,561,500	86.9	88.5	1,418,100	(1.2)	3,789,900	4.3
Old Republic International	117,427	2.7	942,917	90.4 <sup>2</sup>	91.3 <sup>2</sup>	456,407 <sup>2</sup>	6.2	2,182,963	9.2
American Financial Group	101,500	61.4	997,600	88.1	92.4	624,200	5.1	2,284,400	3.2
Ohio Casualty Corp.	51,900	37.7	422,800	94.9	95.6	354,100 <sup>2</sup>	(1.2)	1,038,200	13.5
RLI Corp.	25,656	(12.5)	148,537	87.5 <sup>2</sup>	78.8 <sup>2</sup>	121,168 <sup>2</sup>	9.4	700,006	1.0
Argonaut Group Inc.	20,500	(21.2)	224,600	95.2	95.6	191,500	26.7	728,400	18.5
<b>Cumulative</b>	<b>\$7,688,170</b>	<b>13.0%</b>	<b>\$60,393,056</b>	<b>90.4%</b>	<b>92.4%</b>	<b>\$34,535,250</b>	<b>2.4%</b>	<b>\$72,782,718</b>	<b>13.2%</b>

(1) Includes dividends. (2) Statutory.  
Source: BI survey, company reports

## Results: Investments, lighter losses boost P/C insurers in quarter

Continued from page 3  
ing account."

Mr. Dion said, however, "I don't think the increase in investment income is large enough yet to spur insurers to basically engage in cash-flow underwriting, or be more aggressive in terms of price declines," he said. "I just don't think we're at that level yet."

Observers say results should continue to be strong this year. This year "could go down as the most profitable year ever" in the commercial property/casualty sector, "so long as the wind doesn't blow," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York.

"I think the outlook is still positive for '06," said Mr. Ward. "I believe investment results will remain strong. The underwriting outlook is a little less optimistic, but as long as carriers keep the discipline in place to price business where it needs to be priced, even if it means sacrificing premium growth, underwriting results will remain at strong levels," although catastrophes remain a "big unknown."

This year "will be a pretty good year," said Mr. Auden. "At some point, I think, companies will face pressure from the equity market and analysts for growth." While that has not happened yet, "that's something to watch for," he said. "If companies feel pressured to grow...that could lead to deterioration in underwriting performance."

"If fundamentals continue to be strong, we think this could be a good time" for insurers, said Julie Ko, equity analyst at Philo Smith & Co. in Stamford, Conn. "We think that the group has a good momentum going in for the rest of the year."

Meanwhile, observers say casualty rates in particular will continue

## Cats spur changes to portfolios, reinsurance

With the fear of another catastrophe year like 2005 looming over the property/casualty insurance industry, insurers are making some fundamental changes in their operations, including their underwriting criteria and reinsurance programs, say observers.

"It's affecting companies in many, many ways," said Jeffrey Berg, an analyst with Moody's Investors Service in New York. There has been "renewed discipline around underwriting criteria and essentially doing a better job of getting your data" and setting appropriate rates for the risks they are taking.

There are also changes being made in terms and conditions, including wind deductibles and flood exclusions "and trying to put more types of protection caveats within the policy," said Mr. Berg.

Companies with multiple exposures in the same area "are taking some additional risk measures," by determining which lines of business are the most profitable and concentrating on those lines, he said.

In addition, in light of rising reinsurance prices and reduced capacity, insurers are "continuing to think of alternative ways of using reinsurance, whether that is catastrophe bonds, or something like that—just finding alternative means to transfer risk, but at the same time accepting more risk by raising attachment points," said Mr. Berg.

"Primary companies seem to be retaining

more risk," agreed Cliff Gallant, an analyst at Keefe, Bruyette & Woods Inc. in New York. With the underlying books of business more profitable, "they're willing to accept a little more volatility in terms of risk," Mr. Gallant said.

Mr. Berg said insurers' boards of directors have also "kind of stepped up the discussions with management" as to their risk appetite, "and making sure everybody is on board with the risks that are being taken and the exposures that are being taken."

The 2005 hurricanes have caused a "sea change" in the way insurers operate, said John L. Ward, chief executive officer of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry.

Last year, the catastrophe models "missed the mark, and so it's adding some uncertainty to the equation, and I think it's led a number of companies to re-evaluate their entire reinsurance program, and has even led some to retreat from the coastal areas, more than they would have if they had a high degree of confidence in the risk management and the cat modeling tools available," said Mr. Ward.

Andrew Colannino, vp at Oldwick, N.J.-based A.M. Best Co. Inc., said, "companies are taking a more proactive approach" to enterprise risk management. "They're looking at the risks across the enterprise more closely"

and "paying a lot more attention to that right now, more than in the past."

Insurers are "revisiting the amount of exposure they had in catastrophe-prone areas, and taking some fairly significant underwriting actions to reduce their exposure," said John Iten, a director at Standard & Poor's Corp. in New York.

National and even regional insurers are "limiting their direct, coastal exposure and perhaps writing more inland business," said Michael O'Neill & Partners L.P. in New York. "I think that is having a bigger effect on a lot of the Midwest companies" that do not have coastal exposure, he said.

They are "seeing an influx of new competitors entering the market, or existing competitors looking to increase their exposure to the Midwest, just because they're not as exposed to hurricane risk, and that's having a negative effect on pricing," said Mr. Dion.

Meanwhile, property/casualty insurers with catastrophe exposures are the only insurance group that has not returned to its pre-hurricane levels in the stock market, said Mark Lane, a principal and research analyst with William Blair & Co. in Chicago.

"There's a lot of angst and concern about what this season's going to bring" on Wall Street, said Mr. Lane.

—By Judy Greenwald

to soften. "We think property prices will continue to increase through the balance of the year, and there'll continue to be pressure on casualty pricing, modest pressure," said Mark Lane, a principal and research analyst with William Blair & Co. in Chicago. "We don't really see anything that's going to change in the

near term."

"Rates in most commercial lines continue to drift down," said Mr. Gwynn. "We're not seeing heated competition in terms of rates, but we are seeing rate declines, and loss-cost trends continue to increase. That means, ultimately, we'll have lower underwriting margins."

"At this point, we don't see any signs that the bottom is starting to fall out," Mr. Iten said. "We think that the current trend in rates, that low, single-digit sort of decline, will go on for a bit longer. We don't think it's going to go on forever, but...at least through the third quarter, I would expect fairly mod-

est declines in rates."

"Growth is still relatively slow," said Mr. Auden. Casualty rates are declining, and only rates in catastrophe-affected areas "are seeing significant rate hikes in property. I think we'll be in a slow, modest growth environment for some time," he said.

## ABM: Claim based on time to rebuild WTC

Continued from page 3

Ehrman White & McAuliffe in New York.

In *Duane Reade Inc. vs. St. Paul Fire & Marine Insurance Co.*, the 2nd U.S. Circuit Court of Appeals in New York ruled that the loss period would extend only until Duane Reade could relocate and resume permanent operations. In that case, Duane Reade occupied leased space in the WTC, whereas ABM provided services for the WTC common areas and nearly all of the buildings' occupants.

ABM is attempting to tap a property policy purchased from Zurich that includes business interruption coverage. The policy has \$127.4 million in blanket limits and ABM paid \$224,591 in premium for coverage between Feb. 1, 2001, and Feb. 1, 2002, court records show.

A jury trial to determine the length of time that ABM will be able to recover loss of income is scheduled to begin Aug. 14, said John N. Ellison, who represents ABM and is a partner at Anderson Kill & Olick in New York.

According to Judge Jed S. Rakoff in the U.S. District Court for the Southern District of New York, ABM's contract at the WTC was set to expire in January 2004.

For ABM to recover insurance for income lost beyond that point, it will have to argue in trial that it is "more probable than not" that its service contract would have been renewed and that it would have continued to experience a loss, the judge said.

A spokesman for Zurich declined to discuss the case.

Litigation in *Zurich American Insurance Co. vs. ABM Industries Inc.* began after ABM sought business interruption coverage for its WTC losses. ABM claims it lost \$10 million to \$12 million of profit per year.

Zurich then sued, seeking a declaratory judgment that ABM's losses were subject to a \$10 million limit under the policy's contingent business interruption clause, court records show.

Zurich argued the sublimit should apply because ABM's claim stemmed from destruction to property belonging to ABM's customers.

ABM argued that the contingent business interruption sublimit did not apply because it was entitled to coverage under business interruption, extra expense and civil authority provisions of the policy.

The district court determined in 2003 that ABM was not entitled to the policy's business interruption, civil authority or extra expense provisions because its losses resulted from destruction of property that it did not own, control, use or lease.

The 2nd Circuit, however, found that ABM did "use" World Trade Center property within the insurance contract's requirements and reversed the lower court's ruling. The appeals court remanded the case to the trial court to determine damages under the business interruption provision and to determine extra expense and civil authority losses, court records show.

Zurich then argued before the trial court that ABM's period of recovery

for lost income should end when ABM's customers relocated their businesses.

The trial court rejected Zurich's position noting, among other things, that under the policy's business interruption terms, the language "insured property" included the WTC's common areas and not just space occupied by tenants.

The court also noted under Zurich's theory, if all WTC tenants immediately relocated, ABM's business would still be interrupted, but it would not be able to recover damages.

"The parties could have hardly intended" such an outcome, the court found. It granted ABM's summary judgment request, finding that the appropriate period of recovery is the hypothetical length of time required to rebuild the WTC.

Along with determining the actual length of recovery time the policyholder is entitled to, a jury must also determine any extra expense and civil losses.

*Zurich American Insurance Co. vs. ABM Industries Inc., 2nd U.S. Circuit Court of Appeals in New York, 01 Civ. 11200 (JSR)*

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# Flu: Crisis management plans employed amid outbreak concerns

Continued from page 1

such as bacteria, dust, lint, pollen and smoke, to keep infected passengers from infecting others on the plane. These units, which are also used in hospital surgical theaters, are standard in all new aircraft and are installed in 75% of all commercial aircraft, according to the Federal Aviation Administration.

"You'd have more chance of catching a flu on a bus than you would on an airplane," said Neil Jonasson, the Singapore-based assistant director of safety, operations and infrastructure for the International Air Transport Assn.

Thai Airways International has gone a step further by retrofitting the filtration systems in all of its 80 aircraft so that the air circulates through two HEPA filters before entering the cabin again, according to Suraphan Israngura Na Ayuthya, di-

rector of crisis management for the state-owned airline, which is based in Bangkok.

The installation of the filters was one of several measures taken by Thai Airways following the SARS outbreak.

"Before SARS we have never thought about how to protect our passengers from disease," Mr. Israngura said. "We immediately started to study ways to reduce the potential by working closely with the Ministry of Public Health."

The result was a Biological Outbreak Operations Manual, which outlines procedures for the airline in the event of a pandemic. The crisis manual includes plans to hire nurses and doctors to work at check-in counters in affected areas to examine passengers who appear ill. Doctors would also be on board aircraft flying in those regions.

The company would use the same planes on the same routes in areas of infection to contain the virus. After each flight in an affected region, the airline would disinfect the entire aircraft and would use especially strong disinfectants on what Mr. Israngura called "36 touch points," or areas that passengers regularly touch, such as door-knobs for the toilets.

The company would also throw away all disposable products after every flight and reusable products like blankets and pillows would be sterilized before being repackaged for use again, he said.

Another pressing need for airlines is to ensure that quarantine procedures are in place for visibly sick passengers, according to Peter Simpson, a risk manager with Hong Kong's Cathay Pacific Airways. As in most major Asian airports, body-

heat scanners that were installed during the SARS crisis to detect passengers running a fever are still in use at Hong Kong International Airport.

In March seven passengers traveling as part of a group all had a fever when they checked in, he said. When they arrived in Canada, they were quarantined until authorities there could confirm they were not infected with the avian flu virus.

In addition, Cathay has stocked up on Tamiflu, a drug used to treat avian flu, which it would dispense to employees that fall ill.

One airline that flies many routes to Asia, Air New Zealand, may face serious financial problems should a pandemic occur. The island nation's government earlier resolved to seal off the country by forbidding overseas flights from landing or taking off in the event of an

avian flu outbreak.

"With SARS we did shut down a few routes, but that was driven by the market," said Geraint Bermingham, manager of operational and continuity risk for Air New Zealand. But if the government shuts the borders, "we would no longer be responding to the market, but to the fact that we would not be flying overseas."

The company has met with its aircrew union to discuss at what point the airline would ask employees to take time off and when it would have to start laying them off. The company has also advised its staff about health-control measures recommended by the IATA.

"If the event occurs, we can work together," Mr. Bermingham said. "One thing we learned from SARS is to have proactive communication with our crew."

## Bad timing?

Companies facing probes into stock-option grant practices:

■ **Dallas-based Affiliated Computer Services Inc.:** The Securities and Exchange Commission is conducting an informal inquiry into its options from October 1998 through March 2005. ACS also has received a federal grand jury subpoena from a U.S. District Court in New York. Several former directors and officers face at least three separate shareholder derivative suits alleging breach of fiduciary duties related to stock option grant practices. ACS has denied any intentional backdating by executives and will defend the suits.

■ **San Jose, Calif.-based Altera Corp.:** Board has announced an independent review of the company's historical stock option practices, after management completed a review of several periods.

■ **Chelmsford, Mass.-based Brooks Automation Inc.:** Received notice of a SEC informal inquiry into the company. Company plans to restate earnings for the years 1999 through 2005, because it believes it incorrectly accounted for certain matters concerning stock options.

■ **Nashville, Tenn.-based Caremark Rx Inc.:** Received a grand jury document subpoena from the U.S. Attorney for the Southern District of New York requesting records pertaining to the granting of stock options. Company also received a letter of informal inquiry from the SEC.

■ **Wakefield, Mass.-based Converse Technology Inc.:** Said it will restate results for fiscal years 2001 through 2005 and the first three quarters of the 2006 fiscal year, which ends Jan. 31, because of misaccounting for options grants. Converse faces at least six shareholder derivative suits and two shareholder class-action suits over its options practices. The firm received a subpoena this month from the U.S. Attorney's Office for the Eastern District of New York in connection with issuance of option grants since 1995. Company's CEO, CFO and general counsel have resigned amid the probe.

Source: Company reports

■ **St. Petersburg, Fla.-based Jabil Circuit Inc.:** SEC is conducting an informal inquiry into its options practices. The company faces at least one derivative complaint alleging that certain executives and directors of the company breached fiduciary duties in connection with certain stock option grants.

■ **San Jose, Calif.-based Power Integrations Inc.:** Said it may restate earnings for the years 1999 through 2004, along with the first three quarters of 2005, due to improper recording of grant dates for stock option awards. One day prior to the announcement, the company's chairman and CFO resigned.

■ **Baltimore-based SafeNet Inc.:** Received a grand jury document subpoena from the U.S. Attorney for the Southern District of New York requesting records pertaining to the granting of stock options. Also received a letter of informal inquiry from the SEC.

■ **Minnetonka, Minn.-based UnitedHealth Group Inc.:** Said it may restate several years of financial results due to improper oversight and accounting for stock option grants, which could reduce earnings by as much as \$286 million. UnitedHealth faces numerous shareholder class-action lawsuits alleging harm caused by backdated stock options. Company also is the subject of an SEC informal inquiry and has received a subpoena over options practices from the U.S. Attorney's office for the Southern District of New York.

■ **Camarillo, Calif.-based Vitesse Semiconductor Corp.:** Fired several top executives in the midst of internal probes, including its CEO and CFO. The board has deemed at least three years of the company's results unreliable after an internal investigation relating to past stock option grants. Vitesse and certain of its directors and officers face at least one securities class-action lawsuit filed by investors, alleging backdating of stock option grants.

## Backdating: Practices unlikely to affect market

Continued from page 1

practice, a division of Chicago-based Aon Corp.

In evaluating an entity's compensation-related D&O risks, insurers have tended to center on the actual amounts of executive compensation—checking whether there was an appropriate balance between an officer's position and pay—and wrongdoing by executives such as insider trading, said John A. Rafferty, vp in charge of D&O underwriting at Hartford Financial Products, a unit of Hartford, Conn.-based Hartford Financial Services Group Inc. Options practices, meanwhile, have been "a bit murky" and "hasn't been something that's been focused on" by underwriters, Mr. Rafferty said.

"Insureds and brokers should expect that there will be increased diligence...and for underwriters to ask more pointed questions around the issue," Mr. Rafferty said. "If it's a big issue to the SEC, it's going to be a big issue to a D&O underwriter, so we think it's a great opportunity for companies to favorably differentiate themselves," regarding quality controls and management integrity, he said.

Of special interest to underwriters, Mr. Rafferty said, will be the issue of so-called "backdating," or when the grant price for a stock option is retroactively dated to boost profits for the recipient.

Backdating is not necessarily illegal, legal experts say, though it could raise accounting and disclosure issues under securities laws.

According to Jacob S. Frenkel, a former SEC enforcement lawyer now with Shulman, Rogers, Gandal, Pordy & Ecker P.A. in Rockville, Md., "It appears as if the SEC's view of backdating may differ from the conventional interpretation of the concept of backdating...that the options don't become effective until they are signed, sealed and delivered on paper, not just authorized by the compensation committee."

"If for example, on a given day, options are issued or authorized by the company's compensation com-

mittee but they are not memorialized until some later date," SEC enforcement could view it as backdating, Mr. Frenkel said.

"On some level, the D&O implications depend on what kind of backdating we're talking about," Mr. Frenkel said. "As long as SEC enforcement is pushing new theories, it will continue to test the four corners of D&O policies."

Still, heightened regulatory attention over companies' options practices will not lead to any significant changes to policy terms and conditions, or D&O insurance rate increases, predicted Lou Ann Layton, D&O practice leader with Marsh Inc. in New York. "I just don't think this issue is going to be enough to change a market," she said.

While coverage questions at renewals time will be "much more fine-tuned by the underwriters," Ms. Layton said, she doubts that "there will be a preponderance of claims on this issue...or that it will be one causing underwriters to walk away from business."

"I don't think you're going to see a tremendous amount of change in the policy," said Evan Rosenberg, senior vp at Chubb Specialty Insurance, a unit of Warren, N.J.-based Chubb Corp.

"I think underwriters are trying to be thoughtful about these types of issues, and there is a maturity in the underwriting community to look, listen, and make sure that if there are any changes, they are done on the accounts that require them, not on a broad-brush basis."

"There may be more companies that will come out of the woodwork, but I don't think it's big enough a number" to cause underwriters great concern, Mr. Rosenberg said. "But, for the companies that are in the press, I can guarantee you that underwriters will question how they got to where they are, and what they're doing going forward to change the option-granting practice," along with any disclosures about the administration of the stock-option grant program, he said.

Any attempts to rescind policies

stemming from possible timing problems with stock options would be "an overreaction to the issue," Mr. Rosenberg said.

However, Aon's Mr. Shappell said, going forward, if insurers receive D&O claims stemming from alleged backdating of options, and "if underwriters have asked the right questions, and the insureds failed to disclose their option-granting practices, we will see rescissions come out of that."

The backdating issue is problematic, because it can lead to "financial restatement risk" and "tax and cash implications for a company, depending upon how the tax issues were handled around the options being exercised," Hartford's Mr. Rafferty said.

Still, "It doesn't seem that there is likely to be exclusionary language added to policies at this time," Mr. Rafferty said.

A few D&O insurers may try to specifically exclude the backdating of stock options on future policies, predicted Mr. Shappell, but such attempts "will be resisted in the marketplace and I don't think carriers will fundamentally be successful."

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# Court: Health plans can recover medical costs when third-parties pay expenses

Continued from page 1

Both a district court and an appeals court panel held for MAMSI.

The Supreme Court followed suit on Monday, holding that MAMSI could pursue reimbursement under ERISA. The plan's attempt to recover "properly sought equitable relief" is allowed under ERISA, wrote the chief justice.

Employee benefit experts hailed the decision as one that would clear up the circumstances under which a plan could seek reimbursement from beneficiaries who had received awards from third parties.

"This is longstanding practice. Most plans use it," said Kathryn Wilber, health policy legal counsel for the American Benefits Council in Washington, who noted that the decision was both unanimous and "quite clear" about plans' rights to seek reimbursement.

"It was a good decision. It really clarified what, until then, had been a split in the circuits as to when you could enforce these provisions and

under what circumstances," she said.

"It does allow employers to enforce their subrogation and reimbursement provisions under a com-

**"Employers still have to be fleet of foot when it comes to making sure that the third-party payments are not put beyond the control of the employees, such as in a trust."**

**Henry Saveth**  
Mercer Human Resources Consulting

mon pattern," said Henry Saveth, an attorney with Mercer Human Resources Consulting in New York.

"There had been some concern that employers would be strictly limited in the extent they could seek recovery of benefits paid by the plan where a third party had also reimbursed those expenses. This case says, in general, the employer can recover. However, it doesn't apply in all situations," he added.

Mr. Saveth said that the exception occurs when "the employee doesn't have the money, but it's set aside in some kind of trust." He added that while "it's good news for employers, employers still have to be fleet of foot when it comes to making sure that the third-party payments are not put beyond the control of the employees, such as in a trust," he said.

Despite the exception, the ruling should help keep health care more affordable for beneficiaries, say some observers.

"We were gratified by the court's decision in a case that relates to contract provisions that help to

keep health care affordable for consumers," said a spokeswoman for the Washington-based America's Health Insurance Plans, which represents health insurers.

The National Assn. of Manufacturers in Washington welcomed the decision. Quentin Riegel, NAM's vp-litigation, issued a statement saying that "reimbursements are vital to the ability of health plans to try to keep up with rising health-care costs. Every dollar that is not

reimbursed to a plan is a dollar that is not available to pay the claims of other employees. It is entirely reasonable for an employer to ask for its money back from an employee whose medical bills are paid twice."

*Joel Sereboff et ux. vs. Mid Atlantic Medical Services Inc. U.S. Supreme Court. No. 05-260. Decided May 15, 2006.*

## Late News

Continued from page 1

Knox placed property/casualty insurance for the State Insurance Risk Management Board and the Connecticut Development Authority from 1997 through 2004. While the state paid the brokerage an upfront fee for the insurance placements, R.C. Knox collected more than \$400,000 in concealed contingent commissions from insurers, despite "repeatedly" assuring the state that it was not receiving any commissions from insurers for the placements, Mr. Blumenthal said in a statement. The company denies any wrongdoing.

### Validus forms sidecar for marine/energy

Validus Reinsurance Ltd. has entered into a quota-share retrocession agreement with sidecar reinsurer Petrel Re Ltd. to write marine and energy business. Petrel Re, a newly formed reinsurer based in Bermuda, will assume a 75% quota share of certain lines of marine and offshore energy reinsurance contracts written by Validus for 2006 and 2007. Hamilton-based Validus was set up late last year and is backed by Aquiline Capital Partners L.L.C., an insurance investment vehicle headed by Jeffrey Greenberg, the former chairman and chief executive officer of Marsh & McLennan Cos. Inc. Petrel Re is backed by investment funds managed by First Reserve Corp., a private equity firm that specializes in investing in the energy industry.

### UnitedHealth, WellPoint settle Ohio investigation

Subsidiaries of UnitedHealth Group Inc. and WellPoint Inc. have signed consent orders with the Ohio Department of Insurance to resolve allegations of improper compensation to agents. The department alleged that UnitedHealthcare of Ohio and Anthem Blue Cross & Blue Shield paid improper compensation to independent agents who were hired to evaluate multiple health insurance coverage options on behalf of public entities. UnitedHealthcare neither admitted nor denied the allegations of the department but entered into the consent order to fully resolve the allegations, according to the consent order. It agreed to pay an administrative penalty of \$125,000 and administrative costs of \$50,000. Anthem denied the allegations, but it also signed a consent order to

resolve all outstanding disputes, agreeing to pay administrative fees and costs in the amount of \$30,000.

### Max Re notified of possible delisting

Max Re Capital Ltd. has received notice that its securities may be delisted from the NASDAQ because it has failed to file its Form 10-Q for the first quarter. The reinsurer said it has not filed the report because its board of director's Audit and Risk Management Commission has not yet completed its review of three finite risk retrocessional contracts written in 2001 and 2003. Max Re said it will request a hearing on the issue and that it expects to file the 10-Q next month.

### Briefly noted

Ronald R. Pressman, president and CEO of GE Insurance Solutions, has been named president and CEO of GE Asset Management. In November, Swiss Reinsurance Co. announced plans to take over the property/casualty business of GE Insurance Solutions in a deal valued at more than \$7 billion....New Mexico Insurance Superintendent Eric Serna will resign June 14, according to an agreement reached with the state's Public Regulation Commission, which oversees his office. Mr. Serna has been on paid leave from the New Mexico Division of Insurance since April 6, when New Mexico Attorney General Patricia Madrid began investigating certain of his activities. He denies any wrongdoing.

...Sedgwick Claims Management Services Inc. has acquired VPA Inc., a claims services firm specializing in absence and disability benefit management programs for large employers. Terms of the deal were not disclosed. Calabasas, Calif.-based VPA has annual revenues of approximately \$20 million, Sedgwick said in a statement.

### At BusinessInsurance.com

New Online Poll: Over the past three years, has the period of time between binding coverage and you receiving a policy:  
1. Shortened.  
2. Lengthened.  
3. Remained the same

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

## Oregon: Allocation ruling favors policyholders

Continued from page 3

among themselves.

Based on the high court's 1959 *Lamb-Weston* decision, the judge in the Cascade case sliced the \$3.8 million judgment against Employers Re by nearly 97% to \$118,000. The judge calculated that Employers Re's \$5 million policy limits represented 3% of the nearly \$160.8 million in excess limits that Cascade had purchased from all of its excess insurers.

On appeal, the appellate court rejected the lower court's interpretation of *Lamb-Weston*, ruling that it does not support the notion that any coverage allocation formula may leave a policyholder with a coverage shortfall if the insurers on the risk have not tendered their full policy limits.

The *Lamb-Weston* case applied only to how insurers should spread their policyholder's loss among themselves, the appeals court ruled. The decision had "no effect on each

insurer's independent obligation to make the insured whole to the extent of its applicable policy limits," the appeals court ruled.

Indeed, the appeals court noted, the state Supreme Court emphasized in a 1971 decision that its 1959 conclusion "is a corollary of the fact that, in the absence of other insurance, each insurer would be liable to the full extent of its policy limits."

Employers Re had argued that reasoning would apply only when the policyholder sues one insurer, not multiple insurers.

But the appellate court found the allocation formula Employers Re supported could be used only to prevent a policyholder from recovering insurance proceeds in excess of its loss.

The appellate court also rejected Employers Re's arguments that failing to use its allocation formula would unfairly penalize nonsettling insurers by forcing them to cover

the portion of a loss that settling insurers avoided when they settled for less than their full policy limits.

The insurer's "argument would discourage a settlement with fewer than all insurers because a settlement for less than the policy limits would prevent the insured from ever recovering the full insured amount of its loss," the court wrote. "That would be the case even if some insurers had defenses that were not available to others, or if some insurers were more forthcoming in negotiations than others."

Ms. Foggan said the court's reasoning would allow a policyholder and one of its insurers to collude in foisting most of a loss on one insurer.

*Cascade Corp. vs. American Home Assurance Co. et al., Oregon Court of Appeals, No. 9205-03083; A118185.*

## BI Stock Index [ 5/15 - 5/19 ]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com)

Percentage change of BI Stock Index vs. key indicators

**BI Stock Index**   
**2883.00** **-1.39**

**Dow Jones**   
**11144.06** **-2.08**

**S&P 500**   
**1267.03** **-1.87**

### Largest gains

Sierra Health Services	10.94%
PMA Capital Corp.	7.01%
Health Net Inc.	6.47%
Humana Inc.	6.41%
UNICO American Corp.	6.38%

### Largest losses

Vesta Insurance Group	-16.22%
Gainsco Inc.	-10.58%
SCOR S.A.	-9.56%
Axis Capital Holdings	-7.05%
Meadowbrook Insurance	-5.42%

### Weekly change by market segment

Brokers	0.09%
Insurers/Reinsurers	-1.77%
Managed Care Organizations	2.48%

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



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