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OVER DEFENSE COSTS COVER
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In Brief

ING unit settles kickback charge

A unit of Dutch financial services firm ING Group last week agreed to pay \$33 million to settle litigation in New York and New Hampshire for allegedly accepting kickbacks to promote certain funds as part of retirement plans. Under the settlement, New York teachers and former teachers are eligible for \$30 million in restitution, while New Hampshire state employees are eligible to receive a total of \$3 million. ING did not admit or deny any wrongdoing.

UnitedHealth loses bid to block probe

Minnesota Attorney General Mike Hatch has the right to investigate UnitedHealth Group Inc.'s executive compensation

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Benefits Management Technology & Online Solutions

Benefits managers turn to the Internet to speed up processes; personal health records gain traction; employees plan for the future with Web-based calculators. **PAGE 9**

**RANKING OF LEADING
EMPLOYEE BENEFIT
INFORMATION SYSTEMS
PAGE 10**

IRS rules create problems for firms launching HSAs

By **JERRY GEISEL**

WASHINGTON—Employees who start health savings accounts next year could be shortchanged if their employers offer flexible spending accounts with grace periods.

In such situations, the maximum tax-free contribution made to an employee's HSA could be cut by as much as 25% during the first year of HSA enrollment, reducing funds available to pay for current year's health care expenses.

"If you have adopted a grace-period FSA, it can be very damaging for those who want to make maximum contributions to their HSAs," said Jay Savan, health and group welfare leader in the St. Louis office of consultant Towers Perrin.

The problem arises from Internal Revenue Service rules governing HSAs and grace-period FSAs. Those FSAs are so named because, unlike traditional FSAs in which employees forfeit unused account balances at the end of year, employees in

grace-period FSAs can tap balances that remain at the end of a year to pay for uncovered health care expenses incurred during the first 10 weeks of the next year.

The IRS, under pressure from Congress, in 2005 authorized grace periods for FSAs to reduce the impact of the end-of-year FSA forfeiture requirement, which has come to be known as "use it or lose it."

IRS rules, though, say that, with

See **HSAs** page 6

Drug pricing system nixed by pact

*Class settlement may
lead to reduced
prescription costs*

By **JOANNE WOJCIC**

A proposed settlement of a class action lawsuit against the nation's No. 1 provider of average wholesale prices for pharmaceuticals likely will result in pharmacy benefit managers attempting to renegotiate their contracts to preserve their profit margins, experts say.

Employers, organizations and other PBM users should not pin their hopes on lowering their drug costs in the immediate future but, if the settlement is finalized, PBM users could see more competitive drug prices going forward. The case also could lead to the end of the AWP system, observers say.

The settlement, which is pending approval by Judge Patti Saris in the U.S. District Court in Boston, would require First DataBank Inc. to reduce average wholesale prices by



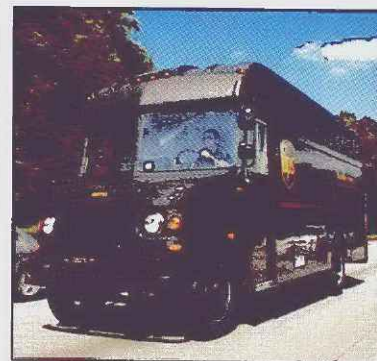
5% and eventually cease publishing the drug price benchmark that insurers, employers, pharmacies and PBMs use to set prescription drug prices. This AWP often is the starting point in negotiations for employers seeking discounts from their PBMs.

Filed by the New England Carpenters Health Benefits Fund and

AFSCME District Council 37 Health and Security Plan, the lawsuit alleged that First DataBank, a San Bruno, Calif.-based division of publisher Hearst Corp., conspired with San Francisco-based drug wholesaler McKesson Corp. to arbitrarily increase AWP markups to 25% from 20% between 2002 and 2005, resulting in overpayment to PBMs and pharmacies of as much as \$4 billion.

The increase allegedly benefited both McKesson's customers and the purchasers of First DataBank's pricing guides, the suit claimed. Though First DataBank claimed its AWP reflected a survey of national drug wholesalers, it turned out only McKesson participated in the survey.

See **DRUGS** page 29



UPS

Court puts brakes on UPS ban

*Safety plans that bar
deaf drivers violate
bias law, ruling says*

By **ROBERTO CENICEROS**

SAN FRANCISCO—Employers will face a tougher time justifying safety standards that exclude disabled workers from performing certain jobs following a federal appeals court ruling last week involving deaf employees at United Parcel Service Inc.

The 9th U.S. Circuit Court of Appeals' decision in *Eric Bates vs. United Parcel Service Inc.* stems from a class action lawsuit brought by UPS workers alleging that the Atlanta-based shipping company's safety-based hearing standard barred them from jobs driving UPS' familiar brown vans.

The San Francisco-based appeals court affirmed a lower court's finding that UPS violated the American's with Disabilities Act. The appeals court also upheld the trial court's injunction against the program and denied UPS motion to decertify the class that sued.

Defense and plaintiffs' attorneys point out that last week's decision will have wide implications for employers and is not limited to those with deaf employees that seek jobs operating company vehicles.

In particular, the decision bars employer safety programs that exclude entire groups of people with disabilities without establishing a business necessity, attorneys say. And employers now carry the

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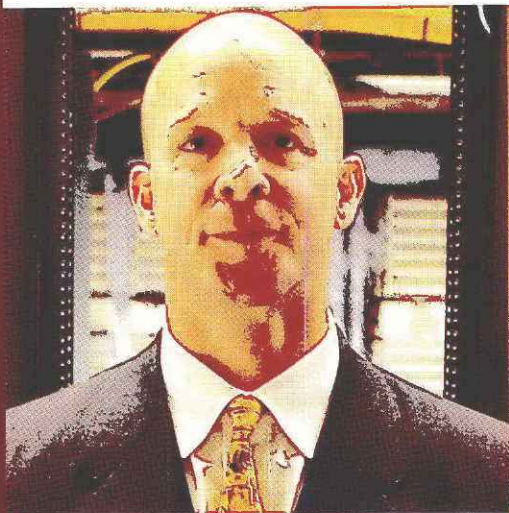
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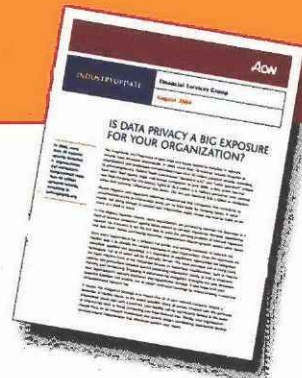


Breaches in network security have created unprecedented data theft, litigation and financial loss. Purchasing network risk insurance is one way to protect your company from liability for data privacy exposures. But before you do, there are a host of other strategies to consider – behavioral

risk mitigation, contractual limitations, IT security to name a few – that can make your network risk management program more efficient and effective. Visit www.aon.com/ask to learn more.

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

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Business Insurance.

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Defense costs upheld despite exclusion

ConocoPhillips wins coverage as an insured in cleanup litigation

By DOUGLAS McLEOD

LAKE CHARLES, La.—ConocoPhillips Co. is entitled to defense costs as an additional insured under its contractors' liability policies for claims arising from a 1994 pipeline leak at a Westlake, La., facility, a state judge has ruled.

Pollution exclusions in the contractors' policies do not preclude defense coverage for Houston-based ConocoPhillips, according to a ruling earlier this month by Judge Wilfred Carter of the 14th Judicial District Court for Calcasieu Parish in

Lake Charles, La.

Judge Carter also rejected insurers' arguments that he should consider evidence other than the policy and contract language to decide whether the underlying claims are covered, and therefore whether defense costs are also covered.

The litigation arose from a discharge of between 150,000 and 170,000 gallons of ethylene dichloride from a pipeline at ConocoPhillips' Docks Facility in Westlake. The March 1994 discovery of the leak was followed by thousands of bodily injury claims against the energy company and others for exposure to EDC, which is classified by the U.S. Environmental Protection Agency as a probable carcinogen.

ConocoPhillips sued in 1998 for

coverage of its liabilities as an additional insured under policies of various contractors the company had hired to help clean up the spill.

Coverage litigation was stayed until 2002, however, while the underlying bodily injury claims were resolved, according to John Ellison, a lawyer with New York-based Anderson, Kill & Olick, which represents ConocoPhillips. So far, ConocoPhillips and other defendants have paid more than \$150 million to settle several thousand of these claims, and a "second wave" of about 500 more claims for secondary exposure to EDC are pending, Mr. Ellison said.

Apart from the contractors' coverage, which ConocoPhillips expects to respond first to the EDC claims, the energy company has its

own liability coverage excess of an "eight-figure" self-insured retention, Mr. Ellison said.

When the coverage case resumed, ConocoPhillips filed a motion for partial summary judgment on the defense cost issue after several of the contractors' insurers maintained that pollution exclusions in the policies barred coverage of the claims and absolved the insurers of any defense obligation.

Insurers involved in the dispute include the Continental Casualty Co. unit of CNA Financial Corp.; American Dynasty Surplus Lines Insurance Co., now known as Great American Fidelity Insurance Co.; American Indemnity Co., which was acquired earlier this year by

See **CONOCOPHILLIPS** page 30



GETTY IMAGES

New York is home to a new captive formed to insure terrorism risks for a real estate investment trust.

New York captive to write terror risks

REIT-sponsored insurer to write up to \$100 million

By RUPAL PAREKH

NEW YORK—SL Green Realty Corp. has formed a captive insurer to help protect it against terrorism-related risks.

The captive—Belmont Insurance Co.—received its license from the New York State Insurance Department on Sept. 15, to begin writing business immediately, a spokesman for the insurance department said.

Under its license, Belmont can write up to \$100 million of coverage for the New York-based real estate firm.

"While there is sufficient capacity in today's insurance markets to cover property and general liability, we have formed this captive as a means of providing our company with options and flexibility for the future," Marc Holliday, SL Green's president and chief executive officer, said in a statement last week.

New York-based SL Green chose New York as its captive domicile after evaluating various domiciles.

"We looked at a lot of offshore

locations as well as several in the (United States)," said Andrew Falk, vice president of SL Green. "We certainly looked at Bermuda."

Ultimately, the company's management chose New York due to "the sales tax savings in New York state, given that we are a New York company," and "due to the fact that our portfolio is mostly in New York City," Mr. Falk said.

SL Green, a self-administered and self-managed real estate investment trust, owns 27 office properties in Manhattan, totaling approximately 18.4 million square feet.

According to Mr. Falk, although the new captive entity is licensed to write up to \$100 million of coverage, it is currently writing half that amount, in the form of a \$50 million terrorism policy for SL Green.

"It remains to be seen what the capacity for terrorism is with the expiration of (the Terrorism Risk Insurance Act)," Mr. Falk said. "We felt it was a prudent step to form Belmont ahead of TRIA's expiration to provide us a vehicle for self-insurance."

"We will be insuring terrorism, as well as looking at the possibility of

See **BELMONT** page 6

Public liability ruling shuts skateboard parks

Nebraska court overturns tort shield for public entities

By DAVE LENCKUS

LINCOLN, Neb.—Overturning more than 20 years of case law, the Nebraska Supreme Court has ruled that a state statute that shields owners of recreational land from public liability does not cover governmental entities.

The 1965 law extends only to private landowners who either open their property to the public or lease it to a governmental entity that then invites the public to use the land, the court ruled.

The 7-0 ruling overturns a precedent established in numerous state Supreme Court cases that date back to 1981.

In response to the ruling, several Nebraska cities have temporarily closed their skateboard facilities until they purchase liability insurance that would cover injury claims filed by skateboarders.

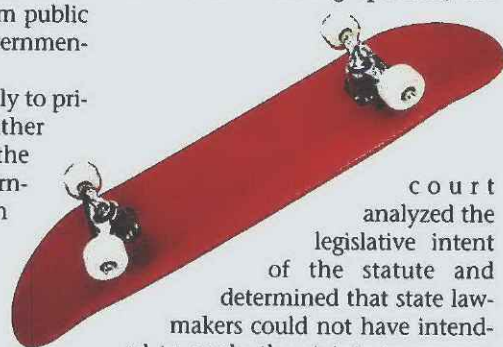
The state high court handed down its decision on Sept. 29 in a slip-and-fall case that plaintiff Carolyn Bronsen filed against Dawes County. At a summer festival held in July 2002 on the Dawes County Courthouse lawn in Chadron, Neb., Ms. Bronsen stepped into a depression in the lawn and broke her ankle. Her treatment included several surgeries to repair the ankle.

After the county refused to cover Ms. Bronsen's medical costs and other damages, she sued the county and the event organizer for negligence. But a state district court and an appellate court ruled that Nebraska's Recreation Liability Act shielded the county from liability, because Ms. Bronsen's injury did

not result from any willful or malicious failure by the county to protect the public.

But the state Supreme Court agreed to review its 1981 decision that extended the RLA's liability shield to public entities—a precedent that the high court followed in numerous subsequent cases.

Noting that its earlier decisions interpreting the RLA generated numerous dissenting opinions, the



court analyzed the legislative intent of the statute and determined that state lawmakers could not have intended to apply the statute to governmental entities.

For example, the high court noted that when the RLA was enacted in 1965, state law provided governmental entities immunity from liability under a sovereign immunity doctrine. Therefore, the court reasoned, the Legislature would have had no reason to cover governmental entities in the statute.

Governmental entities' liability protections were not weakened until several years after the RLA was enacted, the court noted.

In addition, the law, which was designed to encourage more landowners to open their property for free public use, is not necessary for governmental entities, the court reasoned. Governmental entities "are in the business" of making the land they own accessible to the public, the court ruled.

Allowing the precedent to stand also would promote an inconsistent liability system that could be

See **SKATEBOARD** page 6

Delaware aims to become a powerhouse captive domicile

Public-private effort produces revised attitudes and laws

By JERRY GEISEL

WILMINGTON, Del.—Delaware is taking steps that state officials and others say they believe will help it become a captive insurance company powerhouse.

The first step occurred last year when state legislators passed a measure—assembled through a major collaborative public-private sector effort—overhauling the state's more than 20-year-old captive law.

That measure, intended to make Delaware more competitive with other domiciles, significantly cut premium taxes, especially for new,

smaller captives, set a ceiling on the maximum taxes paid by large captives and granted an additional tax break to captives with big staffs in the state.

Now, more steps are being taken. A captive trade group—the Delaware Captive Insurance Assn.—was launched earlier this year to promote the industry and to act as a liaison between the industry and state legislators and regulators.

Additionally, the Delaware Department of Insurance recently hired Bill White, the former highly regarded director of the District of Columbia captive division, as the first administrator of its captive unit. Mr. White, in turn, is now building a captive regulatory staff.

With those accomplishments, on top of its longtime strength as the home of a huge financial services

industry, Delaware now is to promoting itself as a domicile eager to grow.



GETTY IMAGES

"We have set our sights on reaching out to new customers and establishing Delaware as a premier location for captive insurance companies," Delaware Gov. Ruth Ann Minner said earlier this month at

the inaugural fall conference of the Delaware Captive Insurance Assn. in Wilmington.

'We have set our sights on reaching out to new customers and establishing Delaware as a premier location for captive insurance companies'

Gov. Ruth Ann Minner, Delaware

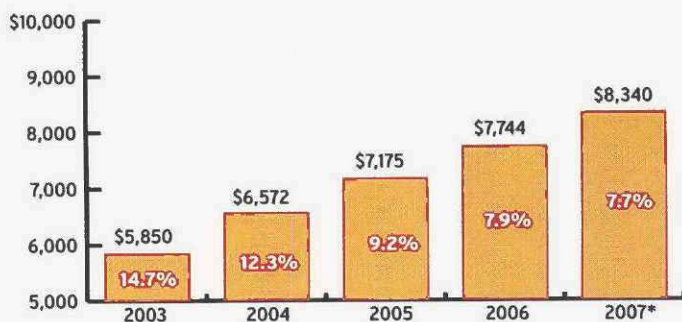
That pro-captive appeal by Gov. Minner and other state officials at the DCIA conference is a sharp contrast to what had been long-term state indifference to the captive industry.

"For 20 years, there was a lack of commitment in the captive arena," said David Ripsom, president of Nuclear Electric Insurance Ltd., the big nuclear power industry captive that is the largest of the six captives currently domiciled in Delaware with annual net premium volume of about \$215 million.

Even worse, state officials sometimes took actions that put it into the position of appearing to be anti-captive. In the early 1980s, for example, David Elliott, then commissioner of the Delaware's Insurance Department, tried to block one of the nation's first risk retention groups from operating in the state. Mr. Elliott argued that the coverage the RRG was writing was not, under Delaware law, considered to be

See **CAPTIVES** page 29

GROUP HEALTH CARE COSTS CLIMB BUT AT A SLOWER RATE



SOURCE: HEWITT ASSOCIATES INC.

Study: Health care costs to rise 7.7% in 2007

Hewitt study the latest to forecast deceleration in premium increases

By JERRY GEISEL

Showing more evidence that group health plan cost increases are easing, a Hewitt Associates Inc. analysis of health plans sponsored by 400 major employers projects that costs will rise by an average of 7.7% to \$8,340 per employee next year.

The actual cost increase may be even less than Lincolnshire, Ill.-based Hewitt projects. Hewitt's projection is based on a survey of budgets that employers have set and the health insurance premium increases they have received through the end of September. The actual increases could be lower if, for example, employers drop their most expensive health care plans or, in the case of self-funded employers, greater cost-shifting to employees reduces utilization.

A similar analysis Hewitt conducted a year ago projected that 2006 health care plan increases—which do not reflect copayments or coinsurance for medical, hospital and prescription drug coverage—

would average 9.9%. In fact, the 2006 cost increases averaged 7.9%.

The rate at which health care plan costs have been increasing has slowed dramatically in recent years. From 2001 through 2004, costs increased annually by double-digit amounts with the biggest increase in 2002, when they increased 15.2%.

Cost increases, though, moved back into single digits in 2005, when costs rose by 9.2% and increases have been slowing ever since.

There are several reasons, benefit experts say, for easing health care plan increases, with the most frequently cited reason being higher deductibles, which shift costs to employees.

Indeed, Hewitt projects that employees next year will, on average, pay \$1,627 in out-of-pocket costs, up 9.3% from this year. Additionally, employees, on average, will pay \$1,678 for health insurance premiums, up 6.5% from this year.

Average plan costs—which reflect employer and employee premium contributions for coverage—in point of service plans increased the most in 2006, climbing by an aver-

See **SURVEY** page 30

Failure to fully report environmental liabilities a growing business risk

'Willful ignorance' less defensible, accounting standards changing

By SALLY ROBERTS

MADISON, Wis.—The days of corporate reticence toward environmental liabilities are numbered, according to an environmental legal and accounting expert.

While flexible interpretation of a three-decades-old Financial Accounting Standards Board rule, FAS 5, has resulted in widespread underreporting of environmental liabilities on most corporate financial statements today, more companies will be forced to recognize and assess such liabilities in the future as more stringent accounting stan-

dards are implemented, said C. Gregory Rogers, president of Advanced Environmental Dimensions L.L.C., a Dallas-based management consulting company that specializes in environmental financial reporting

COVERAGE: More from the Advanced Environmental Risk Management Strategies Seminar **PAGE 28.**

strategies.

And while companies may be reluctant to disclose their environmental liabilities and potentially open themselves up to third-party litigation, they will have little defense should a shareholder lawsuit arise for not doing so, Mr. Rogers said, noting that executives are required to sign off on their financial statements as a result of

the 2002 Sarbanes-Oxley Act.

Furthermore, should such shareholder lawsuits arise in the future, companies likely will not have coverage due to the pollution exclusions contained in most directors and officers liability policies, he added.

"People need to think about a new type of risk in the environmental area and that's financial reporting risk, not the underlying environmental risk itself, but the fact that you haven't properly identified, assessed, measured and reported that liability or risk in your financial report," Mr. Rogers said.

"Willful ignorance" of an environmental liability will become less defensible and "a lot more liabilities" are going to be recognized as a

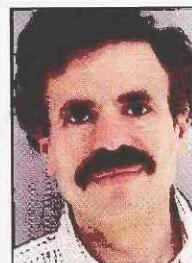
See **ENVIRONMENTAL** page 28

New life for cash balance plans?

Experts to discuss changes in market during BI webinar



Mr. Geisel



Mr. Glickstein



Mr. Sher



Mr. Sweetnam

Cash balance plans once were the fastest-growing type of pension plan design until several lawsuits alleged that the design discriminated against older employees. However, recent federal pension reform legislation and a court ruling involving IBM Corp.'s cash balance plan rebut those claims of age bias, affirming the legitimacy of these plans.

Business Insurance invites readers to register for "Cash Balance Plans: Back on the Table," a free online panel discussion on Oct. 17 that will explore these new developments and what they mean for employers.

Join *Business Insurance* Editor-

at-Large Jerry Geisel and our panel of pension and legal experts:

• Alan Glickstein, senior consultant with Watson Wyatt Worldwide in Dallas.

• Larry Sher, principal and director of retirement policy for Buck Consultants L.L.C. in New York.

• Bill Sweetnam, principal with The Groom Law Group in Washington.

BI's Online Executive Forum™ webinars, developed by our editorial staff, are highly informative online events where noted speakers and respected business leaders come together with *BI* editors to discuss the most pressing issues in this live interactive format.

For more information, and to register for the free Oct. 17 Online Executive Forum™ on cash balance pension plans, please visit www.BusinessInsurance.com/webinars.

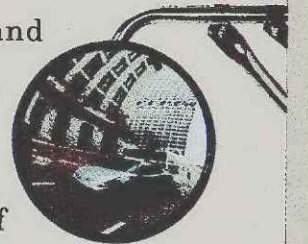
**OBJECTS IN MIRROR
ARE A LOT CLOSER
THAN THEY APPEAR.**



WAUSAU COMMERCIAL AUTO AT WORK.

While looking at the claim history of a food distributor we insure, we noticed a number of issues with its fleet safety. During the previous two years there had been 15 accidents, including a few sideswipes, that accounted for almost \$62,000 (nearly 50% of total costs). Part of the problem was poor visibility, especially when changing lanes. This was easily remedied by installing fender-mounted **PRICE#COST** elliptical mirrors on all of the trucks. Another problem was finding the right drivers. Working together, we established new hiring methods

(including background checks and road testing) and formalized the driver selection process. As a result, even with a significant increase in annual mileage, the number of accidents dropped 30% and dollar losses dropped 60%. And thanks to fewer accidents, the delivery schedule ran smoother as well. It's all part of Wausau TotalValueSM and our commitment to lowering your total cost of risk. And it's backed by the financial strength of the Liberty Mutual Group. To learn more, visit wausau.com or contact your Wausau representative.



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HSAs: Those switching from FSAs face first-year contribution cap

CONTINUED FROM PAGE 1

very limited exceptions, the only health plan that HSA-enrolled employees can be covered by is the high-deductible health insurance plan that must be linked to the HSA. A health care FSA is considered a health care plan and, as a result, an employee with an FSA would be considered to have "other" health care coverage and not be eligible for the HSA.

Even a new HSA enrollee with a zero FSA account balance at the end of the year would be considered to be covered by the FSA during the grace period.

As a result, neither the employee nor the employer could make contributions to the HSA during the FSA grace period.

Under IRS rules, HSA contributions can start only in the first full month after the end of the grace period. In the case of a 10-week FSA grace period—the maximum that the IRS allows—that restriction would allow HSA contributions only in the remaining nine months of the year.

Since extra contributions are not allowed to make up for periods when employees are not considered eligible HSA participants, the maximum contribution to employees' HSAs could be cut by as much as 25%. This cut would occur in only the first year an employee is enrolled in the HSA since the employee in successive years no longer would be covered through a grace-period FSA.

Still, that shortchanging could make it a lot tougher to encourage

employees to enroll in HSAs. "This is not a good thing if you are trying to launch a new program," said Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

Employers would face the same problem communicating the issue every year to employees who are first-time HSA enrollees.

The problem is not new. Indeed, the IRS late last year laid out its position on the issue.

But the IRS, in those November 2005 rules, also provided some temporary relief. The rules said, among other things, that HSA contributions would be allowed for the full year for HSA enrollees who were also covered by a grace-period FSA so long as they had exhausted their FSA balances by the end of the plan year.

But now the issue is back on the front burner for employers. First, the IRS relief expired at the end of June. Additionally, a big increase is expected next year in the number of employers that will offer HSAs, increasing the likelihood of HSA-FSA grace-period interaction.

"We expect our business to at least double over the next year," said Tom Hricik, national director-HSA-product distribution with ACS/Mellon Financial Corp., a big HSA administrator in Pittsburgh.

While there are remedies that would allow the maximum contribution to be made to employees' HSAs during the first year, those approaches, in turn, cause problems.

For example, an employer now offering a grace-period FSA could rescind the grace period before the

end of year. That, though, could upset employees who have saved in anticipation of utilizing health care services early in the next year.

Alternatively, employers could adopt so-called limited-purpose FSAs during the grace period. Limited-purpose FSAs are those that, under IRS rules, reimburse expenses for preventive, dental and vision care and for medical expenses incurred after the minimum annual deductible for the high-deductible plan has been satisfied. Under IRS rules, contributions to employees' HSAs can be made for employees enrolled in limited-purpose FSAs.

"There are no good solutions," Mr. Anderson said.

Whatever the approach, some employees "will feel some pain," said Jeff Munn, a consultant in the Falls Church, Va., office of Hewitt Associates Inc.

Federal legislators are aware of the problems associated with the interaction of grace-period FSAs and HSAs. The House Ways and Means Committee has passed legislation that would allow the maximum contribution to employees' HSAs if there is a zero balance in their FSAs at the end of the year before the grace period began or if they transferred the balance to the HSA.

But no one knows if legislators will take up that bill during the brief special session after Congress returns following the November elections.

Some benefits experts say that one permanent strategy employers might take is to convert their grace-period FSAs to limited-purpose FSAs during the grace period during the

first 10 weeks of 2007 and then get rid of the grace period for 2008. In succeeding years, HSA enrollees would be offered a limited-purpose FSA and other employees would be offered a traditional FSA with no grace period. In that approach, the maximum contribution could be made to employees' HSAs in the first year.

While employees would lose grace periods, some believe their value has been overstated. "Grace-period FSAs just make things more complicated and don't really add that much," said Scott Keyes, a senior consultant with Watson Wyatt Worldwide in Stamford, Conn.

Indeed, with so many types of health care-related expenses eligible

for FSA reimbursement, the likelihood that employees will forfeit FSA balances at the end of the year is very low, said Kathy Dupree, insurance risk/benefits manager in the Orlando, Fla., office of Ocwen Financial Corp., a loan servicing company.

The risk of significant FSA forfeitures is "overblown," Ms. Dupree added.

Another purported advantage of grace-period FSAs—they encourage greater employee participation in the FSA because of reduced fear of forfeiture—also may be overstated.

Hewitt Associates, for example, says it hasn't seen much change in FSA participation in grace-period FSAs that it administers for employers.

Skateboard: Court nullifies longtime liability shield

CONTINUED FROM PAGE 3

extremely unfair to the public, the court ruled.

For example, the court envisioned a scenario in which a piece of the state Capitol's facade breaks loose and injures two children who are on a school field trip and a witness who is scheduled to testify at a legislative hearing. As the RLA was previously interpreted, the state would be liable only to the legislative witness, the court said. The state would not be liable to the families of the schoolchildren because they were injured during a recreational activity, the court stated.

The court concluded by overruling its rulings in nine prior cases that either explicitly or implicitly extended the RLA's immunity protection to governmental entities.

The plaintiffs in those cases, however, are "stuck" with the court's original decisions, said attorney Timothy M. Kenny, a partner at Abrahams Kaslow & Cassman L.L.P. of Omaha, Neb. Mr. Kenny represented the successful defendant in the 1981 case in which the Nebraska Supreme Court first extended the RLA's liability shield to governmental entities.

Among Nebraska cities that quickly closed their skateboard facilities in response to the ruling is

North Platte. Its skateboard facility is located within a city park, said Mayor G. Keith Richardson. The facility will remain closed until the city can arrange skateboard liability coverage through its municipal self-insurance pool, the Lincoln, Neb.-based League Association of Risk Management.

The city's parks can remain open because LARM provides North Platte with general liability coverage—most crucial for its defense cost protection—for claims stemming from injuries that the public suffers during other activities at the parks, explained Mayor Richardson and Johnnie Miller, director of LARM.

LARM also had covered skateboard injuries for its members, but only as long as the RLA extended to governmental entities, Mr. Miller noted. That endorsement was crafted years ago because LARM's reinsurer at the time would not cover skateboard claims, he said. Because of the RLA, LARM had not asked its current reinsurer to cover members for skateboard claims, but now plans to do so, said Mr. Miller, noting that the reinsurer typically has covered that risk for municipalities in other states.

Carolyn Bronsen vs. Dawes County et. al, Nebraska Supreme Court, Sept. 29; No. S-04-237.

Belmont: Terrorism captive backs N.Y. real estate firm

CONTINUED FROM PAGE 3

taking higher deductible limits on property and general liability," said Mr. Falk. "In the future we will look at other insurance lines that we can write."

In a statement, New York Superintendent of Insurance Howard Mills said: "We applaud their decision to take advantage of the state's legislation permitting business owners to take a greater degree of control over insuring their risks."

Under captive insurance laws enacted in 1997, New York permits the formation of pure and group captives for entities with a net worth of at least \$100 million. The captives can write coverage in nearly all commercial property/casualty business lines, excluding title, mortgage, guaranty and financial guaranty insurance.

There are currently 36 captives registered in New York, the state insurance department spokesman said.

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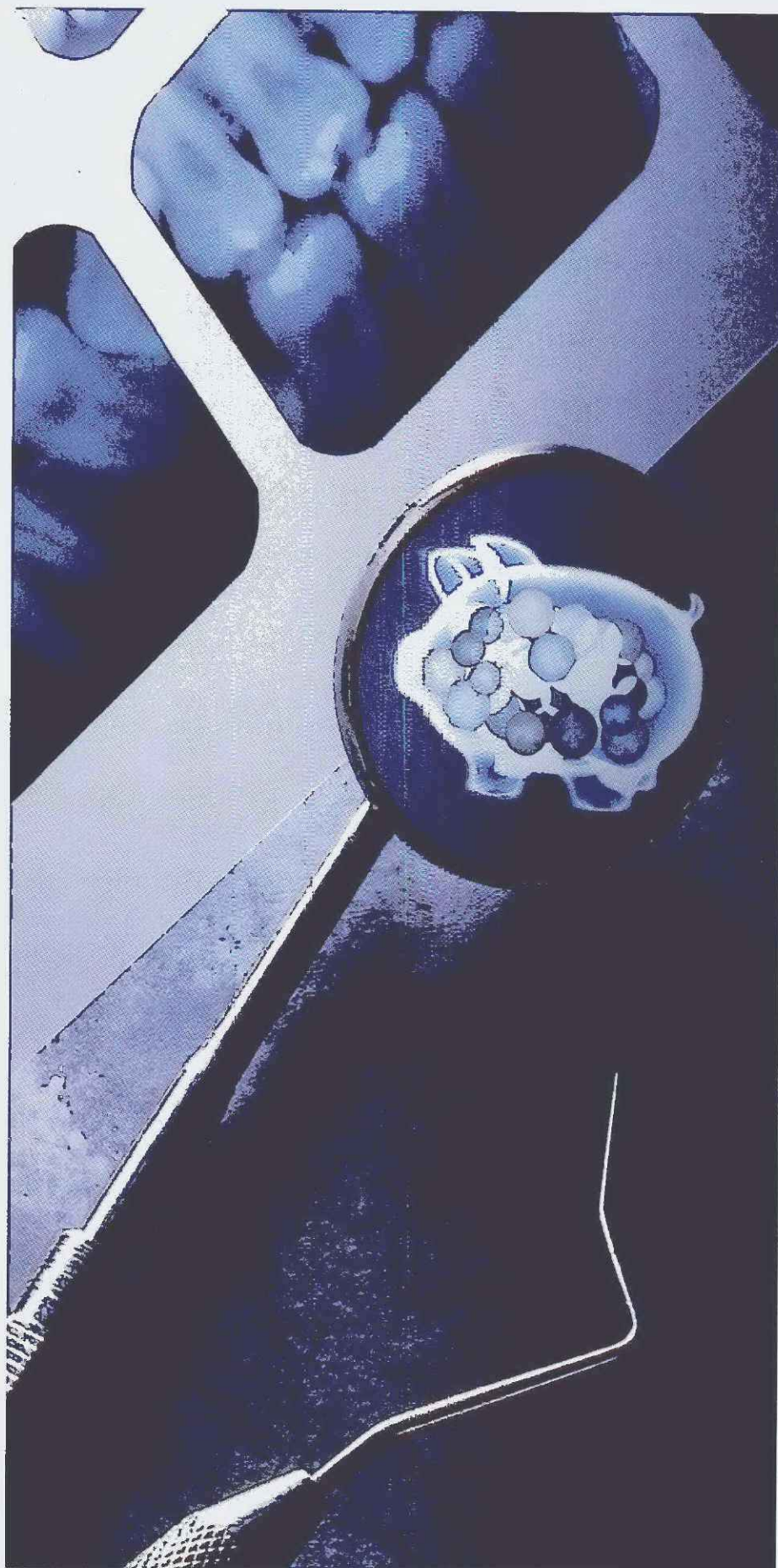
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2006156

Business Insurance OPINIONS

Editorials

Deal with ethical lapse before it gets larger

WHEN WARREN BUFFETT speaks on investment matters, people listen. When he speaks on business ethics, managers ought to listen, and listen closely.

The chairman of Berkshire Hathaway Inc. recently sent a letter regarding business ethics to his senior managers. In it, he said that "the five most dangerous words in business may be 'Everyone else is doing it.'" While he was referring to such practices as backdating stock options, Mr. Buffett's warning can certainly be taken to include other business practices as well.

He noted that given the company's size, the odds are that "somebody is doing something today at Berkshire that you and I would be unhappy about if we knew of it." In fact, Berkshire, Mr. Buffett wrote, should be "jumping on anything immediately when there is the slightest odor of impropriety."

No doubt he wished that had happened when some former executives of his General Reinsurance Corp. unit engaged in a complex finite reinsurance transaction that drew the attention of securities regulators and federal prosecutors. That does not, however, by any means detract from the wisdom of Mr. Buffett's words.

Ethical conduct has to be at the heart of any business transaction. The excuse that "everybody else is doing it" is worse than no justification at all.

As the property/casualty industry has learned all too painfully in recent years as it has been rocked by bid-rigging scandals, failure to jump on situations that emit the even "the slightest odor of impropriety" can have unpleasant consequences. Mr. Buffett's warning underscores the simple fact that the best way to prevent a slight odor from becoming a big ethical stink is to deal with it at first whiff.

The best way to prevent a slight odor from becoming a big ethical stink is to deal with it at first whiff.

Industry turning focus back toward customers

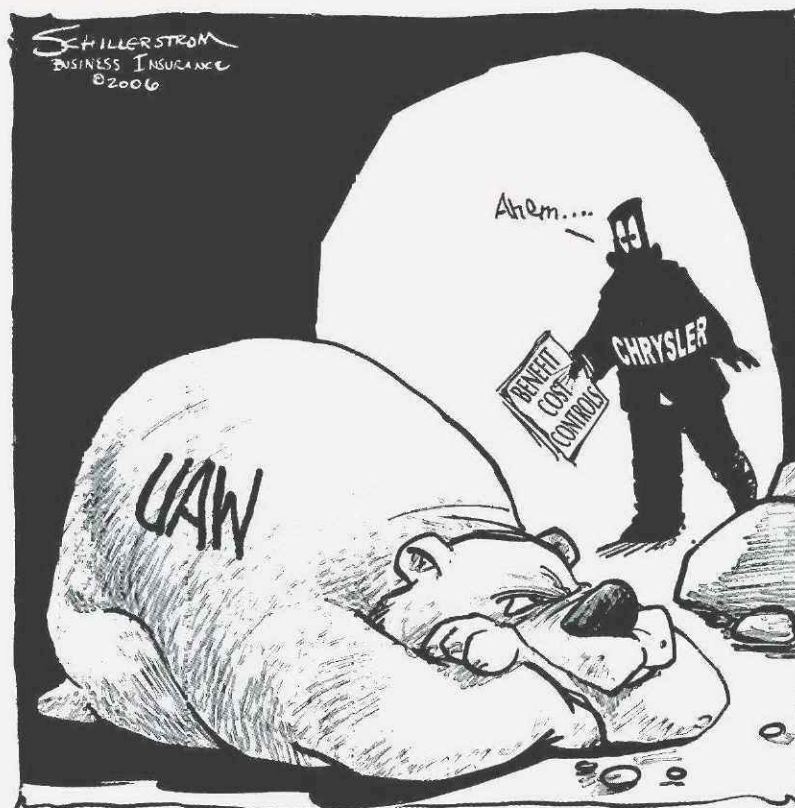
JUDGING FROM THE TALK at the 93rd annual Insurance Leadership Forum at The Greenbrier resort last week, insurance brokers and company executives have returned to focusing on everyday business matters.

If the upheaval from the investigations of broker and insurer practices during the past two years remains, it wasn't evident at this year's gathering of top industry executives. According to broker and insurer executives, their meetings during the forum centered on market issues.

That is good news, because it means that brokers and insurers are putting more of their focus on serving their clients. Businesses need the help in managing risk and solving coverage problems, despite the apparent respite from catastrophes so far this year.

The ongoing investigations have prompted a hard look at how brokers, insurers and reinsurers do business, and that ultimately is good for the industry and for its customers. We hope that the industry continues to keep its promise to be more transparent to insurance buyers.

Schillerstrom



Community Forums

A new feature allows risk and benefits management professionals to connect and exchange information at www.BusinessInsurance.com. The Community Forums is an easy-to-use discussion board that enables readers to ask questions, exchange ideas and voice opinions. Topic-focused categories include:

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- **The Lighter Side**. Share stories of success as well as blunders.
- **General Forum**. Discuss general insurance market issues and conditions, trends and other topics.

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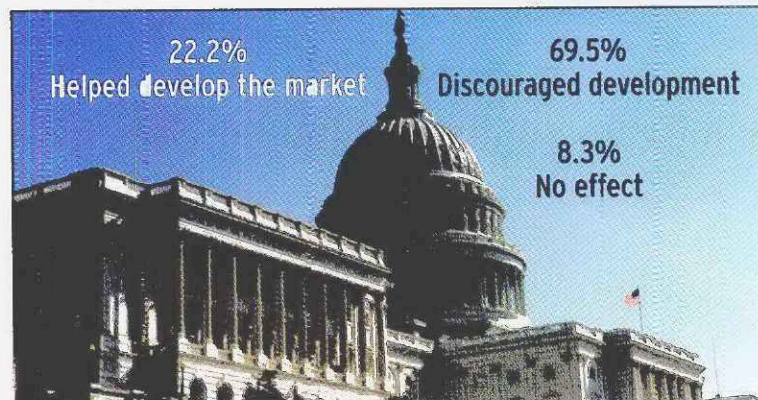
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at www.businessinsurance.com

What effect has the U.S. terrorism insurance backstop had on the availability of commercial terrorism coverage?



Next poll: Does your organization intend to add an automatic enrollment feature to your 401(k) plan next year?

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TECHNOLOGY & ONLINE SOLUTIONS

Web-based calculators help employees plan for future / **Page 14**

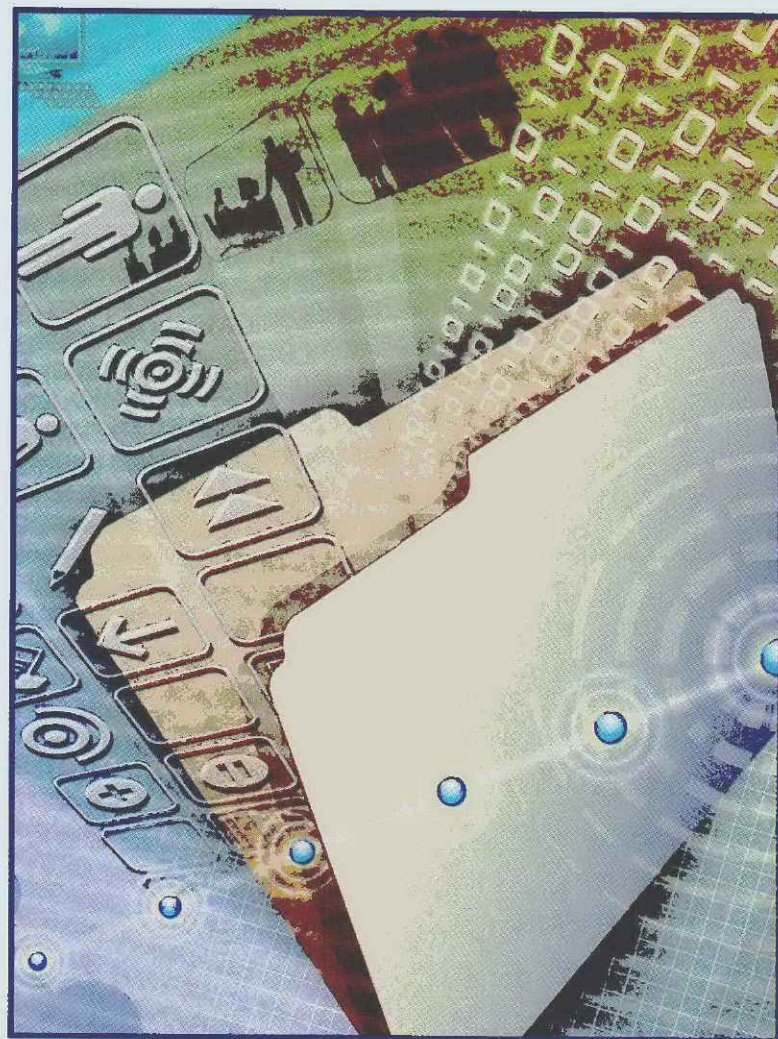
Personal health records gain interest among insurers / **Page 18**

Employees use the Internet to compare health costs / **Page 20**

BENEFITS MANAGEMENT

Net rewards

PRIORITY NO. 1: SPEED



How technology innovations assist benefits managers

By RUPAL PAREKH

Benefits managers are relying on Internet-based benefit information systems to help them do their jobs more swiftly and accurately, experts and users say.

At the same time, the online programs are reducing employers' costs through the elimination of hidden errors and reduced administrative staff to support benefits functions.

"Benefits managers are being asked to do more and do it faster," said Michael Rudnick, national intranet and portal practice leader for Watson Wyatt Worldwide in Stam-

ford, Conn.

In recent conversations with clients, a leading feature sought from the latest employee benefit information platforms is speed, and it is "something we're hearing more and more every day," said Bill Crowley, vp for Aon Consulting in its outsourcing sales division, who is based in Milwaukee.

Chris Carroll, director of human resources for Austin, Texas-based technology services provider NCR Corp., moved benefits administration online after a series of acquisitions caused the company's employee population to spike in less than two years.

"When you go from 100 to 800 employees in a very short time-frame, enrolling all those employees is a time-consuming process to say the least," Mr. Carroll said. "At the time, we were managing all of

our employee data using spreadsheets...and we just couldn't keep up with that kind of volume anymore."

Since then, Mr. Carroll and his HR team have grown to depend on a Web-based benefits management system—which is provided by Norcross, Ga.-based Employeease Inc.—accessing it on an "hourly" basis, mainly to manage employee benefits enrollment, as well as billing. "We have links set up between our system and our carriers whereby we are able to do a lot of the flow of billing electronically," Mr. Carroll said.

Another key area in which Web-based benefits management systems can save time—not only for benefit managers, but also for benefit brokers and consultants—is during the renewals process, according to users.

"As brokers, we can extract all sorts of information (from the BMIS) we need for the bid process without having to bother the employer," said Valerie Clark, of Reno, Nev.-based Clark & Associates of Nevada Inc.

Ms. Clark has been offering San Diego-based Benetrac's benefits management system to many of her 250 client groups since 2002, to help move "bogged down, paper-clogged benefits programs to a to-

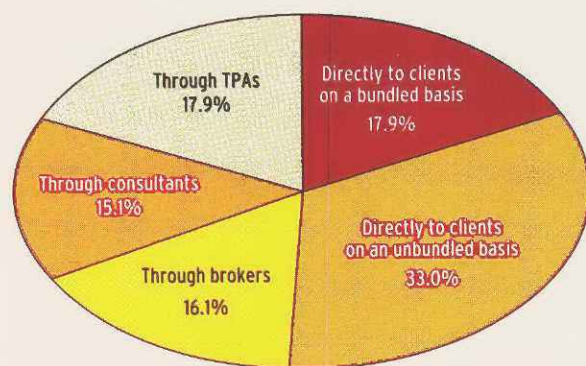
tally paperless system."

"I can take this information and e-mail it over to the carriers I need quotes from, and it's error free," she said. The data-gathering process for renewals that previously took Ms. Clark at least one week, when she relied on a paper-based benefits system, is now typically completed within a matter of seconds, Ms. Clark said.

See **BMIS** page 12

BI RANKING

HOW BENEFIT SYSTEMS ARE SOLD



SOURCE: BI survey

LEADING EMPLOYEE BENEFIT COMMUNICATIONS AND INFORMATION SYSTEMS

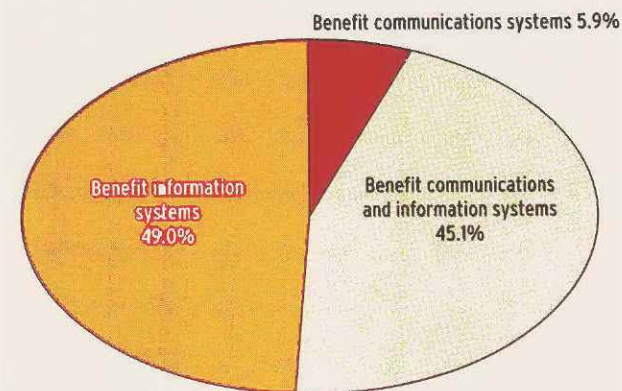
Ranked by number of installations in benefit departments

Software name	Company	Number of installations
FlexComp 9.0 Taxdemo	HR Consulting Group Inc.	5,520
Fringe Facts Communicator	Benefit Software Inc.	4,320
COBRA EAS	Benefit Plan Systems Corp.	2,000
EasyCert	Benefit Plan Systems Corp.	2,000
GIBS	Benefit Plan Systems Corp.	2,000
The Plan Administrator	Benefit Plan Systems Corp.	2,000
Benelogic	Benelogic	1,436
HRLinks	Colt Express Outsourcing Services Inc. dba Colt HR	1,000

SOURCE: BI survey

TYPE OF SYSTEMS

Based on the system's primary purpose for all companies listed



SOURCE: BI survey

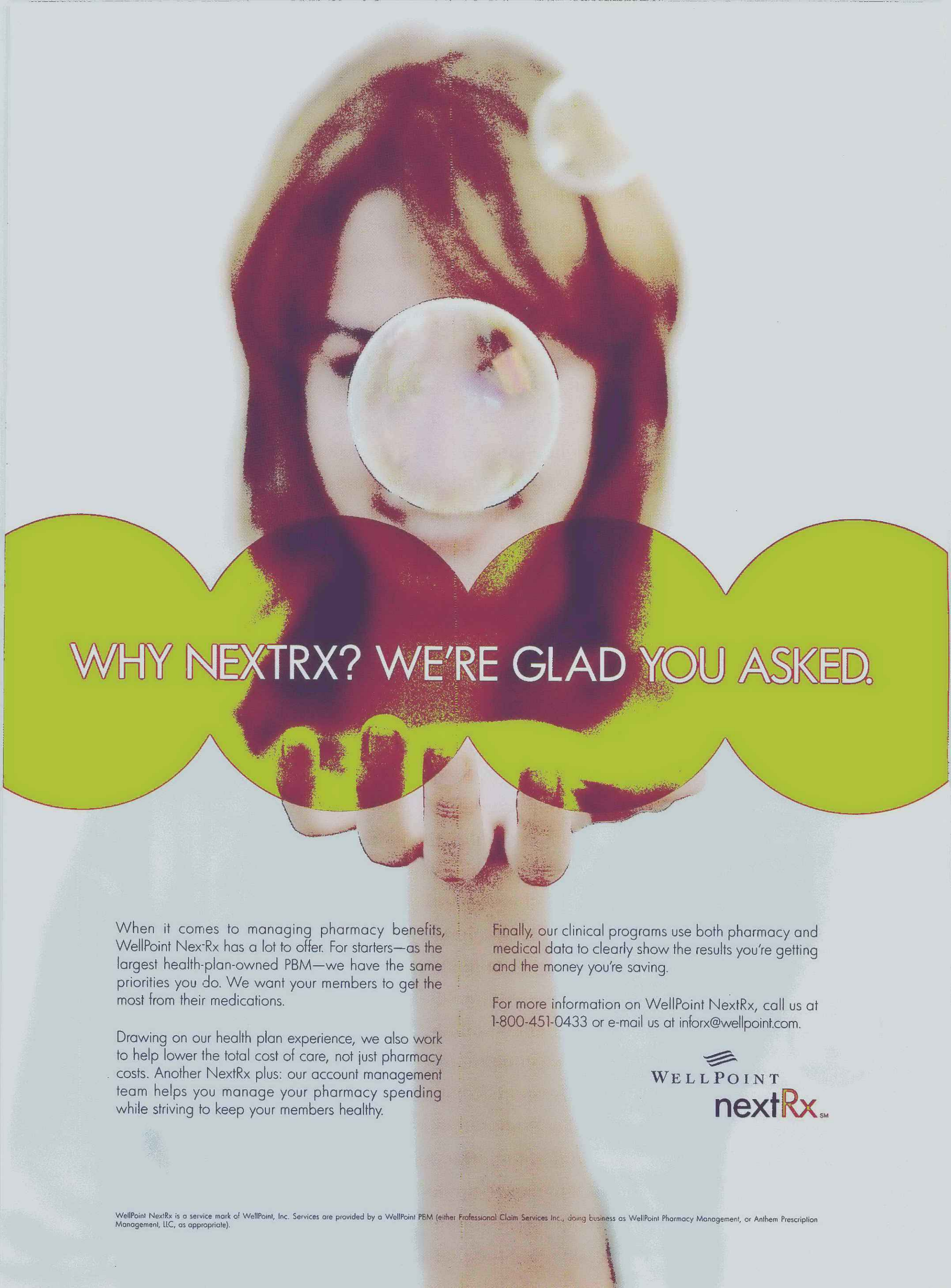
Largest employee benefit information systems

Ranked by number of installations in benefit departments

Rank	Software name	Company/Address	Phone/Fax/Web site	Number of installations	Price	First installation	Principal officer
1	bSwift Manager	bSwift 224 N. Des Plaines, Sixth Floor, Chicago, Ill. 60661	312-261-5750 Fax: 312-928-0640 www.bswift.com	3,300	—	2000	Richard Gallun, president/CEO
2	Employeease Network	Employeease Inc. 3295 River Exchange Drive, Suite 500, Norcross, Ga. 30092	888-327-3638 Fax: 770-325-7702 www.employeease.com	1,500	—	1997	Phil Fauver, chairman/CEO
3	TravisCobra	Travis Software Corp. P.O. Box 820469, Houston, Texas 77282-0469	281-496-3737 Fax: 281-496-4022 www.travissoft.com	700	\$2,295 to \$5,995	1986	Alan H. Williams, president
3	WebCOBRA.com	Travis Software Corp. P.O. Box 820469, Houston, Texas 77282-0469	281-496-3737 Fax: 281-496-4022 www.travissoft.com	700	—	2004	Alan H. Williams, president
5	POWERPLUS	P+W Software 5655 Lindero Cyn Road, Suite 403, Westlake Village, Calif. 91362	818-707-7690 Fax: 818-707-9097 www.pwsoftware.com	430	\$8,000 to \$40,000	1987	Tom Philipp, president
6	TravisFlex	Travis Software Corp. P.O. Box 820469, Houston, Texas 77282-0469	281-496-3737 Fax: 281-496-4022 www.travissoft.com	262	\$2,495 to \$9,995	1987	Alan H. Williams, president
7	FACTS	FACTS Services Inc. 1575 San Ignacio Ave., Suite 406, Coral Gables, Fla. 33146	305-284-7400 Fax: 305-661-6710 www.factsservices.com	226	\$25,000 and up	1981	Jose A. Lopez, vp
8	TravisBilling (TBILL)	Travis Software Corp. P.O. Box 820469, Houston, Texas 77282-0469	281-496-3737 Fax: 281-496-4022 www.travissoft.com	203	\$2,295 to \$8,995	1988	Alan H. Williams, president
9	VisualHCS	Byrne Software Technologies Inc. 1819 Clarkson Road, Suite 200, Chesterfield, Mo. 63017	636-537-2505 Fax: 636-537-2666 www.byrnesoftware.com	120	\$40,000 to \$500,000	1986	Bill Byrne, president
9	FlexAdmin	Flex Compensation Inc. P.O. Box 220, Minneapolis, Minn. 55440-0220	952-544-8332 Fax: 952-544-8287 www.flexcompensation.com	120	\$1,495 to \$4,995	1986	Gary Bohline, president

Source: BI survey

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



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BMIS: Online benefit systems reduce costs by eliminating errors

CONTINUED FROM PAGE 9

NCR's Mr. Carroll noted that having employee data from the BMIS system at his fingertips during renewals is critical in helping his company to best reevaluate its benefits program.

"It helps us have a very educated stance when it comes to our participation levels and what (health plans) the employees are enrolled in or not," said Mr. Carroll.

NCR offers its employees a health maintenance organization, two levels of preferred provider organization plans, and is planning to add a consumer-driver option next year.

Additionally, "It allows us to look at our benefit program," and analyze statistics such as "percentages of single coverage enrollees, family coverage and spouse coverage," and subsequently track the associated costs of those plans on a monthly basis, Mr. Carroll said.

Besides the ease and speed online employee benefit information systems offer, a cost-savings factor often exists too, experts say.

For example, "Too often, a terminated employee remains covered after termination," said Art Brooks, a vp at Benetrac. As a rule of thumb, carriers tend to cap refunds in such cases at 60 days, he said, leaving the

BMIS systems are 'no longer just a playground for large organizations; mid- and smaller-size organizations are using the online tools too.'

Bill Crowley, Aon Consulting

employers to pick up the rest of the benefits costs that racks up until the

error is discovered.

To eliminate such errors, BMIS systems can be designed to trigger an automatic halt of the medical expenses paid on behalf of employees who are no longer with the company, Mr. Brooks said.

According to Watson Wyatt's Mr. Rudnick, cost savings also lie in the shift over the past couple of years where "employers are not buying software and installing the software inside their companies," but instead, using "software as a service."

The trend saves on internal Internet technology department staffing, as "you're technically renting the software and using it over

the Internet," Mr. Rudnick said. "Ultimately, on the cost side, it probably saves some money, because the vendors that host this software are very efficient at it."

Mr. Rudnick has observed that his clients are often able to account for the BMIS systems "as an operating expense as opposed to a capital expense, which sometimes makes it easier to get approval (from senior management) and also, you don't have a huge upfront cost."

Using "software as a service"—where fees are typically charged on a per-user per-month basis—also allows midsize and smaller companies to tap into the technology whereas before it may not have been affordable, experts say.

BMIS systems are "no longer just a playground for large organizations; mid- and smaller-size organizations are using the online tools too," said Aon Consulting's Mr. Crowley.

The biggest barrier to the spread of Internet-based BMIS systems, Mr. Rudnick said, remains "control" and "concern about security."

"More traditional companies might say we want all of our software in our company, on our servers and behind our firewalls," Mr. Rudnick said. For larger companies especially, "cost really isn't the main factor."

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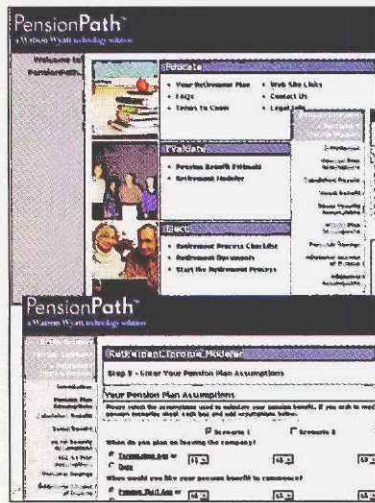
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Online tools such as Watson Wyatt's PensionPath™ Solution help employees plan for their future.

Tools take guesswork out of retiree planning

Employers urging workers to make use of online solutions

By LOUISE KERTESZ

A growing number of employers with defined benefit plans are considering implementing sophisticated Internet-based tools to encourage workers to plan for their retirement. Companies hope the newer pension calculators and related online tools will engage many employees who are still procrastinating

when it comes to retirement planning.

Fifty-eight percent of employees polled for the Washington-based Employee Benefit Research Institute's "2006 Retirement Confidence Survey" said neither they nor their spouse calculated how much money they need to live comfortably in retirement. Of those who did calculate retirement needs, 8% said they arrived at an answer by guessing.

Yet, according to a recent unpublished survey by Towers Perrin, about 60% of employees say they have online retirement planning tools available to them, said Ginny

Olson, a principal with the consultant in Atlanta.

A majority of employees in the EBRI survey reported that they did not find the tools especially useful. Asked what sources of information they found "most helpful" in planning for retirement, only 5% of employees in the EBRI survey identified the Internet and fewer than 2% said online tools. Instead, employees relied more on advice from a professional, written material from an employer and advice from family and friends.

That picture may change as more employers make better tools avail-

able. Companies that have introduced next-generation pension planning tools—including Northeast Utilities Service Co. in Hartford, Conn., and Public Service Enterprise Group Inc. in Newark, N.J.—report the tools are very popular.

Evolving from generic Web sites that offered simple pension estimates, sophisticated tools bring personalized information onto an employee's computer screen and paint a total retirement picture, allowing a worker to model scenarios side-by-side for retiring at different ages. The tools can show an employee's pension benefit and factor in a spouse's 401(k), an annuity, Social Security income and the possibility that the employee will sell a house and move into a condominium, said Tony DeNucci, national leader, pension administration systems at Watson Wyatt Worldwide in Minneapolis.

'Our clients are asking for tools that not only show retirement income but also health care expenses.'

Scot Marcotte, Buck Consultants L.L.C.

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PSEG's pension calculator also can model the effect on retirement of variables including anticipated raises and bonuses and different contribution levels to a 401(k) plan, said Charles Miracola, manager of corporate benefits in Audubon, N.J.

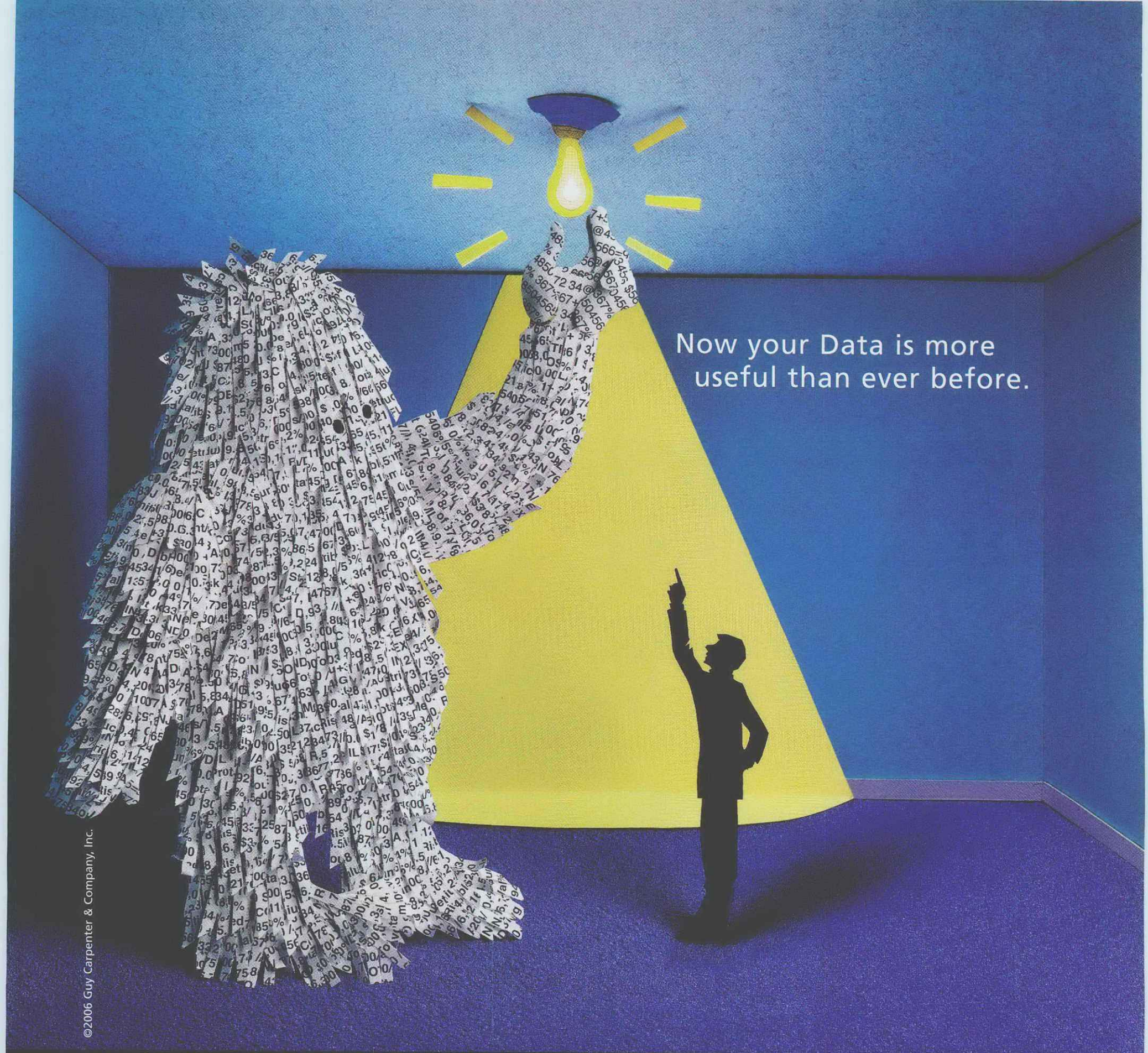
And that's not all. "Our clients are asking for tools that not only show retirement income but also health care expenses," said Scot Marcotte, principal, electronic communications with Buck Consultants L.L.C. in Chicago. An employee retiring at age 65 could face an estimated \$200,000 in health care expenses during the rest of his or her life, he said.

To help workers plan for those expenses, PSEG's retirement tool links to a benefits estimator that calculates how contributions to a tax-free medical expense account will accumulate to pay for medical expenses at retirement, said Mr. Miracola.

On the other hand, Mr. Marcotte said, "an employee can load up on one (long-term) savings device only to find out he missed out in the short-term," for example, by not putting money in a company stock ownership plan. Tools should help an employee decide money placement "for the smartest possible future," he said.

Tools are moving in the direction of helping employees understand "the investment mix question," added Ms. Olson. Tools help with questions such as whether the employee is willing to take on more risk and where that will get him or

See **TOOLS** page 16



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Tools: Retirement modeling tools prepare employees for future

CONTINUED FROM PAGE 14
her in retirement, she said.

"The art is making the tools comprehensive and easy to use," Watson Wyatt's Mr. DeNucci said. An employee should be able to get an answer to a retirement question at the bottom of the first screen. Employees can become discouraged if they have to plow through five screens to get an answer, Mr. DeNucci said.

PSEG has had a retirement modeling tool "for quite a number of years," Mr. Miracola said. As the tool has become more comprehensive and graphic, "by now for most people it's second nature" to use it.

"Some people check their 401(k) balance literally every day," he said.

Northeast Utilities introduced an Internet-based pension calculator about five years ago, said Jean-Claude Bazelaïs, human resources director-benefits. "It's a very, very popular tool," particularly because the average age of employees is 48 with 20 years of service. "Before we introduced the pension calculator, we were bombarded with requests for estimates" of pension amounts, he said.

Two-thirds of the company's 6,000 workers are professional and technical employees and most of the professional employees use the

'Before we introduced the pension calculator, we were bombarded with requests for estimates' of pension amounts.

Jean-Claude Bazelaïs,
Northeast Utilities Service Co.

tool, Mr. Bazelaïs said. The company's objective is for the majority of its workers to use the tool. But he

said, "Remember, this is a long journey."

Employers and consultants say companies find online tools particularly useful when introducing benefit plan changes. For example, last year, while Northeast Utilities introduced a defined contribution plan for its new employees, most employees remain in the defined benefit plan. "We're making sure people know about their future needs and are educating them" by offering the tool and through a partnership with a financial planning firm that offers a free financial planning seminar. Employees also are offered vouchers to consult with a financial

adviser.

PSEG set up an additional calculator for employees when on July 1 it changed the contribution for retirees from medical only to one for medical and dental.

Even the best tools have to be proactively marketed, consultants and employers say.

"When it's well-marketed and offers personalization and good decision support, usage often is up in the 60 to 70% range," Mr. Marcotte said. "If it's poorly marketed or it's just a simple tool, that number could be 20%."

As more employees use the tools, employers find they are saving time through a reduction in phone inquiries about pension benefits.

"But we didn't do it to save money," Northeast Utilities' Mr. Bazelaïs said. "What we want is for employees to appreciate the value of the benefits."

"When you get to an employee population that's better prepared for retirement," Mr. Marcotte said, "that takes their minds off financial needs so they can focus on business concerns."

The EBRI and Towers Perrin surveys indicate that lower-income workers make less use of the online tools than higher-paid employees, and surveys, including the Pew Internet and American Life Project, have correlated Internet use with higher income and education. "It's a very clear picture," said Ms. Olson, and suggests that employers with large, lower-paid workforces "need to be thinking of whether they need to be focusing on offering tools or actual people to help their employees plan for retirement."

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Keeping a personal health record

*PHRs an interim step
on road to complete
electronic records*

By LEIGH PAGE

Until last year, the personal health record was the bailiwick of a small number of health-conscious patients who purchased Web space and entered their own health care information, obtained from doctors and hospitals.

Now this device is being reformatting and adopted by some of the

nation's largest health insurance plans. Since June 2005, six health plans have launched Web-based PHRs for a potential audience of more than 65 million members (see chart).

Unlike the original PHR sites, health plans' sites cost users nothing and are populated automatically with claims data on doctor visits, hospital stays, procedures, medications and in some cases laboratory test results. Like their predecessors, new PHRs allow users to add and revise their own data and use passwords for security.

The race to introduce these new

PHRs is in full swing. Four major U.S. managed care organizations—WellPoint Inc., UnitedHealth Group Inc., Health Care Service Corp. and Kaiser Permanente—are spending tens of millions of dollars apiece to set up PHRs for their members.

These plans are responding to a growing demand to create a central repository for each patient's health care record, says John Asencio, senior vp at The Segal Co. in New York.

"The health care system is very fragmented," he said. A patient's records are split between doctors, hospitals, labs and other sources. "The nice thing about a personal health record is that it accumulates information in one place. You can print out the record and give it to

See **RECORDS** page 20

PERSONAL HEALTH RECORDS

*Managed care plans that offer personal health records**

WELLPOINT INC.

Indianapolis

Membership: 29.6 million

Program name: 360° Health

Launched: August 2006

How it works: Site populated with data on medications, lab results, dates of service and diagnoses codes.

UNITEDHEALTH GROUP INC.

Minnetonka, Minn.

Membership: 22.7 million

Program name: Personal Health Record

Launched: November 2005

How it works: Web page shows medical conditions, medication history, medical interventions and laboratory results.

KAISER PERMANENTE

Oakland, Calif.

Membership: 9.2 million

Program name: HealthConnect

Launched: November 2005

How it works: Web portal shows immunizations and health conditions.

EMPIRE BLUE CROSS BLUE SHIELD

New York**

Membership: 3.5 million

Program name: My Health Record

Launched: June 2005

How it works: Web page is populated with medication history, dates of service, diagnosis codes and lab results.

BLUE CROSS BLUE SHIELD OF FLORIDA

Jacksonville, Fla.

Membership: 2.3 million

Program name: Personal Health Report

Launched: June 2005

How it works: Members receive summaries of health care encounters.

BLUE CROSS BLUE SHIELD OF TENNESSEE

Chattanooga, Tenn.

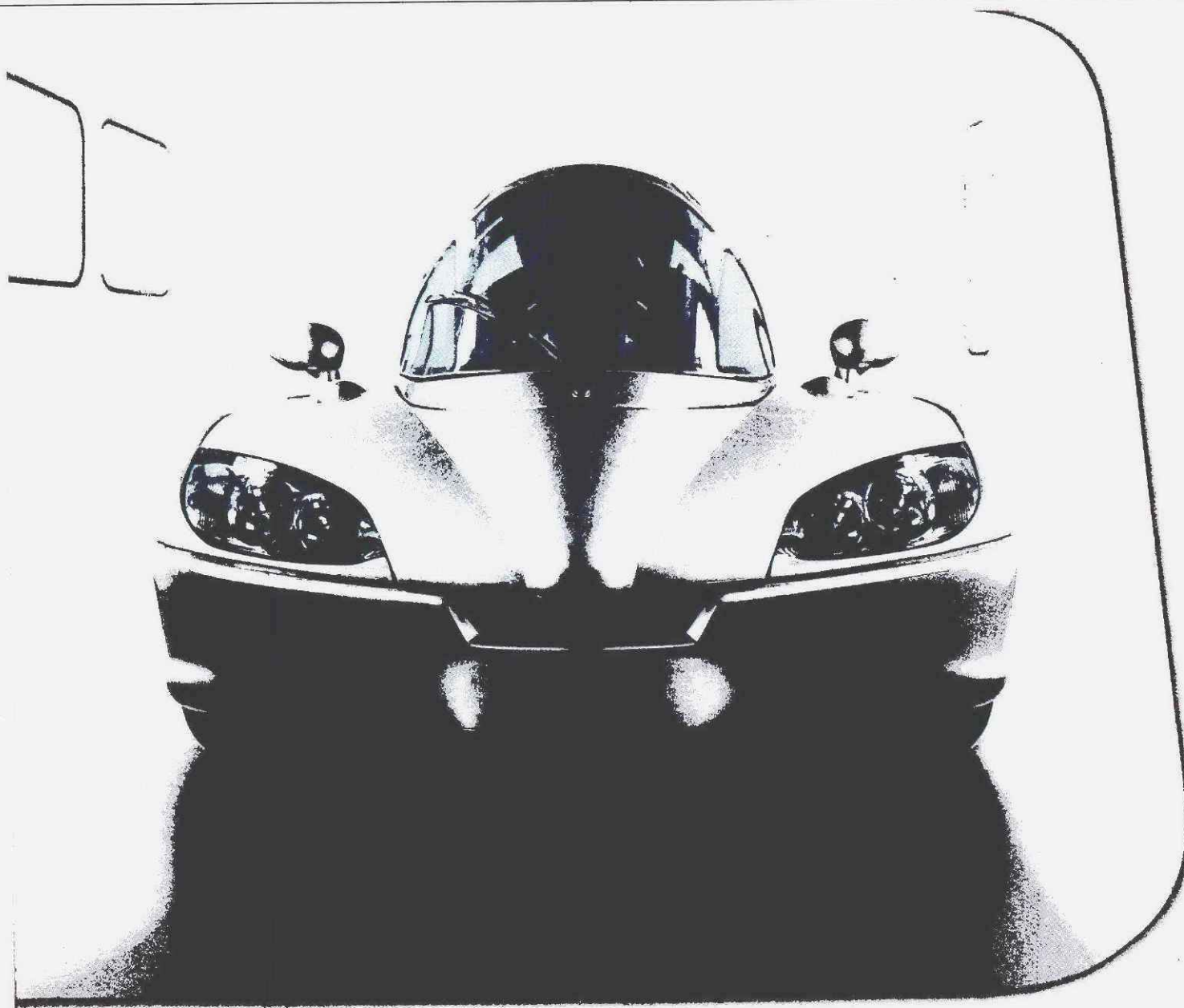
Membership: 1.9 million

Program name: Shared Health Clinical Health Record

Launched: September 2006

How it works: Members can access their clinical health record on a secure site.

SOURCE: *EACH HEALTH PLAN. MEMBERSHIP INFORMATION, AS OF DECEMBER 2005, IS FROM ATLANTIC INFORMATION SERVICES INC. IN WASHINGTON.
**EMPIRE LAUNCHED ITS PROGRAM AND LATER WAS ACQUIRED BY WELLPOINT.



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Creativity key in employee use of online health care tools

Consumer Web site tactics improve usage to as high as 90%

By JOANNE WOJCIK

Advancing Internet technology is helping employers encourage their employees to make better health care purchasing decisions and adopt healthy behaviors, eventually lowering health care costs, experts say.

The online tools range from the most rudimentary—such as online enrollment and plan comparison tools listing premiums, copayments and deductibles—to more elaborate calculators that help determine individual tax savings if users contribute to a health care spending account.

There also are tools to compare prescription drug costs, hospital costs and quality measures, health risk assessment programs and even digital online health “coaches.”

Among the recent innovations:

- In September, Golden, Colo.-based HealthGrades Inc. launched HealthGuide, a suite of decision support tools that empower consumers to shop for high-quality health care as well as manage their finances and conditions. The program includes a budgeting tool that allows users to plan their health

care finances and a cost calculator that provides likely out-of-pocket costs for hospital, doctor, drug and laboratory expenses.

- Also in September, San Francisco-based Healthline Networks Inc. unveiled HealthLinks, a health care search vehicle that provides content on symptoms, conditions and treatments that has been screened by a team of medical experts.

- In July and August, New York-based WebMD Health Corp. introduced an estimator that allows users to find out what an episode of treatment costs, including medication, office visits, etc. It also added a retirement cost calculator to project how much employees would have remaining in their health savings accounts at retirement based on current utilization. Last year, WebMD introduced Select Quality Care, a tool that evaluates cost and quality for every U.S. hospital based on outcomes for specific procedures.

Regardless of which tools are used, benefit communication experts strongly advise employers to make sure such tools are interesting, that they be advertised regularly and that employers always think of long-term results.

“A lot of companies that have embraced consumerism understand that you have to take a long-term strategy to change the way people

think about health care and engage the health care system and how they modify behaviors,” said George Thomas, a principal and communication business leader at Mercer Human Resource Consulting in Philadelphia. “That doesn’t happen overnight. That’s why companies invest in communication strategies so that people re-evaluate how they think about health care.”

GM rolls out pilot

General Motors Corp. has introduced consumerism tools to its Dayton, Ohio-area HMO enrollees with the idea that education will ultimately lead to optimal health care service use even in a managed care environment, said Sam Shalaby, director of community health initiatives for GM in Dayton.

Beginning Sept. 25, GM employees enrolled in WellPoint Inc. HMOs in the Dayton area were given access to detailed hospital cost information about 40 common procedures. The costs, all taken from the Indianapolis-based insurer’s claims database, include everything from the initial doctor’s office visit to lab work, radiology, emergency room care, surgical procedures, pharmacy and follow-up visits.

“It provides you with specific cost information about not only the

procedure, but the entire episode” all bundled together, Mr. Shalaby said.

Information on the number of procedures performed by a given hospital is included as a quality indicator since frequency is generally linked to better outcomes, he said.

“For our consumers in the Dayton area, GM wants to make sure the plan members seek the information, make appropriate provider selections and communicate with their physicians, establishing a partnership throughout the episode. It is also hoped that the plan members practice prevention when they see how much certain procedures cost and pursue a healthier lifestyle,” Mr. Shalaby said. “On the provider side, we expect them to focus on initiatives to improve the quality of care and reduce costs and identify and eliminate any sources of waste and improve their organization’s efficiency.”

Though the pilot in Dayton, where about 40% of GM’s employees are enrolled in managed care plans, is limited, GM and WellPoint intend to expand access to all of the automaker’s health plans by January 2007.

Drive toward engagement

In another approach to engage

clients’ employees, Buck Consultants L.L.C. now is developing an interactive Web site that allows users to assign certain symptoms and/or conditions to an “avatar” that simulates the process of going to a doctor’s office, talking with the provider, interacting with the medical billing clerk regarding payment and going to the drugstore to fill a prescription.

“The avatar is a person,” says Scot Marcotte, principal-electronic communications in Buck’s Chicago office. “You can change its gender, hair or skin color to look like the user. The entire process is role-played before the employee goes to the doctor. This even provides a list of questions,” he said.

“What we’re finding is that with CDHPs, the provider or billing coordinator doesn’t know how the plan works and so the employee needs to run interference to explain it to them,” Mr. Marcotte said.

Buck also is designing online tools to target employees’ family members, who often influence decisions regarding what and when to eat as well as exercise, he said.

“The kids’ portion of the site has online games to help them understand the basics of health care and why it’s important to eat well and

See **USAGE** page 22

Records: Electronic health care data a growing force despite obstacles

CONTINUED FROM PAGE 18

your provider.”

Joseph Marlowe, senior vp at Aon Consulting in Philadelphia, says a unified health record addresses the problem of duplicated services and medical errors that occur when caregivers are not aware of the full medical record.

He says this also explains the plans’ interest. “The health plans benefit from PHRs because they can help avoid duplication,” Mr. Marlowe says, noting that 20% of services are considered unnecessary.

The rush to PHRs is also a response to a 2004 executive order from President Bush calling on all doctors and hospitals to adopt electronic health records by 2014—a deadline many insiders believe will not be met. So far, less than one-fifth of providers have EHRs.

PHRs, which use claims-based data, are different from EHRs, which use provider-based information.

Even though EHRs are far richer than claims data, “for EHRs to work, everyone must have the capabilities,” says Patrick Kennedy, president of PJ Consulting Inc. in Rockville, Md., which is helping health plans set up PHRs. “If I see five doctors, how long do I have to wait until all five have it?”

Personal health records serve as “an interim step on the way to an EHR,” Aon’s Mr. Marlowe says. “It’s a very good step, especially if physicians are able to populate that record with meaningful clinical information.”

Meanwhile, Mr. Kennedy says health plans are directly providing

doctors and hospitals with claims-based information on each patient, similar to a PHR, as a proxy for an EHR-based record. He said Chattanooga-based BlueCross BlueShield of Tennessee was a pioneer in this and in September started providing the data to members as well.

Consumer-driven trends

PHRs also are following the trend toward consumer-driven health plans, says Mindy Kairey, global health and welfare outsourcing leader at Hewitt Associates Inc. in Lincolnshire, Ill.

“When employees assume more of the burden of administering their own health care, tools like the PHR become increasingly critical, not just beneficial,” she says.

In fact, Ms. Kairey says “more employers are talking about PHRs than about CDHPs,” perhaps because it’s easier to offer a free PHR than to introduce a consumer-directed product.

Some employers, such as Dell Inc., the Round Rock, Texas-based computer manufacturer, have been creating PHRs for employees. But to do so, employers have to spend money to import health plan claims data into the PHRs.

Regardless of who sets up the PHR, Ms. Kairey warns that “there is a very steep learning curve” before many members will actually use them.

Surveys, including one by UnitedHealth Group, have shown that consumers do not want to spend a lot of time maintaining their PHR. Some health plan members worry

that their employer can access the site, which consultants say is never the case, and some worry that sensitive information will be put on the site. In fact, many PHRs automatically suppress behavioral health and HIV information and allow patients to suppress other information, health plan officials say.

Health plans expect PHRs will net employers substantial savings by reducing duplicative tests and by improving health care so workers are more productive. New York-based Empire Blue Cross Blue Shield, one of the first plans to launch a PHR in June 2005, reports that customers including employers and trade unions have yielded a 2-to-1 return on investment on members enrolled in its PHR program.

The overwhelming majority of Empire members, however, still have not signed up. Company officials report that 40,000 of the plan’s 3.5 million members have activated a PHR, but say this is an encouraging rate for a new service with which members are not familiar.

Empire recently was acquired by Indianapolis-based WellPoint and its PHR became a model for WellPoint’s new 360° Health program—an Internet-based program of services, provider and wellness information that includes a PHR component. WellPoint says it has invested \$100 million in 360° Health, which started in August with members in Georgia and Virginia and is being rolled out this month in California, Colorado and Nevada.

Sheila McPhillips, who helped start the Empire PHR and is now vp of 360° Health and Wellness at

Health Management Corp. in Richmond, Va., a WellPoint subsidiary, says the program gives WellPoint a competitive edge. With an online PHR, “we believe that we will be able to improve patient safety, reduce the number of tests performed and the delivery of more efficient care,” she says.

Minnetonka, Minn.-based UnitedHealth Group launched its PHR in November 2005. In August, UnitedHealth Group announced that next year it will release a digital membership card embedded with patient information, including portions of the PHR. However, providers will need to have a card-swiping mechanism to read the card.

Hurdles to be cleared

Personal health records face some major hurdles, such as doctors’ continued wariness of the data. In a recent UnitedHealth Group survey, physicians objected to patients’ ability to block and change information, thus limiting data available to physicians.

Also, pure claims information lacks key data such as lab test results. However, plans such as WellPoint have been adding test results by working directly with the labs. WellPoint officials also plan to add X-rays, but they say automatically adding the doctor’s chart won’t be possible until there is much wider adoption of EHRs.

But above all, the major problem facing this new phenomenon is the inability to automatically transfer PHRs when members change plans.

Member turnover rates are thought to be 10% to 20% per year, and transferring a member’s PHR does not have past claims history unless he or she enters it manually.

Health plans are so worried about this problem that they have set aside competitive differences to devise universal portability standards.

Working through Washington-based trade group America’s Health Insurance Plans and the Chicago-based Blue Cross Blue Shield Assn., plans have agreed on a set of 13 data categories that would be transferred, such as medication history, doctors’ visits, family history and advance directives.

No date has been set for universal portability because plans still have to work out data transmission standards, says Tom Wilder, vp for private market regulation at AHIP. “The appropriate standards are not all in one place,” he says. “We need to bring them all together.”

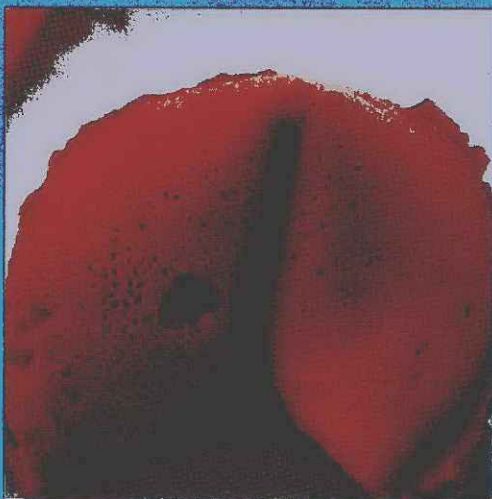
In a pilot study running from July to November, seven member health plans have been testing transmission of PHR datasets. The plans include UnitedHealth Group and Chicago-based Health Care Service Corp., which owns Blues plans in Illinois, New Mexico, Oklahoma and Texas, and is about to introduce PHRs.

An AHIP spokeswoman said standardization will not stop plans from offering diverse products. “Companies will still innovate with certain elements,” such as member notifications or tools to manage health, she said. “The work is only limited to the ingenuity of the health plans.”



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Technology backs health care efforts to reduce costs, change behaviors

By JOANNE WOJCIK

While some employers are eagerly embracing technology, others are still using paper enrollment and printed benefit communications, either because their employees lack Internet access or because they think many of their employees are not sufficiently tech-savvy to use the interactive new tools that have been developed, like online health risk assessments or medical cost modeling programs.

The case for change is obvious for many employers that found

switching to online from paper enrollment produced an immediate return on investment. Meanwhile, vendors are developing ways to measure how effective the next step—giving employees access to Web-based health education support tools—is in lowering employers' overall health benefit costs.

"I think there is still a disconnect between the marketplace's emphasis on consumerism and the willingness of employers to create an informed consumer," said William Smith, vp of sales at Benefit Software Inc. in Santa Bar-

bara, Calif.

Mr. Smith said when he talks to employers, he compares introduction of consumer-driven health plans to marketing other products, asking whether the employer would ever introduce a product without advertising it first.

Instead, employers are asking employees to decide about a new plan offering in which employees shoulder more cost, but leave it up to the employees to do their own research, Mr. Smith said.

"There is definitely a cost benefit" to using technology in benefit

enrollment and communications, according to Sara Taylor, national annual enrollment leader at Hewitt Associates Inc. in Lincolnshire, Ill. Among other things, the need for additional manpower at enrollment time is reduced, and data entry mistakes are avoided, as are paper, postage, printing, distribution and mailing costs. While it's hard to correlate how stepped-up communications affect health care purchasing decisions, Hewitt has found that people who use online benefit tools are more inclined to change their

health plan choices, she said.

"If employers want to reap the financial benefits of making employees consumers, those employers are going to have to have access to information to help them make smart decisions about health care. I think it's just a slam-dunk that Web-based tools are the only way to do that cost-effectively," said Andrew Ceccon, chief marketing officer at Uniondale, N.Y.-based OnlineBenefits Inc., which has developed an online ROI calculator for employers to use.

Cash Balance Pension Plans: Back on the Table

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- **Larry Sher**, Principal & Director of Retirement Policy, Buck Consultants L.L.C., New York
- **Bill Sweetnam**, Principal, The Groom Law Group, Washington, DC

Moderator: Jerry Geisel, Editor-at-Large, Washington, DC

QUESTIONS TO BE ADDRESSED:

- Do cash balance plans have a brighter future in the wake of the Pension Protection Act and recent appeals court ruling upholding IBM's plan?
- Does it make sense for employers to set up new cash balance plans or continue existing plans in the wake of the new pension reform law?
- What plan designs will work and which ones will not pass muster?
- Is a hybrid plan approach, like cash balance, more attractive for employers and employees than a defined contribution plan only approach?

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Usage: Tools depend on 'stickiness'

CONTINUED FROM PAGE 22

exercise," Mr. Marcotte said. "We even tie it in with professional motor sports and TV game shows to make it fun."

While such creative tools may seem like overkill in the often staid world of benefit communications, "these more creative tools help boost usage to as high as 80% or 90%," Mr. Marcotte said. Most consultants say usage of online tools of 20% to 30% is about average.

In fact, because of the additional tools as well as training, Mr. Marcotte said one of his employer clients achieved a 60% enrollment rate in its new CDHP.

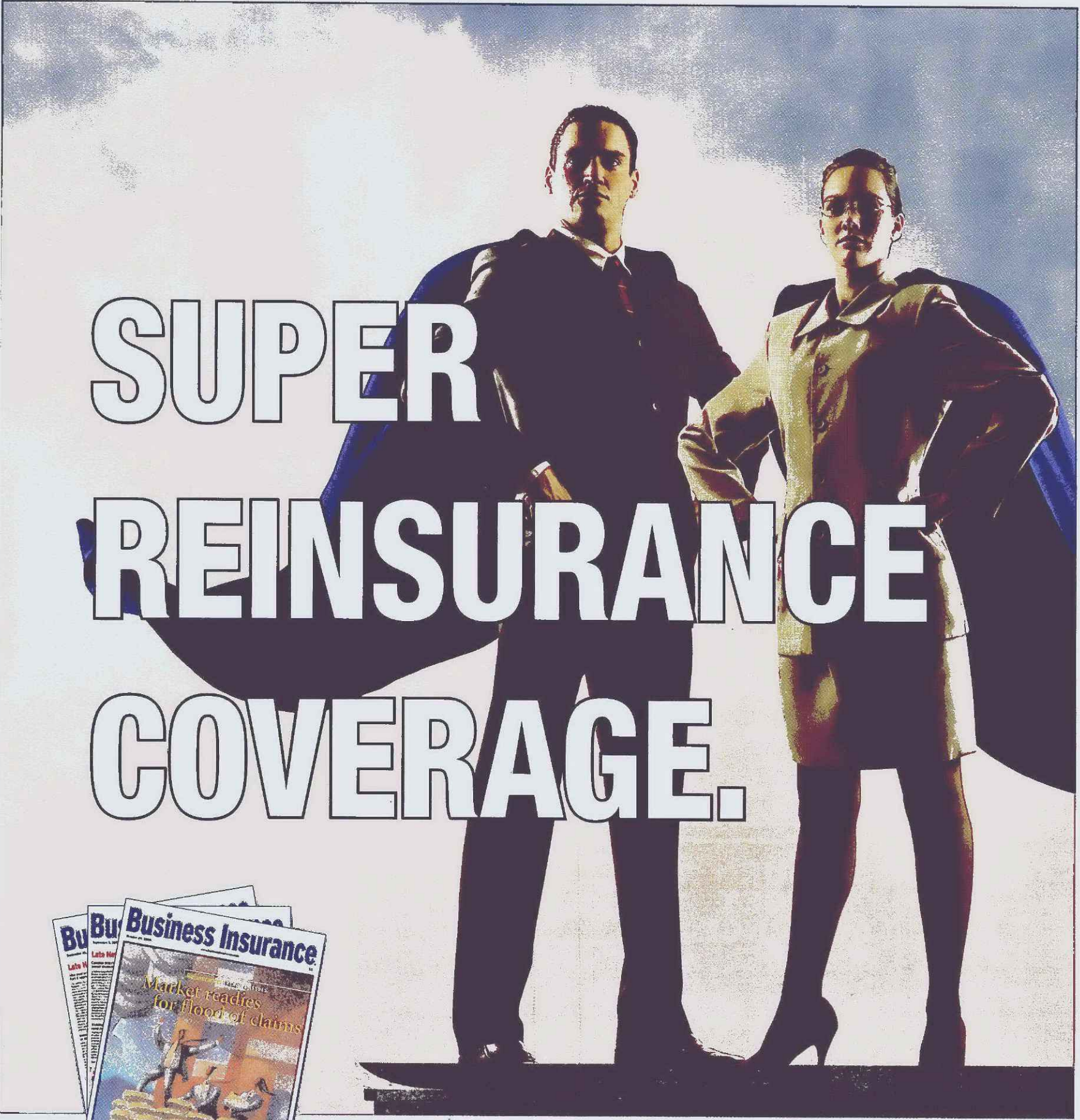
"Employers with higher utilization are those who really make an effort to educate employees that tools are available and how they can help them," said Sara Taylor, national annual enrollment leader at Hewitt Associates Inc. in Lincolnshire, Ill.

For best results, employers should design their benefit portals to be similar to the Internet sites that consumers use for commerce, advises Michael Rudnick, national portal practice leader at Watson Wyatt Worldwide in Stamford, Conn.

"Employers that want their employees to change their behavior have to build health benefit Web sites that are on a par with the commercial Web sites," he said. "People use the Web all day long, so they compare their experience against commercial Web sites. It's what MTV did to corporate video years ago."

"What companies like Amazon have done on the consumer side in taking these different points of data—price, independent reviews, multiple places to buy them, all those things that they've done around a camera or a book—is what participants want from their health care portals," Mr. Rudnick said.

Interactive Web sites that make the benefit communication experience more interesting are more likely to capture employee attention, agreed Mercer's Mr. Thomas. "The best health portals will have people keep coming back—to make a portal 'sticky' you have to make value."



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ANNOUNCEMENT



PRICE FORBES LIMITED & INSOLUTIONS LEGACY CLAIMS HANDLING

The newly incorporated company, Price Forbes & Partners Limited, has acquired the business and net operating assets of Price Forbes by Marsh & McLennan Company Inc., with effect from the 21st September 2006.

This includes the legacy claims processing formerly handled on behalf of Price Forbes by Insolutions. Accordingly, the new, single postal address for all correspondence is:

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Firms interested in submitting proposals may register to obtain an RFP on the CalPERS website at www.calpers.ca.gov.



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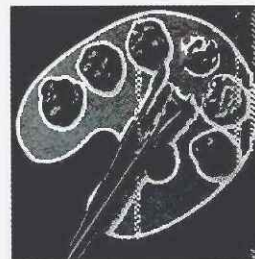
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International NEWS

RSA aligns operations into 3 units

LONDON—Royal & SunAlliance Insurance Group P.L.C. has restructured its operations into three main operating units.

The London-based property/casualty insurer has said the reorganization, which will take effect immediately, will enable RSA to pursue its strategic goals.

The three main operating units will focus on the United Kingdom, international and emerging markets.



Mr. Haste

sue our objective of profitable growth."

Bridget McIntyre will remain CEO of RSA's U.K. operations. Simon Lee will remain CEO of the international unit, and he will be appointed to RSA's board as an executive director as of Jan. 1, 2007. As part of the restructuring, the international unit will now include RSA's operations in Scandinavia, as well as Canada, Ireland and Italy.

Paul Whittaker will become CEO of the emerging markets, which will comprise RSA's operations in Latin America, Asia, Middle East and the Baltic states. Previously, Mr. Whittaker was RSA's group human resources director.

Last month, RSA announced the sale of its operations in the United States to Arrowpoint Capital, a vehicle set up by RSA's U.S. management team, for a deferred consideration of £158 million (\$296.8 million). The company also announced its voluntary delisting from the New York Stock Exchange.

In 2003 RSA had announced that its U.S. operation was "strategically noncore" and closed the unit to new business.

—By Stuart Collins

Converium plan for retakaful continues trend

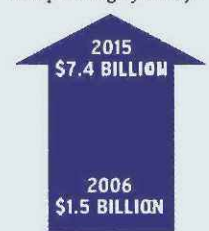
ZUG, Switzerland—Converium Holding Ltd. plans to write international retakaful—Islamic reinsurance—business in South and Southeast Asia through its Malaysian office.

The Zug, Switzerland-based reinsurer has obtained regulatory approval from the Labuan Offshore Financial Services Authority in Malaysia to provide reinsurance services that comply with Islamic principles, or Shariah. Takaful entities resemble mutual insurers.

Benjamin Gentsch, Converium's executive vp for specialty lines, said: "We look forward to offering our clients in the Islamic world reinsur-

TAKAFUL PREMIUMS

Revenue from insurance that complies with Islamic law is expected to expand significantly.



ance solutions which are Shariah compliant. Our decision to write retakaful business demonstrates our strong commitment to serve fast growing markets, with innovative and culturally sensitive products."

According to Converium, global premiums for the takaful insurance market in 2005 were an estimated \$1.5 billion.

The market is expected to develop substantially in the coming years, with demand for retakaful products set to increase, the reinsurer said in a statement.

Meanwhile, according to a report by Moody's Investors Service, the takaful insurance market is showing

impressive growth as takaful insurers take business from traditional insurers that face difficulties in providing products that comply with Islamic law.

The takaful market has had growth rates of about 20% in recent years, with premiums of more than \$2 billion written in 2005, according to "Takaful: A Market with Great Potential," released this month by Moody's Investors Service. Takaful premiums are expected to reach \$7.4 billion annually by 2015, the report predicts.

Takaful business is growing because conventional insurance conflicts with Islamic law in two meaningful ways, said Timour Boudkeev, a vp with Moody's and author of the report.

"Firstly, traditional insurance is thought to have a large element of

'gharar', a term that denotes uncertainty, ambiguity or deception," he said in a statement announcing the report's release.

"As the payoff from an insurance policy is dependent on occurrence of uncertain events in the future, the amount of compensation has no predictable relationship with the insurance premium, which disqualifies conventional insurance as an acceptable financial product under Islamic law," Mr. Boudkeev said.

Investment strategies by conventional insurers also run afoul of Islamic law, according to Mr. Boudkeev. Interest is forbidden under Islamic law, which means conventional bonds and other sources of funding are not acceptable, he explained.

—By Stuart Collins and Michael Bradford

European senior execs focusing on risk: FERMA

By SARAH VEYSEY

Senior management teams at European companies are becoming more involved in risk management, according to a survey of European risk managers.

Chief executive officers, chief financial officers and board members are now more focused on risk management than in the past, and risk managers increasingly report to CEOs and CFOs, according to the survey.

The survey of 469 European companies was carried out by the Federation of European Risk Management Assns. in conjunction with Ernst & Young L.L.P. and AXA Corporate Solutions.

The results of the survey indicate that risk management is now well established in Europe and that it is now "more and more a top level matter," said Dominique Pageaud, a partner in Ernst & Young's business risk services division. It also indicates that the "scope for your job is expanding," Mr. Pageaud added.

According to the survey, for 44% of respondents, risk management within their companies is "sponsored" or overseen by the board of directors. Of respondents from the United Kingdom, the figure was 67%, while 57% of respondents from the Netherlands and 47% of those surveyed from Belgium said

their board of directors was the sponsor of risk management.

About a third of those surveyed, 34%, said that risk management within their organizations was sponsored by the company president or CEO. This trend was most marked among French companies, 42% of which said their president or CEO sponsored risk management.

The remaining respondents, 32%, said that risk management within their organizations was sponsored by the CFO or treasurer.

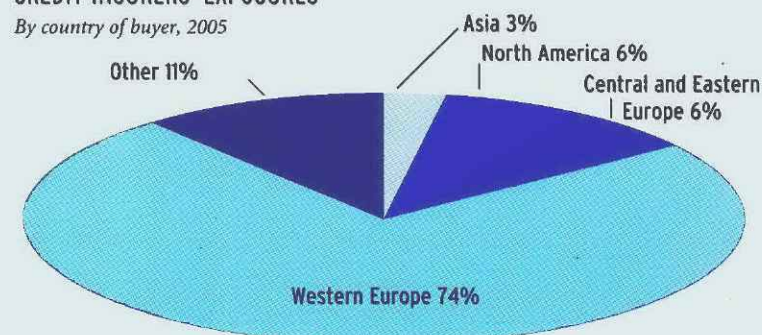
According to the study, 46% of risk managers report to their company's CFO. This was most marked among respondents from Germany, with 81% of German respondents saying that they report to the CFO.

Most respondents, 63%, said the risk manager meets with the company's board of directors at least once a year, while this happens on an "as needed" basis at 23% of respondents' companies.

According to the survey, top management's main objectives for risk management are to minimize operational surprises and losses—cited as a management priority by 73% of respondents. The next most important objective was to enhance risk response decisions, which was cited by 47% of respondents; 45% cited the alignment of risk appetite and strategy and 43% said the main objective was to identify and manage cross-enterprise risks.

CREDIT INSURERS' EXPOSURES

By country of buyer, 2005



SOURCE: SWISS REINSURANCE CO.

Study forecasts growth in credit, surety cover

Values insured by credit and surety companies totaled an estimated \$2.9 trillion last year, according to a report published by Sigma, the economic and consulting arm of Zurich-based reinsurer Swiss Reinsurance Co.

In its Sigma study, Swiss Re said that worldwide credit insurance premiums were estimated at \$6.9 billion in 2005. While three-quarters of this total were written in Western Europe, the United States and Asia were growing in relative importance, Swiss Re said in a statement.

"There is huge potential for export and domestic credit insurance in the expanding Asian and Central and Eastern European economies," Swiss Re said in the Sigma study. "The U.S. market—

whose ratio of premiums to (gross domestic product) suggests that it is less highly penetrated than other major markets—is also expected to grow briskly."

Global surety premiums in 2005 were \$7.9 billion, more than half of which was written in the United States, according to the Sigma study.

"The surety business has substantial growth potential in less penetrated Asian and European markets and the Middle East," Swiss Re said.

Swiss Re is a provider of credit reinsurance and has a 35% holding in Amsterdam, Netherlands-based credit insurer Atradius.

Sigma's "Credit Insurance and Surety: Solidifying Commitments" is available on www.swissre.com.

—By Stuart Collins

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Supreme Court rulings score a worker trifecta

By Gerald L. Maatman Jr.

Many thought the addition of President Bush's two appointments to the U.S. Supreme Court this past term—Chief Justice John Roberts and Associate Justice Samuel Alito—would tilt the balance toward a more conservative and business-friendly legal environment in federal courts. These expectations were defied on the employment liability practices playing field, as employers took it on the chin in workplace rights cases in the 2005-2006 U.S. Supreme Court term.

Workers won a trifecta of employment discrimination rulings involving standards for retaliation liability, defenses based on statutory coverage and proof-of-bias requirements. Given that the Supreme Court's makeup shifted with the addition of the two new justices, these employee-friendly rulings took many employers by surprise.

Scoring the trifecta

The biggest ruling for employers and workers was the Supreme Court's June 22 decision in *Burlington Northern & Santa Fe Railway Co. vs. Sheila White*. In resolving a split among the federal appellate courts, the Supreme Court established a new standard for what constitutes actionable conduct under the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964. The Supreme Court held that acts far short of termination or demotion can establish a retaliation claim; all that is needed is that an employer take an action that would cause a reasonable worker to think twice about complaining of discrimination. Even being transferred to a less appealing job at the same pay can constitute retaliation.

As a result, the Supreme Court held that lower federal courts should examine all of the facts and circumstances surrounding a particular personnel decision in determining whether an adverse employment action has taken place. The ruling in this case extends the anti-retaliation provisions of Title VII to the widest scope previously adopted by any court. The bottom line of the decision is that it removes hurdles for employees to get their cases before a jury, and undoubtedly will increase the number of retaliation claims that employers face nationwide. Employers also face a more difficult burden of proof in litigating and defending against retaliation claims.

The Supreme Court passed on the statutory coverage defense on Feb. 22 in *Jenifer Arbaugh vs. Y&H Corp. DBA The Moonlight Café*. The Supreme Court determined that

the 15-employee threshold for jurisdiction under Title VII does not determine federal court jurisdiction. What this means is that an employer must raise this defense no later than the end of trial or the defense is forever waived. While the ruling is narrow, it cuts off another line of defense for employers that must be asserted or lost if not made as an initial response to a lawsuit.

The Supreme Court ruled Feb. 21 on a proof-of-bias issue in *Anthony Ash et al. vs. Tyson Foods Inc.* It determined that in comparing qualifications between employees in a situation where a worker sues for a discriminatory denial of a promotion, lower court rulings that had established a "jump off the page and slap you in the face" standard were dead wrong. While the Supreme Court rejected this standard but did not suggest the proper standard that a federal court should utilize in determining the viability of discriminatory promotion claims, the result is a blow for employers. By discarding the "jump off the page and slap you in the face" standard, the Supreme Court undoubtedly lowered the standard for plaintiffs and gave the green light to the plaintiffs' bar to push for lower standards of proof in winning their cases.

Employers' narrow win

In the sole public worker case of the term, the Supreme Court narrowly sided 5-4 with employers in its May 30 decision in *Gil Garcetti et al. vs. Richard Ceballos*. In this case, a deputy district attorney sued his employer claiming retaliation in violation of the First Amendment after he was demoted for allegedly writing a memorandum to his boss claiming that an affidavit police used to obtain a search warrant made serious misrepresentations. The Supreme Court rejected his claim. It held that the First Amendment gives no protection to statements made by workers pursuant to the employee's official duties. Because statements made pursuant to one's official duties are not statements made as a citizen, the Supreme Court deemed that such workplace statements have no constitutional protection.

Subtle shift?

The decisions in *Burlington Northern vs. White*, *Ash vs. Tyson Foods* and *Arbaugh vs. Y&H Corp.* expand protections for worker rights. Whether the employment discrimination rulings of the 2005-2006 term reflect a subtle shift in the Supreme Court's view of employment statutes remains to be seen in the coming 2006-2007 term.



Gerald L. Maatman Jr. is a partner in the law firm of Seyfarth Shaw L.L.P. in Chicago.

Comings & Goings

BROKERS:

New York-based *Integro Ltd.* has appointed **William T. Sullivan** as a managing principal in the Chicago office. He joins Integro from *Aon Corp.*, where he served as a relationship manager.

Chicago-based *Aon Corp.* has named **Elliot Richardson** as head of its global cedent facultative reinsurance activities at Aon Re Global in London. Previously, he

was head of facultative reinsurance at *Benfield Group P.L.C.*

Also at *Aon*, **Barbara Spain** has been named senior vp and relationship manager and **Matt Reese** has been named senior vp and

originator for *Aon Risk Services* in Chicago. Both previously were senior vps for *Arthur J. Gallagher & Co.*

Equity Risk Partners has named **Jennifer Dolan** as director, client services, for the company's Chicago office. Previously, she was vp at *Aon Risk Services*.

The *Park Group* has appointed **Elizabeth Main** as senior vp in the company's new office in Toronto. Previously, she was a senior vp for *Sutton Reinsurance Consultants & Intermediaries*.

Mercator Risk Services has appointed **David Novak** as senior vp of the West Coast property practice in San Francisco. Before joining *Mercator*, he was a vp with *Cooper Gay & Co. Ltd.*

Lockton Cos. Inc. has named **Ron Lockton** as president of its Kansas City, Mo.-based property/casualty operations. Mr. Lockton, the son of late brokerage founder Jack Lockton and the nephew of Chairman David Lockton, formerly was senior executive vp.

Beecher Carlson has promoted **Seraldine Kerrigan** to senior vp in Boston. Previously, she was an assistant vp.

MANAGED CARE:

Deborah Moessner has been named president of Louisville, Ky.-based *Anthem Blue Cross & Blue Shield* in Kentucky. Previously, she was vp of group sales. She replaces **Jude Thompson**, who has been promoted to president of the individual under 65 market for *Anthem Inc.*, the parent company of *Anthem Blue Cross & Blue Shield*.

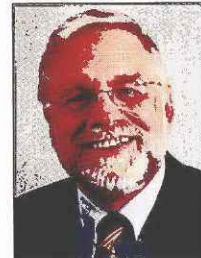
In addition, **Bob McIntire**, who currently leads health care management for the company's central region, has been promoted to senior vp of health care management for the company's commercial

and consumer business segments. The changes are effective Nov. 1.

At St. Louis-based *Anthem Blue Cross & Blue Shield* in Missouri, **Dennis Matheis** has been named president, effective Nov. 1. Currently he is vp and general manager of group business.

Mark Wagar

has been named president of *Empire Blue Cross Blue Shield* in New York, effective Nov. 1. Currently, he is senior vp and market leader for the company's national accounts in the Northeast.



Mr. Seitz

He replaces

Jason Gorevic, who has been promoted to senior vp, chief marketing and product officer for *Well-Point Inc.*, the parent company of *Empire Blue Cross Blue Shield*.



Ms. Carlson

Blue Cross Blue Shield of Michigan in Detroit has named **Kevin Seitz** as executive vp of health care value enhancement. Succeeding Mr. Seitz as president and CEO of *Blue Care Network* and BCBSM senior vp of subsidiary operations is **Jeanne Carlson**, currently chief operating officer for *Blue Care Network*.

INSURERS:

Springfield, Mass.-based *Massachusetts Mutual Life Insurance Co.* has promoted **Melissa Millan** to senior vp of product management. Previously, she was corporate vp of disability income and long-term care businesses at *MassMutual*.

OTHER PROVIDERS:

Bothell, Wash.-based *Vertafore Inc.* has named **Joe Schick** as chief financial officer. Previously, he was a senior vp for *Expedia Inc.*

Milliman Inc. has appointed **Gregory A. Ray** as research director for the Milliman health care practice. Before joining the Seattle-based firm, he was a senior project manager for *Kindred Healthcare Inc.* and *Anthem Inc.*

Washington-based *Touchstone Consulting Group Inc.* has named **David Peck** as president. Previously, he was chief actuary of the benefits consulting firm.

Also at *Touchstone*, **Gene Power** has been promoted to managing director. Previously, he was head of the health and welfare practice.

Atlanta-based *Crawford & Co.* has appointed **W. Bruce Swain Jr.** as chief financial officer and executive vp. Previously, he was senior vp and controller. In May, he was named interim CFO.

TO SUBMIT ITEMS

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Commentary

Employment case highlights problem with hiring illegals

Unique employment-related litigation that has been filed in Texas state courts could be more than an unusual problem for one employer. Indeed, the litigation, which spotlights the issue of employing illegal immigrants, ultimately could unite risk managers and organizations with wide-ranging political leanings.

The litigation against Dublin, Ohio-based Wendy's International Inc. and subsidiary Café Express L.L.C. of Houston was filed by a group of illegal immigrants, who claim the defendants ruined the plaintiffs' opportunity to attain legal U.S. residency and citizenship.

That opportunity arose in 2001 when Congress created a program in which illegal immigrants could attain permanent U.S. residency if they had jobs that no U.S. citizen wanted, admitted that they entered the country illegally and paid a fine. But if illegal workers did not apply for that so-called forgiveness by April 30, 2001, they were required to leave the country and not seek residency for 10 years, said plaintiffs' attorney Stanley Broome, who repre-

sents the immigrants suing Wendy's.

According to court papers, Wendy's created a corporate program to facilitate its illegal workers' filings, which were to be processed by Houston-based law firm Boyar & Miller P.C. But Boyar, also a named defendant, missed the filing deadline, according to court papers.

Still, Wendy's and Café Express assured the workers for years that their applications had been filed and were being processed, the plaintiffs charge.

During that period, the workers also paid \$100 each month through payroll deductions to cover related legal expenses and abided by written warnings from Wendy's that they could not seek other employment without nullifying their forgiveness applications, noted Mr. Broome, a partner at Howie, Broome & Bobo L.L.P. of Irving, Texas.

Some of the plaintiffs were terminated this summer when Wendy's told them it learned of the filing problem and no longer could knowingly employ illegal immigrants. Others have quit their



**DAVE
LENCKUS**

Senior Editor Dave Lenckus
can be reached at:
dlenckus@businessinsurance.com

jobs, Mr. Broome said.

The attorney has filed six individual lawsuits and a proposed class action lawsuit in state courts in Dallas and Houston.

In the proposed class action, which he estimated will ultimately double to 100 plaintiffs, Mr. Broome said he will ask for hundreds of millions of dollars for the plaintiffs—"the price of their

last chance to become a U.S. citizen."

Attorneys say that other employers might have had similar programs, but there is no way to determine whether they missed the filing deadline until immigration officials finish sorting through all applications.

But Mr. Broome said he has heard "this is a significant problem."

Even employers that did not have such programs but knew they employed illegal immigrants might face legal problems, said employer attorney Dyann DelVecchio, a partner at Seyfarth Shaw L.L.P. in Boston. The law is unclear about whether such employers were obliged to assist illegal workers in filing their applications, she said.

And don't count on courts tossing out such litigation because the plaintiffs are in the country illegally, attorneys say. There is no legal barrier to such litigation, attorneys agree.

But a lawsuit does not shield the plaintiffs from U.S. immigration laws, Ms. DelVecchio said. She questioned how many poten-

tial plaintiffs would risk exposing their illegal status by filing lawsuits.

That risk, however, did not deter Mr. Broome's clients. And any success they have surely would embolden other illegal immigrants—something that Mr. Broome said he hopes will happen.

There is only one salvation for employers, Mr. Broome said: legal residency with the opportunity for U.S. citizenship for the plaintiffs. That could be achieved by Congress either waiving the application deadline for his clients or enacting a guest worker, forgiveness or amnesty program for illegal immigrants.

If that happens, at least the Wendy's plaintiffs would give up the American birthright to litigation and a windfall award in exchange for citizenship. Mr. Broome said. "We'll all go away, and you won't have to worry about giving these people money."

If future plaintiffs adopt the same attitude, that would be great news—at least liability-wise—for risk managers and organizations of all political stripes.



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Five steps analyze and mitigate the risks of pollution

By SALLY ROBERTS

MADISON, Wis.—In order for environmental risk management to work effectively, organizations need to follow the five basic principles of risk management, and risk managers need to be part of the process, according to an environmental brokerage executive.

Most organizations today focus on controlling environmental losses while ignoring other efforts such as analyzing environmental risks and implementing appropriate risk financing techniques, said Kenneth E. Anderson, central team leader for Aon Environmental based in Chicago. Too often, environmental risk management "begins and ends with the lawyers," he said.

"The environmental risk management function is severely broken. I see it day in and day out," Mr. Anderson said during a session at "Advanced Environmental Risk Strategies," a recent Madison, Wis., seminar presented by the Environmental Risk Resources Assn. and the University of Wisconsin School of Business.

For environmental risk management to be effective, it must contain the same steps found in traditional risk management—and the first step is to identify the exposures within the organization, Mr. Anderson said. Some exposures are obvious, like a letter from the Environmental Protection Agency saying

the company is a potentially responsible party to a Superfund cleanup site, while others are not so obvious.

"I would suggest to you that even if your organization may employ a 'don't ask, don't tell' policy when it comes to figuring out what liabilities may exist—and legally you may be OK in doing that—you still have the liability until the law changes," Mr. Anderson said, referring to numerous different federal and state environmental laws. "The liability will still be yours when the pollution is found out. Whether it's because of a transaction or third-party injury occurs, it will still be yours, and pollution doesn't usually get better in time."

Once exposures are identified, their frequency and severity need to be analyzed, Mr. Anderson said, referring to the second step in the risk management process. This can be accomplished in a variety of ways with third parties such as environmental consultants and insurers.

While organizations generally "don't do a very good job" with the second step, they usually do an "excellent job" in step No. 3—controlling the loss, Mr. Anderson said.

With all the environmental laws that have been passed, from The Resource Conservation and Recovery Act to the Comprehensive Environmental Response, Compensation and Liability Act, regulations have ensued, Mr. Anderson said. Under-

ground storage tanks, which are governed by RCRA, must be properly contained, he said in citing an example. These are control issues, and companies do a good job of avoiding losses and in their crisis response once a loss does occur.

STEPS TO TAKE

1. Identify exposures
2. Analyze frequency and severity
3. Control losses
4. Apply risk financing
5. Evaluate process and improve it

Mr. Anderson said that if \$1 is spent on all five risk management steps, 98 cents of the total is spent on the third step.

"Where we fail miserably...is implementing the appropriate risk financing alternatives," he said, referring to the fourth step of the risk management function.

"The environmental insurance business is at best a \$2 billion (premium) industry," he said. Half of that comes from environmental companies, such as waste haulers, he said.

As a whole, about \$400 billion in premiums is spent annually in the U.S. property/casualty insurance

market, said Mr. Anderson, who estimates that the exposure to insurable environmental liabilities in the United States for all organizations is at least 5% if not 10% of their total exposure to risk.

"So if we're using insurance for \$400 billion, we should be using environmental insurance to the tune of \$20 billion on the low end and \$40 billion on the high end," Mr. Anderson said.

While environmental insurance is an underutilized financial mechanism for environmental risks, it can effectively mitigate many financial consequences related to environmental losses, he said.

Environmental site liability, also known as pollution legal liability, for example, is one of the most flexible insurance policies available, Mr. Anderson said. It covers broad environmental liabilities, including sudden and gradual forms of pollution, for a single site or a group of specific sites. Environmental site liability insurance provides coverage for pre-existing and new conditions, cleanup, third-party liability and changes in environmental laws, he said.

Remediation stop loss coverage, also known as cost cap coverage, is a separate policy that pays for cost overruns above an attachment point, which is based on the expected cleanup cost, Mr. Anderson said. Such cost overruns might include discovery of additional, higher con-

centrations of materials requiring cleanup or a greater spread of pollution.

Unlike pollution legal liability coverage, remediation stop loss coverage is expensive, Mr. Anderson noted. The cleanup cost needs to be at least \$1 million and the premium is about 8% to 15% of the limits purchased, he said. So a \$10 million policy above a \$10 million cleanup would cost between \$800,000 and \$1.5 million.

The fifth step in the risk management function is to evaluate the process and implement improvements. This means figuring out what works and what doesn't work and starting the process all over again, Mr. Anderson said.

When it comes to environmental risk management, there needs to be coordination of expertise within the organization including legal, real estate, finance, environmental management, operations and facilities, and risk management, he said.

Environmental liabilities exist, whether an organization knows them or not, and a risk manager's job is fairly straightforward, he said. "His or her job definition is to reduce the overall cost of risk to the organization and environmental liabilities are risks to the organization."

Risk managers can play a "very strong part" in the environmental risk management process, Mr. Anderson said.

Environmental: Liability reporting moving to 'fair value measurement'

CONTINUED FROM PAGE 4

result of new accounting standards and trends in environmental liability reporting, he added.

At a recent "Advanced Environmental Risk Management Strategies" seminar presented by the Environmental Risk Resources Assn. and the University of Wisconsin School of Business in Madison, Mr. Rogers outlined the past and future trends of environmental financial reporting.

He explained that the historical framework for financial accounting of environmental liabilities resides in Financial Accounting Standard 5, which in 1975 set forth the ground rules of when an environmental risk becomes a liability and must be recognized in financial statements.

Under FAS 5—and further interpretations of the standard—an environmental liability is triggered either by a governmental enforcement action or a lawsuit, he said. It has to be "probable" that a loss has occurred and in an environmental situation, the contemplation or contingency is a claim, he said.

In order for unasserted environmental claims to be recognized, certain criteria must be met, and in most cases corporate attorneys will advise companies that the threshold has not been reached, he said.

"You don't want to disclose an unasserted claim. That's just reality," Mr. Rogers said.

So "if you have a property, and you know you have some problems

with it, and nobody knows about it and you think you might want to go clean it up some day," it does not have to be recognized. "This is why all the brownfield sites are not on the balance sheet," Mr. Rogers said. "The rules say it doesn't belong there."

Under FAS 5, companies do not have to account for such environmental costs as voluntary cleanups and asset retirement obligations. AROs are legal obligations associated with the removal, sale and redevelopment of a tangible long-lived asset, such as a shut-down building or facility.

For those environmental liabilities that are recognized, FAS 5 says companies can report the losses at a "known minimum value" in absence of a "most likely value," Mr. Rogers said. As a result, reported environmental liabilities rarely reflect the true liability, if they are reported at all, he said.

FAS 5's days are numbered, though, Mr. Rogers said. "It's not going to live for another 10 years in this country."

The movement toward fair value measurement of liabilities, new accounting rules and the convergence of global accounting standards is going to change the way companies must identify, assess, measure and report their environmental liabilities, Mr. Rogers said.

The concept of "fair value measurement" basically wipes out the longstanding notion of contingent liability, which is currently gov-

erned by FAS 105, Mr. Rogers said. It also is "fundamentally different" from the FAS 5 measurement techniques of "known minimum value" and "most likely value," he said.

Under fair value measurement, the uncertainty is not whether there is a liability, but rather "how much you're going to have to pay and when," he said.

"So say you've got asbestos in the building or contamination in the ground, and even though you might not have to deal with it today, there is a clear legal obligation to deal with it in the future," he said. Under fair value measurement, companies will have to take all the uncertainty around that and factor it into a probabilistic analysis called fair value measurement, he said.

"It's exactly what people do in arm's-length transactions every day," Mr. Rogers said. "If I want to transfer an obligation to somebody else and there's lots of uncertainty around it, you get sophisticated and look at all the different scenarios and run probabilistic analysis" and come up with a fair price.

"It's the same underlying principles of insurance underwriting," he noted.

Are companies going to do that with their environmental liability? "They're going to fight like hell not to," Mr. Rogers said. "But if they end up in court or in bankruptcy, they may not be able to defend themselves for having not done that."

And if companies do end up in court, they most likely will not have insurance coverage due to pollution exclusions. "Financial reporting claims will hit your D&O policy and we've got case law that these pollution exclusions are valid," he said.

"The trend is not going away. The whole accounting profession is moving toward fair value measurement," Mr. Rogers said.

Currently, under the 4-year-old accounting standard FAS 143 and the subsequent FASB Interpretation No. 47, companies must use fair value measurement when recognizing their asset retirement obligations, which include old facilities or equipment that have environmental issues that are not currently being addressed, but will be some day when the asset is sold, redeveloped or otherwise "retired," Mr. Rogers said.

Furthermore, the International Accounting Standards Board in Europe is moving toward fair value measurement and is working with the Financial Accounting Standards Board in the United States toward common accounting standards, Mr. Rogers said.

One of their joint projects is FAS 141-R, which affects mergers and acquisitions, Mr. Rogers said. Effective in 2008, companies will have to account for all assets and liabilities of an acquired company using fair value measurement and those liabilities include environmental liabilities, he said.

"Even if you don't have to do fair value measurement now on your whole portfolio of environmental liabilities, you should start because to do it right, it takes time," Mr. Rogers said. "And you don't want to be in a compliance period where FASB says you have six months to do it."

First meeting

MADISON, Wis.—A small gathering of environmental managers, brokers, insurers, consultants and others attended the inaugural Advanced Environmental Risk Management Strategies seminar at the University of Wisconsin in Madison last month.

The program was presented by the Environmental Risk Resource Assn. and the UW School of Business.

Attendees heard from a variety of environmental experts on topics such as global warming, restoring brownfields, environmental liability financial disclosure, fixed cost environmental remediation strategies and enterprise environmental management strategies.

Contact ERRRA at www.errraonline.com for more information about next year's seminar, dates of which have not been determined.

—By Sally Roberts

Captives: Delaware revamps domicile

CONTINUED FROM PAGE 4

product liability insurance—at the time the only coverage RRGs could provide to policyholders-owners.

The RRG sued and ultimately won a federal court ruling that its coverage was considered product liability under federal law, and that federal law pre-empted any state definition.

Today, though, the state's highest elected official has pledged that she and other officials will work to make Delaware a state-of-the-art captive domicile.

"You can rely on Delaware Insurance Commissioner Matt Denn, our General Assembly and me to keep Delaware's laws and regulatory environment one step ahead of the competition—just as we do with our banking and trust and corporate laws," Gov. Minner said.

"We will make the same commit-

100-plus attend

WILMINGTON, Del.—More than 100 people attended the fall inaugural conference of the Delaware Captive Insurance Assn held Oct. 4 in Wilmington.

Topics discussed included an analysis of Delaware's revamped captive insurance statute, the roles of captive service providers and the experiences of Delaware captive sponsors.

More information about the DCIA is available online at www.delawarecaptive.org, by e-mail at inquiry@delawarecaptive.org, by telephone at 302-651-8356 or by mail at Delaware Captive Insurance Assn., 1201 N. Orange St., Suite 714, Wilmington, Del. 19801-1186.

ment to the captive industry that we offer to our corporate clientele—an attractive professional workforce; a favorable legal environment; a convenient location in the heart of the Northeast Corridor; and a friendly, quick and reasonable regulatory and tax environment," Gov. Minner said.

New captive sponsors say they are impressed with fast action by state captive regulators. "The state did an exceptional job. The application process and working with the insurance department was phenomenal," said Kent Lisenby, president of MAKE Transportation Insurance Inc., a Risk Retention Group, which earlier this year became the first captive licensed since the state revamped its captive law.

MAKE writes commercial auto insurance for four trucking companies and is expected to have a first year premium flow of about \$2.5 million, Mr. Lisenby said.

ADA: Justifying safety standards

CONTINUED FROM PAGE 1

burden of showing that an individual employee's disability precludes them from safely performing a specific job, as the court found that employees that challenge an employer's safety-based qualification standard do not need to establish that they generally can perform the essential functions of the job safely.

Instead, employees only have to show that they are qualified and can satisfy safety prerequisites that are unrelated to the challenged qualification standard. Once they do that, and show that the qualification standard at issue screens out individuals or groups with disabilities, then the burden shifts to the employer to establish that the challenged qualification is job related and consistent with a business necessity, court records show.

"UPS contends that in the face of uncertainty regarding whether deaf drivers are more dangerous than hearing drivers, it must be given the benefit of the doubt," the decision read. "The second prong of the business necessity defense...does give employers the benefit of the doubt in cases of uncertainty, but only when the employers introduce persuasive evidence supporting the conclusion that the answers to the questions at hand truly are uncertain. Here, UPS made no such showing."

The decision applies to employees or potential employees with a broad range of physical and mental impairments, not just those that are deaf, said Larry Paradis, executive director for Disability Rights Advocates, a Berkeley, Calif.-based organization that brought the lawsuit.

The ruling will burden any safety program where employers attempt to use a broad brush in imposing limits on accessing jobs, said Andrew Livingston, a partner and employment and labor specialist in the San Francisco office of Heller Ehrman L.L.P.

The ruling represents a significant legal shift because it now places the burden on employers to demon-

strate that a disabled individual does not meet a qualification, in cases where there is a safety qualification standard, Mr. Livingston said.

In the past, employers could win a summary judgment by arguing that an employee belonged to an entire group of people that did not qualify for a job.

'They won't let you take a safety regulation that is very specific about what it applies to and use it for something where it doesn't apply.'

Clay Creps, Bullivant Houser Bailey P.C.

Federal appeals courts across the country have split on whether the burden rests on an individual disabled employee or the employer to prove whether a worker can perform a job safely, Mr. Paradis said.

But the 9th Circuit's decision is different, because it stems from a class action case and is based on the employer's guidelines that applied to an entire group rather than an individual.

At the state court level, California's Supreme Court is weighing the case of *Green vs. State of California*, in which a state appeals court found that a disabled employee does not have to prove his or her capacity to perform the essential duties of a job. Instead, the burden is on the employer to prove that the employee can't perform the job even with reasonable accommodations.

In the UPS case, the company said it is evaluating a potential appeal and that its safety policy is aimed at protecting the public and its employees. It declined further comment.

Court records show that UPS requires drivers to pass a physical that

includes a hearing standard established by the U.S. Department of Transportation for drivers of trucks with a gross vehicle weight rating of more than 10,000 pounds, a larger truck than UPS' brown vans. But UPS went beyond the DOT requirement and applied the standard to drivers of its vans.

The decision shows that the court won't allow employers to use safety standards out of context, said Clay Creps, a partner and employment specialist in the Portland, Ore. office of Bullivant Houser Bailey P.C.

"They won't let you take a safety regulation that is very specific about what it applies to and use it for something where it doesn't apply," Mr. Creps said. The court said UPS needs to show that the standard is consistent with a business necessity, which is a recognized defense in ADA cases, Mr. Creps said.

The appeals court noted that deaf drivers are licensed to drive in every state. It also found that the trial court "was not clearly erroneous" in concluding that evidence was inconclusive in determining whether deaf drivers present a higher risk of accidents than nondeaf drivers.

But hearing is extremely important for safe driving, as is maintaining a standard for minimum hearing, said Carmen Daecher, president of Daecher Consulting, a Camp Hill, Penn.-based company providing loss prevention services for companies with vehicle fleets.

Employers must apply such a standard consistently for all employees, said Mr. Daecher who is chairman of an American Society of Safety Engineers safe motor vehicle operation committee.

But employers also must now ensure that each individual employee they exclude from driving does not meet the standard, rather than merely excluding an entire group because they might not meet the standard, he added.

Bates et al. vs. United Parcel Service Inc., Docket No. 04-17295, 9th U.S. Circuit Court of Appeals, Oct. 10.

Drugs: PBMs likely to try to renegotiate contracts

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While it has agreed to settle the case, First DataBank denies any wrongdoing and said that, while it does report and publish information collected from third parties, it does not set pharmaceutical prices.

McKesson, which remains a defendant in the litigation, issued a statement after the proposed settlement was announced asserting that "the claims against McKesson have no merit and we will defend ourselves vigorously."

Theoretically, reducing the markup on prescription drug prices by 5% should result in a 5% reduction in the cost to employers. However, the settlement, even if it is approved, is unlikely to result in a windfall for employers, experts say.

"In theory, it would mean lower costs if your deal stayed the same with your PBM," said Sean Brandle, a vp at The Segal Co. in New York. "If employers did absolutely nothing and First DataBank started lowering the prices, they would save money. But I don't know how it's going to pan out. I assume the PBMs are going to try and renegotiate contracts."

PBM contracts have provisions that "if there is a substantial change in AWP methodology," the PBM will have the right to reopen negotiations that come to equitable terms to maintain the status of both parties, Mr. Brandle added.

David Dross, a principal and national practice leader for managed pharmacy at Mercer Health & Benefits in Houston, agreed. "The bottom line is, I don't think a lot of the providers—both PBMs and retailers—are really interested in seeing their profit margins shrink," Mr. Dross said. "So what that potentially implies is some sort of contract renegotiation between the PBMs, the retailers and ultimately, because the plan sponsor is the one paying for it, the plan sponsors."

"That's all a long way of saying this may not result in substantial cost savings to plan sponsors as a result of what the PBM and the retailers come back with based on this potential change," Mr. Dross said. "The term that I heard repeatedly over the past few days is that they want to 'maintain contract economics,' which is a politically correct way of saying in effect 'maintain the same pricing levers,' and, for the PBM, whatever their previous profit margin was."

In fact, during an analyst conference call last Tuesday, CVS Corp. President and Chief Executive Officer Tom Ryan asserted that if the AWP is adjusted significantly, CVS will renegotiate its PBM contracts "to avoid any significant margin impact."

PBMs contacted by *Business Insurance* either declined to comment or did not return calls with the exception of Medco Health Solutions Inc., which issued a statement saying that "the settlement has not been approved by the court so at this point it's a theoretical exercise. That said, situations such as these

are defined in our customer contracts and we will have these discussions directly with our clients."

To avoid lower prices, some PBMs may attempt to switch from First DataBank, which provides AWP data to 75% to 80% of the U.S. drug distribution industry, to Medi-Span, a smaller publisher of AWP data that wasn't named in the suit, sources say. Indianapolis-based Medi-Span is a unit of Wolters Kluwer Health Inc.

"In aggregate, (Medi-Span's listed prices) must be 1% to 2% lower across a broad spectrum of drugs," according to Mercer's Mr. Dross.

A spokesman for Medi-Span said the company's lawyers are reviewing the proposed settlement to determine whether it would have any impact on its operations, but declined to say whether it would alter or discontinue use of its AWP.

Even if there is no immediate savings for employers, the eventual discontinued use of the AWP could lead to more competitive prescription drug pricing in the future, particularly if a new pricing model emerges that is based on the wholesale acquisition cost plus a defined profit margin, sources say.

Even before the proposed settlement was reached, the pharmacy and payer community were already discussing whether to abandon the controversial AWP since it no longer represents the actual price paid. In fact, there is a joke in the industry that AWP really stands for "Ain't What's Paid."

Just days after the proposed settlement was announced, the Academy of Managed Care Pharmacy, a national association of pharmacists based in Alexandria, Va., issued a statement that said it has initiated an assessment of current payment methodologies for prescription drug products.

"For the past few years, people have been talking about moving

See **DRUGS** next page

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Drugs: PBMs likely to try to renegotiate contracts

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away from AWP and coming up with a new standard for drug pricing," said John Malley, eastern region pharmacy practice leader at Watson Wyatt Worldwide in New York. "Medicare uses average sales price, which is a different calculation of acquisition costs. People have been talking about the variability around AWP in the first place and that maybe it's not a good starting point. I wonder if this is going to put

fuel in that fire."

"There are already some shifts toward other benchmarks, particularly for government programs," said Alex Sugerman-Brozan, director for the Boston-based Prescription Access Litigation Project, whose members were the plaintiffs in the case.

"This settlement is going to add huge momentum to the private market switching to other benchmarks, too, which, frankly, they should have been doing for the past 10 years. Instead they've been trying to

negotiate bigger and bigger discounts off of AWP. But the analogy we always draw is it's sort of like the store that raises its prices and then holds a sale," he said.

Christine Whipple, executive director of the Pittsburgh Business Group on Health, said that members of the coalition's pharmacy benefit users group have been discussing the use of AWP vs. wholesale acquisition costs and other available pricing metrics.

"What this does is continue to

shine the light on this particular area of the pharmaceutical prescription drug benefit—allowing the employers to ask the critical questions and get the answers they need so that they can move forward on the benefit," Ms. Whipple said.

New England Carpenters Health Benefits Fund et al. vs. First DataBank Inc. and McKesson Corp., Civil Action No. 05-11148, Filed June 2, 2005, U.S. District Court for the District of Massachusetts in Boston.

ConocoPhillips: Defense costs upheld despite exclusion

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Catlin Group Ltd.; and American International Group Inc.'s Lexington Insurance Co., National Union Fire Insurance Co. of Pittsburgh, Pa., and Commerce & Industry Insurance Co. of Canada.

In its summary judgment motion, ConocoPhillips argued that it is entitled to defense coverage unless the underlying claims are unambiguously excluded by the contractors' policies. It also maintained that the court should look

only at the language of the policies themselves and ConocoPhillips' contracts with cleanup companies to determine whether coverage is excluded.

Insurers, meanwhile, argued that there were issues of fact about whether the underlying claims were covered and asked the court to consider evidence outside the policy and contract language.

Judge Carter sided with ConocoPhillips in his ruling, though, granting the company's partial summary judgment motion. He found that

the contractors' policies do not unambiguously exclude coverage of the bodily injury claims, opening the door to defense coverage. He also found that Louisiana law constrains him from considering evidence beyond the policy and contract language in deciding the defense cost issue.

The ruling was a victory for policyholders in part because it affirmed ConocoPhillips' defense coverage rights as an additional insured rather than as a named insured under its own policy, according to

Anderson, Kill. While the distinction should not matter, the added complexity sometimes leads courts to deny defense coverage in similar cases, the law firm said.

Insurers are expected to ask Judge Carter's permission to appeal the defense cost ruling. The judge has said he wants the coverage case to proceed to trial next year.

EDC Contractor Insurance Litigation, Docket No. 98-1984, 14th Judicial District Court, Parish of Calcasieu, La.

In Brief

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practices, a court ruling affirmed. The ruling follows a motion by UnitedHealth, which sought a protective order to block Mr. Hatch's requests for documents relating to his probe. Mr. Hatch previously withdrew the state's participation in a shareholder lawsuit against UnitedHealth in order to conduct a separate probe into the company's stock-option granting practices. UnitedHealth said it plans to appeal the ruling. UnitedHealth is being investigated by the Securities and Exchange Commission and other authorities over their timing and accounting for stock options granted to executives.

Wal-Mart loses suit over forced work time

Wal-Mart Stores Inc. lost a class action suit last week in state court in Philadelphia where the retailer was

charged with forcing employees to work through rest breaks and off the clock. According to plaintiff attorney Gerald L. Bader Jr. of Baker & Associates Inc. in Denver, the jury award totalled \$78.5 million in compensatory damages. However, the judge may also still award additional statutory damages. The suit alleged that Wal-Mart made workers skip more than 33 million rest breaks from 1998 to 2001.

Crawford settles overbilling allegations

Crawford & Co. has agreed to pay nearly \$1.4 million to resolve allegations that it submitted inflated invoices for providing federal employees with workers compensation services, the U.S. Department of Justice announced. Between 1992 and 2002, Crawford allegedly billed the government for services at rates set by its managers rather than billing the actual time spent performing services. In addition, the company allegedly billed the entire time spent on one activity to multiple clients files and attempted to pass along overhead expenses, the Department of Justice said in a statement.

Aetna to take charge related to layoffs

Aetna Inc. plans to cut its administrative expenses and take a related fourth-quarter, after-tax earnings charge of \$20 million. The charge is related to severance costs as the company plans to lay off about 650 employees, about 2% of its workforce. The insurer said that the changes will result in increased flexibility, more efficient business operations and a commitment of resources to areas with a greater potential for future growth.

Hershey to close DB plan for new workers

Hershey Co. will close off its defined benefit pension plan to new employees, beef up its 401(k) plan for current and future employees and reduce future benefit accruals to current pension plan participants. A sweetened 401(k) plan will be the sole retirement savings plan offered to employees hired as of Jan. 1, 2007. Hershey will match 75% of employees' salary deferrals, up to 6% of pay. Additionally, Hershey will make an automatic 401(k) plan

contribution on the first 3% of salary. Hershey will reduce future benefit accruals for employees in the defined benefit plan, which is a cash balance plan. However, Hershey will improve its 401(k) match.

Benefit filing extended for Katrina-hit companies

The Labor Department is giving more time to employers and plan administrators affected by Hurricane Katrina to file federally required benefit plan reports. Filers who need additional time beyond the Oct. 16 deadline to file 2005 reports in the Form 5500 series, such as pension plan annual financial reports, can request an extension to the end of 2006. The filing extension is available to plan administrators, employers and other entities affected by Hurricane Katrina and located in one or more parishes or counties identified earlier in an Internal Revenue Service notice. An extension also is available to employers outside the affected areas who are unable to obtain the necessary information from service providers, banks or insurance companies located in the areas specified by the IRS.

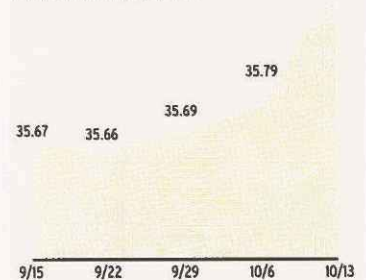
BI Stock Index

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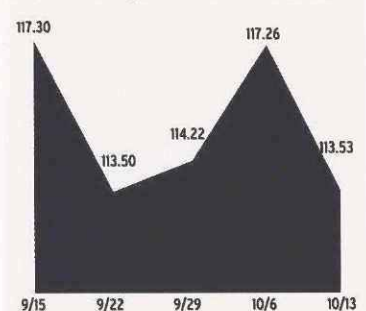
Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.businessinsurance.com.



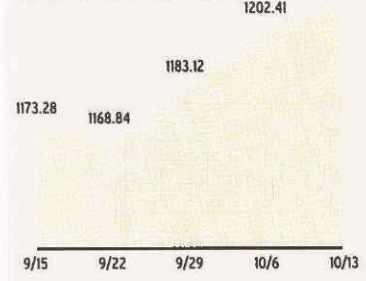
BI Brokers Index



BI Insurer/Reinsurers Index



BI Managed Care Organizations Index



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3150.92	0.27
DOW JONES	11960.51	0.93
S&P 500	1365.62	1.19

Largest gains

SCPIE Holdings Inc.	9.62%
UnumProvident Corp.	8.55%
Fairfax Financial	8.30%
CNA Surety Corp.	7.28%
Meadowbrook Insurance	7.16%

Largest losses

UnitedHealth Group	-5.34%
Sierra Health Services	-3.97%
Humana Inc.	-3.55%
Gainsco Inc.	-2.79%
Aetna Inc.	-2.55%

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Holiday hijacking?

With the holidays nearing, the theft of automated teller machines will surely spike as thieves look to finance a merry time, says Tom Chandler, operations manager for Oklahoma City-based BancInsure Inc.

Some ATMs require only a couple of burly thieves and tools to yank them out of their moorings and a dolly to cart them away. Pickup trucks with a strong bumper and a chain, forklifts and backhoes are favored ATM theft devices—especially when construction slows for the winter, leaving equipment idle and available.

Thieves haul the ATMs to isolated spots where they open them with blow torches or pummel them with sledge hammers, such as one machine recently found abandoned in a gravel pit in Montana.

"They dragged it down the road with sparks flying trying to wear part of it out so they could get it to open easier," says Van Butler, assistant claims manager for BancInsure, which provides all lines of coverage for banks nationwide.

Property package policies usually cover damage to ATMs while financial institution bonds cover the lost cash, according to BancInsure.

But stealing an ATM is "a stupid thing to do because the likelihood of getting caught is great and it's difficult to get the money out," says a spokesman for the Washington-based American Bankers Assn.

Foley's plan on cat reserves gets no takers

What connection does disgraced former Rep. Mark Foley, R-Fla., have with the property/casualty insurance industry?

It just so happens that when Rep. Foley wasn't composing allegedly salacious e-mails to former House pages, he found the time last year to introduce the Policyholder Disaster Protection Act. The measure would have allowed insurers to create tax-free reserve funds for natural disaster claims.

The bill, which was introduced on May 26, 2005, said that revising the tax code to allow tax-free reserves would "reduce the possibility that a significant portion of the private insurance system would fail in the wake of a major natural disaster and that government entities would be required to step in to provide relief at taxpayer expense."

Apparently, though, Rep. Foley had about as much luck persuading his congressional colleagues to get his legislation enacted as he did charming most of the objects of his electronic affection. The bill was referred to the House Ways and Means Committee, where it remained without further action for more than a year before expiring with last month's adjournment.



Mr. Foley

Business Insurance END PAGE



Contributors: Roberto Cenicerio,
Mark A. Hofmann, Rupal Parekh, Matt Scroggins

This fall was no rib tickler

These days, Eva Longoria is more than a celebrity—she's also a workers comp liability.

The actress earlier this month was reportedly rushed to the hospital from the set of ABC's "Desperate Housewives," after slipping on the stairs coming out of her trailer—a fall that left her with some badly bruised ribs.

The injury apparently wasn't her first while on the job.

During shooting for the show in August 2005, Ms. Longoria was reportedly struck in the head by a piece of equipment and required emergency care.

GETTY

Lott's Katrina fallout visited on DHS bill

When you think of the Department of Homeland Security, odds are you think about protecting the nation from terrorists rather than looking into insurance claims handling practices.

Well, think again. The DHS' annual appropriations bill earmarks an amount "not to exceed \$100,000" for the DHS' inspector general to use "for certain confidential operation expenses, including the payment of informants" to investigate insurance practices.

The provision was added courtesy of Sen. Trent Lott, R-Miss. Sen. Lott happens to be suing State Farm Mutual Insurance Co. over the insurer's alleged failure to cover adequately the loss of his Pascagoula, Miss., home that was destroyed by Hurricane Katrina.

The section directs the DHS inspector general to "investigate whether, and to what extent, in adjusting and settling claims resulting from Hurricane Katrina, insurers making flood insurance coverage available under the Write-Your-Own program pursuant to section 1345 of the National Flood Insurance Act of 1968 (42 U.S.C. 4081) and subpart C of part 62 of title 44, Code of Federal Regulations, improperly attributed damages from such hurricane to flooding covered under the insurance coverage provided under the national flood insurance program rather than to windstorms covered under coverage provided by such insurers or by windstorm insurance pools in which such insurers participated."

DHS has until April 1, 2007, to present Congress with the results of its investigation.



Sen. Lott

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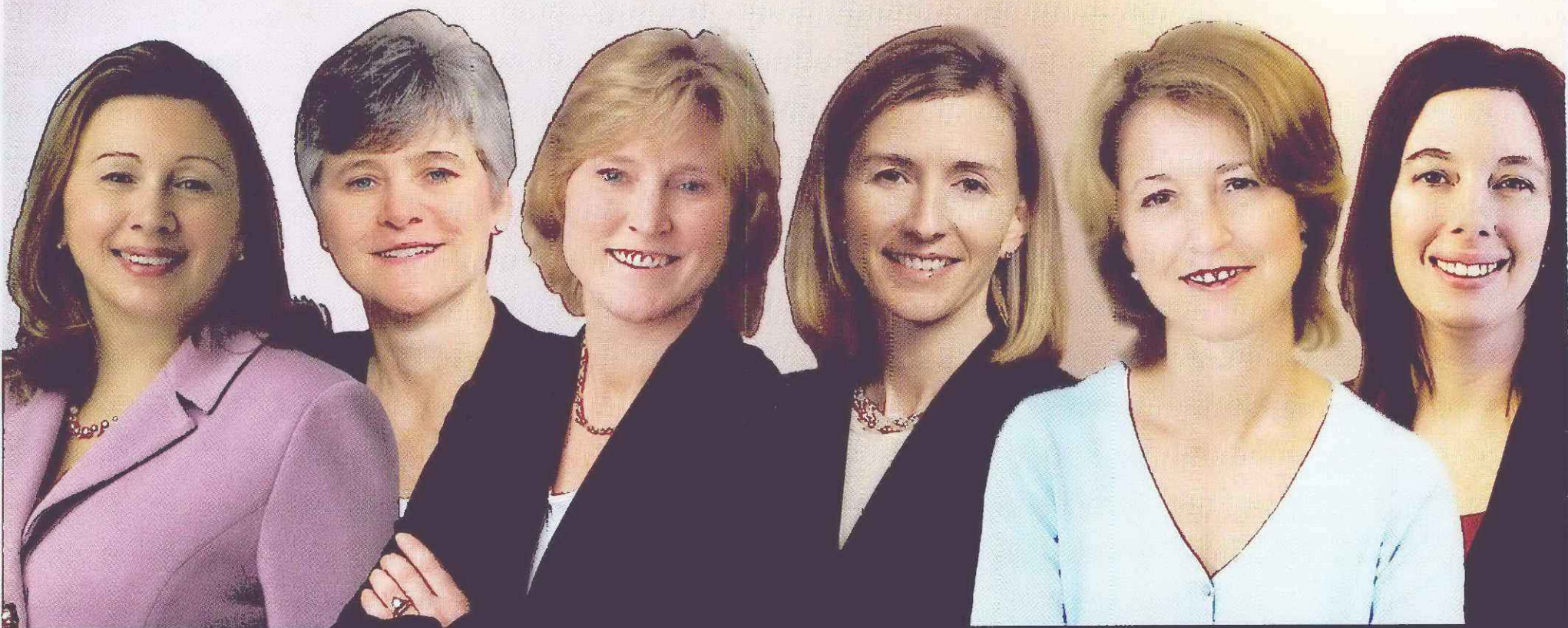
"Play it, Sam. Play 'As Time Goes By.'"

Humana Inc. is bringing "Casablanca" back to the big screen in an effort to promote its 2007 Medicare Advantage health plans.

The health insurer said that the screenings of the 1942 Humphrey Bogart/Ingrid Bergman classic, which began last week, are taking place in nearly 700 theaters across the country and are open to those eligible for Medicare and their caregivers.

In addition to the feature presentation, Humana will show "Changing Lives," a short promotional film about the insurer that features members of its Medicare Advantage plans.

Watch them break down barriers.
Watch them inspire others.
Watch them change the industry.



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