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September Edition
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Linda M. Kuklinski

Employee Benefits and Risk Manager
Generac Power Systems Inc.

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NEWSPAPER

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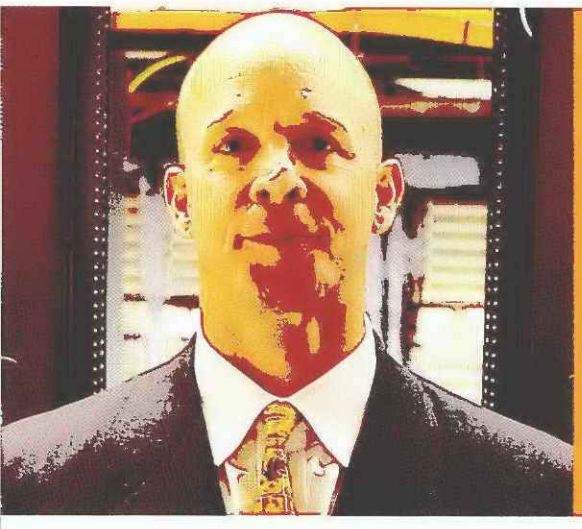
03

Is data privacy a big exposure for your organization?

Ask Aon.



Breaches in network security have created unprecedented data theft, litigation and financial loss. Purchasing network risk insurance is one way to protect your company from liability for data privacy exposures. But before you do, there are a host of other strategies to consider – behavioral risk mitigation, contractual limitations, IT security to name a few – that can make your network risk management program more efficient and effective.

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

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Business Insurance

September 17, 2007

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SEN. LEAHY MULLS BAN ON PRE-EMPTION OF TORT LAW / PAGE 3

CANADIAN LABOR UNIONS WIN LEVERAGE IN RULING BY SUPREME COURT / PAGE 3

In Brief

Storms out as Marsh chief

Brian M. Storms, chief executive officer of Marsh Inc., has left the brokerage, Marsh & McLennan Cos. Inc. said late Friday. "Brian has made important contributions to Marsh's recovery over the past two years," MMC President and CEO Michael G. Cherkasky said in a statement. "That said, we now need a different set of leadership and operational skills to complete the successful transformation of Marsh." Mr. Cherkasky will be acting CEO of the brokerage until a successor to Mr. Storms is named. Meanwhile, after announcing that Timothy J. Mahoney, Marsh's chief

See **IN BRIEF** page 43

BENEFITS MANAGEMENT

More retirement plan sponsors linking 401(k) plans to annuities; why few are adopting the Roth 401(k) option; Indiana puts a premium on incentives for wellness programs; nationwide group of colleges enhances retirement savings program.
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California reform to hinge on voters

Lawmakers enter special session to address funding health care overhaul

By JOANNE WOJCIK

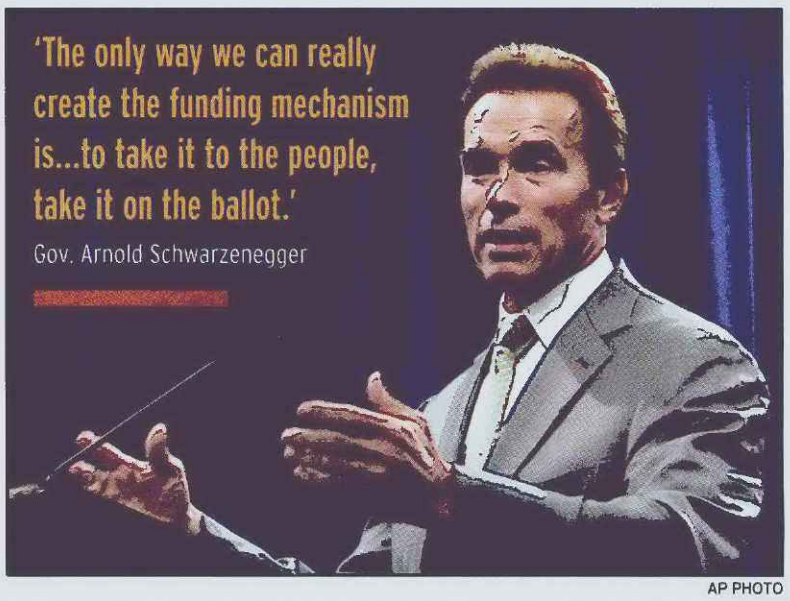
SACRAMENTO, Calif.—Though their legislative session technically ended last week, California lawmakers haven't given up their quest for comprehensive health care reform and are going into overtime to work out a "framework" bill with a financing component that is to be put to voters in November.

Gov. Arnold Schwarzenegger on Sept. 11 called the special session after announcing his intention to veto a bill, A.B 8, passed the previous day that would have required employers in the state to pay as much as 7.5% of their payroll to cover the cost of health insurance for employees or pay into a state pool that would provide the coverage.

The governor opposed the bill primarily because it did not contain an individual mandate, an element of a reform proposal he put forth earlier this year that never made it into bill form. The Schwarzenegger proposal would have required employers to contribute about 4% of their payroll or pay into a state pool, and fees would have been assessed on hospitals to help distribute costs.

"Californians cannot wait for reform. Just a few hours ago, a report was released that said health insurance premiums continue to take...money out of families' pocketbooks and employers' bottom lines at a rate faster than wage growth or inflation," the governor

See **REFORM** page 42



AP PHOTO

California's governor called a special session to work out a health reform plan.

NAIC weighs in on non-U.S. regs

Observers cite pros, cons of equivalence outline

By MEG FLETCHER

KANSAS CITY, Mo.—The National Assn. of Insurance Commissioners' latest proposals to modernize reinsurance regulation are better than previous efforts because, for the first time, they include principles to determine regulatory equivalence with other nations' insurance systems, some industry observers say.

But depending on their perspective, observers say the proposals contain problematic areas that include collateral levels, new ceding company burdens and inadequate recognition of transactions between U.S.-licensed and their non-U.S. parent companies.

Most observers also question the NAIC's authority to act for the nation in international insurance matters. Additionally, they wonder whether a new, two-step approval process that would give greater authority to an individual state regulator overcomes that legal concern or if it would create additional problems, according to representatives

See **NAIC** page 42

PRINCIPLES FOR REGULATORY EQUIVALENCE

Under its proposed mechanism for certification of non-U.S. reinsurers, the NAIC says the new Reinsurance Supervision Review Department should:

- Recognize non-U.S. regulatory regimes that are "functionally equivalent" and reciprocal.
- Give the fullest possible recognition to such regimes.
- Have an effective cooperation arrangement with each home regulator of non-U.S. reinsurers.
- Allow U.S. regulators to enforce U.S. laws that apply to non-U.S. reinsurers.
- Give adequate rights and remedies to U.S. insurers and policyholders.
- Provide adequate disclosure of information that U.S. regulators may reasonably require.

Source: National Assn. of Insurance Commissioners

Comp board revisits coverage mandate

New York mandate requiring specific cover draws criticism

By ROBERTO CENICEROS

ALBANY, N.Y.—The New York State Workers' Compensation Board is reconsidering its implementation of a new mandate requiring that all employers with employees temporarily working in New York purchase "full" workers compensation coverage.

The board's reconsideration—which is being conducted in coordination with Gov. Eliot Spitzer's office—follows opposition from several interested parties including employers, insurers and brokers, a board spokesman said.

The Albany-based board had said earlier that all policyholders with employees in New York, for any amount of time, must obtain an insurance contract specifically listing coverage for New York risks.

Employers that self-insure in other states, but not in New York, also had to comply, said Steve Carbone, head of education for the board.

The board said that its policy stemmed from a law that took effect Sept. 9, and was part of workers comp reforms signed into law by Gov. Spitzer in March. Among many other things, the reforms sought to reduce the number of employers that did not provide workers compensation insurance benefits.

But opponents said the policy went too far in its interpretation of the law.

"It's a pretty sharp departure from practices in the past," said a spokesman for the Syracuse-based Independent Insurance Agents & Brokers of New York Inc.

The board's mandate would have eliminated an established practice of allowing an out-of-state employer to cover employees working in New York under an "all states" endorsement to their workers comp policies.

Under that practice, employers could use the all states endorsement unless they exceeded certain benchmarks, Mr. Carbone said. Those benchmarks included the amount of money a worker earned while in

See **WORKERS COMP** page 43

On the Web

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BI VIDEO

Reinsurance Viewpoints debuts online

A new series of videos based on interview from the 2007 Rendez-Vous de Septembre is now available online. *Business Insurance* Editor Regis Coccia and *BI Europe* News Editor Sarah Veysey interview leaders of the reinsurance industry against the exciting backdrop of Monte Carlo. Go to *www.BusinessInsurance.com/reviews.*

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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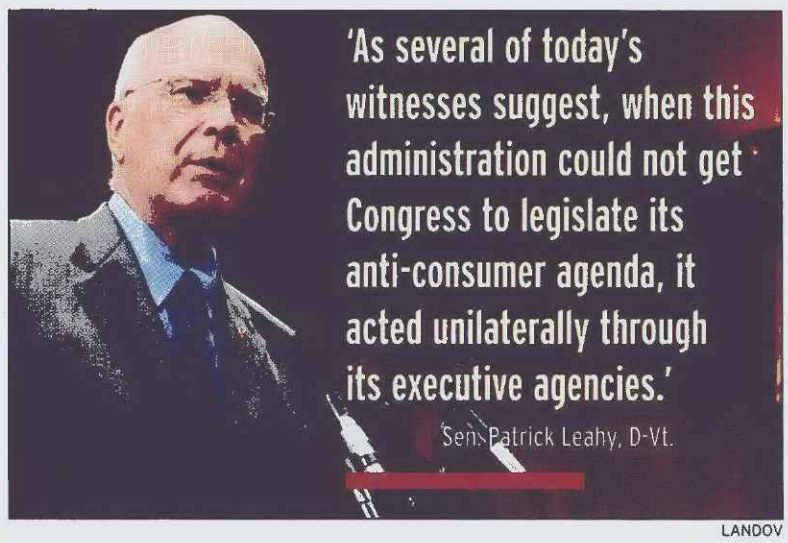
Senator, others chastise Bush administration

State rights at heart of dispute over power of federal agencies

By MARK A. HOFMANN



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WASHINGTON—A battle is brewing on Capitol Hill about the extent that federal regulatory agencies should pre-empt state regulations and tort laws.

The division became evident last week as the Senate Judiciary Committee heard testimony on whether federal agencies were usurping state and congressional authority. Proponents of federal pre-emption hold that it is necessary to maintain the health of the national economy. Opponents argue that so-called implied federal pre-emption provides corporate wrongdoers with an unjustified shield from responsibility for harm caused by their actions.

Implied pre-emption occurs when Congress does not expressly pre-empt a state tort action but allowing a tort claim would appear to conflict with congressional intent.

The committee's chairman—Sen. Patrick Leahy, D-Vt.—is among the skeptics regarding implied federal pre-emption when it applies to state tort law. During the hearing, Sen. Leahy accused the Bush administration of granting "corporate defendants blanket civil immunity by aggressively pre-empting state law in the course of issuing administrative regulations."

In fact, Sen. Leahy is considering several proposals that were raised during the committee hearing to deal with the issue, said a spokeswoman for the committee.

See **REGULATION** page 41

HRH builds Northeast with Banc of America

Longer-term impact seen as market firms

By REGIS COCCIA

GLEN ALLEN, Va.—Hilb Rogal & Hobbs Co.'s planned acquisition of Banc of America Corporate Insurance Agency L.L.C., announced last week, would give the world's ninth-largest broker a larger presence in the Northeast.

Cranford, N.J.-based BACIA focuses on mid-size clients, including employee benefits, public-sector organizations and private-equity businesses. In 2006, BACIA was the 27th-largest broker of U.S. business, based on 2005 revenues of $78.5 million.

HRH announced last Thursday that it expects to complete the purchase of all outstanding equity interests in BACIA in the fourth quarter of this year. Terms of the agreement were not disclosed.

"This acquisition will enhance HRH's presence throughout the northeastern United States, especially with BACIA's strong concentration in the metropolitan markets of New Jersey, Pennsylvania and New York City, and additional growing practices in New England," HRH's chairman and chief executive officer, Martin L. Vaughan, said in a statement.

'This acquisition will enhance HRH's presence throughout the northeastern United States.'

Martin L. Vaughan, CEO

BACIA reported 2006 revenues of more than $66 million, which would rank among the 50 largest brokers of U.S. business in *Business Insurance*'s ranking. BACIA declined to participate in *BI*'s 2007 ranking.

While BACIA's revenue is small relative to HRH's $696 million in 2006 revenues, it does represent one of HRH's largest acquisitions to date. BACIA was formed after its parent, Bank of America N.A., purchased Fleet Insurance Services in 2003 and

See **HRH** page 42

Collective bargaining right upheld in Canada

Ruling also may affect private-sector employers

By GLORIA GONZALEZ

OTTAWA—A Supreme Court of Canada ruling that says employees have a constitutional right to collectively bargain with their employers may provide unions with additional leverage during contract negotiations and make employers vulnerable to litigation for their actions during negotiations.

The ramifications of the June decision involving a British Columbia law restricting collective bargaining rights have already filtered into other provinces, with unions in Ontario and Alberta recently requesting that similar legislation in those provinces be repealed.

Although the decision involved the actions of a public sector employer, the ruling has implications for negotiations between private sector employers and their employees, attorneys say.

In *Health Services and Support – Facilities Subsector Bargaining Assn. vs. British Columbia*, the Supreme Court held that the freedom of association right guaranteed by the Canadian Charter of Rights and Freedoms includes a procedural right to collective bargaining.

THE RULING

In Health Services and Support–Facilities Subsector Bargaining Assn. vs. British Columbia, the Supreme Court of Canada overturned decades of decisions in ruling that collective bargaining is a constitutionally protected right of Canadian employees based on the Charter of Rights and Freedoms. Points in the ruling include:

- The charter grants a procedural right to collective bargaining.
- Employees have the right to unite, to present demands to government employers collectively and to engage in discussions in an attempt to achieve workplace-related goals.
- Government employers must agree to meet and discuss workplace issues with their employees.
- The charter limits the ability to pass laws that interfere with the right to collectively bargain.

Source: Supreme Court of Canada ruling

"The constitutional right to collective bargaining concerns the protection of the ability of workers to

See **CANADA** page 38

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

NOV. 18, 2002 The House of Representatives approves the federal backstop for terrorism risk that is the centerpiece of the Terrorism Risk Insurance Act, all but ensuring the legislation will be enacted. Although widely welcomed by the commercial insurance industry, the measure was vigorously debated in both chambers.

NOV. 18, 2002 The Pension Benefit Guaranty Corp. is preparing for its biggest-ever loss as Bethlehem Steel Corp. says it expects the PBGC to take over and terminate its severely underfunded pension plan. Bethlehem Steel's plan, which has more than 90,000 participants, is estimated to have unfunded liabilities of about $3.9 billion.

Health insurance premiums continue to outpace inflation

But rate of increase for employer plans moderates further

By JOANNE WOJCIK

Health care premiums are continuing to grow faster than both the rate of inflation and worker wage increases, and now average more than $12,000 a year for family coverage, according to the 2007 Employer Health Benefits Survey released by the Kaiser Family Foundation and the Health Research and Educational Trust.

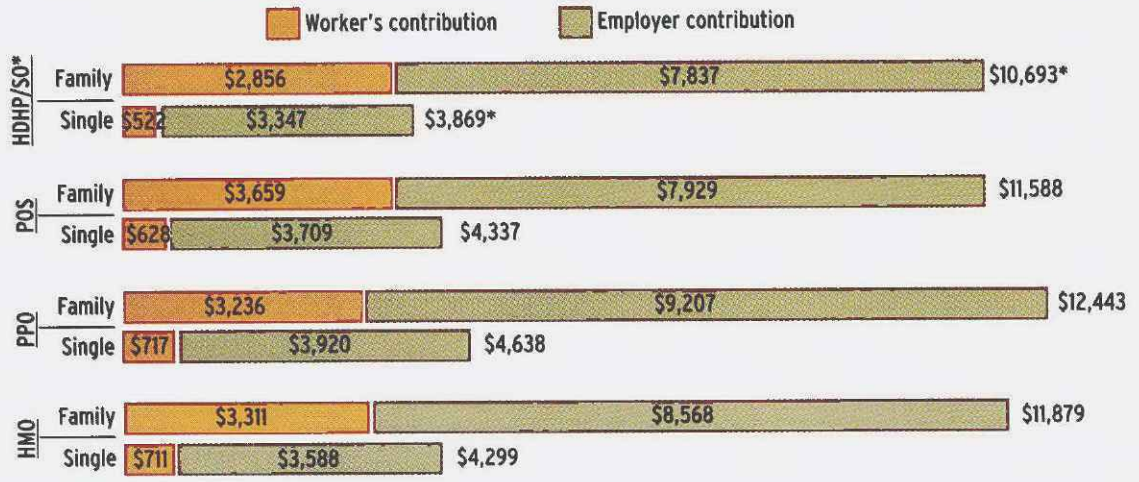
To put this sum in perspective, the average cost of family health care coverage is now roughly equal to the annual income of a worker earning the new federal minimum wage of $5.85, said Jon Gabel, senior fellow at the National Opinion Research Center at the University of Chicago, co-author of the study.

Put another way, "you could buy a new economy car every year for less than the cost of family health insurance," said Drew Altman, president and chief executive officer of KFF, using the cost of a new Chevy Aveo—about $9,995—as his benchmark.

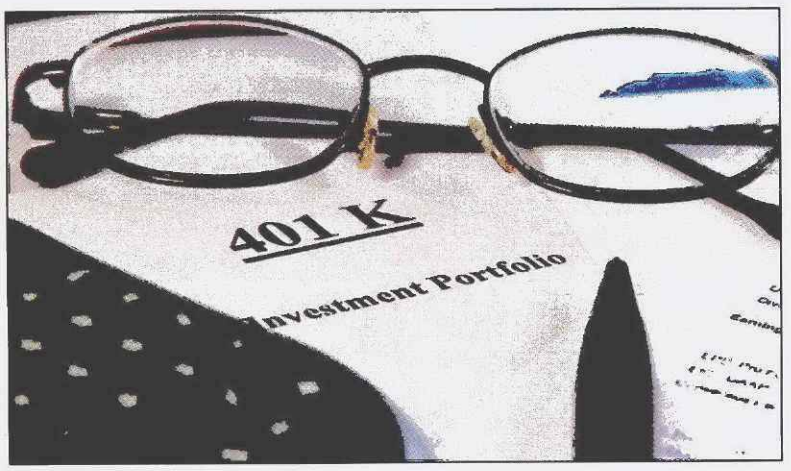
Both Mr. Gabel and Mr. Altman spoke Tuesday during a press briefing in Washington announcing the findings of the annual survey, which is in its ninth year. Also participating in the briefing were Gary Claxton, a KFF vp and director of

See **COSTS** page 38

AVERAGE ANNUAL HEALTH CARE PREMIUM CONTRIBUTION BY PLAN TYPE



** High-deductible health plan with savings option*
Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits 2007



Safe harbor guide issued for retiree annuity plans

DOL moves to quell some sponsors' fears over fiduciary liability

By SALLY ROBERTS

WASHINGTON—Plan sponsors now have safe harbor guidelines when choosing an annuity provider for distributions made from 401(k) and other defined contribution plans, but whether the guidelines result in more employers offering an annuity distribution option with the plans remains to be seen.

The Department of Labor last week proposed the safe harbor guidelines in hopes of swaying reluctant plan sponsors that don't offer a 401(k)-attached annuity due to the fiduciary liability associated with the process of selecting a provider to do so.

But the Labor Department and some observers say the guidelines' impact on overall growth of annuity-linked defined contribution plans will not be great. Others say the rules could be a "tipping point."

The Labor Department published the proposed rules in the Federal Register last week in conjunction with an interim final rule limiting the application of Interpretative Bulletin 95-1 to defined benefit plans.

ANNUITIES: More insurers are offering annuities that can be linked with 401(k) plans to help employees manage defined contribution savings. Page 25

In 2002, the Labor Department said that the bulletin, which requires plan fiduciaries to take steps calculated to obtain the safest annuity available for benefit distributions, applied to both defined benefit and defined contri-

See **SAFE HARBOR** page 40

Errors & Omissions

Due to an editing error, a story in the Sept. 10 edition, "U.S. Reinsurers' Results Expected to Decline Amid Softening Market," incorrectly identified the professional affiliation of Bruce Ballentine. Mr. Ballentine is an analyst at Moody's Investors Service in New York.

Bid to beat bias claim time bar fails

Court rejects worker's attempt to link grievance to related litigation

By DAVE LENCKUS

PHILADELPHIA—Terminated employees in several Eastern states—including Delaware and Pennsylvania—cannot keep their age discrimination claims alive against former employers by piggybacking onto existing lawsuits after failing to meet their own claim-filing deadlines, a federal appeals court has ruled.

The Sept. 7 ruling by a 3rd U.S. Circuit Court of Appeals panel, which overturned a lower court's decision, could lead to a U.S. Supreme Court review of the judicially created piggybacking maneuver designed to aid employees who were terminated in mass layoffs but failed to file timely age discrimination claims with the U.S. Equal Employment Opportunity Commission, according to some attorneys.

Other employer attorneys were more skeptical, even though the three-judge panel's unanimous decision highlights a sharp division on the issue among several federal appeals courts. Even if the high court wanted to close the judicial divide, it likely would not choose the 3rd's Circuit's case, they said.

The case—which centered on a claimant's ability to piggyback onto collective action lawsuits, individual lawsuits and individual cases that have survived after the decertification of collective action litigation—drew an amicus brief from the Washington-based U.S. Chamber of Commerce.

Without the 3rd Circuit panel's ruling, "there's no predictability at all" regarding litigation for employers after a mass layoff, said Shane Brennan, a labor and employment attorney for the Chamber's National Chamber Litigation Center Inc.

The case, *James H. Ruehl vs. Viacom Inc.*, stems from an August 1998 layoff of approximately 4,000 employees at New York-based Viacom Inc., which is now known as CBS Corp. Mr. Ruehl suspected he was a victim of age discrimination but accepted a termination agreement in which he signed a waiver of his right to sue Viacom under the Age Discrimination in Employment Act, according to court papers.

But an ADEA waiver does not preclude terminated employees from pursuing an age discrimination claim under certain circumstances.

For example, waivers may be ruled invalid if employers fail to provide the job classification and age of all

See **BIAS** page 40

Appeals court retiree health ruling highlights need for clear documents

Plan amendments allowed under law, but wording is key

By JUDY GREENWALD

BOSTON—An employer remained responsible for the retiree health plans of a subsidiary when it sold the unit but eliminated that responsibility after it subsequently consolidated the benefit plans for its remaining business, a federal appellate court ruled.

The opinion, which relied on an analysis of sale documents and benefit plan language, illustrates the importance of clear documentation in terminating a plan or selling a unit, an attorney notes.

The Sept. 7 opinion by the 1st U.S. Circuit Court of Appeals in Boston in *Artemis Coffin vs. Bowater Inc.* concerned the health care coverage of retirees of Great Northern Paper Inc., a subsidiary of Greenville, S.C.-based Bowater Inc. Bowater sold the unit to Inexcon Maine Inc. of Trois-Rivières, Quebec, in 1999. Great Northern declared bankruptcy in 2003.

Both sides agreed Bowater terminated its responsibility for the benefit plans on April 19, 2004, when its board of directors amended its benefit plan to clarify that Great Northern retirees were ineligible to participate, according to the decision.

The 15 workers, who filed suit in 2003 on behalf of themselves and 638 other retirees, were seeking health benefits from the date in 2003 when Great Northern refused to continue paying health benefits until April 2004.

Bowater contended, however, that its responsibility for these benefits terminated either at the time of Great Northern's sale in 1999, or in 2003, when it consolidated its benefit plans under an umbrella plan that did not extend coverage to Great Northern retirees.

"It is well-established that (the Employee Retirement Income Security Act) does not prevent employ-

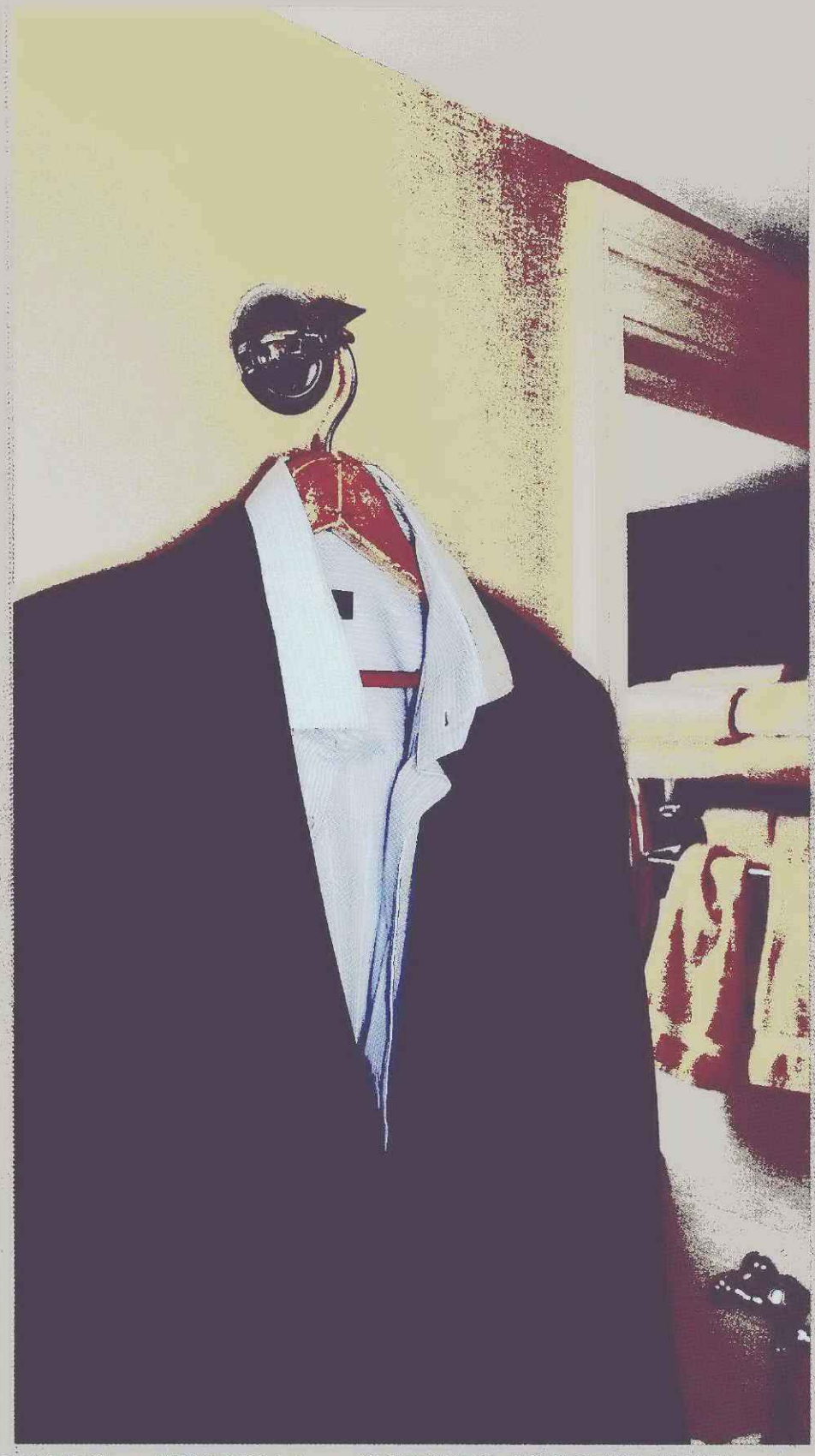
See **RETIREES** page 40

200,000 REASONS

A SPRINKLER HEAD DOES NOT

DOUBLE AS A COAT RACK.

WAUSAU PACKAGE AT WORK. Recently, we received some interesting property claims. Hotel guests, trying to expand their closet space, enlisted the help of sidewall sprinkler heads, using them as makeshift coat racks. The weight of the clothing damaged the fusible element of the sprinklers, setting them off and causing more than $200,000 in water damage. When our loss prevention experts located the source of the problem, they quickly advised clients to place a warning sign next to sidewall sprinklers to prevent similar damage. Simple, but effective. That kind of industry knowledge and attention to detail can be found throughout Wausau, in any of our areas of expertise – from hospitality to construction. And with Wausau Package, you can leverage that expertise to get comprehensive coverage tailored to the specific needs of your business. It's all part of Wausau TotalValue℠ and our commitment **PRICE≠COST** to lowering your total cost of risk. A commitment backed by the financial strength of Liberty Mutual. To learn more, contact your Wausau Signature Agency representative or your appointed Wausau producer.



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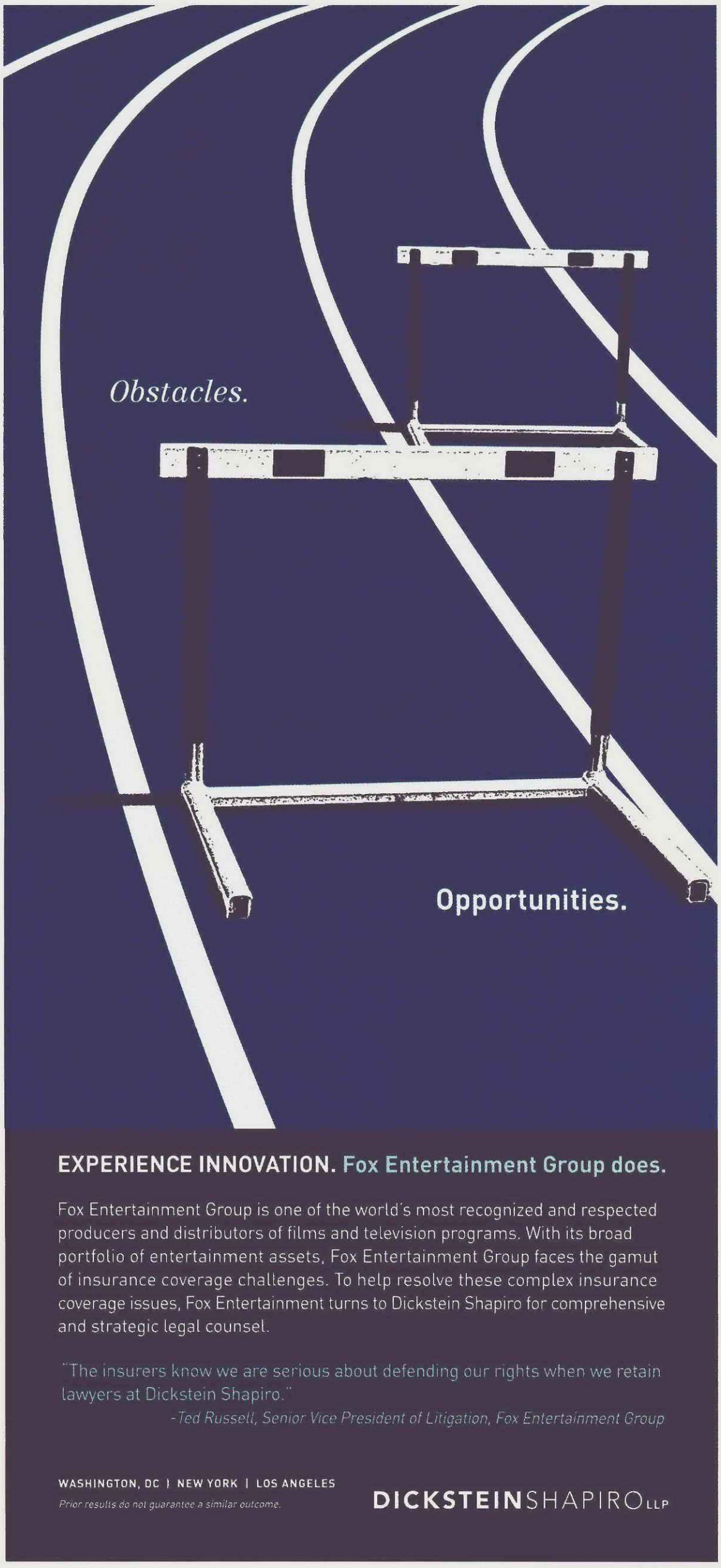

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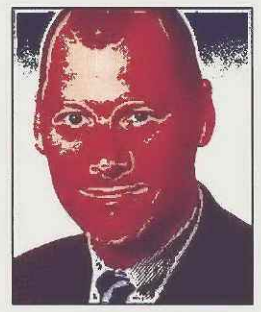
Prior results do not guarantee a similar outcome.

DICKSTEINSHAPIRO LLP

Commentary

Absence may make the heart grow worried



PAUL WINSTON

Associate Publisher and Editorial Director
Paul Winston's commentary appears monthly. E-mail: pwinston@businessinsurance.com

It must be a sign of the times when the absence of tough security measures at an international airport makes me take notice more than its presence.

Traveling from Canada to the United States at the end of August, I experienced an almost total disregard for security by personnel responsible for preclearance screening—in which U.S. Customs and Border authorities inspect U.S.-bound passengers before departure from a foreign country—at the Winnipeg International Airport.

In the years since the Sept. 11, 2001, terrorist attacks, air travelers certainly have seen an escalation in security measures for travel into and out of the United States. For frequent international air travelers, it is easy to become desensitized to these measures not only due to the frequency at which we experience them but also due to a subconscious acceptance of their purpose.

We have grown familiar, albeit not comfortable, with long lines at baggage counters, X-ray screening and passport control. We expect unfriendly, humorless personnel. We are used to redundant questions as we move though the check-in process about the luggage we are carrying. We know how many bags we are allowed to bring on board, and what must not be contained in them.

To the frequent traveler who knows these rules and procedures by heart, the spectacle of the infrequent traveler caught in the snare of these rules is almost a perverse form of entertainment. Stuck in a long line, it can be a welcome diversion to see people walk through the X-ray screening device with pockets full of cigarette lighters, knives, keys and cell phones. Or to see people make it all the way to the end of the line with their 1 liter bottle of water only to learn it must be discarded. Or to see people whose number of bags exceeds the allowance attempt to crowd the many into one, with as much grace and success as a python swallowing a hippopotamus.

This year alone, we have had multiple reminders of why airport security is seen as a first line of defense. In June, a scheme to blow up the fuel supply system at JFK Airport in New York was uncovered, and a car containing explosives was driven into the Glasgow, Scotland, airport but failed to detonate. In September, German police arrested a group plotting to blow up the Frankfurt International Airport.

In light of our experience with tightened security measures, and the ongoing risks, it was surprising and disconcerting to find such a lack of effort and attention at an airport in Canada.

The preclearance U.S. customs and security screening system in place at the Winnipeg International Airport is intended to streamline travel. It is comparable to a system in place at dozens of other facilities in Canada and the Caribbean.

The screening employees, who appeared to be local contract workers, were lounging in a group near an X-ray scanner, chatting and flirting with each other and paying little attention to passengers. While waiting for my carry-on bag to move through the device, I listened to a lively discussion among the group of twentysomethings about what was the best kind of cigarette lighter to use. One of them was demonstrating a karate move to the others.

We expect unfriendly, humorless personnel.

After moving to the gate area, my companions discovered that between the four us, we had unintentionally made it through the screening with two pocket knives and one box of matches. All of us expressed disgust at the lack of professionalism and skill we saw by the border agents.

But below the surface emotions of surprise or anger, we were shocked by the realization that our sense of security was shown to be false. The procedures we endure, grow accustomed to and believe make us safer, can easily be bypassed, or tricked, or exploited by a determined, or even lucky, individual or group. That has always been the case; we are not more vulnerable because of what I saw in Winnipeg. But having to confront that reality, and abandon illusions of safety, was a rude awakening, indeed.

IN THEIR OWN WORDS

Wilma Miller, Insurance Administrator, Church of God Florida State Offices, Inc.

"LEXINGTON'S SWIFT RESPONSE DID A GREAT SERVICE TO OUR CHURCH AND OUR COMMUNITY ..."

"Less than 24 hours after a supercell tornado destroyed our Lady Lake Church of God, Lexington had adjusters here assessing our loss. Five days later, at the very site of the devastation, their representative handed me the claim check we needed to begin rebuilding. When we needed Lexington, they were there for us 100 percent."

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Business Insurance OPINIONS

Innovation in benefits pays healthy dividends

KEEPING COSTS STABLE in an era of continually rising health care costs is no small achievement. Neither is getting a majority of employees and their spouses to participate in preventive health care programs.

Yet Linda M. Kuklinski, the employee benefits and risk manager of Generac Power Systems Inc., was able to do both of those things. Those are just two of the achievements that made her the *Business Insurance* 2007 Benefit Manager of the Year.

How was Generac able to hold the line on health care costs? Through a sensible approach from which other employers can learn.

Ms. Kuklinski leads a program based on emphasizing access to preventive health care as well as offering plan members strong financial incentives to improve their health. Generac not only provides free preventive services but also halves the health plan deductibles for those who complete health risk assessments.

Business Insurance is proud to recognize the achievements of the 2007 Benefit Manager of the Year.

As our profile beginning on page 12 shows, Ms. Kuklinski is having an impact not just at the Waukesha, Wis.-based generator manufacturer but also in the broader community. For example, through her involvement in business health groups, she has shared specifics of Generac's health care program so that other employers can learn from Generac's experience.

Business Insurance is proud to recognize Ms. Kuklinski's achievements as Benefit Manager of the Year and salutes all professional benefit managers, whose programs play a vital role in the lives of their organizations' employees and dependents.

Battle lines drawn over tort law pre-emption

THAT A CONGRESSIONAL BATTLE is emerging over how far federal regulatory agencies' right to pre-empt state and local regulations and tort law should extend is hardly surprising. After all, the nature of federalism is something that's been questioned over and over again for more than two centuries.

As we report on page 1, the battle lines in this latest controversy are drawn in a predictable manner. On one side, businesses argue that Corporate America needs uniform standards if the national economy is to work as efficiently as it can. On the other side, consumer activists and others argue that injured citizens should not be denied redress because of restrictive interpretations of federal agency regulations. Both arguments have their merits.

Ironically, the current controversy could have been avoided years ago when Congress last considered establishing federal product liability standards. It was an effort that drew bipartisan support but ultimately failed, in part, because some segments of the business community overreached and let the perfect be the enemy of the good.

A congressionally crafted uniform product liability code could be fashioned in a way that would protect the right of redress while providing some of the certainty to the tort system that businesses crave.

We don't have any illusions that such a code will emerge from this Congress. But up the road, such a back-to-the-future approach may become appealing, indeed, as a way to balance the interests of business and consumers alike.

BI beats list

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

Agents/brokers: Sally Roberts.

Benefits–health care and ancillary benefits: Joanne Wojcik.

Benefits–retirement savings/pensions: Jerry Geisel.

Canada–risk management and benefits: Gloria Gonzalez.

Employment practices: Judy Greenwald.

Environmental risk management: Sally Roberts.

Federal regulation/ legislation–benefits: Jerry Geisel.

Federal regulation/ legislation–risk management: Mark A. Hofmann.

Health care industry operations: Gloria Gonzalez.

Industry Focus: Rodd Zolkos, Meg Fletcher.

Insurance coverage litigation: Douglas McLeod.

Insurance fraud: Douglas McLeod.

Latin American markets: Roberto Ceniceros.

Property/casualty industry operations: Judy Greenwald.

Professional liability: Dave Lenckus.

Property loss control/ cat risks: Mark A. Hofmann.

Regulation of insurance: Meg Fletcher.

Reinsurance: Judy Greenwald.

Risk management profession: Dave Lenckus.

Runoffs/receiverships: Douglas McLeod.

Safety/ergonomics: Meg Fletcher.

Surplus lines/wholesalers: Roberto Ceniceros.

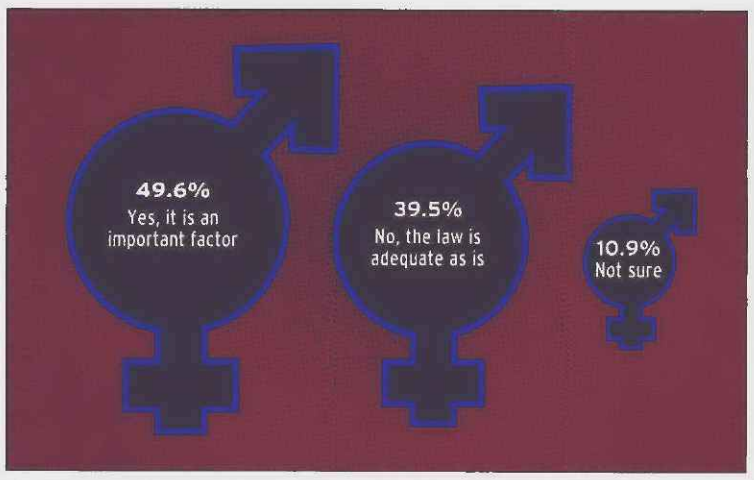
Tort reform: Mark A. Hofmann.

Work/life benefits and EAPs: Sally Roberts.

Workers compensation: Roberto Ceniceros.

Online Poll at www.businessinsurance.com

Should gender identity be included in employment non-discrimination law?



NEXT WEEK'S POLL: *Should standards set by federal regulatory agencies pre-empt state tort law?*

***BI* Online Poll tool sponsored by Wausau Insurance Cos.**

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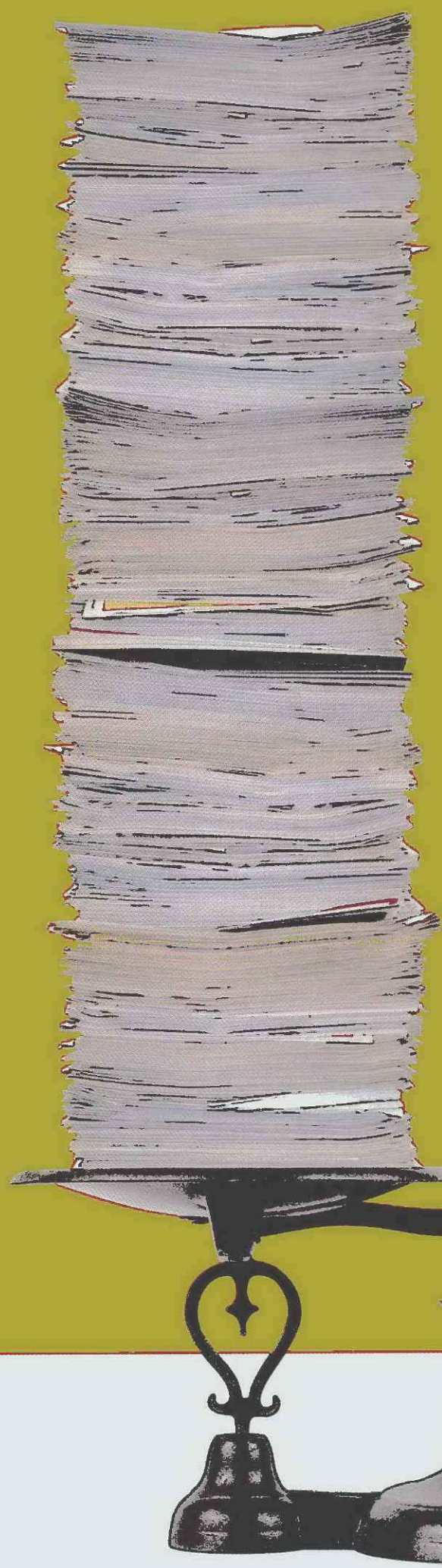

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Market Moves

W.R. Berkley to purchase American Mining Insurance

BIRMINGHAM, Ala.—W.R. Berkley Corp. said it has reached an agreement to acquire CGH Insurance Group, the parent company of Birmingham, Ala.-based American Mining Insurance Co.

The price of the purchase, which Berkley said is subject to regulatory approval and other unspecified conditions, was not disclosed.

American Mining President and Chief Executive Officer Chandler F. Cox Jr. and Executive Vp and Chief Financial Officer Dominick Giovannelli will continue in those roles, Greenwich, Conn.-based Berkley said in a statement.

EBRI moves to new Washington location

WASHINGTON—The Employee Benefit Research Institute has moved to a new location in Washington.

EBRI's office now is at 1100 13th St. N.W., Suite 878, Washington, D.C. 20005.

The nonprofit research organization's phone and fax numbers remain the same.

Houston outsourcing firm buys London adviser

LONDON—Houston-based EquaTerra Inc. has reached agreement to acquire London-based Morgan Chambers Ltd., both of which are outsourcing advisory firms, for an undisclosed price.

The firms provide outsourcing and offshoring advice in areas that include information technology, human resources, finance and accounting, procurement and customer care, and claims management.

In a joint statement, the companies said Morgan Chambers founder and Chairman Robert Morgan will depart once the transaction is complete, which a spokeswoman said is expected at the end of this month.

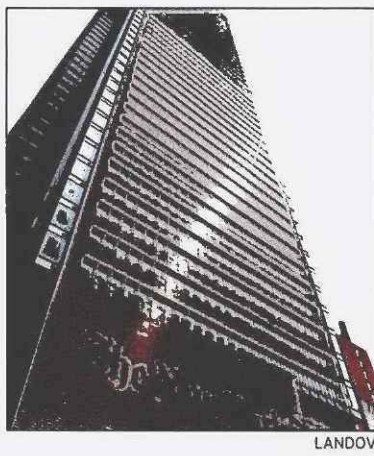
The Morgan Chambers name will be retained for now but eventually will be changed to EquaTerra, the spokeswoman said.

The combined operations have about 300 employees in North America, Europe and the Asia-Pacific regions.

Seyfarth Shaw moves New York office

NEW YORK—Seyfarth Shaw L.L.P, a law firm that represents corporations and governmental entities, has moved its New York office from the Radio City Music Hall to three floors of the New York Times Building.

Seyfarth Shaw's new office is a



LANDOV

620 Eighth Ave., New York, N.Y. 10018-1405. Its telephone and fax numbers remain the same.

The Chicago-based law firm that provides business, employee benefits, labor-related and litigation services to corporate clients said it moved to its new location with more than 80 attorneys and has room within its 100,000 square feet of space to expand to 140 attorneys.

Integro operations open in Vancouver, B.C.

VANCOUVER, British Columbia—Brokerage Integro Ltd. has opened its third office in Canada, the latest in Vancouver, British Columbia.

The office, which is part of Integro (Canada) Ltd., is at 355 Burrard St., Suite 1000, Vancouver, British Columbia V6C 2BG. Phone: 604-608-6182. Fax: 604-609-2001.

Michael Baddeley, whose specialty is risk management; Norm Duncan, whose specialty is ski resorts; and Roland Waldmeier, whose specialty is marine and construction, have been named principals of the Vancouver office, Integro said in a statement. They previously were with Marsh Canada Ltd.

William Gallagher expands to New York

NEW YORK—Boston-based William Gallagher Associates has opened an office in New York.

Doug Bixby, senior vp, is heading the office at 11 Penn Plaza, Fifth Floor, New York, N.Y. 10001. Phone: 212-946-2756.

Technology, energy, media and financial risks markets will be the main focus of the new office, WGA said in a statement.

TAPCO adds offices in California and Texas

BURLINGTON, N.C.—TAPCO Underwriters Inc., a Burlington, N.C.-based excess and surplus lines managing general agency, expanded its operations to California and Texas.

TAPCO's California office is at 1901 Avenue of the Stars, Suite 200, Los Angeles, Calif. 90067. Phone: 877-827-2699.

Its Texas office is at 2100 West Loop S., Suite 900, Houston, Texas 77027. Phone: 877-827-2689.

TAPCO, which said it has proprietary technology that allows quoting and binding insurance coverage in minutes, has binding authority for more than 1,000 classes of business.

Please send Market Moves news to: Charmain Benton at cbenton@businessinsurance.com or to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601.

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Our ability to be highly flexible is beneficial on a number of different levels. First it allows us to tailor each deal to a client's individual appetite for risk. Second, it can help us manage different kinds of risk within that captive. Finally, in a world where control, flexibility and creativity are at a premium, we enable our clients to elevate risk management to an art, providing our clients with a true advantage.

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MICHAEL MARCOTTE

Emphasis on prevention leads to impressive results

Financial incentives get large number of employees to participate in Generac's benefits programs

By JERRY GEISEL

WAUKESHA, Wis.—At Generac Power Systems Inc., "an ounce of prevention is worth a pound of cure" is more than just a saying. It's the foundation of the company's strategy to hold down health care cost increases.

Keeping employees healthy, said Linda M. Kuklinski, Generac's employee benefits and risk manager, is "positive to employee health and to the company's bottom line."

To that end, Generac has used a multistep approach in recent years to revamp its health care benefit program.

In 2003 it added free preventive care services provided through clinics that are convenient to

Continued next page

Involved benefit manager achieves balance between work, community and family goals

WAUKESHA, Wis.—Linda M. Kuklinski's involvement in health care issues goes well beyond managing the employee benefits programs for Generac Power Systems Inc.

She currently is on the board of directors of the Waukesha County Mental Health Assn. and serves on the 2007 United Way Days of Caring Campaign Committee.

Since 2005, she has been co-chair of the Waukesha County Save on Health Care Alliance, while she also has been a member of the Oconomowoc Memorial Hospital emergency department design team and the Wisconsin Insurance Advisory Council.

Ms. Kuklinski, who is the employee benefits and risk manager of Waukesha, Wis.-based Generac Power Systems Inc., also has served the community where she and her family reside. From 2002 to 2005, she was the 6th district alderman for Delafield, Wis.

Ms. Kuklinski said she ran for alderman in the city because, "As an active member in our homeowners association, I felt I could make a difference in a growing community."

During the same period, Ms. Kuklinski, was chair of Delafield's Finance Committee, while between 2002 and 2006, she was a member of the Delafield-Hartland Water Pollution Control board of directors.

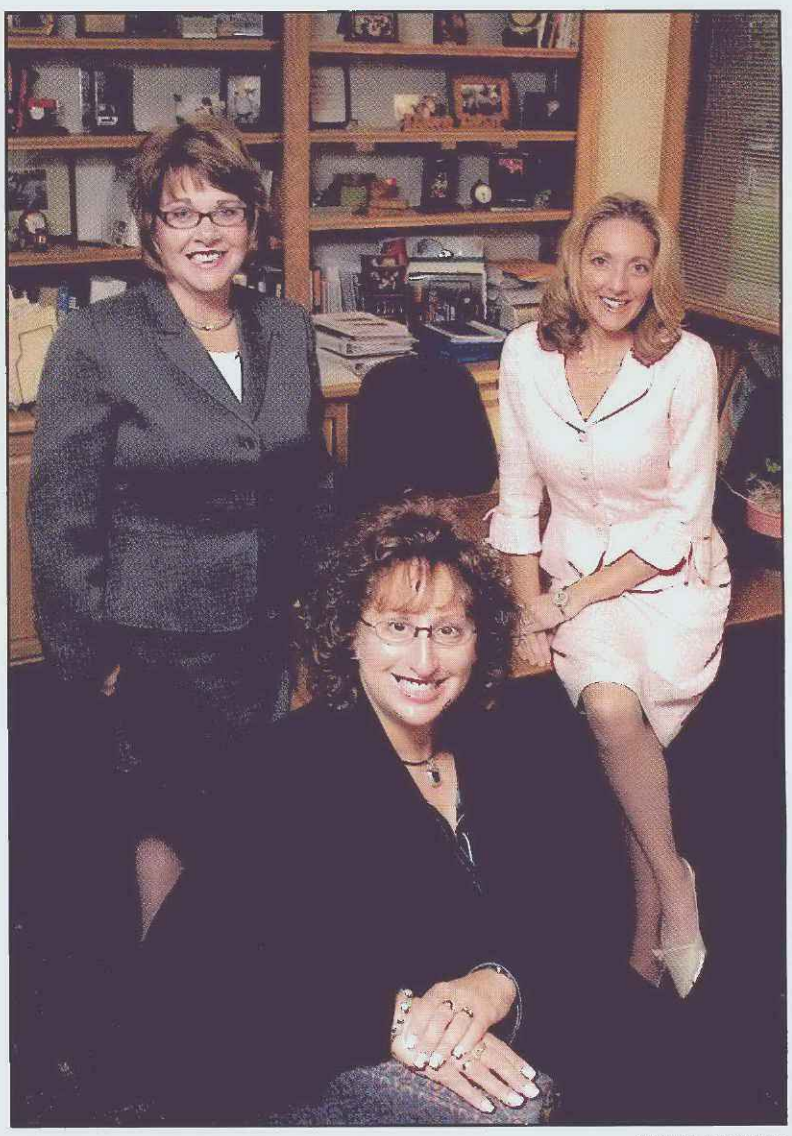
Additionally, Ms. Kuklinski, who is a certified treasury professional, was treasurer of the St. Joan of Arc Athletic Department, a Catholic school in Delafield, between 1992 and 1998.

In life, Ms. Kuklinski notes, balance is key. "Everyone that works hard should definitely not lose focus on family and friends. They are the support behind every good person," she said.

Indeed, she says snowmobiling is a family affair, while her entire family is involved in the American Legion. Her family also has a retreat in the Wisconsin Northwoods to relax and unwind.

Ms. Kuklinski and husband Gregory have been married 26 years and have two married sons and a daughter, now attending the University of Wisconsin at Oshkosh.

—By Jerry Geisel



MICHAEL MARCOTTE

Linda M. Kuklinski, Generac Power Systems' employee benefits and risk manager (seated), with Dawn Tabat, Generac's COO (left), and Stephanie Borowski, the company's vp of human resources.

CONTINUED FROM PREVIOUS PAGE

employees. Later, it expanded health care services available through the clinics. And in a groundbreaking approach, Generac gave employees a strong financial incentive—halving their health care plan deductibles—for those who get health risk assessments and actively try to improve their health.

In addition, to get more employees to contribute to and build up their health care flexible spending accounts, Generac makes a contribution of up to $200 to employees FSAs, so long as employees contribute to their accounts as well. That resulted in a whopping 70% FSA participation rate in 2003 and 75% since 2004.

The results have been impressive. Over the past three years, the number of so-called high risk employees has fallen by 10%, while Generac's health plan costs per employee have held steady since 2004.

It is for these and other accomplishments at Generac that Ms. Kuklinski has been named *Business Insurance*'s 2007 Benefit Manager of the Year.

"You may not be able to stop high blood pressure, but at least you can help employees get treatment sooner and to manage it better," said Ms. Kuklinski.

"If you can identify risk, there will be long-term savings," she added.

In 2003, Generac contracted with Corporate Health Services, a unit of ProHealth Care of Waukesha, Wis., for employees and their dependents to have access to a medical clinic, staffed by nurse practitioners, at no cost for preventive and wellness benefits, such as annual checkups, pelvic exams and well-baby examinations.

'You may not be able to stop high blood pressure, but at least you can help employees get treatment sooner and to manage it better.'

Linda M. Kuklinski

The nurse practitioner model was appealing for several reasons, Ms. Kuklinski said. Services provided through the clinic cost between 20% and 50% less compared with other providers, she said.

Lower costs were not the only attraction, however. Not only do nurse practitioners provide high-quality care, Ms. Kuklinski said, but they also are able to spend more time with patients.

The clinic, just a mile from Generac's Waukesha manufacturing facility, was an immediate hit with employees. In fact, while the clinic was open to anyone, 99.9% of patients were Generac employees or dependents.

Soon, the clinic was too small to meet Generac's needs. Later, another bigger clinic was offered to employees, but still centrally located in Eagle, Wis.

The current primary clinic is located in nearby Mukwonago, Wis., and is not only conveniently located, but also has room to expand. Generac employees also have access to other Corporate Health Services' clinics, though free office visits are not available at those facilities.

Clinics are staffed by a family nurse practitioner, a pediatric nurse practitioner and a licensed practitioner nurse with a physician on call at all times.

Generac did more than just contract with the clinic provider on rates and services, Ms. Kuklinski said. Generac also interviews prospective clinic staffers enabling it to obtain staff members "who share in our culture," Ms. Kuklinski said.

Over time, the clinic was expand-

See **KUKLINSKI** next page

Generator manufacturer grows to meet demand

WAUKESHA, Wis.—From a modest beginning, Generac Power Systems Inc. has grown into a major manufacturer of commercial and residential standby generators.

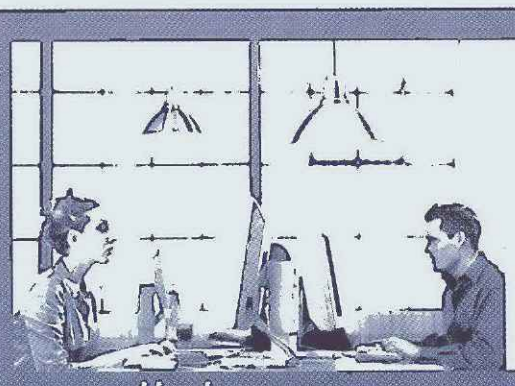
Generac was incorporated in 1959 and began operations with a work force of five employees with manufacturing done out of a garage in Wales, Wis. In 1965, the company moved to Waukesha, Wis.

As demand burgeoned for backup generators to protect businesses and homeowners during power outages, Generac has grown to meet that demand, significantly increasing in size over the last few years. It currently has about 1,500 employees.

Corporate headquarters are in Waukesha, where it also has a 265,000-square-foot manufacturing facility. Additional manufacturing facilities are in two other Wisconsin communities—Eagle and Whitewater—while its newest manufacturing facility is in Maquoketa, Iowa.

In September 2006, affiliates of CCMP Capital Advisors L.L.C., a New York-based private equity firm, acquired Generac from Robert Kern, Generac's founder, and other Generac shareholders.

—By Jerry Geisel



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Kuklinski: Incentives boost health risk assessments

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ed to enable Generac employees access to more than just preventive services, so that employees could get treatment for such medical ailments as colds, the flu and sinus infections.

Employees have a significant financial incentive to go to a clinic for treatment of medical problems. If medical services are needed, such as laboratory work and X-rays, employees pay only $15 compared to 20% of the cost if they received services through Generac's preferred provider organizations.

Additionally, Generac contracted with certain specialty physicians, such as orthopedists, who are not in its PPOs, to provide services at discounted rates.

"We are not shy about negotiating discounts with out-of-network providers," Ms. Kuklinski said.

Yet more changes—very significant ones—were unrolled last year when Generac offered employees and their spouses free health risk assessments. Those assessments provided by ProHealth Works measured blood pressure, weight and cholesterol levels, with participants filling out a detailed questionnaire covering lifestyle and family health history.

Employees were given powerful financial incentives to get the assessments, having the results reviewed by a physician and then completing certain "healthy living activities," such as joining a health club and getting their blood pressure checked regularly.

For employees with family coverage who meet all the requirements in the health risk assessment program, Generac contributes $500 each year for the next three years into a special account, known as a Medical Deductible Reimbursement Account. Employees with single coverage who meet the requirements receive $250 a year and those with employee-plus-one dependent coverage receive $375.

Those contributions then are used to offset health care expenses that fall under Generac's deductible, which is $500 for family coverage.

Participation has been huge, with 80% of employees and 70% of covered spouses getting health risk assessments.

Ultimately, Ms. Kuklinski said, individual health risk assessments will be integrated with quantitative modeling to develop programs to both reduce employee health risks and future health care claims.

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2007 Benefit Manager OF THE YEAR

Experts selected winner

An independent panel of seven judges chose the 2007 Benefit Manager of the Year.

The judges, who represented benefit brokerages, benefit consulting firms, former winners of the award and other benefit-related organizations, were:

- John J. Asencio, senior vp and Corporate Health practice leader at Sibson Consulting, a unit of The Segal Co., in New York. Mr. Asencio represents benefit consultants on the panel.
- Robyn Bayne, a principal and Health and Welfare practice leader in the Dallas office of Buck Consultants Inc., a benefit consulting company member of ACS. Ms. Bayne also represents benefit consultants.
- Larry Boress, president and chief executive officer of the Midwest Business Group on Health in Chicago. Mr. Boress represents employer group organizations on the panel.
- David L. Eslick, chairman, president and CEO of USI Holdings Inc. in Briarcliff Manor, N.Y. Mr. Eslick represents benefit brokerage firms on the panel.
- Paul Hackleman, benefits manager for San Mateo County, Calif. Mr. Hackleman is the 2006 Benefit Manager of the Year.
- Chris McSwain, director of compensation and benefits for SCANA Services Inc. in Columbia, S.C. Mr. McSwain is the 2005 Benefit Manager of the Year.
- Angelo Nardi, executive vp of Gallagher Benefit Services, a unit of Arthur J. Gallagher & Co., in Itasca, Ill. GBS provides benefits brokerage, consulting and administration services.

"*Business Insurance* is indebted to the panel of judges who reviewed this year's talented nominees and tackled the difficult task of assigning scores based on the criteria in the BMOY award," said *BI* Editor Regis Coccia. "We are fortunate to have had the assistance and expertise of these benefit industry professionals in selecting the 2007 Benefit Manager of the Year."

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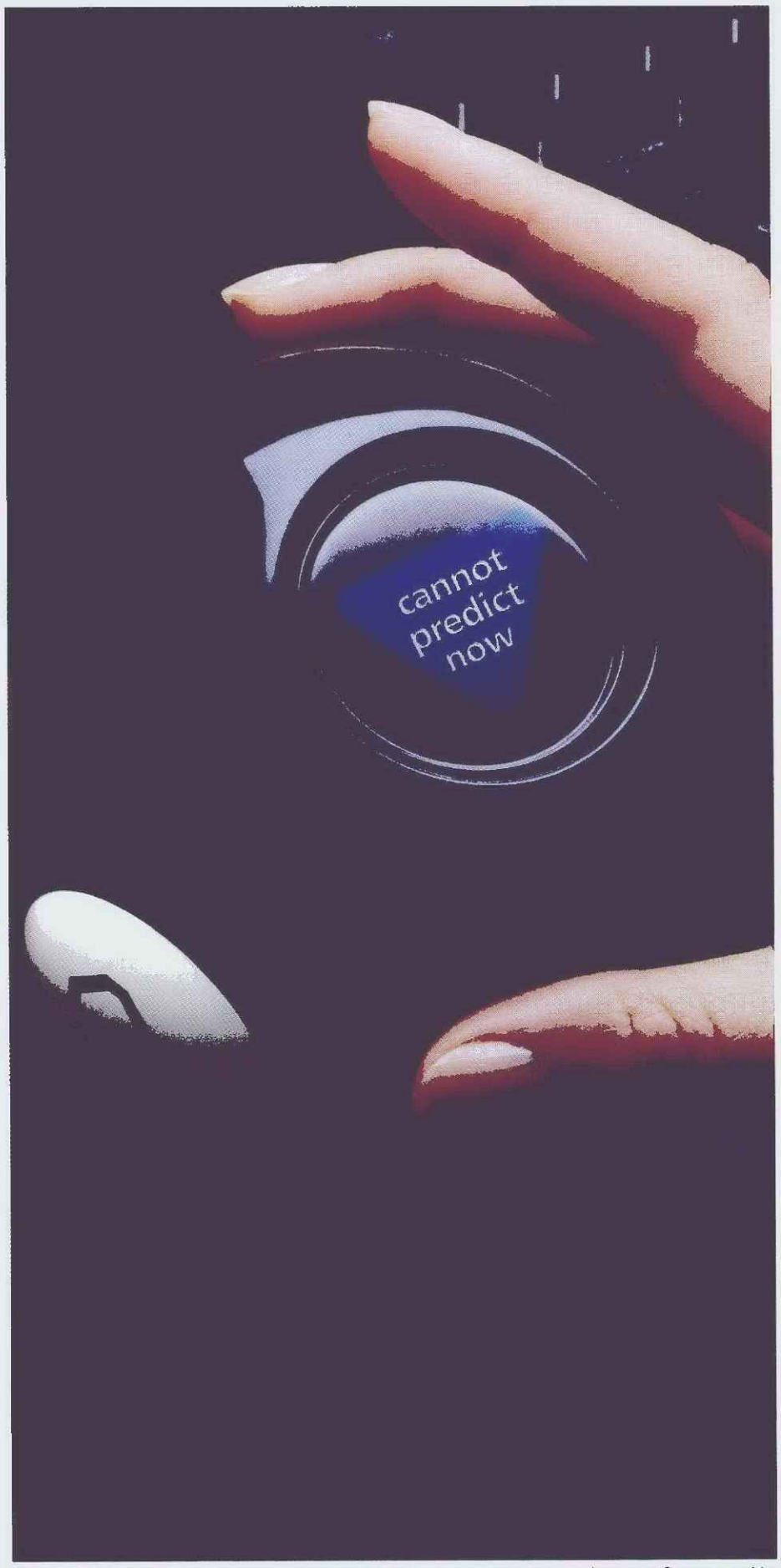

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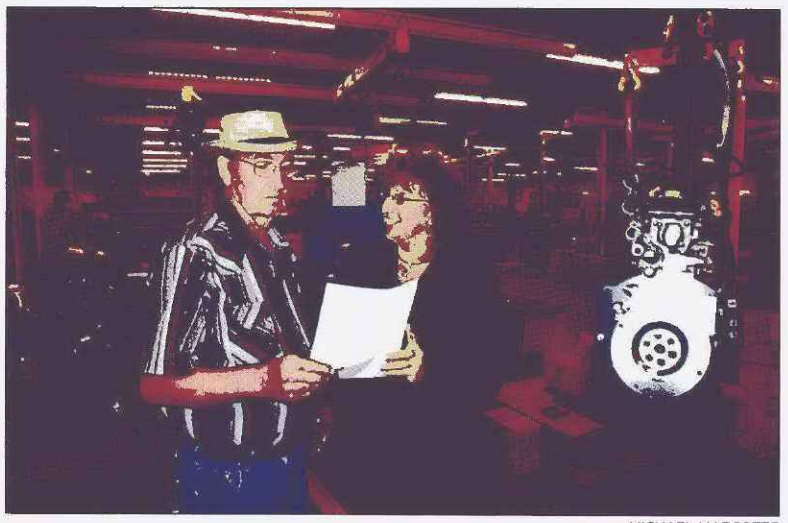

MICHAEL MARCOTTE

Linda M. Kuklinski, employee benefits and risk manager at Generac Power Systems, pictured with Hank Hilburn, a Generac generator assembly worker, says it is important to communicate openly and honestly with employees.

Past work experiences prove to be valuable business lessons

By JERRY GEISEL

WAUKESHA, Wis.—One of the most valuable business lessons Linda M. Kuklinski says she ever learned happened a decade ago when she was the treasurer at Stokely USA Inc., a canned and frozen food processor in Oconomowoc, Wis.

In 1997, food giant Chiquita Brands International Inc. reached an agreement with Stokely to acquire the company. Ms. Kuklinski recalls the stress that Stokely employees felt between the time the buyout was announced and the deal was completed.

"It was a difficult time for employees. Lots of executives left," said Ms. Kuklinski, now employee benefits and risk manager at Generac Power Systems Inc.

That put a lot more pressure on remaining employees, making the transition even more difficult. Ms. Kuklinski said the experience reinforced to her the importance of "communicating openly and honestly to employees."

Employees also needed reinforcement that they were part of a successful organization, she said.

"You had to keep up morale or there could have been a mass exodus," Ms. Kuklinski recalled.

Learning experience

In all, Ms. Kuklinski said, her more than 10 years with Stokely were a great business experience. When she joined the company in 1986, she started as an executive assistant, working with top-level corporate executives on a wide array of financial issues that included cash management.

While at Stokely, she received accreditation as a certified treasury professional, a course of study she said her bosses encouraged her to pursue.

'I established a lot of great relationships, individuals who I still deal with.'

Linda M. Kuklinski

Ms. Kuklinski's interest in financial issues, though, long preceded her joining Stokely. In fact, she majored in finance when she attended the University of Wisconsin at Waukesha.

"I always did well with numbers," she said.

But Ms. Kuklinski said she always has been more than a numbers person, enjoying the give and take in dealing with others and having numerous outside interests.

"Numbers are black and white. People are not," she said.

Professionally, her entry into employee benefits and insurance came in 1978 when she joined Marsh & McLennan Cos. Inc. and its Mercer consulting unit in Milwaukee. She stayed two years and then left for a small Wisconsin benefits consultant, working largely with smaller employers on their life and disability plans, and stayed six years.

Building relationships

Looking back at those years, Ms. Kuklinski said the contacts she made were invaluable. "I established a lot of great relationships, individuals who I still deal with."

Ms. Kuklinski joined Generac in 1998 when the generator manufacturer had an opening in its treasury department. Initially, she was in charge of cash management and the company's property/casualty insurance programs, and later became more and more directly involved in running and designing Generac's health benefits programs.

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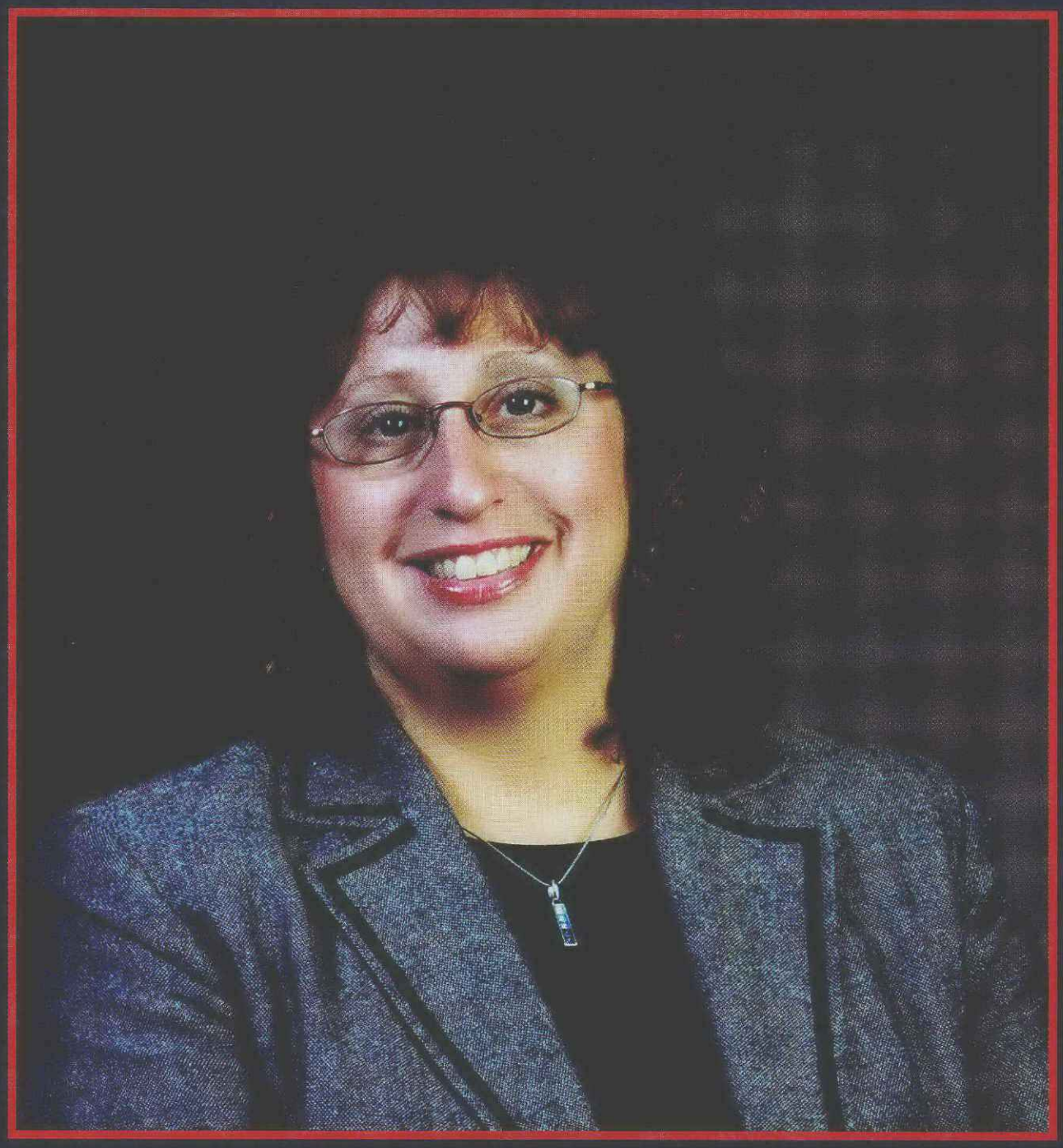

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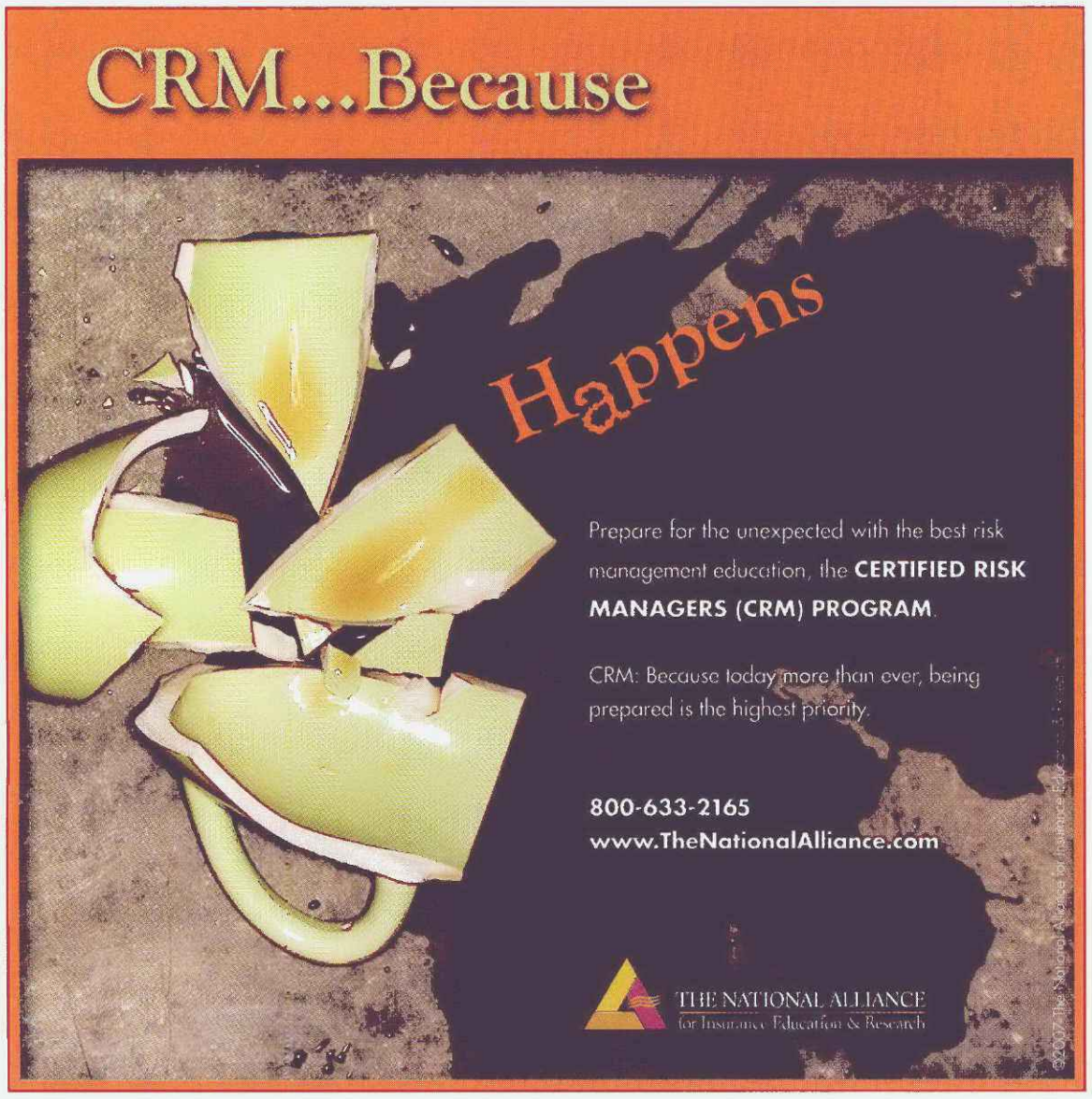

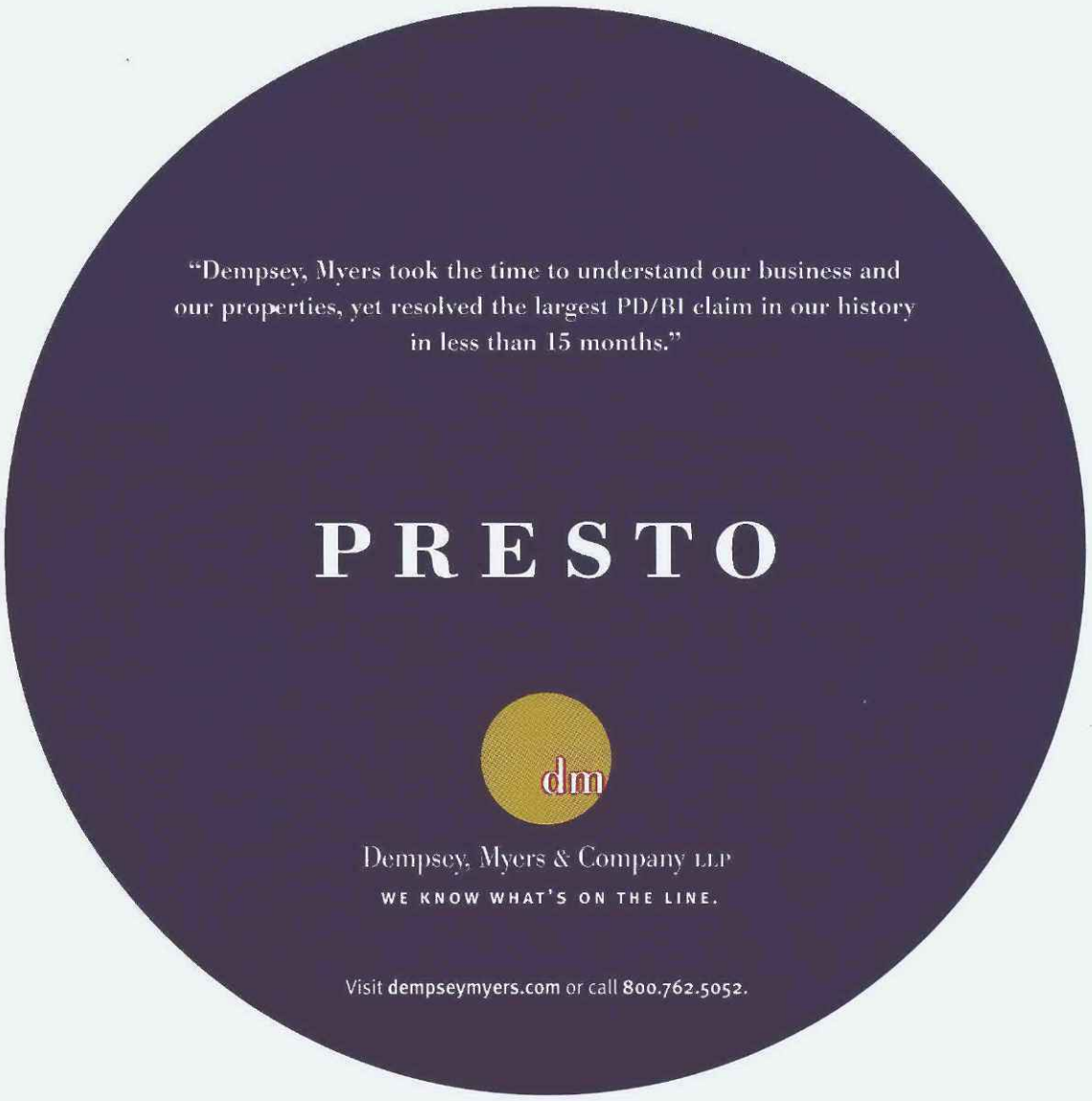

MICHAEL MARCOTTE

Generac Power Systems' benefits team includes, from left: Linda M. Kuklinski, employee benefits and risk manager; Kristie Nelson, benefits specialist (seated); Mary Mix, benefits specialist; and Kerri LaDu, senior human resources generalist.

Benefits program focuses on employees

Approach emphasizes preventive health care

By JERRY GEISEL

WAUKESHA, Wis.—If there is a constant in the group health care plan arena, it is that costs go up every year.

But a southeast Wisconsin-based manufacturer of standby power generators is the exception to that near-universal rule. Since 2004, Generac Power Systems Inc.'s health care costs have held steady, running in the range of $5,000 to $5,500 per year per employee.

This stabilization of costs did not come as a result of slashing benefits or increasing employee cost-sharing. Instead, it was achieved through a multifaceted approach with a strong emphasis on preventive health care.

"You may not be in the business of health care, but you need to be in the business of health care," said Linda M. Kuklinski, Generac's employee benefits and risk manager.

To that end, under Ms. Kuklinski's direction, Generac has:

- Expanded its use of health care clinics at which Generac employees can receive a wide range of preventive services, as well as treatment for certain minor medical problems.
- Contracted directly with a medical clinic provider using a nurse practitioner model that has substantially cut the cost of services. Generac employees obviously like the clinics, with patient volume rising 200% since 2003.
- Given employees a strong financial incentive to seek preventive services. Employees who receive health risk assessments—measuring things such as weight, blood pressure and cholesterol levels—receive up to $500 from Generac, which is placed in a Medical Deductible Reimbursement Account to be used for expenses that fall under their health care plan deductible.

Since health risk assessments were introduced in 2005 and fully implemented in 2006, nearly 80% of employees and 70% of spouses have received such evaluations, while the number of individuals in the high-risk category has been reduced by about 10%.

Generac also has achieved an extraordinary 75% employee participation rate in its health care flexible spending account program. That is three to four times higher than typical participation rates for health care FSAs.

To encourage FSA participation, Generac kicks in up to $200 each year for employees who contribute at least an equal amount. The payoff, Ms. Kuklinski said, is that employees are more likely to get needed medical care sooner because they have money in their FSAs, rather than later when more treatment and higher costs are likely.

"Everyone has out-of-pocket expenses. We want to help employees stretch out their dollars," Ms. Kuklinski said.

It is for these and numerous other accomplishments spanning her nearly 10 years at Generac that Ms.

See **BENEFITS** page 20

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Benefits: Employees' input key to building successful program

CONTINUED FROM PAGE 18

Kuklinski has been named *Business Insurance*'s 2007 Benefit Manager of the Year.

Ms. Kuklinski's accomplishments are no accident, say those who have worked with her.

A vigorous work ethic is one factor.

"She is one of the hardest-working people I know. She is available 24/7," said Sara Hames, a senior vp at Hilb Rogal & Hobbs Co. in Milwaukee, Generac's longtime insurance broker and benefits consultant.

But hard work is far from the only reason for Ms. Kuklinski's success. A creative mind and a willingness to try new ideas also are important, say those who know her.

"She thinks outside the box and you can always throw a new idea at her, no matter how crazy it sounds," Ms. Hames said.

"She exemplifies Generac's philosophy to have the courage to try, the discipline to learn, the willingness to listen and the aptitude to execute," said Stephanie Borowski, Generac's vp of human resources, who also is Ms. Kuklinski's supervisor.

While being adept at keeping the big picture in mind, Ms. Kuklinski also pays attention to detail. That enabled her, for example, to analyze and end a problem in which there was a long lag period between the time claims were incurred by Generac's preferred provider network and when it received the claims.

Ms. Kuklinski isn't afraid to take a hard line, if necessary, with vendors. "You can and should demand that your expectations are met," she said.

For Generac employees, though, Ms. Kuklinski wants them to know that the door of the employee benefits department is always open to them to quickly resolve problems—big and small.

"We have a paternalistic culture. We want to help employees, be it on how to file a claim or understand an explanation of benefits statement," she said.

"This is a family culture. Employees can call us with any question, anytime," said Ms. Kuklinski, who gives employees her cell phone number.

Indeed, Ms. Kuklinski actively seeks input from employees, Generac top executives say.

"What Linda has done very successfully is to ask employees what is important to them and then try to structure benefit plans accordingly," said Dawn Tabat, Generac's COO.

It isn't only Generac employees whom Ms. Kuklinski wants to reach. She also reaches out to other employers, explaining to them, for example, how Generac is tackling health care problems.

She is one of the leaders of the Save on Health Care Business Alliance of Waukesha County, which was created more than two years ago to give employers in southeastern Wisconsin an opportunity to exchange ideas and information on health care issues.

At forums, she has described the Generac program to Alliance members, an opportunity she has relished.

"As businesses, we have to work together to find answers to health care problems," she said.

It is important, Ms. Kuklinski says, "to affect health care in a positive manner, with those who deal with it every day."

That sharing of knowledge is recognized by Generac's top executives.

"As her supervisor, I know that Linda has done an outstanding job not only for this organization but for her community as well in the field of benefits," Ms. Borowski wrote in her letter nominating Ms. Kuklinski for *BI*'s Benefit Manager of the Year competition.

As for the future, Ms. Kuklinski says she will not rest on her laurels.

"We have achieved a lot in a challenging environment. But we will never become complacent," Ms. Kuklinski said.

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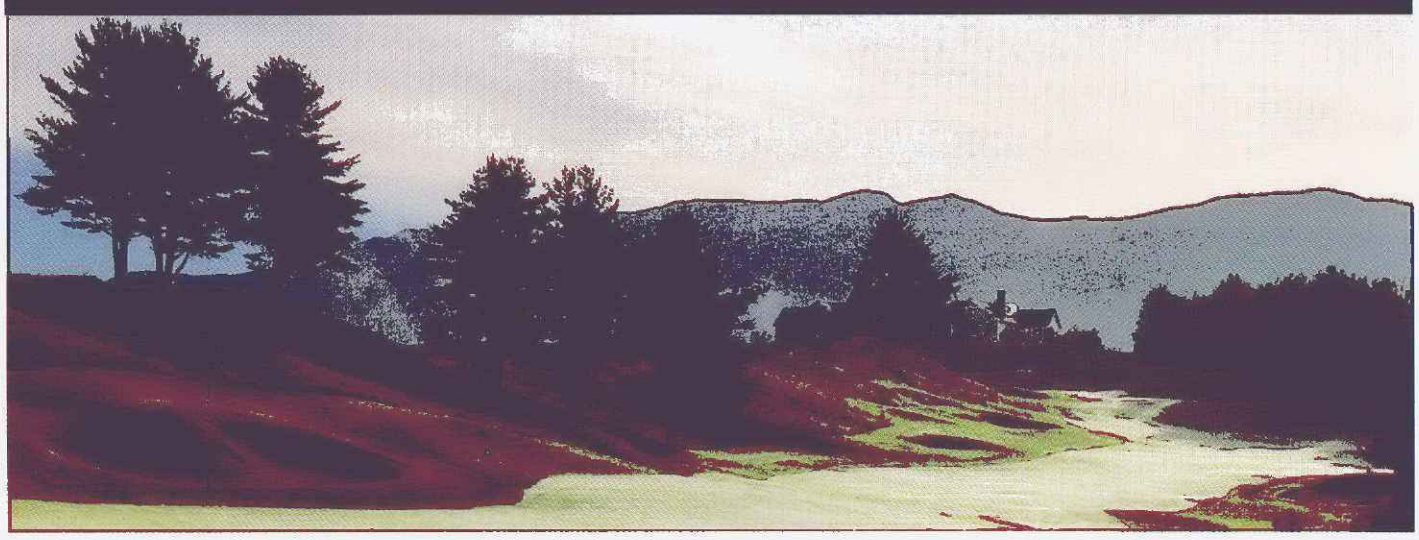

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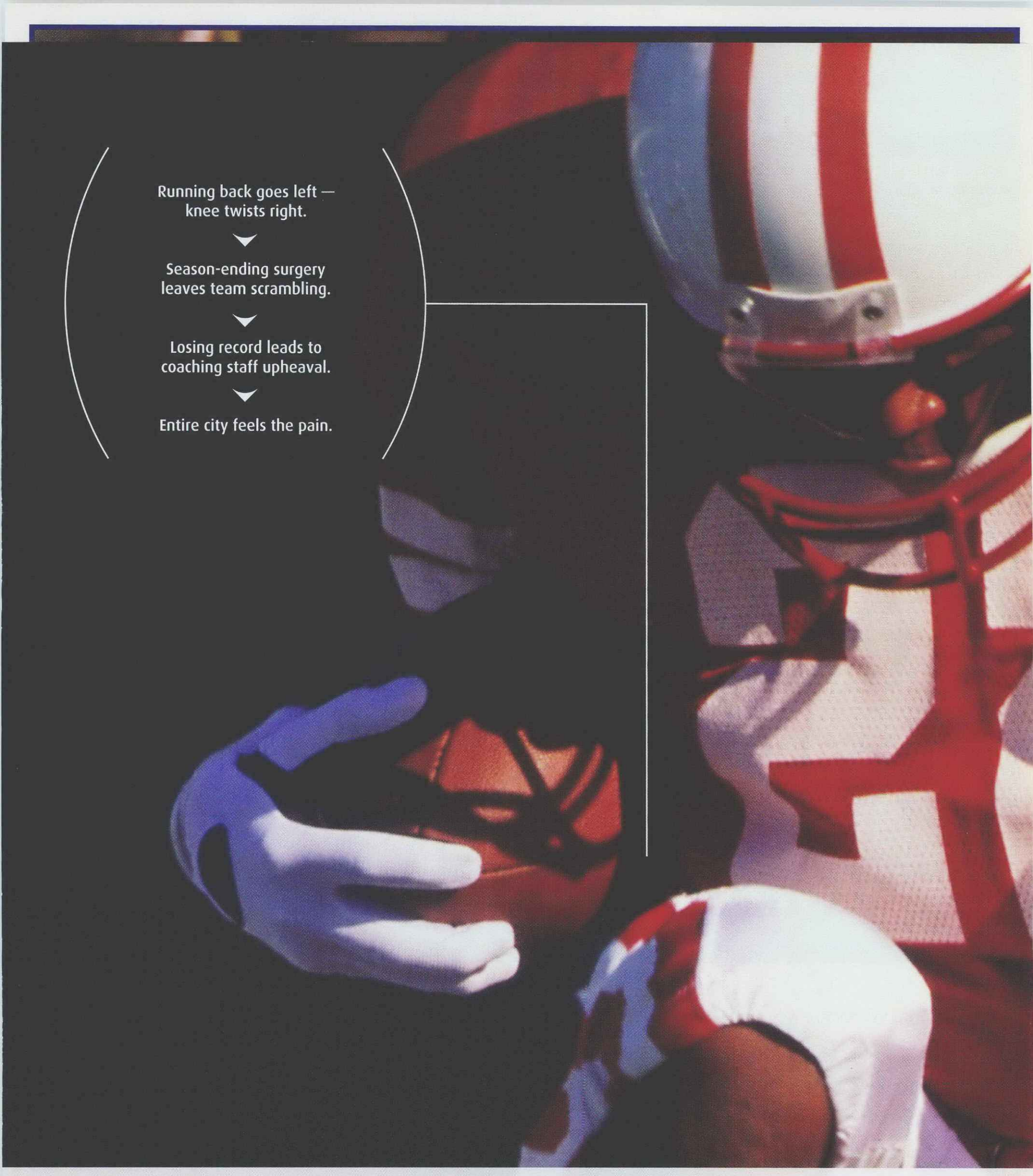

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NEW YORK REALTY COMPANY FORMS CAPTIVE TO COVER TERRORISM RISKS/PAGE 3

PUBLIC RECREATIONAL SITES LOSE LIABILITY PROTECTION IN NEBRASKA/PAGE 3

CONOCOPH OVER DEFI FOR POLLI

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

See IN BRIEF page 30

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, wi

See HSAs page 6

Drug pricing system nixed by pact

Class settlement may lead to reduced prescription costs

By JOANNE WOJCIK

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

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BENEFIT FINANCING STRATEGIES

Uncertainty, complication and distraction limit adoption of Roth 401(k)s / Page 30

Wellness program a must to receive incentives in innovative Indiana plan/ Page 32

Band of colleges not only maintain but enhance their offerings to retirees / Page 34

BENEFITS MANAGEMENT

Retirement nest egg strategies

Sponsors linking 401(k)s to annuities to bolster retirees

Increasing insurer offerings of fixed monthly retirement payments back employers' desire to attract and retain workers

By LOUISE ESOLA

Just as many employers in recent years have phased out their defined benefit pension plans, many soon could be in the market for annuities to offer within 401(k) plans as a way to provide guaranteed lifetime income for employees.

Over the past three years, financial services firms have introduced insurance products to help fill the hole left by the winding down of traditional plans in which vested participants are promised a lifetime monthly benefit at retirement and the growth of 401(k) and other defined contribution plans in which employees choose from different options to invest contributions and receive a lump sum benefit when they leave.

Experts say the products help quell a growing concern: Will employees be able to adequately manage their retirement accounts under good and bad market conditions and, if not, will they eventually outlive their savings?

And for employers, companies are constantly on the lookout for ways to enhance 401(k) options to attract and retain employees, according to experts.

"Everyone has been focusing on accumulating money for retirement," said Robyn Credico, Arlington, Va.-based national director of defined contribution consulting for Watson Wyatt Worldwide. "Nobody is helping with the 'decumulation' phase, the spending of your retirement money."

Watson Wyatt recommends that companies include annuities as part of retirement investment options.

"People don't really have a good sense of their longevity and how much money they need," Ms. Credico said. "You can't really afford to be wrong."

According to the U.S. Centers for Disease Control and Prevention's National Department for Health Statistics, the average U.S. resident's life expectancy is 77.9 years. Numerous studies, however, estimate that most of today's workers will live longer than that.

With the future of retirement income in the balance, some experts say the move towards 401(k)-attached annuities is akin to

See **ANNUITIES** next page

Annuities: Investment vehicle offers retirement income security

CONTINUED FROM PREVIOUS PAGE

the pendulum swinging back to the era of defined benefits.

"I think that employers and employees are recognizing that the defined contribution plans have limitations. The annuity guarantee is the only way to protect against the longevity risk. It's the only way to provide a certain amount of income as long as you live," said Steve Roth, a Washington-based partner at Sutherland Asbill & Brennan L.L.P., a nationwide law firm specializing in business and financial services.

"Investment management doesn't solve everything you need," Mr. Roth said. "The lifetime guarantees that only an insurance company can provide, the safety and security, are what people are looking for."

More than half a dozen companies have annuity products linked to 401(k)s available, each promising to take over where a pension leaves off by giving employees the security of lifetime income (see story, page 28).

While the products are marketed as lifesavers in a time of uncertainty, experts and sources at several companies say pension plan sponsors have been slow to catch on.

Fred Barstein, president and chief executive officer of the 401kExchange, a consulting firm based in Green Acres, Fla., said he has been following the products closely. Working with 6,000 companies a year, Mr. Barstein said it's the older workers that are thinking about annuities and income guarantees; younger members of the work force are more focused on their plan values.

'The annuity guarantee is the only way to protect against the longevity risk.'

Steve Roth,
Sutherland Asbill & Brennan L.L.P.

"These seem to be perfect for 401(k)s," Mr. Barstein said. "But they haven't taken off; nobody's really talking about them."

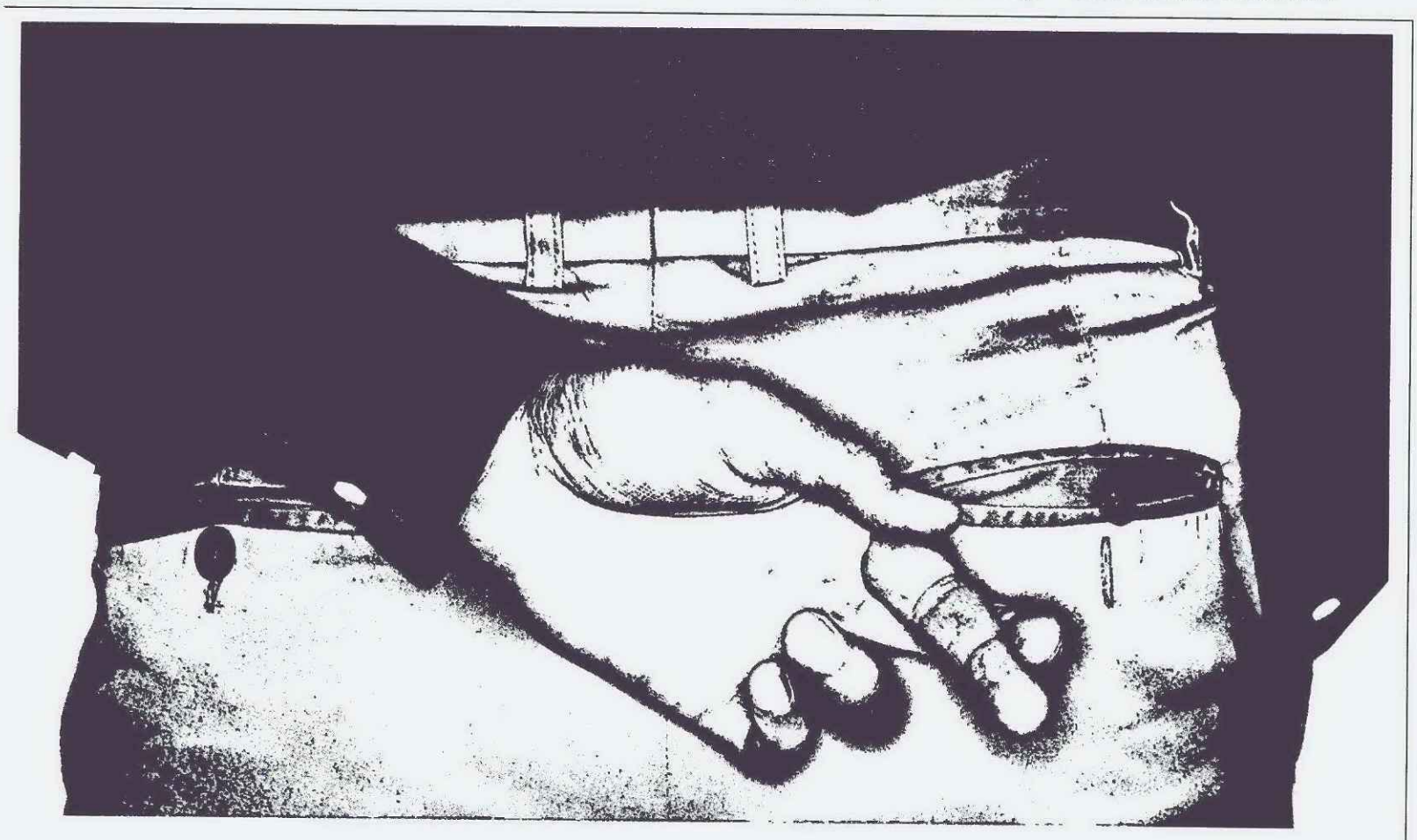
Pat Harris, Simsbury, Conn.-based director of Hartford Lifetime Income with Hartford Financial Services Group Inc., which introduced its product last year, said it's not an easy sell to convince employers about the value of annuities.

"It's a long sales process," Mr. Harris said. "This is something that is quite new, so there is a lot of due diligence. Consultants are just getting comfortable in understanding what the products are and how they work."

Lou Mazaway, a partner with the Washington-based Groom Law Group, which specializes in employee benefits law, also is optimistic.

"I think these are going to work (for employers), but it is going to take several years for it to become popular," Mr. Mazaway said. "As employers get more familiar with (the products), they will definitely become more prevalent as an option in 401(k) plans."

See **ANNUITIES** next page



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Annuities: More employers linking to 401(k) plans

CONTINUED FROM PREVIOUS PAGE

Firms offering annuity-linked 401(k) plans are reporting modest success initially in getting companies and employees on board.

First to hit the market, New York-based Metropolitan Life Insurance Co. introduced its Personal Pension Builder in 2004 and, according to company data, the company, in conjunction with Merrill Lynch & Co. Inc., has lined up nearly two dozen plan sponsors that either offer the product or are working to introduce it to employees.

Jody Strakosch, Minneapolis-based national director for institutional income annuities for MetLife, said the product isn't yet a regular feature in 401(k) plans, but it does show promise.

"It's a slow-going thing, as with any other product that is brought into the 401(k) marketplace," she said. "The interest at the plan-sponsor level is really high."

Meeting a need

Newark, N.J.-based Prudential Financial Inc., which introduced its IncomeFlex product late last year, is catching up and has signed almost a dozen plan sponsors so far this year, said Mark Foley, a Hartford, Conn.-based vp for Prudential Retirement, a unit of Prudential Financial.

Prudential's 2006 Workplace Report on Retirement Planning survey found that 70% of older workers between 55 and 64 years old would welcome an option that converts their defined contribution plan assets into a stream of guaranteed lifetime income.

"This is something that is meeting a need," said Mr. Foley. "Academic research shows that employees prefer income for life. Annuities are one of the best ways to do that now. The demand for this product is coming from the swelling of baby boomers going into retirement."

Richmond, Va.-based Genworth Financial Inc., which launched ClearCourse in 2005, is also gaining attention, said Fred Conley, Richmond, Va.-based president of Genworth's institutional retirement group.

"When we go to education meetings at workplaces, the feedback that we get from (employees) is that they really like the guarantee," Mr. Conley said. "Everybody is worried about running out of money."

"I think these (annuities) options are around to stay," Mr. Conley added.

Annuity offerings expand with requirements, deductions and payouts that vary greatly

One of the biggest challenges faced by companies that provide annuities that are linked to 401(k) plans, as well as plan sponsors that are now considering that option, is educating employees, according to experts and sources at several companies.

Traditional annuities, popular among new retirees seeking ways to manage their savings, typically require buyers to pay a lump sum to an insurance company in exchange for a guaranteed stream of income for a specified period of time, often one's lifetime.

Buyers are typically locked in for life and often pay hefty upfront fees.

The newest breed of 401(k)-attached annuities, however, allows employees to purchase annuities annually, via payroll deduction or exchanges from 401(k) balances, and accrue guaranteed income later in life depending on market conditions at the time of purchase. The products are offered as supplemental investments and as a way to diversify one's savings within a 401(k) plan.

The details of each firm's product, however, are different.

Some plans, such as Metropolitan Life Insurance Co.'s Personal Pension Builder, require a minimum allocation of $50 a month. Others, such as Hartford Financial Services Group's Lifetime Income, have no minimum payments. Fees for each product vary depending on allocation and balances.

Most plans allow participants to see, on regular statements, how much retirement income they can count on monthly. The earlier a person begins allocating, the more money they will receive.

For example, using Hartford's product, a 30-year-old who begins contributing $100 per month pretax until age 65 can count on at least $990 monthly retirement income for life, whereas a 50-year-old allocating the same amount until age 65 can rely on $200 a month for life, based on current market conditions.

By way of comparison, in traditional savings, a 30-year-old setting aside $100 a month for 35 years with a 4% rate of return will have $89,992 saved for retirement, which results in roughly $375 a month for 20 years. For a 50 year old, that figure pans out to $24,446 by age 65, or $102 a month for 20 years.

As for products' portability, some insurance products allow participants to roll over their participants' accrued allocations to individual retirement accounts or traditional annuities.

Other products will allow participants to continue contributing long after they leave their employer. Some products allow employees to keep their annuities without future contributions but with the promise of a smaller stream of income in retirement.

Unlike most traditional annuities, a participant can withdraw funds before retirement but, like any other retirement plan, he or she will face penalty charges.

—By Louise Esola

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More employers add Roth 401(k) plans but at leisurely pace

Complexity, confusion among reasons cited for sluggish uptake

By JUDY GREENWALD

Roth 401(k)s are off to a slow start.

Although legislative and regulatory obstacles to the plans are now gone, employers and employees alike have been slow to embrace the plans.

Among the major reasons: the plans are not appropriate for everyone, and they are difficult both to communicate and understand. Some observers say the plans add to an already confusing array of benefit choices.

Unlike traditional 401(k) contributions, which are made with pretax dollars, Roth 401(k) contributions are made with aftertax dollars, but contributions and earnings are withdrawn tax-free (see related stories).

Roth 401(k)s were created under legislation that passed Congress in 2001 and went into effect Jan. 1, 2006. A major barrier to their growth—a provision that no new contributions could be made to the plans after 2010—was eliminated under the Pension Protection Act of 2006.

And earlier this year, the Internal Revenue Service issued regulations applicable to Roth 401(k)s, which cleared the path for companies to adopt the plans.

Meanwhile, after some initial concern, vendors have largely geared up to administer the complex plans, which require separate accounts for traditional 401(k) and the Roth 401(k) plans, and must be integrated with firms' payroll systems, say observers.

While the pace of adoption has picked up of late, growth has nevertheless remained relatively slow. According to the Chicago-based Profit Sharing/401k Council of America's survey of 1,000 employer plans this spring, just 18.4% of all plans permitted Roth 401(k) deferrals in 2006 and, of those that do offer the plans, only 11.6% of employees took advantage of them.

Some say it is only a matter of time before more employers offer Roth 401(k) plans, although many do not anticipate they will ever account for more than a relatively small percentage of 401(k) contributions.

Employers typically offer Roth 401(k)s in response to employees' request, because they want to present their workers with a wide range of benefit options and because it could represent a competitive advantage, employers and others say.

There were several reasons why Des Moines, Iowa-based Ruan Transport Corp. decided to offer a Roth 401(k) plan to its employees, "But No. 1, there just didn't seem to be a good reason not to," said Sharon Calkins, director of human resources for the trucking company. "There didn't seem to be a downside to it."

"We had lots of employees that were asking for it as articles began to appear" in consumer finance publications, said Tricia Darragh, retirement plan specialist with Cary, N.C.-based SAS Institute Inc., a business software firm with about 5,200 U.S. employees.

> **'People are already sort of paralyzed by all the choices they have to make and (employers are) worried about giving them more.'**
>
> Chris Bowman,
> Principal Financial Group

Furthermore, "we have a very employee-focused philosophy and we also wanted to provide our employees progressive opportunities" in the company's benefits plan, Ms. Darragh said.

"The main reason we implemented it was to give people the tax diversification choice, because we have a very high participation rate to begin with, and people were asking for it," said Dottie McFalls, principal, human resources at the Valley Forge, Pa.-based Vanguard Group Inc., which introduced the Roth 401(k) to its employees last year.

"We want our 401(k) plan as flexible as possible and as competitive as possible," said Steven Vigneron, vp of benefits design at New York-based AXA Equitable Life Insurance Co.

The Roth 401(k) provides that additional flexibility, Mr. Vigneron said.

Some employers pointed to the plan's potential value to their employees.

Julie Hammel, Mountain View, Calif.-based human resources and benefits manager for Google Inc., which introduced its Roth 401(k) last year, said, "We want our employees to have the best resources available to them, and we felt this was a great addition to our financial package."

A Roth 401(k) also can be an effective recruitment tool, say observers.

"You never know," said John Graham, New York-based director of regional compliance research for Segal Advisors Inc., an investment consulting firm. "You might have that one employee or potential hire" where the ability to offer a Roth and having that "one extra choice" could lead to a decision in the employer's favor.

But many employers have been slow to introduce the plans.

"I think that employers are looking at it and they're not feeling rushed," said Dallas Salisbury, president of the Washington-based Employee Benefit Research Institute.

However, Stephen P. Utkus, a principal with the Vanguard Center for Retirement Research, a Vanguard Group unit, said, "I think a lot of employers misguidedly think it's only for rich people" when in fact many low- and middle-income participants could benefit from a Roth as well.

"It's kind of a complicated feature to implement, more than the typical 401(k) enhancement," said Michael Weddell, a principal at Mercer L.L.C. in Detroit.

Employers may have been distracted by other concerns, said Jamie Cornell, senior vp, employer marketing, for Boston-based Fidelity Investments Institutional Services Co. Inc. "Employers have been dealing with other issues on their other benefit programs," including cutting health care program costs and making decisions on their defined benefit plans, he said.

Some employers also may be concerned that presenting another choice in the already vast array of potential benefit options may simply be too much for workers, observers say.

Employers already "have a lot to think about," said Chris Bowman, vp-retirement and investor services at Principal Financial Group in Des Moines, Iowa. Employers are "quite concerned that introducing Roth means they have one more story to tell, one more set of rules to educate people on, and frankly, they're worried. People are already sort of paralyzed by all the choices they have to make and (employers are) worried about giving them more."

Communicating the plans is also a challenge, say observers, particularly in light of the difference between a Roth plan and the traditional 401(k), with which employees are already familiar. Unless it is well-communicated, "I have a feeling it's not going to be heavily used," said Alan Vorchheimer, a principal with Buck Consultants L.L.C. in New York.

"We did such a good job of educating people on pretax. Now we have to reverse," said SAS' Ms. Darragh.

It comes down "to an individual's tax situation, and it's so personal and individual, it's hard to do broad-based communications around it," said Susan Alford, Winston-Salem, N.C.-based executive vp for Aon Consulting Worldwide and the firm's national defined contribution practice leader.

Further complicating the decision-making process is that no one knows what will happen with the tax code between now and when they decide to retire, "so it's a difficult question," said Mr. Bowman.

Some observers do not anticipate a rapid increase in the plans' introduction.

"In general, employers move slowly to make significant changes to their plans," said Profit Sharing/401(k) Council of America President David Wray. "I think the number of companies offering Roth will continue to increase, but you're not going to see an overnight availability of Roth throughout the 401(k) system. It'll probably increase slowly for several years and reach some kind of plateau."

However, Vanguard's Mr. Utkus said, "I think we're definitely going to cross the 50% mark" within the next couple of years as the plan receives wide coverage in consumer financial publications. "It'll get out to employees, who will then lobby their employers with some degree of success," Mr. Utkus said.

Lack of employee adoption blamed on varied reasons

Employees' failure to embrace Roth 401(k)s in large numbers may be due to confusion about how such a plan would work, their conclusion it is not the right investment for them or, in many cases, simple inertia, say observers.

Robert M. Schrayer, president of Rolling Meadows Ill.-based Associated Agencies Inc., an insurance brokerage with about 125 employees, introduced the plan because he said he believed it would be beneficial to his employees, but only a few have taken advantage of it so far.

"It may be because they don't understand it and it may be because they just don't want it, but I have been frankly surprised and disappointed that more people didn't take it," Mr. Schrayer said.

Roth 401(k)s are not appropriate for everyone, say observers. It is a good idea for those who are likely to be in as higher tax bracket on retirement than they are today, say observers.

"I think for most people, that's not likely," said David Wray, president of the Chicago-based Profit Sharing/401(k) Council of America.

Inertia may play a role as well.

"Historically, 401(k) participants do not change things about their plan except where there is an event," such as a job change, said Mr. Wray. "We know that they're very passive once they're in the plan."

Those who contribute to Roth 401(k)s tend to be younger employees, those who have recently switched jobs and those who are more sophisticated investors, observers say.

New hires are likely prospects for enrolling in a Roth 401(k) "because they're at a point where they are making decisions around their retirement," said Linda Wauson, senior defined contribution consultant at Watson Wyatt Worldwide in Houston.

"I think the types of employees that you see taking advantage of the Roth have several years until retirement" for their earnings to build up and "see the advantages of having the money come out tax-free in the future as significantly outweighing current-year tax deductions," said Greg Rosica, a Tampa, Fla.-based tax partner with Ernst & Young L.L.P.

—By Judy Greenwald

Pay taxes now for tax-free withdrawals later

"Aftertax" is the key phrase to keep in mind in trying to understand how Roth 401(k) plans work.

Unlike traditional 401(k)s, where contributions are made with pretax dollars, in a Roth 401(k), contributions are made with aftertax dollars, but contributions and earnings can be withdrawn tax-free so long as the Roth account has been open for five years and the participant is at least age 59½.

"A lot of people are going are going to end up in higher-paid categories and higher-tax categories when they retire, and if they can get their money out tax-free, they're much better off," said Joe Hessenthaler, a principal with Towers Perrin in Philadelphia, referring to younger workers who contribute to a Roth 401(k) are likely to be in higher tax bracket when they retire.

Under federal law, Roth and traditional 401(k) plan contributions must be kept separate. Furthermore, before a contribution is made, an employee must designate whether it is for the Roth or the traditional 401(k) plan.

Eligible participants may make Roth 401(k) contributions regardless of their income level. For 2007, there is a maximum of $15,500 in contributions for a combination of traditional and Roth 401(k) plans, plus an additional $5,000 for employees 50 or older who are offered a catch-up provision by their plan sponsor.

—By Judy Greenwald

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Indiana health care reform law integrates financial incentives

State health plan doesn't promise universal coverage

By JERRY GEISEL

INDIANAPOLIS—A 2006 Massachusetts law to help the state achieve near-universal health care coverage has captured national attention, but legislation passed this year in Indiana may be a more innovative approach to expanding and financing coverage.

There is good reason why Indiana's Healthy Indiana Plan has been overshadowed by the Massachusetts reform law as well as ongoing reform initiatives in California, Illinois and Pennsylvania.

The Indiana law does not promise universal or even near-universal coverage. Initially, the program could reduce—depending on how revenue is raised from an increase in cigarette taxes and whether the state receives financial support from federal regulators—the number of people without health insurance by nearly 50,000 a year, state officials say.

A NEW APPROACH

How the Healthy Indiana Plan works

- Lower-income uninsured state residents receive health insurance coverage with an $1,100 deductible.
- "Power Accounts" with $1,100, mostly contributed by the state, set up for enrollees.
- Enrollees draw upon accounts to pay expenses falling under the deductible.
- If enrollees obtain preventive health care services, unused power account balances roll over to following year.

That is a relative drop in the bucket compared to more than 700,000 state residents lacking coverage.

While other states' programs may go further in expanding coverage, they lack an element central to Indiana's plan: powerful financial incentives for enrollees—the uninsured working poor—to use health care services carefully

The Indiana plan, observers say, is a kind of marriage of more traditional state approaches to expanding coverage—heavily or completely subsidizing health insurance premiums or coverage—with wellness and consumerism, elements that are missing in other reform efforts and state Medicaid plans offered to very low-income residents without coverage.

"It is a pioneering approach. It combines a subsidy approach with consumerism. It gives people a reason to care about health care costs," said Roy Ramthun, president of HSA Consulting Services in Silver Spring, Md., and a former senior health policy adviser to President Bush.

"This gives beneficiaries incentives to be a little wiser in their use of care and to reward beneficiaries based on how they use health care services," said Thomas Miller, a resident fellow at the American Enterprise Institute, a Washington-based policy think tank.

'This gives beneficiaries incentives to be a little wiser in their use of care.'

Thomas Miller,
American Enterprise Institute

The Indiana plan, funded in part by an increase in the state's cigarette tax and set to begin in January, will be available to lower-income state residents, who have been uninsured at least six months and are ineligible for employer-provided health insurance.

Under the plan, the state will pay for $500 a year in preventive services, which include annual physicals, smoking cessation programs, prostate exams, mammograms and diabetes testing.

Enrollees will have an annual deductible of $1,100. To cover that deductible, the state and enrollees will contribute a total of $1,100 to a so-called Power Account, which is similar to health reimbursement arrangements used by many private-sector employers. Like an HRA, accumulated contributions in a Power Account will roll over from year to year, offsetting an enrollee's future contributions.

Beneficiaries' contributions to Power Accounts will be linked to their incomes and range from 2% to 4.5% of gross annual income. For example, for a single adult whose annual income is $10,210, the state would contribute $896 to the Power Account, while the individual would contribute $204.

After medical costs exceed $1,100, health insurance coverage will be provided that has a $300,000 annual limit for covered services and a $1 million lifetime limit. Late last month, state officials selected Anthem Insurance Cos. of Indianapolis to administer the plan and to offer a provider network. A second insurer is expected to be selected soon.

It is the design of the Power Account and its link to wellness services, state officials and others say,

See **INDIANA** page 34

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Retiree health care program uses defined contribution model

Colleges, universities benefit from savings, predictable costs

By GLORIA GONZALEZ

College and university officials are praising a two-year-old program designed to help them offer retiree health care plans as a practical and affordable approach to providing coverage.

The defined contribution program, Emeriti Retirement Health Solutions, allows nonprofit higher education institutions to budget their future health care expenses for retired employees and band together to offer retiree medical benefits on a cost-effective basis.

Unlike traditional retiree health care in which employers agree to provide a certain level of benefits, employers participating in the Emeriti program agree to make a specific contribution, which is funneled to special tax-favored trusts known as voluntary employee beneficiary associations.

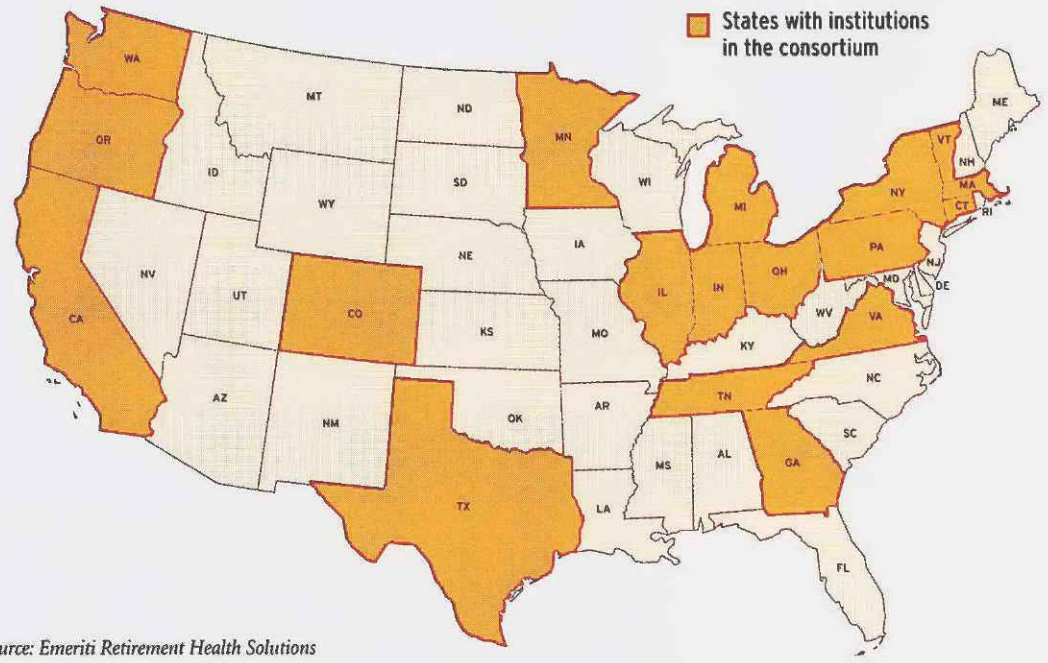
According to Emeriti research, such a program also convinces employees to retire on average 18 to 36 months sooner and not extend their employment to assure health care coverage.

Employees also contribute on either a voluntary or mandatory basis. If employee contributions are mandatory, they receive the same favorable tax treatment as employer contributions. If the employee contributions are voluntary, they are made on an aftertax basis (see story, page 35).

Employees direct investment of the VEBA contributions into a set of mutual funds offered by Fidelity Investments. When employees retire and are eligible for Medicare, they can withdraw the funds tax-free to pay premiums for medical, dental and prescription drug plans offered by Hartford, Conn.-based Aetna Inc. and Bloomington, Minn.-based Health Partners.

RETIREE HEALTH CARE FOR HIGHER EDUCATION INSTITUTIONS

More than 45 colleges in 18 states are members of a program that funds retiree health care benefits through a VEBA.



Source: Emeriti Retirement Health Solutions

Major changes planned for the program will make it even more attractive to potential members and increase its economies of scale, including the development of insurance products for pre-65 retirees and a proposed expansion of the program to other nonprofit institutions, observers say.

Launched in July 2005, the Emeriti program currently has 47 participating schools making varying levels of contributions to the VEBAs. That's up from 33 schools in January 2006 and 29 when the program launched.

While the program initially targeted smaller colleges, it began marketing to large public and private higher education institutions last year. Larger institutions include the University of San Francisco, which joined the consortium last year and has about 8,500 students.

"I think this is a good solution for retiree health care for higher education because it's not a liability on our financial statements," said Martha Peugh-Wade, assistant vp for human resources at USF.

The program has enabled colleges that did not have retiree health care programs or were forced to scale back or eliminate them to offer the benefit in a more cost-effective way.

Southern Methodist University in Dallas has offered a retiree medical benefit for 20 years, but was constantly modifying the plan design to keep up with rising costs, said Bill Detwiler, associate vp, business services. School officials decided to convert from a defined benefit plan to Emeriti's defined contribution approach because its costs are more predictable—$1 million for the first year, he said.

SMU estimates it will save $40 million over a 30-year period by adopting a defined contribution approach to retiree health care benefits.

"It allowed us for the long term to sustain a benefit that was vital to our institution and retaining faculty and staff in an affordable way," Mr. Detwiler said.

Denison University eliminated post-retirement benefits for employees hired after 1993 due to concerns about the benefits' unfunded liability, which was estimated at $18.6 million last year, said Seth Patton, chief financial officer for the Granville, Ohio, educational institution. University officials, though, were concerned that employees were delaying retirement, potentially beyond their productive years.

'I think this is a good solution for retiree health care for higher education because it's not a liability on our financial statements.'

Martha Peugh-Wade,
University of San Francisco

The university joined the Emeriti program when it launched in 2005. Under the plan, Denison's average contribution is about $1,050 per employee per year, Mr. Patton said. "The board was comfortable with this because it was a known amount," he said. "It's not an unfunded liability."

The program has undergone a few structural changes, namely a revamp of the prescription drug benefit to abide by definitive rules that govern how a Medicare Part D drug program should function to qualify for maximum reimbursement, said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

Emeriti also revised the program to be more responsive to retired participants' needs, including adding a dental plan this year. Retirees were pleased because they often had trouble securing dental coverage on their own, school officials say.

Major changes are planned for the program next year. Beginning Jan. 1, retirees will be able to pick from a menu of options to build their own plans rather than choosing from just the six options currently available, said Michael Fusaro, a New York-based vp-client management and Aetna's executive sponsor for the Emeriti program. For example, they will be able to choose from traditional Medicare integration plans or private fee-for-service plans and combine them with varying levels of Part D benefits and dental plans, he said.

The program offerings have not been as broad as they could have been with the proliferation of Medicare Advantage and Medicare Part D plans, which is why some large institutions have not yet joined the Emeriti program, said Stuart Alden, chief actuary, group and health care for Watson Wyatt Worldwide in Philadelphia.

Another change planned for mid-2008 would make health care plans available to pre-65 retirees, Mr. Fusaro said. The plans, which are still being finalized, will be based on the insurer's preferred provider organization offerings.

Plan sponsors are looking forward to the pre-65 offerings because they can take those retirees out of their health plans offered to active employees, which could improve the group's claims experience and reduce costs.

"The ability to offer pre-65 products would be most beneficial to our employees and retirees," said David Anderson, president of St. Olaf College in Northfield, Minn., and a member of Emeriti's advisory council.

Emeriti is also seeking federal regulatory authority to expand its mandate beyond higher education institutions to work with other tax-exempt entities such as research organizations, cultural institutions, private secondary schools and public schools. The organization hopes to receive a favorable response this fall.

"The more institutions that you have, the more competitive the rates get over time," Mr. Thompson said. "As the scale of the program grows, the underlying administrative costs become a smaller and smaller part of the premium."

Indiana: Health care law integrates incentives

CONTINUED FROM PAGE 32

that will drive enrollees to use preventive services and be better health care consumers.

For example, if an enrollee does not complete the relevant preventive services, the state Power Account contribution will not roll over for the following year. That preventive service incentive could lead to healthier enrollees and, ultimately, lower health care costs.

"Maybe, enrollees will see doctors and get physicals and take other actions they would not otherwise do. Prevention, in the long run, always saves money," said Norm Springer, president of the Indiana State Assn. of Health Underwriters and senior marketing director for American Community Mutual Insurance Co. in Westfield, Ind.

The Power Accounts roll over unused contributions, which also could lead to better use of health care services, some say.

"Enrollees have a sense of ownership. They can take better charge compared to a third party paying all the bills," said Joel White, a former House Ways and Means Committee staffer and now president of JCWhite Consulting in Washington and a visiting senior fellow at the Galen Institute, an Alexandria, Va.-based health policy organization.

The Indiana plan differs from traditional Medicaid programs in other ways as well. For example, while Medicaid programs typically pay rock-bottom rates to participating health care providers, reimbursement rates in the Indiana program will be closer to federal Medicare reimbursement rates, resulting in a much bigger network of providers available to enrollees and making it easier for enrollees to obtain medical services.

"By putting in Medicare payment rates, we will have a robust provider base," said Mitchell Roob Jr., secretary of the Indiana Family and Social Services Administration in Indianapolis.

While the Indiana plan may be innovative, many unknowns remain—not the least of which is how many people will enroll, whether they will obtain preventive services and whether health care costs will be better controlled compared to other state health care coverage expansion programs.

"It is a bold step. Whether it works remains to be seen," Mr. White said.

Still, Indiana state officials believe the plan is the right one for the state. "This plan is designed to work in Indiana, though perhaps not everywhere," Mr. Roob said.

But if the program succeeds in expanding coverage, while controlling costs, it could be a model for other states to follow.

"If successful, over time other states could look at this program as a roadmap," Mr. Roob said.

While the Indiana program is only offered to the low-income uninsured, employers with health care plans have a direct stake in the program's outcome.

If the program can successfully expand coverage, it would reduce the amount of uncompensated care and the need for providers to shift those costs to insured patients, inflating the cost of health insurance premiums.

In fact, in 2005—the most recent year figures are available—provider cost-shifting added an average of $953 to health insurance premiums for family health coverage for Indiana residents, according to Indiana state officials.

Retiree benefits program weighs mandatory contributions

By GLORIA GONZALEZ

When designing their retiree health care plans, college officials participating in the Emeriti Retirement Health Solutions program faced a difficult decision: whether to mandate employee contributions.

About 10% of the 47 member institutions of the Emeriti program elected to require employee contributions as part of their plan designs, said Ken Cool, president of Emeriti, based in New Windsor, N.Y.

The advantage of mandatory employee contributions from a tax perspective is that employee dollars are treated as employer contributions and thus reduce employees' taxable income. Employees also can make voluntary contributions, but those dollars are contributed on an aftertax basis.

Officials at participating higher education institutions that require employee contributions were motivated by a desire to ensure that employees properly plan for and participate in funding their retiree health care needs and that they receive the tax benefits of mandatory contributions.

The Emeriti program intends to help college and university employees accumulate assets to fund their retiree health care needs.

Colorado College requires employees 40 or older to contribute 50% of the estimated premium for health insurance plans offered by the program's insurers in retirement, said Thomas Nycum, vp for business and finance/treasurer for the college in Colorado Springs. The current contribution amount is about $1,000 per year, shared equally by the employer and the employee.

Thus far, employees are contributing only the required minimum, but Mr. Nycum said he expects to see more employees contribute voluntarily to further save for retiree health care costs as they become more comfortable with the program.

The benefits offered by the Emeriti program are generally designed to cover about 50% to 75% of retiree health care costs, so employees are encouraged to make voluntary contributions to supplement the benefit.

Officials at schools that do not require employee contributions expressed concern that low-wage workers would opt out of the program entirely because they could not afford to contribute.

Denison University decided against mandatory employee contributions, said Seth Patton, chief financial officer for the Granville, Ohio-based university.

"We really struggled with that," Mr. Patton said. "I'm not sure if we came up with the best decision or not. If you have an employee at the lower end of the wage scale, you really don't want to drive them out of the program."

Some colleges and universities do not require an employee match because it goes against their benefit policies, officials said, noting that they do not require employee contributions in their pension programs.

"This is not a culture that likes requirements," said Annette Parker, vp and treasurer at Dickinson College in Carlisle, Pa. "It might be common in other industries, but in higher education, choice is very important."

All eligible employees are enrolled in retiree health care programs at the schools that do not require employee contributions, but only a fraction contribute on a voluntary, aftertax basis, school officials say. Indeed, Ms. Parker said she would like the college to set an initial target of having 10% to 20% of employees making voluntary contributions.

While all eligible employees are enrolled in the Smith College program, a relatively modest number add their own money to the Voluntary Employees' Beneficiary Assn. arrangement, partly because they are more familiar with and choose to contribute funds to their 403(b) plans, said Ruth Constantine, vp-finance and administration at the college in Northampton, Mass. Employees that do make contributions—a number she expects to grow slowly—are generally closer to retirement.

"As you can imagine, people over 50 are more motivated to save," Ms. Constantine said.

Emeriti is exploring the possibility of extending the automatic enrollment concept now allowed in retirement plans to Emeriti's health and welfare plans to facilitate employee contributions to retiree health care benefits, Mr. Cool said. The organization hopes to receive a response from federal regulators within the next year.

Automatically enrolling employees in the program could be a viable way to jump-start greater employee participation in saving for retiree health care costs. "We're still at the point of trying to educate them on the need for them to contribute over and above their employer contributions," Mr. Cool said.

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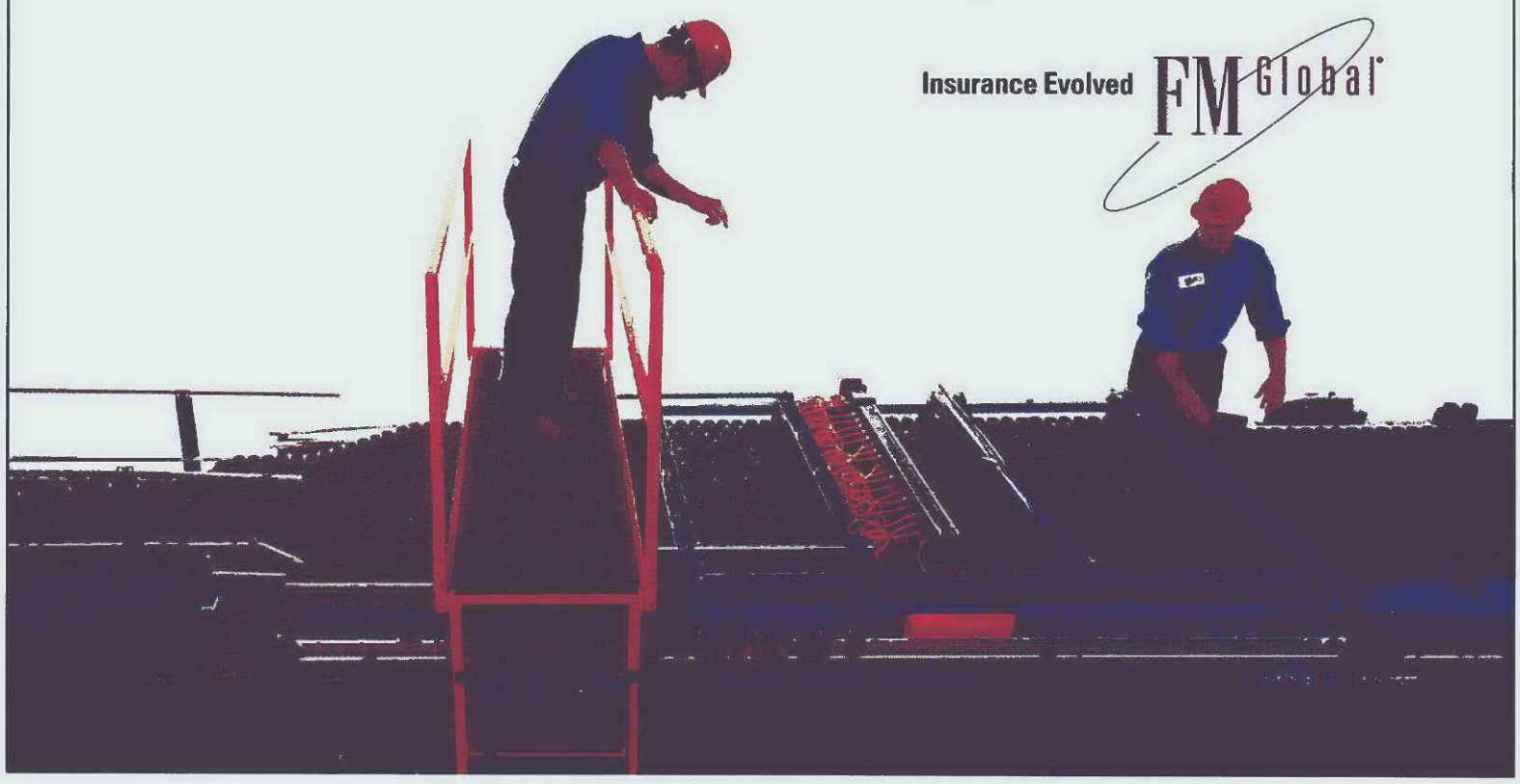

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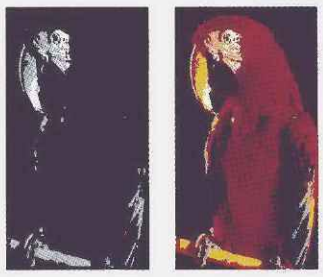

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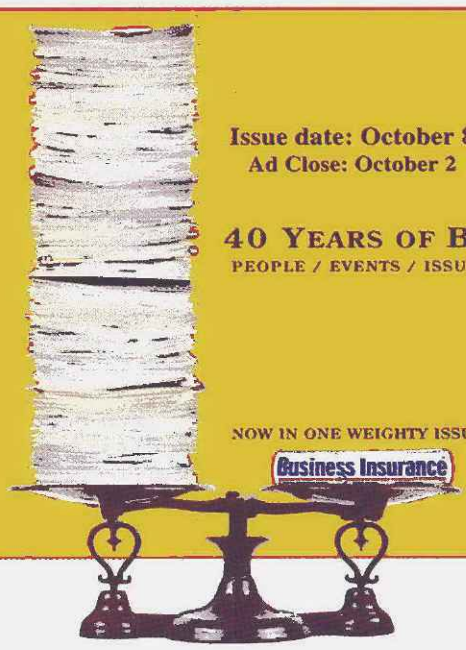

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Petition of Jan C.H. Endresen, as foreign representative of

Oslo Reinsurance Company (UK) Limited and Oslo Reinsurance Company ASA,

Debtors in Foreign Proceedings.

Chapter 15

Case No. 07-12211(RDD)

(Jointly Administered)

ORDER AND FINAL DECREE GRANTING RECOGNITION OF FOREIGN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

Jan C. H. Endresen (the "Petitioner"), as the duly appointed foreign representative of Oslo Reinsurance Company ASA ("Oslo Re ASA") and Oslo Reinsurance Company (UK) Limited ("Oslo Re UK") (collectively, the "Scheme Companies"), which are subject to jointly administered adjustment of debt proceedings (the "English Proceedings") and bound by those certain Schemes of Arrangement pursuant to section 425 of the Companies Act 1985 (the "Schemes of Arrangement" or the "Schemes") sanctioned by the High Court of Justice of England and Wales (the "English Court") on April 19, 2007 for Oslo Re UK and on June 13, 2007 for Oslo Re ASA, filed the petition for recognition of foreign main proceedings (the "Petition"), the Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For Permanent Injunction (the "Petition and Motion"), the Memorandum Of Law In Support Of Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For Permanent Injunction (the "Memorandum of Law"), the Declaration of Jan C.H. Endresen In Support Of Petition Under Chapter 15 For Recognition Of A Foreign Proceedings And Motion For Permanent Injunction And Order (the "Endresen Declaration"), the Statement of Foreign Representative Identifying All Foreign Proceedings With Respect To Debtor Pursuant To 11 U.S.C. § 1515(c) (the "Section 1515(c) Statement"), and the List Filed Pursuant To Bankruptcy Rule 1007(a)(4) Of Administrators In Foreign Proceedings, Litigation Parties And Entities Against Whom Provisional Relief Is Being Sought Under 11 U.S.C. §1519 (the "Bankruptcy Rule 1007(a)(4) List") (collectively, the "Chapter 15 Pleadings") on July 13, 2007; and the Petitioner having given notice of the Petition in accordance with the Scheduling Order, on or before July 27, 2007 and by publication in *The Wall Street Journal (US Edition)* and *Business Insurance* magazine on or before July 30, 2007; and upon the record of the hearing before this Court on August 29, 2007 and all prior hearings and status conferences herein; this Court hereby finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

C. Venue is properly located in this District pursuant to 28 U.S.C. § 1410; and

D. The Petitioner, acting at the direction of the English Court, is a person duly appointed to act as the foreign representative (the "Foreign Representative") of the Scheme Companies; and

E. This case was properly commenced in compliance with and pursuant to 11 U.S.C. §§ 1504 and 1515; and

F. The Verified Petition satisfies the requirements of 11 U.S.C. § 1515; and

G. The English Proceedings are "foreign proceedings" pursuant to 11 U.S.C. § 1517(a); and

H. The English Proceedings are "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1); and

I. The Scheme Companies are entitled to all the relief provided pursuant to 11 U.S.C. § 1520 without limitation; and

J. The Scheme Companies are entitled to all the relief expressly set forth in 11 U.S.C. §§ 1521(a) and (b) and that is granted hereby.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Petitioner is recognized as a "foreign representative" pursuant to 11 U.S.C. § 101(24); and

ORDERED, that the English Proceedings are recognized as "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(a), (b)(1); and

ORDERED, that all relief afforded a debtor in a foreign main proceeding pursuant to 11 U.S.C. §1520 of the Bankruptcy Code is automatically effective as to the Scheme Companies, without modification; and it is further

ORDERED, that the Schemes of Arrangement (including any amendments or modifications to the Schemes on or before the date of this Order) shall be given full force and effect and be binding on and enforceable against all Scheme Creditors, including without limitation, against a Scheme Creditor in its capacity as a debtor of the Scheme Companies, in the United States; and it is further

ORDERED, that all Scheme Creditors are hereby permanently enjoined and restrained from:

(a) taking or continuing any act to obtain possession of, or exercise control over, any Property of the Scheme Companies or the proceeds of such Property in the United States, and its territories, that is not in compliance with the Schemes of Arrangement, and seizing, repossessing, transferring, relinquishing, or disposing of any Property of the Scheme Companies, or the proceeds of such Property in the United States, and its territories that is not in compliance with the Schemes of Arrangement; and

(b) commencing or continuing any legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against the Scheme Companies or any of their Property in the United States, and their territories, or the proceeds thereof, and seeking discovery of any nature against the Scheme Companies, that is not in compliance with the Schemes of Arrangement; and

(c) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act or any other legal or equitable action or proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) to create, perfect or enforce any lien or other security interest, set off, attachment, garnishment, or other claim against the Scheme Companies or any of its Property in the United States, and its territories, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts, except as in compliance with the Schemes of Arrangement; and

(d) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Scheme Companies to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) and such statute, rule or requirement will be rendered null and void for Proceedings, except as in compliance with the Schemes of Arrangement; provided, however, that nothing in the Order shall in any respect affect any Security in existence at the Effective Date or the replacements for such Security; and

(e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar agreement in which the Scheme Companies have an interest in excess of amounts expressly authorized by the terms of the trust, escrow, or similar agreement;

(f) drawing down any letter of credit established by, on behalf or at the request of, the Scheme Companies, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;

(g) declaring or treating the filing of the Chapter 15 Pleadings or the Schemes of Arrangement as a default or event of default under any agreement, contract or arrangement;

and it is further

ORDERED, that a Net Ascertained Claim or Net Debt (as defined in the Schemes) determined as provided under the Schemes of Arrangement shall be final and binding on the Scheme Companies and any person or entity that is a Scheme Creditor; and it is further

ORDERED, that, except is provided in the Schemes of Arrangement, all persons and entities in possession, custody, or control of property of the Scheme Companies in the United States, or its territories, or the proceeds thereof, are required to turn over and account for such property or proceeds to the Scheme Companies; and it is further

ORDERED, that nothing in this Order prevents the continuance or commencement of proceedings against any person, entity, or other insurer other than the Scheme Companies, provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Scheme Companies, such settlement or judgment shall not be binding on or enforceable against the Scheme Companies or their Property, or any proceeds thereof except as provided in the Scheme of Arrangement; and it is further

ORDERED, that the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, pursuant to 7065 of the Federal Rules of Bankruptcy Procedure, shall be, and the same hereby, are waived with respect to the injunctive relief provided in this Order; and it is further

ORDERED, that no action taken by the Scheme Companies, the Scheme Advisers, their successors, agents, representatives, advisers, or counsel, or any of them, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Schemes of Arrangement, this Order, these chapter 15 cases, any further order for additional relief in these chapter 15 cases, or any adversary proceedings in connection therewith will be deemed to constitute a waiver of any immunity afforded to the Scheme Companies, the Scheme Advisers, their successors, agents, representatives, advisers, or counsel under the law of the United States or otherwise; and it is further

ORDERED, that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of a Scheme Company or parties to any trust, escrow or similar arrangement in which a Scheme Company has an interest, are required to:

(a) provide notice to the Scheme Manager's United States counsel (Sidley Austin LLP 787 Seventh Avenue, New York, NY 10019 Attn: Geoffrey T. Raicht, Esq. and Alex R. Rovira, Esq. of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which a Scheme Company has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and

(b) turn over and account to the Scheme Manager for any funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established unless such Scheme Creditor has a bona fide defense to this obligation to turn over; and it is further

ORDERED, that every Scheme Creditor that has a claim of any nature or source arising out of a Scheme Claim and that is a party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in which a Scheme Company is or was named as a party, or as a result of which a liability of a Scheme Company may be established, is required to place the Petitioner's United States counsel (Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Geoffrey T. Raicht, Esq. and Alex R. Rovira, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and (b) any and all correspondence, or other documents circulated to parties named in the master service list; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of the Order or requests for any additional relief in these chapter 15 cases and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and it is further

ORDERED, that this Order shall be served:

(a) by United States mail, first class prepaid, on or before August 31, 2007 as prescribed by this Court upon all known potential Scheme Creditors in the U.S.; and

(b) by publication in *The Wall Street Journal (US Edition)* and *Business Insurance* magazine on or before September 17, 2007; and it is further

ORDERED, that such service will be good and sufficient service and adequate notice of this Order for all purposes.

Dated: August 29, 2007
New York, New York

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

International NEWS

Marsh enters Nordic captive services market

By MICHAEL BRADFORD

COPENHAGEN, Denmark—Competition in the Nordic captive management market is heating up with Marsh Inc.'s recent entrance into Denmark and Sweden.

New York-based Marsh last month established its Nordic captive management unit in Copenhagen, Denmark to take on Chicago-based Aon Corp., which has offered captive services in Denmark, Sweden and Norway since 2001.

A new Marsh office is also planned in Sweden, across the border from its Copenhagen location.

Marsh hired Lars Andersen from Aon's captive management operation in Denmark to head the new office. Mr. Andersen also is a former risk manager and past chairman of the Danish Risk Managers Assn.

"There was some pressure by risk managers on Marsh to provide these services," Mr. Andersen said.

Aon says the increased competition will not change the way it approaches the Nordic captive management business.

"We want to be with our clients on all key issues 100%, and that requires an integrated team approach that draws on wider resources across the Aon Global Risk Consulting organization, and Aon network if required," said Karl-Ove Andersson, Stockholm, Sweden-based managing director of Aon Global Insurance Managers Nordic.

Before Marsh arrived in Copenhagen, there were few choices other than Aon for risk managers interested in setting up a captive in Denmark, according to Mr. Andersen. There are only around 13 captives located in the country, he said, with Aon controlling the largest share of those. An independent captive manager has two under contract, three are self-managed and Marsh manages one, he said.

Aon said it has more than 40 captives under management in Denmark, Norway and Sweden, with the bulk of those domiciled in Sweden.

In Denmark, there are around 40 companies that are candidates for captives, Mr. Andersen said. Beyond those potential owners, there are public sector organizations that could benefit from setting up the self-insurance mechanism, he said. Many local municipalities are as big as some large companies and have significant insurance budgets, he said, and could benefit from establishing captives.

Marsh plans to expand its captive management services in Sweden with an office in Malmö. In Sweden, around 48 captives already exist and are managed by several captive managers, according to Mr. Andersen.

"If you list the biggest 100 companies in Sweden, based on (revenues), there are still around 30 to 35 companies that do not have a captive," he said. "Whether they have had feasibility studies, I do not know."

Captives are catching on among Sweden's municipalities, too, he said. Eight captives already are owned by public sector parents and more are expected, Mr. Andersen said.

Apart from new formations, there is room for growth among the captives already domiciled in Sweden, Mr. Andersson said.

"That market is fairly mature when you talk about the establishment of captives," said Mr. Andersson. "But there still is the potential for growth in existing captives" that might be interested in expanding the lines of coverage they write, he said.

There also is growing interest from non-Scandinavian companies to locate in Sweden, Mr. Andersson said. The country offers an established regulatory environment; the advantage of European Union membership, which allows captives to write business throughout the European Union; a legal framework that is not overly complicated and regulators who are approachable, he said.

GLOBAL Re seeks policyholder OK to enter scheme of arrangement

German reinsurer's use of provision may be a first

By STUART COLLINS

COLOGNE, Germany—GLOBAL Reinsurance Co., formerly Gerling Globale Re A.G., plans to contact policyholders this month to seek approval to place part of its reinsurance business into a scheme of arrangement.

Cologne, Germany-based GLOBAL Re expects to send out by the end of September a formal announcement to policyholders proposing a scheme of arrangement for certain parts of its U.K. business, according to Tom Freudenstein, senior vp of GLOBAL Reinsurance Co. and head of the insurer's claims and commutations department.

The company announced its intention to use a solvent scheme of arrangement in December 2006.

Although solvent schemes for reinsurers have become commonplace in the London market, the GLOBAL Re proposal may be the first such action by a German insurer.

"We believe GLOBAL Re to be the first German company using the U.K. solvent scheme process, which will introduce an innovation to the market," said GLOBAL Re's Mr. Freudenstein. "We believe that more German and/or European companies are going to follow that route in the future. Current changes in legislation make it easier and more attractive to do so," he added.

Solvent scheme legislation does not exist in Germany, but GLOBAL Re's reinsurance business with U.K. ceding companies establishes the required "sufficient connection" to the United Kingdom to enable the insurer to place part of its business in a scheme, the company said.

The business affected by the proposed scheme includes various classes of reinsurance business, mainly aviation and liability such as accident, pollution and health. Policyholders are mainly U.K.-based, although some are from other countries, GLOBAL Re said in a statement.

"Using the U.K. scheme proceedings will enable us to close a certain portfolio of reinsurance business and help us accelerate the runoff of the company," Mr. Freudenstein said in an e-mailed statement. "The advantages of the scheme for the creditor are early payment in full, as well as finality and administrative cost savings. Furthermore, the scheme creditors have an opportunity to manage the credit risk imposed by GLOBAL Re," he added.

Global Re policyholders will have a say in whether the proposed

See **GLOBAL RE** next page

Many U.K. continuity plans untested

By SARAH VEYSEY

More than a third of U.K. companies have never tested their business continuity plans, according to a survey.

London-based HSBC Insurance Brokers, a unit of HSBC Bank P.L.C., and the London-based Institute of Directors surveyed 315 Institute members to try to gain an understanding of U.K. business' attitudes to risk and risk management practices.

While 56% of respondents said they had a formal, signed and current business continuity plan, 39% said their plan had never been tested.

Almost half of those companies with a plan, 49%, said their plan had been tested as a rehearsal, while 23% said it had been tested by a real incident. Respondents were allowed to give more than one answer.

Governmental organizations or utilities were most likely to have tested their plans.

Of those organizations that have a continuity plan, 92% include crisis management procedures in the plan and 86% include an allocation of responsibilities within the plan.

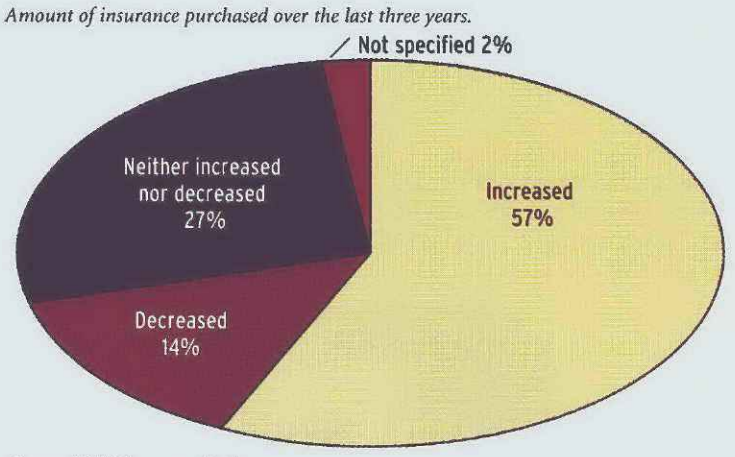
Respondents were also asked to identify the greatest threats to their business in the coming year. More than two-thirds, 70%, said that loss of key staff was a significant threat, while 37% cited litigation or falling afoul of regulation as a significant threat to their business. The insolvency of a client or supplier was considered a significant threat by 27% of respondents, while 24% named fraud a significant threat.

In addition, the survey asked Institute members what was the most significant factor they considered in choosing an insurer. Among the most popular reasons, 24% said service standards, 21% said premium, and 16% said scope of cover.

Respondents were also asked to indicate whether the amount of insurance they purchase had changed over the past three years (see chart).

U.K. INSURANCE PURCHASES INCREASE

Amount of insurance purchased over the last three years.



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Canada: Collective bargaining right upheld

CONTINUED FROM PAGE 3

engage in associational activities and their capacity to act in common to reach shared goals related to workplace issues and terms of employment," the Supreme Court said in its ruling.

The charter also imposes a duty on government employers to agree to meet and discuss workplace issues with their employees and puts constraints on the exercise of legislative powers in relation to collective bargaining, according to the Supreme Court's ruling.

In its decision, the Supreme Court declared unconstitutional a law passed by the British Columbia government that gave health care employers greater flexibility to hire outside contractors and lay off workers, among other things, regardless of any collective agreements in place. The law—known as Bill 29—also voided any provisions of collective agreements that were inconsistent with its provisions. As a result, thousands of health care workers lost their jobs and their unions sued the government.

The Supreme Court's recognition of constitutional protection for collective bargaining makes this a critical decision for labor unions in Canada, lawyers for unions and employers say.

"For me, it's the single most important labor judgment that the Supreme Court of Canada has issued," said Ethan Poskanzer, a senior research lawyer with Toronto-based Sack Goldblatt Mitchell L.L.P., which intervened in the dispute on behalf of the Canadian Labour Congress. "It's important because it recognizes collective bargaining as a fundamental right."

While the charter does not guarantee the particular goals sought through union activity, it protects the collective bargaining process used to pursue those objectives, the Supreme Court ruled. In that respect, any government legislation that interferes with the employer and union's collective bargaining process would at first glance run afoul of the Supreme Court decision, labor lawyers said.

If the government wants to infringe on the right to collective bargaining, it must undergo a multipart test to determine whether the infringement is justified, said Joseph J. Arvay of Arvay Finlay Barristers in Vancouver, who was the lead counsel for the plaintiffs in the dispute. To justify such intervention, the government must prove that the objective is "pressing and compelling," that there must be a rational connection between the objective and the means chosen by the law to achieve the objective, and that it has considered a range of alternatives and concluded that the constraint on collective bargaining is the least restrictive approach, he said.

"The government has to go through quite a few hoops now when it wants to infringe on collective bargaining," Mr. Arvay said.

Unions in other provinces are now seeking to overturn collective bargaining restrictions similar to the British Columbia law declared unconstitutional by the Supreme Court. In a letter sent to Alberta's employment minister earlier this month, Gil McGowan, the president of the Alberta Federation of Labor, said the organization is looking at a potential legal challenge of provincial labor laws that restrict the rights of employees. In light of the Supreme Court decision, a number of the laws "will not survive a court challenge," he said.

"The exceptions that presently exist, unless there is strong justification, will ultimately be invalidated by our courts," Mr. Poskanzer said.

While the charter applies only to government actions, the decision has indirect consequences for private-sector employers with unionized work forces, lawyers say. It adds a heightened level of scrutiny to the way all parties negotiate during the collective bargaining process, they say.

For example, the duty to negotiate in good faith means the employer must respect the exclusive authority of the unions to negotiate salary, pensions and benefits, and other employment issues on behalf of their members and must be forthright and clear in presenting proposals, said George Waggott, an associate in the employment and labor group of Lang Michener L.L.P., which represents management in labor disputes. If the employer refuses to meet with the union or provides false information to union representatives, that would be a violation of that duty, he said.

The Supreme Court decision "raises a new level of inquiry or complexity to how (employers) bargain," Mr. Waggott said.

From a risk management perspective, there will be an increased focus on making sure all procedures for appropriate bargaining are adhered to in order to avoid accusations of bad faith negotiating and potential litigation, lawyers say.

Private-sector employers also may be forced to agree to contract provisions simply to avoid an accusation of bad faith negotiating and possible litigation, lawyers say.

During negotiations, employers may be concerned about completely ignoring the implications of the Supreme Court ruling and may agree to contract provisions they normally would not agree to, Mr. Waggott said.

Costs: Health care cover still outstrips inflation

CONTINUED FROM PAGE 4

the foundation's Health Care Marketplace, and Mary Pittman, president of the Health Research and Education Trust.

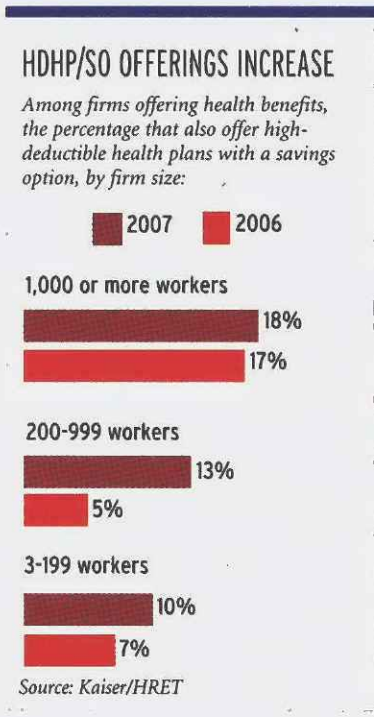
There is some good news in this year's findings, however, according to Mr. Gabel. The rate of increase in employer-sponsored health insurance has been moderating over the past four years, and the 6.1% increase calculated for 2007 was the lowest that it has been since 1999.

But KFF researchers attribute much of the slowdown to the cyclical underwriting cycle rather than to a reduction in health care costs or utilization, and predict the rate of increase will pick up again soon.

"We have seen these peaks and valleys in rates of increase before," Mr. Altman said during the press briefing. "But we've done little as a nation to deal with the underlying cost drivers."

The cost of preferred provider organization coverage was found to be the highest, on average, at $12,443 for family coverage and $4,638 for single coverage. Health maintenance organization premiums were second, at $11,879 for family coverage and $4,299 for single coverage, followed by point-of-service plans, in which premiums averaged $11,588 for families and $4,337 for singles, and high-deductible health plans at $10,693 for families and $3,869 for singles.

HDHPs linked to health reimbursement arrangements, to which only employers can make contributions, cost more than those linked to health savings accounts, the KFF researchers found: $11,492 for family coverage and $3,894 for single coverage, compared with $9,666 for family coverage and $3,826 for single coverage, respectively. Part of the reason for the lower costs was that more than half of individuals enrolled in HSA-qualified plans did not receive any contributions to those accounts from their employers, the researchers noted.



Even though high-deductible health plans were found to cost less than other, traditional types of health care coverage, only about 10% of employers offer them and just 5% of the working population has enrolled in the plans, a proportion that is statistically the same as in 2006.

"They're new and it always takes a while for new products to catch on," said Mr. Claxton. Another deterrent has been HDHP's complexity, he said, suggesting that many employers aren't offering them yet because they are difficult to explain to employees.

But, perhaps the biggest impediment to the growth of HDHPs has been the moderation in premium increases over the past four years, according to Mr. Claxton.

"The moderation in premiums has not pushed employers to make changes," he said.

The complete survey results are available on the KFF Web site at *www.kff.org*.

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GLOBAL Re: London-type plan for German reinsurer

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scheme goes ahead. In addition to the practice statement letter, there will be a formal court-approved process for notifying policyholders of meetings of creditors, at which they can vote on whether the scheme should be approved.

The scheme becomes legally binding on the company and the policyholders if creditors representing more than 75% of the value of liabilities at the creditors' meeting vote in favor.

Policyholder notification

"We will be approaching policyholders to discuss the scheme proposals in advance of the formal notification of the creditor's meetings, and the practice statement letter will provide contact details so that any policyholder who wishes to do so can contact us to discuss any aspect of the proposals," Mr. Freudenstein said.

Once the scheme is in effect, policyholders will have to submit their expected claims by a certain date. Should the company not agree a policyholder's claim, it will be forwarded to an independent expert who will determine its value.

Gerling Globale Re, which formerly was the sixth-largest reinsurer worldwide, ceased underwriting nonlife reinsurance in October 2002. The reinsurer was part of Cologne, Germany-based insurer Gerling Group until 2003 when it was sold to a runoff company and changed its name to GLOBAL Reinsurance Co.

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Safe harbor: Labor Department issues guide for retiree annuity plans

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bution plans. The Pension Protection Act of 2006, however, made clear that the bulletin applied only to defined benefit plans and required the department to issue regulations clarifying that.

Given that the fiduciary standards set forth in Interpretative Bulletin 95-1 do not apply to the annuity provider selection process for defined contribution plans and concerns over fiduciary liability, the Labor Department proposed separate guidelines and protections in hopes of encouraging more employers to offer annuity-linked 401(k) plans

Growing concern over whether retirees will outlive their retirement savings has prompted a number of plan sponsors to look at 401(k)-linked annuities and financial services firms to introduce annuity products linked to 401(k) plans, but few employers actually offer such an option (see story, page 25).

Although the Labor Department says the safe harbor "may encourage" more plans to offer an annuity alternative, it also notes that a number of other factors may influence a plan sponsor's decision and estimates that the share of participants offered an annuity would increase by only one percentage point as a result of the safe harbor.

Some consultants agree the impact will not be great, but say the safe harbor does eliminate another barrier that may have hindered plan sponsors from offering an annuity option.

"It perhaps removes another impediment to plan sponsors offering annuities in defined contribution plans...but I don't think it's going to have a huge impact," said Bill McClain, a principal with Mercer L.L.C. in Seattle.

"I think there are other considerations that are probably weighing more heavily on plan sponsors" such as administration, implementation and historical low employee participation rates in annuities as part of defined contribution plans, Mr. McClain said.

"What really is needed is a mindset change of both plan sponsors and the participants themselves into viewing a 401(k) plan not just as an accumulation vehicle, but as a way of securing a retirement income flow," said Mark Warshawsky, director of retirement research for Watson Wyatt Worldwide in Arlington, Va. "Once that mindset change occurs, I think you'll see a lot more annuity offerings."

"The Department of Labor says this isn't (the tipping point) and it may be right, but we may be closer than we think," Mr. Warshawsky said. "I think there's going to be more of an impact than what the DOL said."

Under the proposal, plan sponsors must take several steps when it comes to the annuity provider selection process, including conducting an objective, thorough and analytical search to identify and select providers (see box).

Full versions of the proposed regulations and interim final rule are available at *www.dol.gov/ebsa*. Written comments must be submitted by Nov. 13.

REQUIREMENTS

Under the Department of Labor's proposed safe harbor rules concerning the annuity provider selection process, defined contribution plan fiduciaries must:

- **Conduct an objective, thorough and analytical search to identify and select providers.**
- **Consider the need to engage an expert to assist in its evaluation of providers.**
- **Appropriately conclude that the annuity provider would be financially able to make all future payments under the contract, and that the cost of the contract is reasonable in relation to the benefits and services to be provided under the contract.**

Bias: Bid to beat time bar for claims overturned

CONTINUED FROM PAGE 4

employees who were eligible and selected for termination and the age of all individuals with the same job status or within the same business unit who were not terminated. Viacom never provided that information to Mr. Ruehl, as required by the Older Workers Benefit Protection Act, according to court papers.

To file an ADEA lawsuit, plaintiffs generally must first file a grievance with the EEOC between 180 and 300 days—depending on state law—after receiving notice of the termination.

In many jurisdictions, however, a plaintiff who fails to file a timely EEOC claim can preserve his or her court claim by piggybacking on an existing collective action court claim against the employer over the same mass layoff. A collective action claim is similar but not identical to a class action. Among other differences, plaintiffs have to opt into collective actions, attorneys say.

Mr. Ruehl did not file an EEOC claim. Instead, in March 2001, he attempted to opt into a preliminarily certified collective action lawsuit against Viacom.

The federal court in that litigation, however, decertified the collective action in December 2002 after determining that the plaintiffs' cases were not similar enough to be combined. Mr. Ruehl first filed a complaint with the EEOC in October 2003 and his own ADEA lawsuit in January 2004.

Viacom objected, but a federal court in Pittsburgh ruled that Mr. Ruehl's case could proceed under the so-called "single filing rule," or piggybacking rule, because the lead plaintiff in the decertified collective action had filed a timely EEOC claim. The former lead plaintiff's case is proceeding as an individual lawsuit.

The lower court also ruled that Mr. Ruehl was entitled to additional time to file his EEOC claim because Viacom deceived him by not disclosing the material required by the OWBPA.

But the 3rd Circuit panel overturned both findings.

Unlike the 2nd Circuit, the 3rd Circuit panel already had ruled in a 1995 case that plaintiffs cannot invoke the single filing doctrine to piggyback onto individual lawsuits. Other circuits that have ruled similarly to or support the 2nd Circuit are the 5th, 6th, 10th and 11th Circuits, according to employer attorney Scott Faust, a partner at McDermott, Will & Emery L.L.P. in Boston.

The 3rd Circuit panel expanded the court's piggybacking restrictions by rejecting Mr. Ruehl's argument that his case should be allowed to proceed because he attempted to opt into a case when it had preliminary collective action status. That case's ultimate decertification meant that plaintiffs who want to continue pressing their claim had to have filed timely EEOC claims to give the agency and Viacom an opportunity to resolve the claims short of litigation, the panel ruled.

Those individual EEOC claims would not necessarily have been fruitless, even though the agency could not resolve the preliminarily certified collection action, because an individual case involves different allegations and defenses, the panel ruled.

"The 3rd Circuit continues to beat the drum of a minority point of view," as many other federal appeals courts would have allowed Mr. Ruehl's case to survive, said employer attorney Jeremy J. Glenn, a partner at Meckler Bulger & Tilson L.L.P. in Chicago.

The court ruled that Viacom's violation of the OWBPA does not entitle Mr. Ruehl to additional time to file an EEOC claim, because everyone has access to the law and cannot be deceived about their legal rights if they are diligent.

Mr. Ruehl's attorney, Gary Lynch of Carlson Lynch Ltd. in New Castle, Pa., said no decision about a potential appeal has been made.

James H. Ruehl vs. Viacom Inc., 3rd U.S. Circuit Court of Appeals, Sept. 7; No. 06-1463.

Retirees: Clear plan language needed

CONTINUED FROM PAGE 4

ers from adopting, modifying or terminating welfare plans at any time and for any reason.... However, it requires that employers meet certain procedural standards when they do so," says the unanimous opinion by the three-judge panel, which affirmed a lower court ruling.

The court agreed with plaintiffs that Bowater did not terminate its responsibility with the 1999 sale.

Bowater argued that because the sale purchase agreement was signed by Bowater's chief financial officer, who is authorized to amend or terminate its benefit plan, it satisfied ERISA's procedural requirement for terminating responsibility, according to the decision.

While Bowater is correct "that it could have amended or terminated its plan in its (sale purchase agreement) with Inexcon, the language of that document did not clearly do so," the decision says.

The court also disagreed with Bowater that the sale meant the benefit plan was automatically terminated. In none of the legal decisions cited by Bowater to support this position "did the mere fact of a sale automatically terminate a parent company's responsibility for its subsidiary's employee welfare benefit plan," the decision says.

In January 2003, however, Bowater established the Bowater Inc. Benefit Plan to replace the various plans under which its employees received health and welfare benefits, according to the decision. The new plan's language said that it "supersedes and replaces any program document defining the terms of, or describing a benefit program that is not incorporated and made part of the plan."

'If there is a take away for business in the decision,' it is that if employers 'want to terminate a plan, they should do it explicitly in the proper documentation.'

Stephen D. Rosenberg, McCormack Firm L.L.C.

The court agreed with Bowater that this terminated its responsibilities for the retirees' health coverage despite plaintiffs' claims that the language applies only to informal documents that were not incorporated into the new plan.

"From Bowater's perspective, this was very much a victory," said defense attorney Reginald R. Goeke, of Mayer Brown L.L.P. in Washington, who represented Bowater in the litigation.

Plaintiffs attorney Leon Dayan, of Bredhoff & Kaiser P.L.L.C. in Washington, had no comment.

Employer attorney Stephen D. Rosenberg, of the McCormack Firm L.L.C. in Boston, who was not involved in the case, said the decision is "consistent with the sort of fact-intensive focus that the 1st Circuit has shown" when it comes to issues involving ERISA.

"If there is a take away for business in the decision," it is that if employers "want to terminate a plan, they should do it explicitly in the proper documentation," said Mr. Rosenberg.

Secondly, "if you're purchasing or selling an asset and you want to resolve outstanding ERISA plan benefits of those assets, you've got to do it in a clear document, not just assume it's implicitly covered in the sale documents. That's just not going to get the job done," Mr. Rosenberg said.

Artemis Coffin, et al. vs. Bowater Inc., et al., 1st U.S. Circuit Court of Appeals, Nos. 06-1964, 06-2101

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Regulation: Battle brews over federal pre-emption of state authority

CONTINUED FROM PAGE 3

"As several of today's witnesses suggest, when this administration could not get Congress to legislate its anti-consumer agenda, it acted unilaterally through its executive agencies," Sen. Leahy said.

Among proposals suggested by witnesses were mandatory consultations between elected officials at the state and local levels and authorities at the federal level before any federal law or rules are considered that would interfere with traditional state or local rights and responsibilities; making congressional intent clear in any bill addressing federal safety and health agencies; and considering federal laws that would limit implied pre-emption.

But Alan E. Untereiner, a partner in the Washington law firm of Robbins, Russell, Englert, Orseck & Untereiner L.L.P., disagreed that pre-emption should be scaled back, holding that regulatory uniformity is necessary for the health of the national economy. The ability of federal regulators to pre-empt local and state law "is critically important to the business community," he said.

"We live in a large and sprawling country that is rich in many things—including government," said Mr. Untereiner, who appeared before the committee on behalf of the U.S. Chamber of Commerce. "This multiplicity of government actors below the federal level ensures that business with national operations will be subject to complicated, overlapping and sometimes even conflicting legal regimes," he said. "These overlapping regulations have the potential to impose undue burdens on interstate commerce."

A pro-free market legal expert who was not involved in last week's hearing agreed that regulatory uniformity is a must for business.

"Uniformity in the law is a critical part of how businesses are able to function in this country," said Glenn Lammi, chief counsel-legal studies division at the Washington Legal Foundation, a free market-oriented think tank. "We have 50 different states for products and services that are sold in an interstate market. It would be rather corrosive to have 50 different standards for a lot of business conduct."

Three of the five witnesses before the committee, however, agreed with Sen. Leahy's contention that the federal government has gone too far in pre-empting state tort law via federal regulation.

"Displacing state law is no trivial matter," said David Vladeck, a professor at the Georgetown University Law Center in Washington. He urged Congress "to wrest back the power" to rein in federal agencies' regulatory powers.

The hearing followed the release of a report prepared by Mr. Vladeck and three other legal experts for the nonprofit Center for Progressive Reform. The report said that federal "agency" pre-emption of state law allows corporations to evade responsibility for harm done to consumers.

'What's at stake is whether we're going to have the tort system in combat with regulatory policy.'

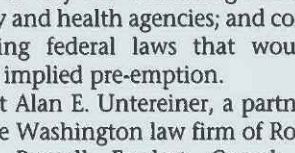
Victor Schwartz,
American Tort Reform Assn.

A longtime consumer advocate who did not appear before the committee said federal agencies simply aren't designed to perform tort functions.

There are "many problems" with agency pre-emption, "but the biggest one from a policy perceptive is that federal health and safety agencies were not established to compensate people who are injured by dangerous or defective products," said Pamela Gilbert, a named partner in the Washington law firm Cuneo Gilbert & LaDuca L.L.P. and former executive director of the Consumer Product Safety Commission. "The agency mission is entirely different, so their rules shouldn't override the ability of injured people to seek redress."

A tort reform advocate who was not among the witnesses said there is no inherent conflict between the regulatory and tort systems.

"What's at stake is whether we're going to have the tort system in combat with regulatory policy," said Victor Schwartz, general counsel of the Washington-based American Tort Reform Assn. "I believe the two should complement each other, not be at loggerheads. Pre-emption is very selective—it doesn't block all product liability claims," including those alleging fraud, deceit or defective design.



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NAIC: State regulators weigh in on collateral for non-U.S. reinsurers

CONTINUED FROM PAGE 1

of insurers, reinsurers and risk managers.

Many observers, who are continuing to review the proposals, plan to present their written comments to the NAIC's Reinsurance Task Force by the Sept. 21 deadline in advance of a Sept. 29 task force meeting in Washington.

Prompting the NAIC's new proposals "is an interest by regulators in re-evaluating the regulatory framework for reinsurance" in light of a number of changes in the insurance and reinsurance marketplace. Those changes include globalization, more transactions among affiliated reinsurers and "significant advancement" in developing international accounting standards, the NAIC said.

Essentially, the proposals would require a financially secure non-U.S. reinsurer to undergo a voluntary, two-step review process to write coverage in the United States. If accepted, the reinsurer would have to post collateral ranging from 60% to more than 100% of its U.S. liabilities. The proposed minimum collateral amount is far less than the 100% collateral that U.S. regulators currently require, but substantially higher than the zero minimum that NAIC members considered earlier this year.

By contrast, the latest NAIC proposals would require a typical reinsurer authorized in the United States and subject to U.S. regulation to post collateral only if it were considered financially troubled. Currently, U.S.-based reinsurers post no collateral.

A typical non-U.S. reinsurer would begin the process by asking a new NAIC Reinsurance Supervision Review Department to determine the extent to which regulation in the reinsurer's home jurisdiction is "functionally equivalent" to U.S. regulation, although the term's definition is still being worked on.

Then the non-U.S. reinsurer would apply for certification from a "port of entry" state. To obtain that designation, a state must meet undefined minimum guidelines to be developed by the new department.

The state regulator conducting the certification process would review information about the financial strength and operating integrity of the reinsurer and then assign one of five categories with collateral amounts of 60%, 70%, 80% and 100% or more.

As part of the process, a reinsurer also would have to agree to several legal requirements, including submitting to the jurisdiction of U.S. courts.

"The mutual recognition principles are the best articulation of NAIC policy ever in this area," Bradley Kading, the Washington-based president and executive director of the Assn. of Bermuda Insurers and Reinsurers, said in an e-mail. "At last, the NAIC has a policy statement that may guide its work at the International Assn. of Insurance Supervisors."

The IAIS supports countries having uniform standards and granting reciprocal market access. The NAIC plan borrows from earlier IAIS proposals.

The NAIC's principles are a good start, although some are very confusing, said Michael Koziol, assistant vp and counsel for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

'The mutual recognition principles are the best articulation of NAIC policy ever in this area.'

Bradley Kading,
Assn. of Bermuda Insurers & Reinurers

In addition, the Washington-based Reinsurance Assn. of America considers the NAIC's latest plan an improvement over earlier proposals because it "fully recognizes the value" of U.S.-licensed reinsurers that are subject to U.S. solvency regulation, said President Frank Nutter. Such U.S.-licensed companies would not have to post collateral unless they received the lowest rating, which would require posting 100% or more collateral.

Yet, several observers cited concerns with the NAIC plan.

"Under the proposal, most of the non-U.S. reinsurers would operate with a 70% collateral requirement," Mr. Kading said. "That's not meaningful relief considering the heavy regulatory compliance burden created."

A European reinsurance executive at the Rendez-Vous de Septembre in Monte Carlo, who asked not to be identified, complained about the inequality of having to post collateral in the United States while U.S. reinsurers did not face a similar requirement in Europe. He also said the port-of-entry concept may be bureaucratically cumbersome.

In a statement, Swiss Reinsurance Co. said it is disappointed that the proposal does not provide collateral relief for affiliated transactions in those situations where the parent company is domiciled outside the United States.

In such situations, "there is already a lot of regulatory oversight" through U.S. laws, including state laws that govern holding companies, Mr. Nutter said.

Having the NAIC, a nonprofit trade association, determine the functional equivalence of other countries' regulatory systems is "fraught with problems," said Wayne Salen, a member of the New York-based Risk & Insurance Management Society Inc.'s external affairs committee. He also is director of risk management for West Palm Beach, Fla.-based Laborfinders International Inc., a temporary staffing agency for construction workers.

Reinsurance Task Force Chair and Georgia Insurance Commissioner John Oxendine, however, said observers disagree about whether the NAIC has the authority to impose its rules. The NAIC's legal staff rendered an opinion on the issue but considers it confidential and has given it only to regulators, he said.

Regulators are aware of critics' concerns that non-U.S. reinsurers might shop around to obtain the most favorable treatment among port-of-entry states, he said.

"We've got to get uniformity," in the minimum standards for that designation or face "a race to the bottom" as states compete to attract non-U.S. reinsurers to domicile there, Mr. Oxendine said.

In addition, a provision that would allow a ceding company's home state regulator to overrule the rating given by a non-U.S. reinsurer's port of entry regulator "is still being massaged" and "will undergo some change," he said.

Mr. Oxendine said he hopes the NAIC will adopt a model law to alter its reinsurance regulation sometime next year, although states would have to individually adopt the changes regulating how cedents can take credit on their balance sheets for risks they transfer via reinsurance.

Sarah Veysey at Business Insurance Europe contributed to this story.

Reform: Calif. efforts to hinge on voters

CONTINUED FROM PAGE 1

said at a press conference announcing the special session. He was referring to the Kaiser Family Foundation/Health Research and Education Trust 2007 Employer Health Benefits Survey, which was released last week (see story page 4).

The survey found that premiums increased 6.1% on average last year and that family health care coverage cost $12,000—the equivalent of a year's salary for an individual earning the federal minimum wage of $5.85 an hour.

However, the governor acknowledged that, because of the two political parties' philosophical differences over how to finance health reform, "the only way we can really create the funding mechanism is...to take it to the people, take it on the ballot."

"That's what we have done with infrastructure bonds, and that's exactly what we want to do with health care reform," Gov. Schwarzenegger said.

On Sept. 12, Assembly Speaker Fabian Nunez, D-Los Angeles, appointed a special committee to work directly with Gov. Schwarzenegger on a compromise reform package.

Most observers of the California political scene who doubted lawmakers would be able to work out a reform before year-end are now more confident that something tangible will come out of the special session.

"I never imagined California to be the state to follow Massachusetts because it's got so many uninsured and is not in a strong fiscal position," said Paul Ginsberg, director of the Center for Studying Health System Change in Washington.

But Chris Wadley, a vp at Aon Consulting in Los Angeles who has been closely following the debate over health care reform efforts in California, said he sees "some compromises here on both sides in the interest of getting something now and working around the roadblocks."

Gov. "Schwarzenegger is breaking new ground in terms of strategy," Mr. Wadley said.

"The plan that's announced is the governor and enough of the Legislature will reach a legislative agreement, a bill the governor will sign that will contain the framework for health reform, and, in that process, almost certainly, the single focus of the current legislation of only businesses (being targeted) is going to be moderated," he said.

"I think the governor and the Legislature both realize they don't have the votes to get the necessary taxes, so they're going to introduce a ballot initiative and let the people vote" on how to finance health reforms, Mr. Wadley added.

Kirby Bosley, West division practice leader for Watson Wyatt Worldwide in Los Angeles, said she thinks "there could be a compromise on broad general objectives related to improving health, safety and to encourage employers to offer wellness programs."

"This is unique in that they're taking it off the table and trying to compromise," Ms. Bosley said.

"We're very hopeful that we will be able to reach an agreement on responsible reform," said Michael Shaw, the Sacramento-based state legislative director for the California chapter of the National Federation of Independent Business.

By contrast, labor interests were disheartened by the governor's announcement that he would put the financing component of the reforms before voters in November because it further delays implementation of any measure that is eventually enacted.

Labor groups will hold media events beginning this week to press California lawmakers to maintain the principal elements of A.B. 8—namely the employer mandate and tax—according to a spokeswoman for the Sacramento-based California Federation of Labor.

"We're not sure how this will benefit Californians to put it off. We were promised comprehensive health reform before the end of this year. Now the governor's dragging his feet. It's a little disappointing and a little disturbing," the spokeswoman said.

HRH: Broker expands

CONTINUED FROM PAGE 3

merged it with several other insurance agencies. In May, Bank of America retained Banc of America Securities L.L.C. as adviser on a possible sale of BACIA.

"For acquisitions, an opportunity like this is few and far between," said Tim Cunningham, a partner at OPTIS Partners in Chicago. "You just don't have that many $10 million to $100 million firms to choose from."

At least one analyst sees longer-term benefits for HRH.

"In the short run, it doesn't make a whole lot of difference to earnings" during HRH's integration and amortization of the BACIA assets, said Mark Dwelle, senior vp and equity analyst at Ferris Baker Watts Inc. in Richmond, Va. "In the immediate term, there's not a lot of impact." But, in a year or later, when market conditions firm again, HRH "will have that much larger an engine to grow."

Earlier this year, BACIA opened an office Hartford, Conn., and announced a series of hires in its Boston office.

BACIA has undergone management changes in the past year, seeing its top two executives depart. Tom Sharkey Sr., BACIA's ex-chairman, this summer announced he would resurrect his former firm, Meeker Sharkey Associates, saying he was dissatisfied with Bank of America's direction for the agency subsidiary (*BI*, Aug. 8).

Mr. Sharkey's son, Tom Sharkey Jr., had served as BACIA's president and CEO before stepping down in 2006.

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Insured loss from Humberto less than $1B: Modelers

PORT ARTHUR, Texas—Insured property damage from Hurricane Humberto should be less than $1 billion, according to catastrophe modelers.

Humberto made landfall in southeastern Texas as a Category 1 hurricane early Thursday morning and crossed into Louisiana. The storm passed close to Port Arthur, Texas, a center of petroleum refining operations, some of which were impacted by the storm, according to Oakland, Calif.-based modeler EQECAT Inc. EQECAT estimates that insured damage will be less than $1 billion.

Newark, Calif.-based Risk Management Solutions Inc. said it does not expect total insured losses associated with Hurricane Humberto to exceed $500 million.

That figure includes wind damage to residential, commercial and industrial properties, along with business interruption losses resulting from power outages or damage to property.

—By Mark A. Hofmann

Workers comp: N.Y. rethinks controversial mandate

CONTINUED FROM PAGE 1

New York and the length of time spent working there.

Mr. Carbone could not say why legislators wanted New York's practices changed. But he noted there have been instances of out-of-state contractors failing to have adequate insurance when hiring New York-based subcontractors with New York employees.

Eliminating uninsured contractors is an admirable goal, but the board would have unfairly burdened other employers, the IIABNY spokesman added.

The mandate theoretically could have required employers to purchase insurance policies specifically naming New York as a covered state for employees merely changing planes while traveling through one of the city's airports, the IIABNY spokesman said.

Even if an employee traveling through New York did not stop to conduct any business in the state, the person's employer would have had to obtain the coverage, said Gary Henning, assistant vp for the American Insurance Assn. in Albany, N.Y.

"There seems to be all sorts of problems with this," including how to properly underwrite and price coverage, Mr. Henning added.

One problem for employers would have been the potential fines.

A statutory penalty of $1,000 for each 10 days that an employer failed to obtain appropriate coverage was possible, Mr. Carbone said.

In addition, an employer with five or fewer employees could be found guilty of a misdemeanor and fined an additional $5,000. Employers with six or more employees faced felony charges and an additional $50,000 in fines. Additionally, employers without appropriate workers compensation coverage could be sued by a New York employee in civil court.

But with the board reconsidering how to restructure its policy, enforcement appears to be on hold, a source said.

Enforcing a mandate requiring out-of-state employers to purchase certain coverage would ultimately prove difficult anyway.

The IIABNY spokesman said that the only way the board would learn that an out-of-state employer did not purchase insurance with specific New York coverage is if one of the employer's workers suffered an injury and filed a claim.

Even then, the employee would have to file the claim in New York rather than in their home state, the spokesman acknowledged.

Still, as a sign of widespread concern over the issue, the IIABNY received several telephone calls from broker organizations in other states seeking information, the spokesman said.

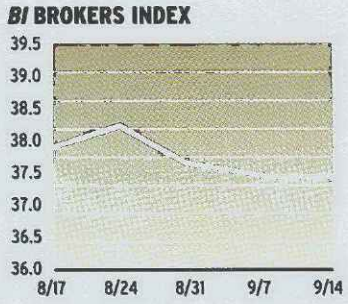
Stock Index

[9/7- 9/14]

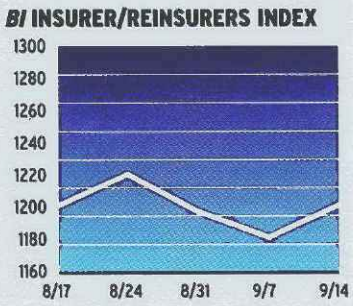
Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

BI STOCK INDEX

BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



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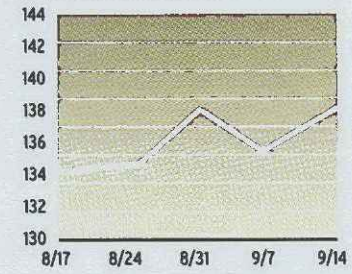


Percentage change of BI *Stock Index vs. key indicators*

BI STOCK INDEX	3252.58	▲ 1.55%
DOW JONES	13442.52	▲ 2.51%
S&P 500	1484.25	▲ 2.11%

LARGEST GAINS

Fairfax Financial Holdings	14.18%
Aspen Insurance Holdings	6.13%
Lincoln National Corp.	5.54%
SCPIE Holdings Inc.	5.24%
RenaissanceRe Holdings	5.23%

LARGEST LOSSES

UNICO American Corp.	-4.70%
CNA Financial Corp.	-3.99%
CNA Surety Corp.	-3.98%
Endurance Specialty.	-3.52%
Berkley Corp.	-2.77%

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

News In Brief

CONTINUED FROM PAGE 1

executive officer of the Americas, was leaving the brokerage to join Integro Ltd., Integro last week said that the deal is off. Although the 18-year Marsh veteran had resigned from the world's largest brokerage to join Integro, he changed his mind, a Marsh spokesman said.

UnitedHealth requests end to options probe

UnitedHealth Group Inc. has asked a state appeals court to halt an inquiry by Minnesota Attorney General Lori Swanson into the insurer's backdating of stock options. UnitedHealth asked the Minnesota Court of Appeals to reverse a lower court's ruling allowing the probe to proceed. UnitedHealth had asked the lower court for a protective order blocking the investigation last year after Ms. Swanson demanded documents and other information related to the backdating. The appeals court is expected to rule within 90 days.

NCCI calls for 16.8% drop for Hawaii comp rates

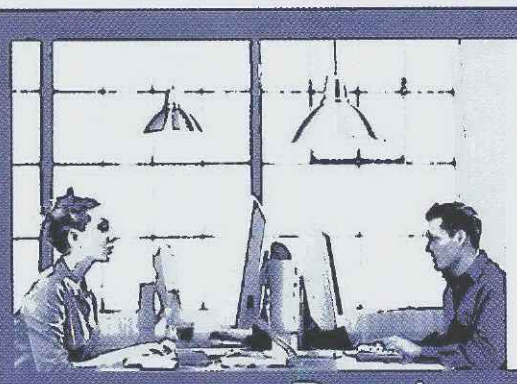
NCCI Holdings Inc. has requested a 16.8% workers compensation loss-cost rate decrease for 2008 policies, Hawaii's Insurance Division announced. The call for a rate decrease beginning Jan. 1, 2008, follows a reduction in claim frequency during 2005, the last year for which complete claims data is available, the division said. "Claim frequency has continued to drop due to the great efforts of Hawaii's employers in providing a safer workplace for our workers," Hawaii Insurance Commissioner J.P. Schmidt said in a statement.

Former regulator starts jail term

Former Insurance Commissioner Carroll Fisher surrendered to authorities at the Oklahoma County, Okla., jail last week after losing his appeal in a corruption case. The Oklahoma Court of Criminal Claims earlier voted 5-0 to uphold his conviction in a 2006 jury trial on charges of perjury and embezzlement from his campaign funds. He was sentenced to three years in prison and fined $20,000. Mr. Fisher, 67, had been under house arrest. Mr. Fisher resigned in 2004 after the state House impeached him on allegations including corruption and neglect of duty.

Humana to buy benefits administrator

Humana Inc. plans to acquire KMG America Corp., a group and voluntary insurance benefits provider and third-party administration company, for $187.7 million. The deal is expected to close in the first quarter of 2008, according to Humana. KMG provides life and health insurance products and services to 1.1 million group and individual members across the United States. The company also provides stop-loss coverage, TPA and medical management services to self-insured employers.



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Contributing: Doug McLeod, Dave Lenckus, Joanne Wojcik, Louise Esola

Aon game to support Canadian scholars

World domination in exchange for $5,000 in scholarship money?

That seems to be the case at a tournament this week at Dalhousie University in Halifax, Nova Scotia, where the winner of a series of games of Risk will take the grand prize to apply to his or her college tuition.

Hosted by Toronto-based brokerage Aon Reed Stenhouse Corp., roughly 200 risk management students are expected to play the game in which players—based on the roll of the dice to move their armies—try to take over the world that, based on an antiquated map, is divided into 42 territories. The tournament coincides with the RIMS Canada conference, which is being held in Halifax this week.

Aon has promised $5,000 in scholarship money to the winner, $2,500 for second place and $500 for third place.

The brokerage also has imposed rules for the battle: No alliances, hinting or negotiations are allowed. Each player's turn is limited to 2½ minutes. And dice must be rolled—"not dropped, jumped, thumped, pelted or skirted."

"Only dice provided by Aon will be used," the policy states.

Paris hot about Hallmark card

Paris Hilton says her image is too hot to touch, so she wants Hallmark Cards Inc. to cool it.

The Hilton Hotel heiress and celebrity has sued Kansas City, Mo.-based Hallmark for using her image on greeting cards without authorization.

One $2.49 card, titled "Paris's First Day as a Waitress" depicts Ms. Hilton warning a customer not to touch a plate she's serving because it is hot. When the customer asks what is hot, Ms. Hilton's character replies, "That's hot"—a catchphrase often used by Ms. Hilton.

The card uses a picture of Ms. Hilton's face over a cartoon body.

In a federal complaint filed Sept. 6 in Los Angeles, Ms. Hilton charges that Hallmark wrongfully utilized her name and identity. The card violated her rights of "privacy and publicity, her exclusive property rights and her personal rights in and to the use of her name and likeness."

Ms. Hilton seeks at least $100,000 of compensatory damages, unspecified punitive damages and all profits from the sale of the card. But her complaint asserts Hallmark has caused her "great and irreparable injury for which there is no adequate remedy at law."

In a statement, Hallmark said: "Some of Hallmark's new humor greeting cards are parodies of today's most popular celebrities and politicians. These cards take a satirical look at news and gossip surrounding these public figures, including Paris Hilton, and we do not believe Hallmark has violated any of Ms. Hilton's rights."

THESMOKINGGUN.COM

A lawsuit against Hallmark doesn't see this parody as too cool.

Video game from Humana aims to make couch potatoes healthier

Humana Inc. is developing easy-on-the-joints, sweat-free ways to boost consumer health: Video games.

The Louisville, Ky.-based health benefits provider says its Games for Health initiative is intended to provide guidance and motivation by using video game technology.

The company is working with Digitalmill Inc., a Portland, Maine, gaming industry consultant and inventor of Serious Games, which are programs intended to improve public policy through game-based learning and simulation.

Humana also has tapped the University of Southern California's GamePipe Laboratory, where researchers are developing virtual world games that promote real-world exercise.

An effort with Oakmont, Pa.-based Touchtown Inc. will focus on boosting the health and mobility of seniors and reducing obesity among children.

Humana, which launched the initiative earlier this month, plans to spend next year developing its games, according to a company statement.

"When you think of video games, you typically think of 'couch potatoes' sitting in front of the TV, playing for hours," Grant Harrison, vp of Humana's Integrated Consumer Experience, said in the statement. "We don't see the future that way. We see health games changing behaviors, basically the way families learn and engage in physical activity to improve their health."

Unum sponsors football injury report

In Major League Baseball, calls to the bullpen often are sponsored by phone companies. Rolaids has long sponsored an award for the best relief pitchers of the year. And the 15th pitch of a game may bring a reminder that a 15-minute call to GEICO can save you money on car insurance.

So it makes sense that accident and health insurer Unum Group would expand its sponsorship of ESPN's nightly baseball "Injury Report" to college football.

As of last Friday, the insurer launched the "Unum Injury Report" during ESPN's "College Football Live" broadcast, updating college players who are hurt, the nature of their injuries and their projected return dates.

The injury reports will be supplemented with Unum commercials on ESPN, ESPN2, ESPNews and affiliates of the TV sports network's majority owner, ABC Inc., in the multimillion-dollar campaign.

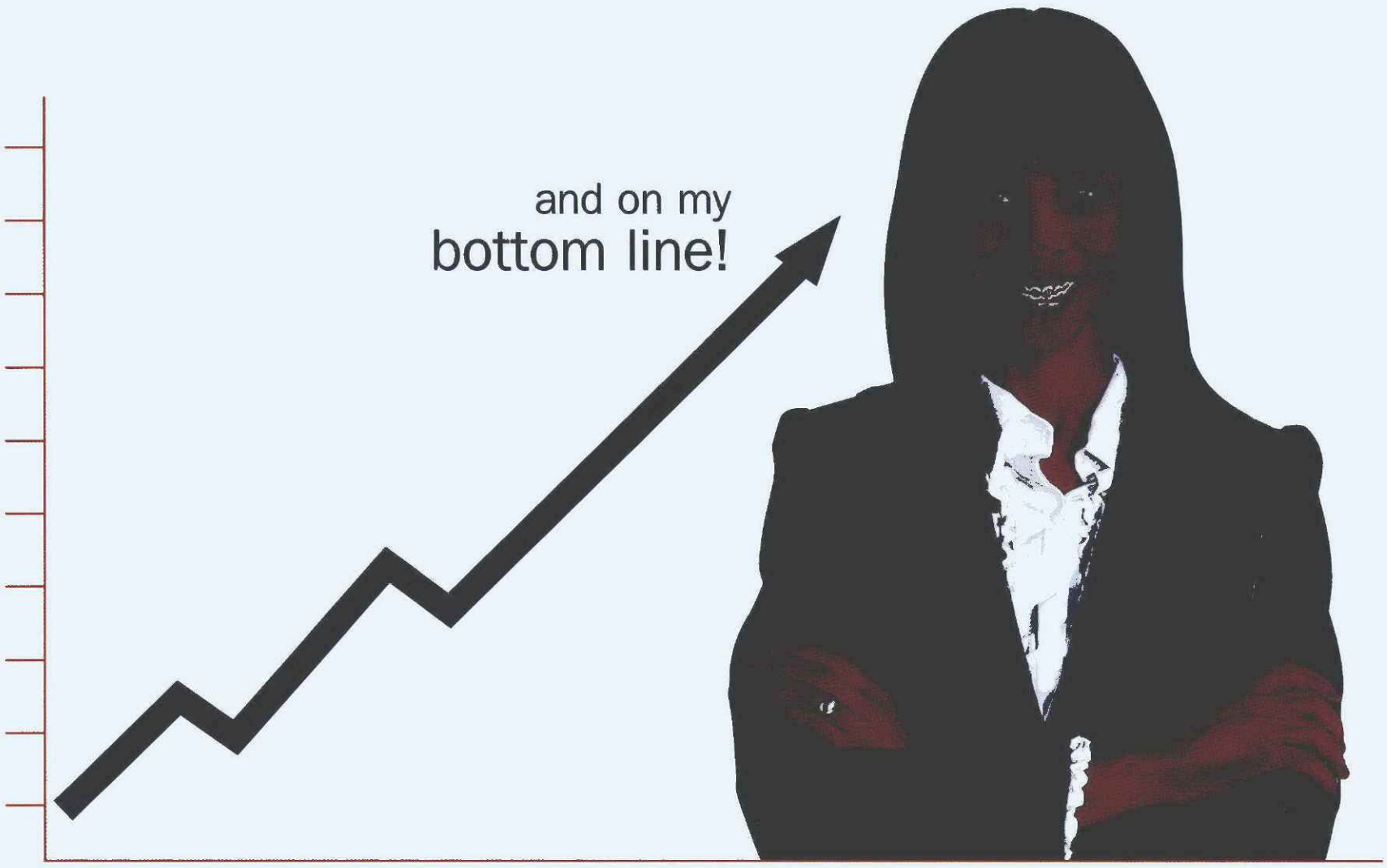
Earlier this year, Unum became the sole "Injury Report" sponsor on ESPN's "Baseball Tonight" show.

It's all about branding, according to Joseph Foley, Unum's senior vp and chief marketing officer.

"ESPN's exceptional college football programming gives us yet another avenue to increase awareness of the full range of benefits we offer," Mr. Foley said in a statement.

As Unum and others are proving, sports marketing possibilities seem unlimited. How about a recap of losing home games sponsored by a catastrophe modeling company?

Having **CBIZ employee benefits advisors** on my team
helps me stay focused on my core business...



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