

TRAVELERS AGREES TO SETTLE INVESTIGATION INTO INDUSTRY BID RIGGING / PAGE 3

JUDGE BLOCKS REQUEST FOR BUFFETT DOCUMENTS IN GEN RE TRIAL / PAGE 3



9th CIRCUIT DELIVERS FAVORABLE RULING TO UPS ON SAFETY STANDARD / PAGE 4

In Brief

Cephalon seeks to use captive to fund benefits

A major biopharmaceutical company is asking the Labor Department for permission to fund employee benefit risks through the Vermont branch of its Bermuda-domiciled captive insurer. Cephalon Inc., which is based in Frazer, Pa., wants to reinsure group term life, accidental death and dismemberment and long-term disability policies written by Prudential Insurance Co. of America and which cover about 2,100 employees.

Bush signs bill to extend TRIA

President Bush has signed legislation extending the federal terrorism insurance backstop for seven years beyond its scheduled Dec. 31 expiration. H.R. 2761 also allows the program to

See **IN BRIEF** page 22

Marsh shakes up broker management

Realignment of North American and international business brings new faces, exits

By **SALLY ROBERTS**

NEW YORK—The revolving door within Marsh Inc.'s executive ranks continued to swing last week with news that Philip Moyles, Marsh's recently appointed chief executive officer of the Americas, and Mark Feuer, chief operating officer of U.S. operations, had resigned and that a new senior management team had been put in place.

It was the second major overhaul of the New York-based broker's upper management following the September ouster of CEO Brian Storms and the first major move

under new CEO Daniel Glaser, who joined Marsh last month.

Coinciding with the management changes, Marsh said it is reorganizing its global structure by consolidating its business into two geographical divisions—United States/Canada and International.

Among management changes as part of the realignment:

- Marsh tapped Joseph M. McSweeney—a former



NEW INVESTOR: Speculation over MMC's future mounted after activist investor Nelson Peltz took a stake in the brokerage. Page 21

chairman of Willis Risk Solutions, the North American large accounts practice of Willis Group Holdings Ltd.—to serve as president of its new U.S./Canada division.

Mr. McSweeney, who worked at Marsh from 1976 to 1994, had been on the business division faculty of St. Thomas Aquinas College in Sparkill, N.Y., since 2005.

- Alexander Moczarski, currently CEO of Marsh's Europe, Middle East and

Africa region, was named president of the new international division and will relocate to New York from London.

- Alexander W. Vietor, who joined Marsh in December from Aon Corp., where he was an executive vp, will serve as president of Marsh's global specialties unit, which comprises Marsh's marine, energy, aviation and other units.

- Timothy J. Mahoney will lead the global risk management unit, and Henry S. Allen will continue as president of the global consumer

See **MARSH** page 20

San Francisco fights for 'play or pay' law

City scrambles to stop ban on health cover rule

By **JUDY GREENWALD**

PASADENA, Calif.—The city of San Francisco turned to a federal appeals court last week in defense of a law, intended to expand health care coverage for uninsured residents, that a lower court ruled violates federal law.

San Francisco sought an emergency stay of U.S. District Court Judge Jeffrey S. White's Dec. 26 decision in *Golden Gate Restaurant Assn. vs. City and County of San Francisco*, in which he ruled that the employer spending requirement of the San Francisco Health Care Security Ordinance violates the federal Employee Retirement Income Security Act. ERISA pre-empts state and local laws and rules that relate to employee benefit plans.

The lower court ruling, which

observers say also could affect a statewide health care reform plan, halted the employer spending portion of the law that was to go into effect Jan. 2.

On Thursday, a three-judge panel of the 9th U.S. Circuit Court of Appeals heard arguments in Pasadena, Calif., on San Francisco's request for an emergency stay. The panel took the arguments under advisement and made no ruling as of Friday.

"We were encouraged that all three judges expressed skepticism about Judge White's ruling," said a spokesman for Dennis Herrera, the city's attorney. The judges "did express concern about the hardship that would fall to the uninsured in San Francisco. We expect the panel

See **MANDATE** page 22

Retiree health saga ends with EEOC rule

Age bias exemption gives employers relief

By **JERRY GEISEL**

WASHINGTON—A legal controversy that threatened many retiree health care plans likely ended late last month with the publication of a final rule by the Equal Employment Opportunity Commission affirming the ability of employers to reduce health benefits when retirees become eligible for Medicare.

The final rule exempts retiree health care plans from the Age Discrimination in Employment Act when those plans reduce benefits for retired workers after they become eligible for Medicare.

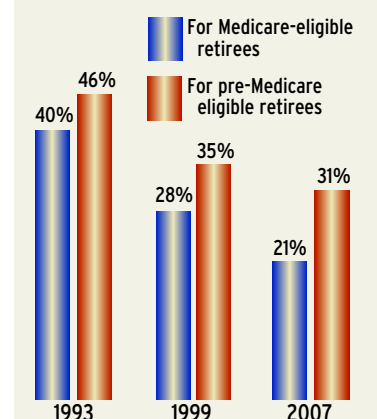
The practical effect of the rule is that employers won't face age discrimination charges if they offer a two-tier system of retiree health care coverage, with younger retirees receiving richer employer-provided benefits than Medicare-eligible retirees.

The rule was first proposed by the EEOC in 2003 as a way of counteracting a decision three years earlier by the 3rd U.S. Circuit Court of Appeals in the so-called Erie County case, which involved a lawsuit filed against the Pennsylvania county by a group of its Medicare-eligible retirees (see box page 21).

In that decision, a legal bombshell at the time, the appeals court

ON THE DECLINE

Employers with at least 500 employees offering retiree health care plans



Source: Mercer LLC.

ruled that retiree health care plans are subject to the ADEA. As a result, employers could be sued for age discrimination if they provided richer benefits to younger retirees than to Medicare-eligible retirees. Such plan structures are typical because of the availability of Medicare when retirees reach age 65.

The EEOC feared that employers would slash health care benefits for

See **EEOC** page 21

SPOTLIGHT

PEOPLE TO WATCH

Who will be making headlines in 2008?

BI profiles 20 people whom we think are likely to generate



news of interest to risk managers and benefit managers. They represent lawmakers, regulators, industry executives and buyers.

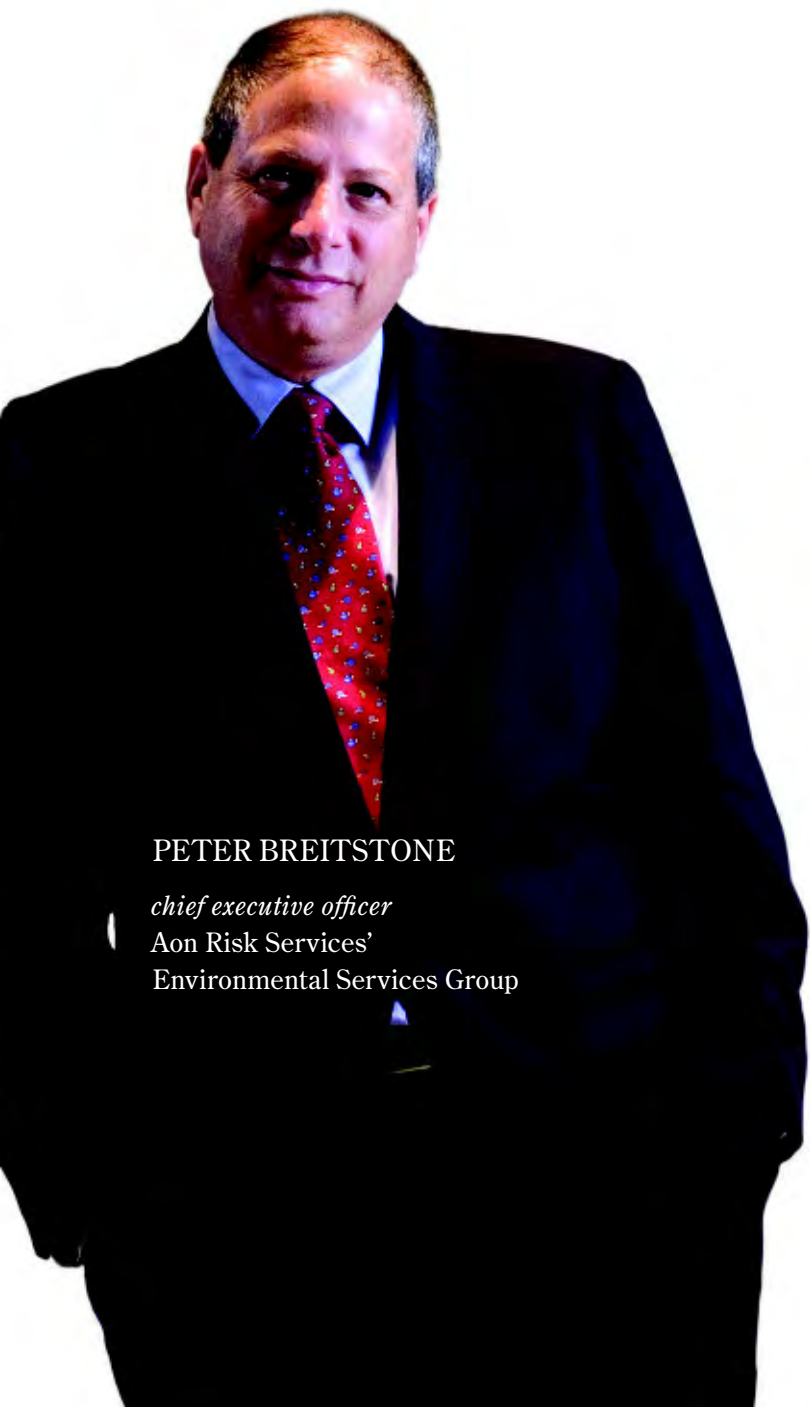
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Are you ready to discuss the opportunities created by climate change?

Ask Aon.



PETER BREITSTONE

chief executive officer
Aon Risk Services'
Environmental Services Group

While there may be debate about causes of climate change, there is little dispute that global warming is happening. As the physical, financial, regulatory and legal risks associated with climate change evolve, are you ready to capture the developing opportunities?

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On the Web

PEOPLE TO WATCH

20 who'll make a difference in 2008

Business Insurance looks ahead to the coming year and the people likely to have an impact on risk and benefits management in 2008. The 20 chosen represent the diverse audience *BI* serves, including industry leaders, legislators and regulators. To see an online complement to the People to Watch package that starts on page 11 of this issue, go to www.BusinessInsurance.com/people2008.

BI VIDEO



Re Views interviews reinsurance experts

Business Insurance's Reinsurance Viewpoints video series continues with interviews on arbitration and runoff with Nick DiGiovanni, above, and Jonathan Bank of Locke Lord Bissell & Liddell, and Lloyd's CEO Richard Ward discusses where the marketplace is heading. Go to www.BusinessInsurance.com/video.

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Gen Re, AIG executives' trial to start today

Ronald Ferguson, others charged with conspiracy, fraud, lying to SEC

By JEFF CASALE

HARTFORD, Conn.—With pretrial motions out of the way, the stage is set for opening arguments as the trial of five former executives of General Re Corp. and American International Group Inc. begins today in U.S. District Court.

Ronald Ferguson, Gen Re's former chief executive officer, three other Gen Re officers and an AIG reinsurance official are being tried on charges of conspiracy, securities and mail fraud and making false statements to the Securities and Exchange Commission. Prosecutors allege that the executives conspired to inflate AIG's loss reserves by

\$500 million with a pair of bogus reinsurance transactions.

Last week, U.S. District Court Judge Christopher Droney, in Hartford, Conn., rejected a subpoena from Mr. Ferguson requesting copies of correspondence during 2000 between Warren Buffett, chairman of Gen Re parent company Berkshire Hathaway Inc., and current Gen Re CEO Joseph Brandon and President Franklin Montross. According to court documents, Mr. Ferguson said that he discussed the AIG deal with Mr. Buffett and told the other executives on trial that Mr. Buffett supported it.

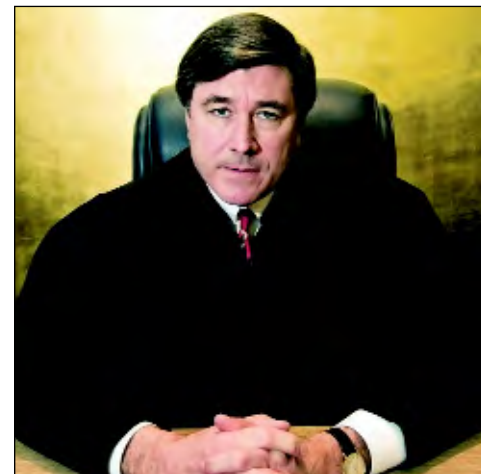
Stamford, Conn.-based Gen Re said that the evidence that

Mr. Ferguson is requesting is irrelevant and Judge Droney agreed.

"If Brandon and Montross ever directly questioned Buffett about his approval of the LPT (loss portfolio transfer), Ferguson would already be in possession of this evidence because Gen Re previously disclosed all written communications between Brandon, Montross, and Buffett concerning the LPT. Since the materials sought are not probative of the matter for which Ferguson seeks them, the subpoena is unenforceable," Judge Droney wrote.

Judge Droney did grant part

See **GEN RE** page 20



U.S. District Court Judge Christopher Droney rejected a subpoena from Ronald Ferguson seeking copies of communications between Warren Buffett, the current Gen Re CEO and its president.

Travelers settles bid-rigging claims

Insurer agrees to \$6 million fine, fully disclose broker compensation

By SALLY ROBERTS

ST. PAUL, Minn.—The Travelers Cos. Inc. ended 2007 by settling a multistate investigation and a shareholder lawsuit involving its business practices, including the practice of paying brokers contingent commissions.

The St. Paul, Minn.-based insurer agreed at the end of the year to pay a \$6 million fine and to disclose to buyers the compensation it pays brokers to resolve client-steering and bid-rigging allegations leveled by nine states and the District of Columbia.

The multistate settlement, which settles allegations made by regulators in Florida, Hawaii, Maryland, Massachusetts, Michigan, Oregon, Texas, West Virginia, Pennsylvania and the District of Columbia, is the latest agreement reached between state regulators and various insurers and brokers following former New York Attorney General Eliot Spitzer's fraud and bid-rigging suit against Marsh & McLennan Cos. Inc. in October 2004.

The states accuse Travelers of paying undisclosed contingent commissions to agents and brokers that agreed to steer business to the insurer and colluding in a scheme with Marsh to rig bids for excess casualty business.

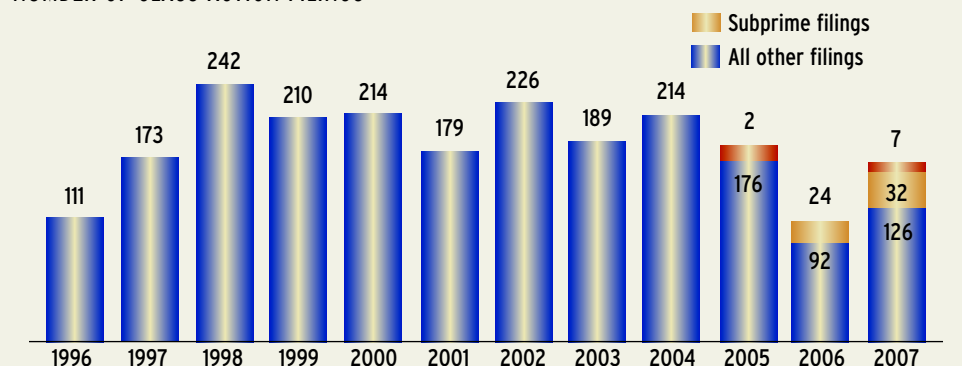
In 2006, Travelers agreed to pay \$77 million and change its business practices to settle similar charges by attorneys general in New York, Connecticut and Illinois (*BI*, Aug. 7, 2006). Last January, Travelers began offering new supplemental commissions in lieu of contingent commissions (*BI*, Jan. 8, 2007).

In addition to the multistate agreement, Travelers also reached an agreement in principle to settle a potential shareholder class action for an undisclosed amount, according to a Dec. 31, 2007, Securities and Exchange Commission filing. The shareholders, who originally sued the insurer in 2004, alleged that the company failed to disclose its practice of paying brokers contingent commissions, its alleged involvement in the bid-rigging scheme and its alleged improper use of finite reinsurance products.

The settlement is subject to a number of contingencies, including the negotiation and execution of definitive documentation and court approval, Travelers said.

A spokeswoman for Travelers referred comments about the agreements to its SEC filing, which states that the settlements will not have a material impact on the insurer's results.

NUMBER OF CLASS ACTION FILINGS



Source: Cornerstone Research

Rise in securities class actions tied to market, subprime woes

By DAVE LENCKUS

Subprime mortgage problems and stock market volatility drove up securities class action lawsuit filings in the second half of 2007, but total filings last year remained below the 10-year average, according to a report released last week.

With 100 suits filed, the second-half increase ended an extended downturn in the number of filings. However, it may not signal a long-term reversal in claim filings, according to one researcher.

Class action filings for all of 2007 jumped 43.1% to 166 from 116 in 2006, according to a report by the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in cooperation with Cornerstone Research of Boston.

Before last year's second half, the number of filings had decreased for eight consecutive quarters, beginning in mid-2005, according to the researchers.

Still, the frequency of filings last year was 14.4% below the 194 lawsuits filed yearly on average from 1997 through 2006, the Clearinghouse and Cornerstone noted.

The upswing in claims may not signal a long-term trend, according to Joseph Grundfest, director of Clearinghouse and a professor at Stanford Law School.

"For the past two years, securities fraud class action litigation has been driven by market-wide events, such as the 2006 backdating

scandals and the 2007 subprime crisis," Mr. Grundfest said. "When litigation related to the subprime crisis is excluded from the calculation—on the assumption that the subprime crisis is a nonrecurring event—the resulting core litigation rate remains well below historical norms. Measured as a core litigation rate, 126 companies were sued in the full calendar year, compared with the average core litigation rate from 1997 through 2006 of 192."

The Clearinghouse and Cornerstone also reported that:

- Financial institutions faced more class action lawsuits—47—than any other sector during 2007. Subprime mortgage-related claims accounted for 25 filings. A year earlier, the finance sector was hit with 11 filings.

- The consumer noncyclical goods sector faced the second-highest number of claims with 36, and the communications sector ranked third in securities class action lawsuits with 33.

- Disclosure dollar losses—or the market capitalization losses that investors sustained the day after an organization announced it misrepresented its financial reports—nearly tripled to \$151 billion last year from \$52 billion in 2006. Those losses also were 18.5% greater than the 10-year average of \$127.4 billion annually.

- Plaintiffs filed nine so-called "mega" disclosure dollar loss lawsuits—cases alleging at least \$5 billion of losses—in 2007, compared with one megalawsuit a year earlier.

Court rules for UPS in case over driver hearing tests

Decision overturns ruling that delivery company discriminated against hearing-impaired workers, applicants

By **ROBERTO CENICEROS**

SAN FRANCISCO—Employers using business necessity as a defense against discrimination lawsuits received a boost last month when a federal appeals court ruled in favor of United Parcel Service Inc. in a case filed by hearing-impaired applicants for drivers' jobs.

The Dec. 28 ruling by the 9th Circuit Court of Appeals' full, 15-member panel vacates a 2006 ruling by a three-judge panel of the same court.

In 2006, the San Francisco-based appeals court ruled that Atlanta-based UPS violated the Americans with Disabilities Act because its hearing-based safety standard barred hearing-impaired employees from jobs driving certain company trucks (*BI*, Oct. 16, 2006).

Last month, though, employer groups applauded the court's rever-

sal in *Eric Bates vs. United Parcel Service Inc.*, which, they say, will uphold a defense against discrimination claims brought under the ADA.

"That's a very favorable development," said Rae T. Vann, general counsel for the Washington-based Equal Employment Advisory Council, which was one of several employer groups that filed amicus briefs supporting UPS.

The earlier ruling against UPS upheld a trial court ruling that also enjoined UPS from using a safety standard that applies to an entire group of employees. Under that ruling, it would be harder for employers to exclude groups of disabled workers from jobs where safety is an issue, attorneys said.

The earlier appeals court decision also made it nearly impossible for employers to argue business necessity,

which is a defense provided by the ADA, Ms. Vann said.

The ongoing case centers on a UPS requirement that drivers pass a physical that includes a hearing standard mandated by the U.S. Department of Transportation for drivers of trucks weighing more than 10,000 pounds.

UPS goes further, though, by imposing the hearing standard for drivers of its smaller vehicles too. A class of hearing-impaired employees and applicants challenged that practice. They argued that UPS discriminates against qualified individuals with disabilities.

The trial court and the three-judge appeals panel agreed because they "imported" language into the ADA from Title VII of the Civil Rights Act of 1964, a federal anti-discrimination law, court records show.



LANDOV

An appeals court ruling may help UPS in its fight against allegations that its hearing requirements for drivers are discriminatory.

UPS appealed that ruling and the 9th Circuit's en-banc panel agreed last month with UPS that the courts erred when they applied Title VII reasoning to an ADA case.

The Title VII standard for proving that a business necessity exists for a particular practice is more onerous than is required under the ADA, according to the EEAC's Ms. Vann.

"Because the court applied that heightened standard...the employer was left with no opportunity to offer up an affirmative defense to liability where the ADA says an employer can avoid liability for discrimination based on the application of a safety based qualification standard if it can show business necessity," Ms. Vann said.

Title VII requirements required UPS to prove that all, or "substan-

See **ADA** page 20

IRS proposes new rules for cash balance plans on vesting, pay credits

By **JERRY GEISEL**

WASHINGTON—Slowly, the Internal Revenue Service is providing guidance to aid employers in complying with cash balance pension plan provisions contained in a sweeping 2006 pension funding reform law.

In proposed rules issued late last month, the IRS addressed several issues—including vesting requirements and protection of benefits earned in cash balance plans—for which employers have been awaiting guidance.

The vesting issue involves a provision in the 2006 law that requires cash balance plan participants to be vested after three years of participating in the plan.

Employers, though, weren't sure how the provision would apply to other pension plans with longer vesting periods if those plans were converted to cash balance plans. Typically, defined benefit plans offer first and full vesting after five years of service.

Under the proposed rules, in such conversion situations, the three-year vesting requirement would apply to employees who earn benefits under both designs.

For example, if an employer converts a final average pay plan with five-year vesting to a cash balance plan, the proposed IRS rules say the employee would be fully vested in the benefit earned under the final pay plan.

The cost of such a requirement would be relatively modest, according to Larry Sher, a principal and director of retirement policy at Buck Consultants L.L.C. in New York.

That is because relatively few plan participants would be affected and because the value of benefits earned after a few years of service is modest.

The proposed rules also make clear that a cash balance plan participant never can receive less than the pay-related credits he or she has earned.

In a cash balance plan, participants' benefits are based on two components. Under one component, the benefit earned each year is a percentage of pay, such as 5% of compensation. Additionally,

employers credit the account with interest, such as the yield on the one-year U.S. Treasury bill, plus one percentage point.

Questions, though, have arisen about situations where the credited interest would be tied to the yield on an equities fund and the equities fund, because of bad investment results, earns a negative return.

In such situations, under the IRS rules, the participant's account balance could be no less than the benefit generated by the pay-related credits.

At the moment, though, few, if any plans, use such a design.

Still, even with the latest guidance from the IRS, many more cash balance plan issues need to be addressed by federal regulators, says Alan Glickstein, a senior consultant with Watson Wyatt Worldwide in Dallas.

For example, the IRS still has yet to formally address the legality of conversion designs where the benefit participants earn would be under the plan design that produced the greatest benefit.

Illegal immigrant wins comp cover

By **ROBERTO CENICEROS**

COLUMBIA, S.C.—An illegal immigrant who falsified documents to gain employment is entitled to workers compensation benefits stemming from a workplace injury, South Carolina's Supreme Court ruled.

The claimant's employer, Environmental Management Services, and the South Carolina Property & Casualty Insurance Guaranty Assn. argued that federal law prohibits them from paying benefits to an illegal immigrant, court records say. They maintained that the federal Immigration Reform and Control Act of 1986 prohibits the hiring of illegal alien workers and should preempt state law, which allows payment of workers comp benefits to undocumented workers.

Although the federal immigration law does not specifically address workers comp benefits, providing such benefits conflicts with the federal law, they argued.

South Carolina Supreme Court justices disagreed in their Dec. 20 ruling, after evaluating court decisions in several other states that addressed the same arguments.

Those state rulings found that the federal immigration law does not "diminish in any way labor protections in existing law" and it "does not expressly preclude an illegal alien from being considered an employee for workers compensation benefits," according to court documents.

Additionally, South Carolina's justices noted in their ruling that allowing employers to forgo providing workers comp benefits would

only encourage unscrupulous companies to hire more illegal workers.

The case stems from an eye injury Mario B. Curiel sustained while doing demolition work in April 2000. His employer's insurer, Reliance National Insurance Co., is insolvent, so the guaranty association is responsible for benefits, court records state.

The Supreme Court's ruling remands the case to the South Carolina Workers' Compensation Commission to determine the amount of disability suffered by the claimant.

Mario B. Curiel vs. Environmental Management Services (MS), Reliance National Insurance Co. and S.C. Property & Casualty Insurance Guaranty Assn., Case No. 26409, Dec. 20, 2007.

Mass. raises fines for rejecting cover

By **JERRY GEISEL**

BOSTON—Massachusetts residents who can afford to buy health insurance coverage but do not would pay penalties of up to about \$900 in 2008, under proposed regulations.

Under the state's landmark 2006 law, intended to move Massachusetts close to universal health care coverage within a few years, the penalty for not having health coverage in 2007 was the loss of the personal exemption for state income tax purposes, which equaled \$219.

In 2008 and succeeding years, the penalty is based on one-half of the premium of the lowest-cost plan available through a state agency known as the Connector Authority. The law, though, left it to the Massachusetts Department of Revenue to provide the details.

Under the regulations, the penal-

ty for not having coverage would be linked to income and the period of time that a person is uninsured. For example, a 27-year-old with income exceeding 300% of the federal poverty level would pay a penalty of \$76 for each month he or she was uninsured, up to \$912 if uninsured for the entire year.

The penalties are intended to encourage state residents to purchase health insurance.

However, the penalties do not apply to those who can prove that affordable health insurance coverage is not available. And, under existing regulations, employees earning between \$35,000 and \$40,000 a year who decline individual coverage offered by their employers will not be penalized if their share of the monthly premium exceeds \$200, while employees earning between \$40,001 and \$50,000 a year declining individual

employer-provided coverage are exempt from the penalties if their monthly premium cost is more than \$300.

Regardless of coverage costs, the penalties would apply to individuals earning more than \$50,000 a year, couples earning more than \$80,000 a year or families with children earning more than \$110,000.

The penalties do not apply to individuals earning up to \$15,324, since their health insurance premiums are completely subsidized by the state.

Currently, about 75% of state residents who lacked coverage before the enactment of the 2006 law now are insured, with most of the newly insured obtaining coverage through a state premium subsidy program available to lower-income residents and through an expansion of Medicaid, which is offered to the very poor.



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Did you know that vanilla flavoring has a flashpoint below 100° F, making it a Class 1 flammable liquid capable of causing an inferno? That was certainly news to a major ice cream factory and Liberty Mutual Property customer. Fortunately, we conducted an engineering evaluation that revealed this risk, and our engineers provided practical storage, containment and fire safety recommendations. The bottom line is, our loss control programs work. And in instances like this, help prevent millions of dollars in damage. Plus, should disaster strike, we honor our commitments by responding quickly, keeping you informed and paying your claim in a timely fashion. That's our policy. For more information on our property insurance, visit libertymutual.com/property.

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Commentary

New Year's resolutions everyone can manage

Every Jan. 1, millions of people engage in the tradition of making resolutions for the new year. This human drive to improve ourselves is admirable, but unfortunately most of these resolutions are doomed from the start.

Common resolutions, such as kicking an addiction, starting a fitness regimen from scratch, changing diet, wearing less plaid—all these are hard to do. And they are made more difficult by the fact that most resolutions are declared publicly, in the hope that those within earshot will help one keep on the path and bolster one's resolve in moments (or weeks) of weakness. Instead, letting others in on these promises to oneself too often just creates the added burden of ridicule when one fails.

To help readers make more attainable goals in 2008, I'd like to offer a more modest set of goals and projects that are truly within reach (but keep it to yourself, all the same, just in case):

- Resolve to root for a sports team no matter how awful their record. As a Cubs fan, this is an easy one for me. If my support is unwavering, no matter how bad the season, I can't be accused of being a fair-weather fan if their fortunes improve. It would be nice to have a winning season every quarter of a century or so, but if my expectations are low, I'm not easily disappointed.

- Resolve to learn how to read a map and not rely on a \$300 gadget to tell you where to turn next. I worry about the country's growing reliance on GPS devices to get us where we are going, rather than making sincere efforts to improve one's sense of direction or knowledge of an area. Better yet, wing it like I do, and encourage people to trust your mysterious sense of direction. If you maintain a façade of confidence while driving, passengers may never realize you were lost for the past 15 minutes.

- Resolve to not depend on entertainment that can be so easily disrupted by a television writer's strike. Is anyone else amazed at how the writers strike has disrupted the ability of so many series, talk shows and awards programs to be broadcast? Pick up a book instead; there are plenty of starving writers out there plying their craft.

- Resolve to not be overwhelmed by the hype surrounding the Iowa caucuses. I know it's the first step in the nomination process for presidential candidates, and it attracts an insanely disproportionate level of media coverage, but it's still only one state out of many. The long-shot prospect of Iowa GOP winner Mike Huckabee declaring Chuck



PAUL WINSTON

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appears monthly. E-mail:
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Norris his running mate is appealing, but if you live elsewhere, your vote still counts. Resolve to use it.

- Resolve to not lay every atmospheric phenomenon at the feet of global warming. I'm freezing right now in Chicago, but by Sunday the temps are expected to hit 50 degrees for a 53-degree jump since Jan. 1. However, a local meteorologist says we've had four or five larger January swings in

Resolve to not lay every atmospheric phenomenon at the feet of global warming.

temperature over the past 20 years, so I'm not jumping to conclusions.

- Resolve to use less gas when it hits \$5 per gallon. Something about paying more than \$75 to fill a tank is bound to make riding the bus, or train or a bicycle seem more attractive and accessible. It also is better for the environment, traffic accident rates and the pocketbook. And it doesn't hurt to hedge our bets in case global warming is real.

One more: Resolve to relegate the "comb-over" as a hairstyle for balding men to the 20th century. To help those in search of an alternative, may I recommend the St. Baldrick's Foundation, in which participants raise funds for research into curing childhood cancers by shaving their heads. There are still about three months to go until most St. Baldrick's events are held and I would encourage you all—whether in danger of a comb-over or not—to join me and thousands of other participants from the insurance industry by shaving this year. You'll not only preserve your self-esteem, but be rewarded by helping save young lives.

Find out more about St. Baldrick's at www.stbaldricks.org.

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Business Insurance OPINIONS

E&S reform proposal deserves fast action

CONGRESS' LAST-MINUTE approval of a measure extending the federal terrorism insurance backstop for seven years was the most important piece of risk management-related legislative business concluded in 2007. That the program was extended—and extended for such a long period—is a significant accomplishment.

As Congress reconvenes, we'd like to point to a piece of unfinished business that could—and should—be dealt with quickly and painlessly: Senate passage of the Nonadmitted and Reinsurance Reform Act, a piece of noncontroversial legislation that basically sailed through the House last year. The measure, which is backed by risk managers, insurers and producers, would streamline the regulation of nonadmitted insurers and ease risk managers' access to those markets. Although the Risk & Insurance Management Society Inc. had initially opposed the legislation because of its overly restrictive definition of what requirements a "qualified risk manager" must meet before enjoying liberalized access to the nonadmitted insurance marketplace, lawmakers fixed the problem language.

The noncontroversial nature of the bill should make it a priority for Senate Banking, Housing and Urban Affairs Committee action. Unlike more controversial—but extremely important—legislation before both houses that would allow insurers and producers to choose federal rather than state regulation under new optional federal charters, this bill involves no deep philosophical rifts. We believe that the Banking Committee should take up this piece of unfinished business as quickly as possible, approve it and send it on to the full Senate. This should not be a difficult piece of business to wrap up, and wrap up with all due dispatch.

The noncontroversial nature of the bill should make it a priority for Senate Banking, Housing and Urban Affairs Committee action.

Answers warranted on Gen Re dealmakers

WHAT DID WARREN BUFFETT KNOW and when did he know it? That is a crucial question in the criminal fraud trial of four former General Re Corp. executives, which is scheduled to start today.

Attorneys for defendants Ronald Ferguson and Elizabeth Monrad, Gen Re's former chief executive officer and chief financial officer, respectively, have said that Berkshire Hathaway's chairman—their former boss—not only was intimately aware of the finite reinsurance deal with American International Group Inc. for which they are on trial but he also priced it and did nothing to stop it (*BI*, Dec. 3 and Dec. 24, 2007).

A spokesman for Mr. Buffett has said the defendants' statements are inaccurate in all material respects. But if Mr. Buffett did in fact know about the finite deal and approved it, that is far from immaterial.

Mr. Buffett may never have to answer further questions about his involvement, though. Prosecutors in the criminal fraud trial put him on the list of potential witnesses, but last week they indicated he won't be asked to testify. And the judge in the case denied a defense motion to subpoena copies of communications between Mr. Buffett and current Gen Re senior executives.

Mr. Buffett is not on trial, and it's possible the defendants acted alone, but it also seems legitimate to ask how a \$500 million deal between two of the industry's biggest insurers would have escaped his attention. Moreover, it would be a miscarriage of justice if Mr. Buffett's ex-employees were deprived of the chance to fully defend themselves.



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 Cenicerros.

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 Cenicerros.

Tort reform:

Mark A. Hofmann.

Work/life benefits and EAPs:

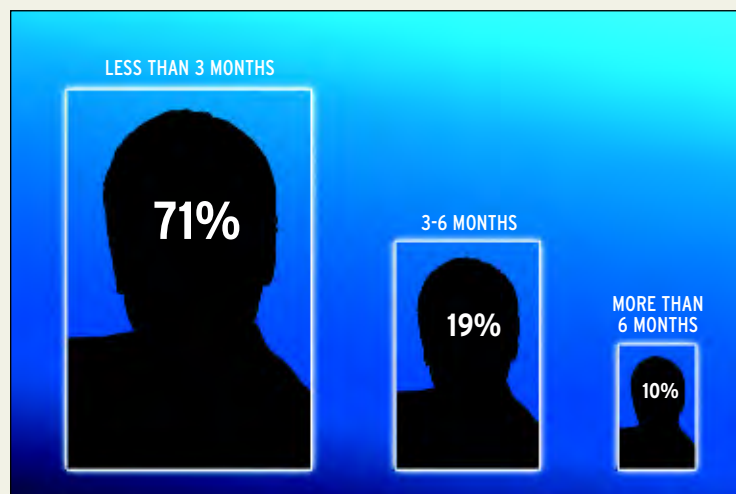
Sally Roberts.

Workers compensation:

Roberto Cenicerros.

Online Poll at www.businessinsurance.com

How long do you believe it will take broker Marsh & McLennan Cos. Inc. to find a new CEO to succeed Michael Cherkasky?



NEXT WEEK'S POLL: What are the chances of Warren Buffett eventually testifying in the Gen Re trial?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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People

to watch



As part of our annual year-in-review features, *Business Insurance* looks back at the top stories and the people who made news during the prior 12 months. For 2008, we decided to add something new: We're also looking ahead to identify some of the people who we think are likely to make headlines this year.

In the following pages are short

profiles of 20 people whom *BI's* editors believe are worth watching. They represent commercial insurance industry executives, legislators, regulators and professionals in risk management and employee benefits—in short, a microcosm of the diverse audience that *Business Insurance* serves.

Twenty was chosen arbitrarily. In

fact, many more people than we've listed might generate significant news this year. As always, we reserve the right to be wrong. The people profiled may or may not fulfill our expectations, but in any event, we think they are strong candidates to do and say things that risk managers and benefit managers will care about—and want to keep an eye on.



Richard Blumenthal

**Attorney General
State of Connecticut
Hartford, Conn.**

HIS ROLE: Connecticut Attorney General Richard Blumenthal not only kept industry investigations alive in 2007, he moved the focus away from insurers and brokers and to the reinsurance brokerage industry.

WHAT'S AHEAD: Mr. Blumenthal has filed a lawsuit against Guy Carpenter & Co. L.L.C. and seeks a jury trial over the reinsurance broker's

creation and management of reinsurance facilities.

The attorney general accused Guy Carpenter of conspiring with reinsurers to fix prices and stifle competition. Industry experts say the case is interesting since Mr. Blumenthal is going after the reinsurance market and questioning the propriety of its practices.

Charges in Mr. Blumenthal's complaint include anticompetitive behavior, conspiracy to inflate prices and failure to disclose business relationships to clients. Rather than seeking competitive quotes, Mr. Blumenthal's court filing charges. Guy Carpenter funneled lucrative business to its facilities in exchange for undisclosed fees and benefits.

Guy Carpenter has said Mr. Blumenthal does not understand reinsurance facilities and that the reinsurance brokerage will defend itself vigorously.

WHAT TO WATCH: Mr. Blumenthal has said further action is forthcoming on the suit. During 2008, he is expected to issue subpoenas and investigate other market players in Spitzer-like fashion as part of the lawsuit.



LANDOV

Warren Buffett

**Chairman
Berkshire Hathaway Inc.
Omaha, Neb.**

HIS ROLE: Warren Buffett is a world-renowned investor and head of Berkshire Hathaway, whose General Re Corp. unit engineered a pair of allegedly fraudulent reinsurance deals with American International Group Inc. in 2000. The criminal trial of four former Gen Re officers, including former Chief Executive Ronald E. Ferguson, is just getting under way.

WHAT'S AHEAD: Mr. Buffett has proven himself adept at damage control. In 1991, he helped steady Salomon Inc.—in which Berkshire held a major stake—after a U.S. Treasury bond trading scandal. He rode to Gen Re's rescue when the reinsurer came under investigation in 2003 for its dealings with the now-defunct Reciprocal of America of Glen Allen, Va.; Gen Re subsequently told investigators about its unrelated reinsurance deals with AIG, and Mr. Buffett was interviewed under oath about the deals by the New York Attorney General and Securities and Exchange Commission officials. Now he's on the list of potential prosecution witnesses in the criminal trial of Mr. Ferguson and the others.

WHAT TO WATCH: Whether he testifies remains to be seen. Defense lawyers say they have evidence that he set Gen Re's price for the AIG transactions, and Mr. Ferguson told others that Mr. Buffett had approved the deals. Mr. Buffett has denied this and said he was not briefed on the deals' structure and did not know of any improper purpose behind them. His testimony, if it comes, will be a highlight of the trial.

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SPOTLIGHT

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Greg Case

Chief Executive Officer
Aon Corp.
Chicago

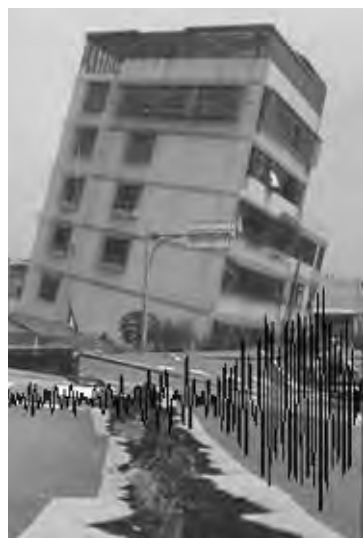
HIS ROLE: In the two-and-a-half years since Greg Case became president and chief executive officer of Aon Corp., he has overseen one round of restructuring and now is beginning to implement a second, while steering the company through the post-Eliot Spitzer environment for brokers.

WHAT'S AHEAD: Amid continued restructuring, Aon closed out 2007 by entering an agreement to sell its Combined Insurance Co. unit to



ACE Ltd. for \$2.4 billion and its Sterling Life Insurance unit to Munich Reinsurance Co. for \$352 million. The sales of the two units are part of a plan by Aon to simplify its business and exit insurance underwriting, which has lower margins and is more capital-intensive than brokerage business. The sales will bring billions of dollars to Aon that, combined with recent streamlining, will strengthen its ability to compete against Marsh & McLennan Cos. Inc., whose brokerage unit continues to struggle.

WHAT TO WATCH: With the divestiture of its underwriting business in place, stock analysts are bullish about Aon, largely because it will be the main beneficiary if Marsh fails to get back on track. Brokerage observers will be keeping a close eye on Aon and Mr. Case to see how both perform this year.



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Sen. Hillary Rodham Clinton

Candidate for Democratic presidential nomination
D-New York

HER ROLE: As first lady in 1993, Hillary Clinton led a failed national health care reform task force that advocated dismantling the current system in favor of a government-run one. The plan went down in flames. As a leading candidate for the Demo-

cratic party's nomination in the 2008 presidential election, a softer approach to health care reform is a major part of her platform.

WHAT'S AHEAD: Sen. Clinton's "American Health Choices Plan" includes individual and employer mandates as well as subsidies for lower-income workers and tax credits for small businesses. The plan would open the Federal Employees Health Benefits Program to all U.S. citizens, and all plans offered would include preventative care services and chronic care management. Larger employers would contribute to employees' health care coverage based on company size, while individuals would pay a percentage of income. Small businesses would be eligible for tax credits up to 50% of the cost of coverage.

WHAT TO WATCH: Health care reform is a significant factor in Sen. Clinton's quest for the White House. For her new plan to succeed, she will have to demonstrate a willingness to negotiate, something she was unwilling to do in 1993.



Andrew Cuomo

Attorney General
State of New York
Albany, N.Y.

HIS ROLE: Elected to the attorney general's post left open when Eliot Spitzer won election to the governor's mansion, Mr. Cuomo has vowed to pursue corruption and hasn't given any indication he will drop high-profile cases pursued by his predecessor.

WHAT'S AHEAD: Mr. Cuomo, the elder son of former New York Gov. Mario Cuomo, came to the job with some courtroom experience. He first practiced law as an assistant district attorney in Manhattan, his office says. But he is better known for other high-profile positions he has held. In 1996, President Clinton nominated him to serve as secretary of Housing and Urban Development. Before that, former New York Mayor David Dinkins selected Mr.

Cuomo to lead a city commission on the homeless. He also ran unsuccessfully for governor in 2002. More recently as attorney general, he has prodded health insurers to disclose information and adopt certain practices for their doctor ranking programs. Still pending is a lawsuit brought by Mr. Spitzer in 2005 against former American International Group Inc. Chief Executive Maurice Greenberg and former Chief Financial Officer Howard Smith, accusing them of misleading investors with transactions that artificially boosted reserves and hid underwriting losses.

WHAT TO WATCH: With that fraud lawsuit still pending against Mr. Greenberg and Mr. Cuomo's pledge to pursue corruption, the New York attorney general is certain to remain in the news during 2008.



Eric Dinallo

Superintendent
New York State Insurance Department
New York

HIS ROLE: Appointed to be the state's chief insurance regulator by Gov. Eliot Spitzer in December 2006; previous posts include general counsel for broker Willis Group Holdings Ltd., managing director and global head of regulatory affairs for Morgan Stanley and head of the New York attorney general's Investment Protection Bureau.

WHAT'S AHEAD: Mr. Dinallo hasn't wasted any time moving on issues he considers important. He has proposed a first-in-the-nation requirement that property insurers set aside reserves for natural catastrophe losses. He's also a step ahead of the National Assn. of Insurance Commissioners by proposing rules that would eliminate reinsurance collateral requirements for highly rated non-U.S. reinsurers and impose a sliding collateral scale for less highly rated companies. He's also proposed a shift in the insurance department's perspective from a strictly rules-based regulatory approach to a "principles-based" approach that highlights responsibilities of both regulators and regulated companies.

WHAT TO WATCH: How his proposals fare remains to be seen. The reinsurance collateral rules, for example, may not produce much practical benefit if other states don't adopt them; after initially refusing to discuss the New York proposal, the NAIC and its member regulators recently have shown more cooperation on reinsurance regulatory reform. The "principles-based" reg-

ulation proposal is still in its comment period and will be taken up by the state's Commission to Modernize the Regulation of Financial Services—which Mr. Dinallo heads—later this month.



Roger Egan

Chief Executive Officer
Integro Ltd.
New York

HIS ROLE: Roger Egan became CEO of Integro in 2005, which he launched with industry veterans Robert Clements and Peter F. Garvey and more than \$300 million in a private securities placement. Prior to that, he was president and chief operating officer of Marsh Inc., from which he resigned at the end of 2004 amid the firestorm created by former New York Attorney General Eliot Spitzer's fraud and bid-rigging suit against the company.

WHAT'S AHEAD: Since its inception, Integro has made waves in the industry by hiring scores of experienced professionals, mainly from its competitors, to build up its talent base. Observers, though, have questioned whether the startup will be able to compete over the long term with the world's three largest brokers. 2007 was a breakout year, as Integro saw its client list grow to more than 500 from 220 while revenues more than doubled to \$60 million, according to Mr. Egan. This year will be "the defining year" for the broker, he said, as Integro looks to grow its revenue base by another 60% to 70%.

WHAT TO WATCH: With roughly 400 employees in 12 offices in the United States, Canada, London, Bermuda and Sweden, Integro is large enough now with the necessary capabilities to assist large companies with complex risks. If Mr. Egan is indeed able to lead the brokerage to its growth targets in 2008, any questions about Integro's viability should be put to rest.

Daniel S. Glaser

Chairman and Chief Executive Officer
Marsh Inc.
New York

HIS ROLE: Named chairman and CEO in December 2007 to succeed Brian Storms, who was fired in September for what Marsh & McLennan Cos. Inc. attributed to poor execution of Marsh's long-term strategy. Mr. Glaser previously was managing director of AIG

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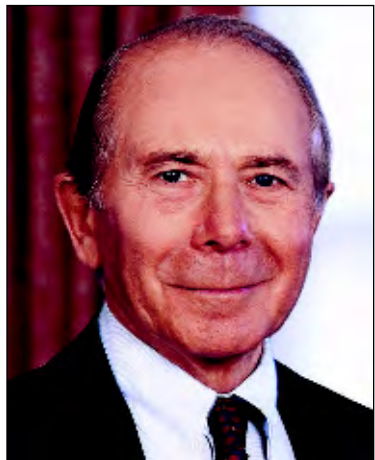
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Europe (U.K.) Ltd. and regional president of the U.K. and Ireland division of American International Underwriters, both units of American International Group Inc. Before that, he worked for Willis Group Holdings Ltd. and Marsh.

WHAT'S AHEAD: Marsh has yet to fully recover from 2004 fraud and bid-rigging charges leveled by former New York Attorney General Eliot Spitzer in which it agreed to give up hundreds of millions in contingent commission revenue. Aside from management changes, Marsh has dealt with lackluster financial results, employee defections and client retention issues. While the broker appeared to be back on track, various initiatives spearheaded by Mr. Storms, including a broad reorganization of the business, increased operating expenses and added distractions and ultimately led to Mr. Storms' ouster.

WHAT TO WATCH: Mr. Glaser faces several challenges, not the least of which is cutting expenses and re-engaging an employee base that had lost confidence in Mr. Storms. While Mr. Glaser's exact plans are unknown, all eyes will be watching whether he can successfully guide the world's largest brokerage back to prosperity.



Maurice R. Greenberg
Chairman
and Chief Executive Officer
C.V. Starr & Co. Inc.
New York

HIS ROLE: Leader of managing general agent C.V. Starr; resigned as chairman and CEO of American International Group Inc. in 2005, amid investigations of AIG accounting practices and participation in alleged bid-rigging. AIG paid \$1.64 billion to settle fraud charges in early 2006.

WHAT'S AHEAD: Mr. Greenberg

has been at war with AIG ever since he left. The insurer sued him to recover its \$1.64 billion settlement and he countersued for \$1 billion in lost profits for C.V. Starr, which had written business for AIG. The two sides are also battling over a huge block of AIG stock held by Starr International Co., which Mr. Greenberg manages: AIG claims the stock, amounting to 9% of its outstanding shares, is intended for AIG executive compensation, a position Mr. Greenberg rejects. The stock is key to Mr. Greenberg's announced plans to seek opinions from other shareholders on AIG's "strategic direction," plans AIG has attacked as an effort to undermine the insurer's management. Meanwhile, Mr. Greenberg still faces a fraud suit

filed by the New York attorney general, and has been identified as an unindicted co-conspirator in the current criminal trial of five former Gen Re Corp. and AIG executives over an allegedly fraudulent loss portfolio reinsurance deal in 2000 that Mr. Greenberg set in motion.

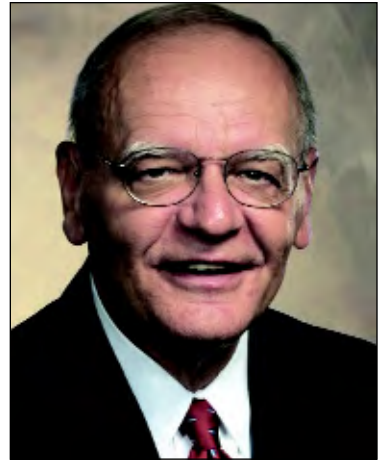
WHAT TO WATCH: 2008 is likely to bring news on any or all of the litigation fronts. The New York State Insurance Department has already warned Mr. Greenberg that he and other AIG shareholders with whom he's associated must seek prior regulatory approval for efforts to change AIG's operations, a contention he disputes. The trial of the five Gen Re and AIG officials is expected to be completed by the end of February;

Mr. Greenberg is not charged and will not testify, but the loss portfolio transaction also figures prominently in the attorney general's civil fraud charges against him, and the outcome of the criminal trial may affect the civil case.

Rep. Paul E. Kanjorski

Chairman
House Financial Services
Committee's Subcommittee on
Capital Markets, Insurance and
Government Sponsored Enterprises
D-Pennsylvania

HIS ROLE: Rep. Paul Kanjorski was elected chairman of the House



Financial Services Committee's Subcommittee on Capital Markets,

Continued on next page

THE TRUE STORY OF THE TORNADO THAT COULDN'T

And the race that couldn't be cancelled.

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CONTINUED FROM PREVIOUS PAGE

Insurance and Government Sponsored Enterprises in January 2007 after Democrats assumed control of the House. First elected to the House in 1984, he wields power over insurance second only to the committee's chairman in the House.

WHAT'S AHEAD: With the federal terrorism insurance backstop—of which Rep. Kanjorski has been a longtime proponent—extended for an additional seven years, he appears likely to continue his focus on the state of insurance regulation.

Rep. Kanjorski has held two informational hearings on the subject and plans to convene others in

2008. Rep. Kanjorski has stressed repeatedly that he approaches the subject without foregone conclusions regarding such matters as the desirability of allowing insurers to choose federal rather than state regulation.

WHAT TO WATCH: By dint of a leadership position and insurance knowledge—he once served as a workers compensation administrative judge—Rep. Kanjorski has considerable influence on insurance matters on Capitol Hill.

If, after the hearings conclude, he chooses to make specific recommendations on improvements to insurance regulation, those recommendations could carry considerable weight at both ends of Pennsylvania Avenue.

Henry C.V. Keeling

Chief Operating Officer
XL Capital Ltd.
Hamilton, Bermuda

HIS ROLE: As COO of Bermuda-based XL, Mr. Keeling oversees an insurer and reinsurer that is expanding globally.

WHAT'S AHEAD: The recent announcement that XL Chief Executive Officer Brian O'Hara will step down in 2008 and serve as chairman has fueled speculation about who will become XL's next CEO. Mr. Keeling has a long history with the company and to many observers appears to be a front-running candidate for that mantle. Mr. Keeling, who is well known in the commercial insurance industry, pre-



viously oversaw XL's reinsurance operations. He was appointed chief operating officer in a management realignment in 2006 that also saw

the creation of an Office of the CEO.

WHAT TO WATCH: If Mr. Keeling is tapped as the next CEO of XL, he will inherit a company with broad reach—and some challenges. Mr. O'Hara has the distinction of being the first employee hired at XL in 1986 and has served as CEO since 1994.

Like many other financial guarantee insurers, XL unit Security Capital Assurance Ltd. in late 2007 faced a capital shortage due to losses related to subprime loans. How the subprime fallout affects insurers' underwriting results in professional liability lines, an area where XL is a leader, remains to be seen.



Rep. Patrick Kennedy

U.S. House of Representatives
D-Rhode Island

HIS ROLE: Rep. Patrick Kennedy is the chief sponsor of mental health care benefits parity legislation and its most outspoken advocate in the House of Representatives.

WHAT'S AHEAD: The parity legislation that Rep. Kennedy introduced last year cleared three House committees and is currently awaiting action by the full House. A somewhat different parity bill has been approved by the Senate. While both bills require employer plans to cover mental health care conditions on the same basis as other medical conditions, the House bill would require plans to cover any diagnosis listed in the psychiatric community's compendium of mental disorders. The Senate bill, though, would leave it to employers to decide which mental health conditions they would cover. Once the House approves Rep. Kennedy's bill, which is considered likely, the differences between that measure and the Senate bill will have to be resolved by a House-Senate conference committee.

WHAT TO WATCH: Rep. Kennedy's willingness to negotiate with the Senate and accept that chamber's parity bill could be the deciding factor on whether Congress will approve a final bill that President Bush will sign. Washington observers say the Senate is unlikely to accept the House's parity bill. So far, though, Rep. Kennedy—whose father, Sen. Edward Kennedy, D-Mass., is one of the co-sponsors of the parity measure that cleared the Senate—has not shown any interest in accepting the Senate version.

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Anthony Kuczinski
Chief Executive Officer
Munich Re America
Princeton, N.J.

HIS ROLE: Promoted to CEO effective Jan. 1 to succeed John Phelan, who retired as head of the U.S. division of Germany's Munich Re Group. Mr. Kuczinski previously was president of Munich-American RiskPartners, a unit that serves the alternative risk market.

WHAT'S AHEAD: Munich Re in late 2007 announced an aggressive plan to grow its business, especially in the United States, which is the world's largest reinsurance market. But continued softening in property and casualty lines as well as rising retentions by ceding insurers, will

make growth difficult to achieve. In an interview shortly after Munich Re's announcement, Mr. Kuczinski said the reinsurance company would remain focused on disciplined underwriting and would build its business as a specialty player. He also noted that Munich Re's planned growth is a long-term strategy, paired with realigning its internal structures to better serve client needs. For 2006, Munich Re reported gross premiums written from U.S. primary and reinsurance business of 5.16 billion euros (\$6.48 billion), nearly 14% of the group's total premium volume worldwide.

WHAT TO WATCH: If Mr. Kuczinski succeeds at growing Munich Re America's profitably amid the tough market conditions, he will have notched a significant achievement and strengthened Munich Re's position as the world's largest reinsurer.

Chris McSwain

Director of Global Benefits
Whirlpool Corp.
Benton Harbor, Mich.

HIS ROLE: Mr. McSwain became director of global benefits at Whirlpool Corp. in December 2007 after serving as director of benefits and compensation at Columbia, S.C.-based SCANA Corp. for just more than four years.

WHAT'S AHEAD: If his health care cost-cutting record at SCANA is any



indicator, cutting costs likely will be a major initiative for Mr. McSwain at Whirlpool. He drastically cut increasing health care costs for the electric and gas utility company, which had risen 201% in three years. By 2005, about two years after his arrival at SCANA, he had managed to reduce health care costs by 5% when compared with 2004 costs. He also launched a health resource center and in-house pharmacy, and worked with the University of South Carolina to build a data warehouse for analyzing and improving health care for SCANA's employees, retirees and their dependents.

WHAT TO WATCH: Mr. McSwain was named *Business Insurance* Benefit Manager of the Year in 2005 for his dramatic impact on SCANA's health care costs in a short time

period. Whirlpool is a big jump in size and scope, however. While SCANA is a large regional employer, with 5,500 employees, Whirlpool has more than 73,000 employees and nearly 70 manufacturing and technology centers around the globe. Mr. McSwain's ability to make a big impact on a global corporation will be tested in his new job.



Rep. George Miller

Chairman
House Education and
Labor Committee
D-California

HIS ROLE: Rep. George Miller, the longtime ranking minority member of the Education and Labor Committee, became chairman in January 2007 after Democrats regained

control of the House of Representatives. In Congress since 1975, Rep. Miller has had a long interest in pension issues, which fall under the jurisdiction of the committee he chairs.

WHAT'S AHEAD: Rep. Miller says one of his priorities for early this year is the enactment of legislation that would require employers to disclose fees that are imposed on 401(k) plan participants. Rep. Miller also is exploring whether to introduce legislation that would require employers to limit or eliminate 401(k) and other defined contribution plan enrollment waiting periods, as well as requiring employers to offer an automatic enrollment feature in 401(k) plans.

WHAT TO WATCH: Through chairmanship of a key committee and his knowledge of pension issues, Rep. Miller has the power to get a 401(k) plan fee disclosure bill—and perhaps broader 401(k) plan changes—through his committee and possibly through the full House. In the past, though, Rep. Miller has found it difficult to work with congressional Republicans—he largely was, for example, on the sidelines in 2006 when Congress passed a sweeping pension funding reform measure. To enact 401(k) plan reforms, he will have to reach out more to Republicans to get the bipartisan support needed to win final congressional approval.

Continued on next page

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CONTINUED FROM PAGE 16



Janice Ochenkowski

**President
Risk & Insurance Management
Society Inc.
New York**

HER ROLE: Ms. Ochenkowski, a managing director at Chicago-based Jones Lang LaSalle Inc., became president of the Risk & Insurance Management Society Inc. on Aug. 31, 2007, with a term that lasts until Jan 1, 2009. Her 16-month term, like that of her predecessor, Michael Liebowitz, allows RIMS to synchronize presidential terms with its fiscal year.

WHAT'S AHEAD: This year, Ms. Ochenkowski can expect to confront ongoing issues dealing with broker compensation.

Brokers, stung by the investigations into their acceptance of contingent commissions from underwriters, have begun floating other compensation arrangements in the United States, arrangements that will have to be monitored closely to ensure they meet RIMS policy on the issue.

Ms. Ochenkowski also has said she will promote quality for risk managers by developing criteria that outline the qualities of a good risk manager and teach them how to take their job performance to the next level. In addition, she plans to continue RIMS' enterprise risk management initiatives.

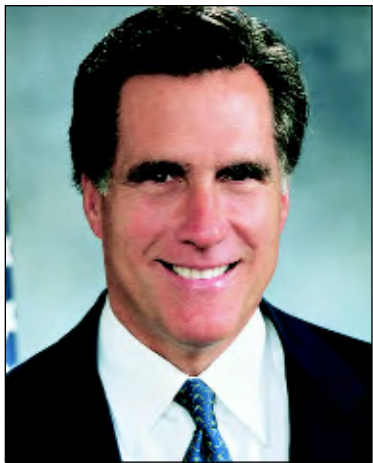
WHAT TO WATCH: As president of the largest risk management organization in North America, Ms. Ochenkowski will be in the position to influence decisions within the property/casualty insurance industry that could have ramifications long after her term ends.

Mitt Romney

**Candidate for Republican
presidential nomination
Boston**

HIS ROLE: Of all the presidential candidates, Mitt Romney is the only one to successfully enact—as Massachusetts' governor in 2006—comprehensive health care reform legislation. As a presidential candidate, health care reform continues to be one of his campaign themes.

WHAT'S AHEAD: Mr. Romney, who worked with Democrats to help enact the Massachusetts health care measure, says a key element of the Massachusetts law—health insurance premium subsidies for the low-income uninsured—should be adopted on a national level. He



LANDOV

also says health care coverage would be made more affordable if individuals buying their own coverage could take a tax deduction for

the premiums they pay. He is strongly opposed to expanding public health insurance plans, such as Medicaid and Medicare, and he argues that a market-based approach is best to ensure universal coverage.

WHAT TO WATCH: If Mr. Romney wins the Republican nomination and the presidential election, his success in Massachusetts would bode well in working with Congress to try to win bipartisan agreement on health care reform legislation.

David A. Sampson

**President and CEO
Property Casualty Insurers Assn.
of America
Des Plaines, Ill.**



HIS ROLE: Mr. Sampson became president and CEO of the Property Casualty Insurers Assn. of America in September 2007. He previously

served as U.S. deputy secretary of commerce and was a member of President Bush's management council.

WHAT'S AHEAD: Property insurance issues, particularly those involving property exposed to natural catastrophes such as hurricanes, are likely to play out on both Capitol Hill and state legislatures. Such issues are of great interest to PCI's diverse membership, many of whom write homeowners' insurance. Congress may also consider what role, if any, the federal government should have in regulating property/casualty insurance, an issue on which PCI has not taken a formal position. Regulatory issues

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could include whether the limited exemption from federal antitrust laws granted to insurers by the McCarran-Ferguson Act should be changed.

WHAT TO WATCH: As someone without a background in the industry, Mr. Sampson is likely to bring a new perspective to issues as varied as the membership he represents. And as the leader of one of the largest insurer trade groups, how Mr. Sampson deals with on those issues will have an impact far beyond Des Plaines, Ill.

Michael J. Sicard

Chairman, President and CEO
USI Holdings Corp.
Briarcliff Manor, N.Y.

HIS ROLE: Took over the helm of USI Holdings Corp. in November 2007 following the departure of David L. Eslick. Mr. Sicard joined USI's board following the broker's \$1.4 billion private equity acquisition by GS Capital Partners last January. He previously was the chief operating officer of Willis Group Holdings Ltd.'s North American operations, helping to turn around the London-based brokerage following its private equity deal with Kohlberg Kravis Roberts & Co. in 1998 and subsequent initial public offering in 2001.

WHAT'S AHEAD: Formed in 1994



DOUG GOODMAN

by well-known insurance brokerage executive Bernard H. Mizel, USI embarked on an aggressive growth-by-acquisition strategy and broke into *Business Insurance's* rankings of the world's largest brokers in 1999. It went public three years later. As a public company though, USI did not meet Wall Street's margin and profit expectations. Now, as a private company again, analysts say USI will be able to make tough decisions to restore profitability and ultimately strengthen the brokerage.

WHAT TO WATCH: Whether Mr. Sicard will be able to make those tough decisions remains to be seen. But with direct experience with one of the most successful private equity insurance brokerage deals to date under his belt, he certainly will be

under the watchful eye of USI's new owner, which will want to see a significant return on its investment within the next couple of years.



LANDOV

Gov. Arnold Schwarzenegger

State of California
Sacramento, Calif.

HIS ROLE: Among other initiatives, California Gov. Arnold Schwarzenegger will continue efforts toward enactment of universal health care coverage legislation. The Republican governor vetoed health care reform bills in 2006 and one in 2007, and is still seeking the elusive plan that provides "coverage for all."

WHAT'S AHEAD: The governor and state Assembly Speaker Fabian Núñez, D-Los Angeles, reached a tentative agreement in December on a \$14 billion plan to overhaul California's health care system. The compromise plan, which includes a sliding fee for employers and a tobacco tax, provides the framework for a bill that the two said they hope will go before the voters in November 2008. The plan, which the state Senate is expected to consider later this month, would require nearly all state residents to obtain health care coverage,

with the state providing premium subsidies for lower-income individuals.

WHAT TO WATCH: The health care issue remains on the front burner as the governor prepares to declare a fiscal emergency this month to deal with the state's growing deficit. With the goals of implementing health care reform and reducing the deficit seemingly at odds, Gov. Schwarzenegger faces a great challenge in trying to create a plan that will satisfy his constituents and establish his legacy as California's health care reformer.

Market Moves

Internet-driven success made it an attractive acquisition with expected premiums of \$40 million this year.

Swett & Crawford adds wholesale broker

LITTLE ROCK, Ark.—Atlanta-based Swett & Crawford Group Inc. has acquired Risk Reducers L.L.C., a Little Rock, Ark.-based wholesale brokerage.

Swett said the acquisition would expand its workers compensation capabilities.

Gallagher purchases Massachusetts agency

QUINCY, Mass.—Arthur J. Gallagher & Co. has acquired Koster Insurance Agency Inc. of Quincy, Mass., in a deal that the Itasca, Ill.-based brokerage and risk management services firm said will expand its educational health care offerings.

Koster will be renamed Gallagher Koster and be part of Gallagher's Higher Education Practice Group, Gallagher said.

Commerce Bankcorp sells brokerage arm

CHERRY HILL, N.J.—Commerce Bankcorp Inc. has sold its Commerce Insurance Services brokerage business to a group led by CIS executives George E. Norcross III and Michael Tiagwad.

Terms of the deal, which was announced in conjunction with Toronto-based TD Bank Financial Group's pending purchase of Commerce Bankcorp, were not disclosed.

Messrs. Norcross and Tiagwad will remain chairman and president, respectively, of Cherry Hill, N.J.-based CIS' 13 U.S. offices.

Haake expands fold with Masonic specialist

ALAMEDA, Calif.—Overland Park, Kan.-based brokerage and consultant Haake Cos. has purchased Thompkins & Co. for an undisclosed sum.

Alameda, Calif.-based Thompkins specializes in providing insurance solutions for the Masonic fraternity across the United States, Haake said.

HCC buys MultiNational, sets up Lloyd's syndicate

INDIANAPOLIS—Houston-based HCC Insurance Holdings Inc. said it has purchased Indianapolis-based life, accident and health insurer MultiNational Underwriters L.L.C. and received Lloyd's of London approval to set up Syndicate 4141 to offer MNU's accident and health products internationally.

In a statement, HCC said MNU's

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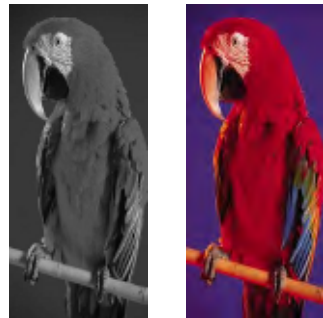
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International NEWS



GETTY IMAGES

An undersea earthquake that struck on Nov. 29, 2007, caused property damage on several islands in and around the Caribbean, including Martinique (above). A catastrophe insurance pool, the Caribbean Catastrophic Risk Insurance Facility, made its first payments after the 7.4-magnitude quake struck.

Caribbean cat pool pays islands' quake losses

By KRISTIN GUNDERSON HUNT

WASHINGTON—For the first time since its inception, a multinational catastrophe insurance pool has come to the aid of two Caribbean countries in need of emergency cash following a recent earthquake.

An undersea earthquake with a magnitude of 7.4 damaged homes and water lines on the islands of Dominica and St. Lucia in late November, triggering a nearly \$1 million payout from the Caribbean Catastrophic Risk Insurance Facility, said Simon Young, fund supervisor and chief executive officer of Caribbean Risk Managers Ltd. in Washington.

Mr. Young said payments of about \$419,000 and \$528,000 were issued to St. Lucia and Dominica, respectively, in mid-December, fulfilling the pool's purpose of providing cash quickly to Caribbean countries left devastated by hurricanes and earthquakes.

The CCRIF, which began operations last June and was hailed as the first-ever regional catastrophe insurance pool, is designed to backstop the small countries that are often financially unable to rebuild follow-

ing a disaster. The nations pool their natural disaster risks and potentially cut individual premiums by as much as 40%, according to the World Bank, which backs the pool.

Sixteen nations are members of the CCRIF—13 in the Caribbean region as well as Bermuda, Anguilla, and Turks and Caicos, Mr. Young said.

Premiums start at \$200,000 depending on each country's risk profile. Limits for each insured hazard are capped at \$50 million. The fund is composed of \$110 million in reinsurance and \$75 million in funds available for paying claims, CCRIF officials say.

The CCRIF says the Caribbean region is hit by one major hurricane about every two years. Hurricane Ivan struck in 2004, causing nearly \$890 million in damage and spurring Caribbean community leaders to ask the World Bank for help in establishing the fund.

"These areas are vulnerable to the impact from earthquakes and hurricanes," Mr. Young said. "They were very keen to put together a program that would help protect against the economic shock of such events."

Canadian employers targeted as overtime suits migrate north

Employees in Canada seek compensation for longer workdays

By GLORIA GONZALEZ

Taking a cue from their U.S. counterparts, Canadian plaintiffs lawyers have identified unpaid overtime as the next employment issue ripe for litigation, with several Canadian companies already accused of violating employment statutes by failing to pay their employees for overtime work.

In light of the increasing risk of overtime pay disputes, Canadian employers must be diligent in ensuring that their overtime policies are compliant with all relevant federal and provincial employment laws and are being strictly implemented and enforced, employment lawyers say.

Three major Canadian companies were sued last year for allegedly violating federal and provincial labor laws mandating overtime pay for employees who worked above hour limits dictated by the statutes. The first unpaid overtime lawsuit, which is seeking class action certification, was filed against Canadian Imperial Bank of Commerce in June 2007, while similar lawsuits were launched against accounting firm KPMG L.L.P. in August and the Bank of Nova Scotia in December (see box).

Unpaid overtime lawsuits will be the next "big wave" of class action filings in Canada, said Henry Juroviesky, a partner with Juroviesky & Ricci L.L.P. in Toronto who filed the lawsuit against KPMG on behalf of an employee who asked for and was denied overtime pay.

As class action overtime lawsuits have exploded in the United States in recent years, Canadian lawyers are beginning to embrace such suits, emulating the principles and provisions established in U.S. court decisions. "The American case law was certainly in our minds when we were drafting the claims," said Douglas Elliott, a partner at Roy, Elliott, O'Connor in Toronto who filed the complaints against CIBC and Scotiabank.

The three complaints are just the beginning, as class action lawsuits continue to gain traction in Canada and plaintiffs lawyers explore their

use in the employment standards arena, lawyers say.

"If these actions are disposed of successfully by the defendant organizations, it may be that the enthusiasm of the plaintiffs bar may die out," said Brian Johnston, a labor and employment lawyer with Stewart McKelvey in Halifax, Nova Scotia, who represents employers. "Certainly, if there's some favorable resolution to the plaintiffs, it may act as some form of encouragement for future lawsuits."

'The burden is on the employer to demonstrate the employee is exempt from the overtime provisions.'

Henry Juroviesky, Juroviesky & Ricci

Federally regulated institutions such as banks are seen as particularly viable targets for unpaid overtime lawsuits because they are governed by a federal statute known as the Canada Labour Code, which plaintiffs attorneys are using as the basis for class action claims. In contrast, class actions become more complicated if the company is regulated at the provincial level, because complaints must address each relevant provincial employment statute, which may differ from province to province.

Scotiabank's overtime policy is based on the federal statute and CIBC says it pays overtime for work in excess of 37.5 hours per week, more stringent than the federal statute's requirement that overtime be paid for working more than 40 hours a week. "When eligible employees do work overtime, it is our explicit policy to compensate them for having done so," CIBC said in a statement. KPMG did not return telephone calls and did not release any statements.

Many financial institutions tend to have a "culture of volunteerism" in which employees are tacitly encouraged to work longer hours to be promoted, but the federal law mandates overtime be paid whether the employer requires or permits the work, said Louis Sokolov, a partner with Sack Goldblatt Mitchell

LAWSUITS MOUNT

Several Canadian companies are being sued by current or former employees for violating federal and provincial employment statutes by failing to pay their employees for working overtime:

- Canadian Imperial Bank of Commerce was sued in June 2007 for an overtime policy that allegedly requires or permits class members to work overtime hours for which they are not paid, in violation of the federal Canada Labour Code. The lawsuit seeks an estimated \$600 million Canadian (\$611.5 million) in total damages for class members and an order declaring that the bank's overtime policy is unlawful and unenforceable.

- KPMG L.L.P. was sued in August 2007 for allegedly breaching its obligations under the Ontario Employment Standards Act and other provincial employment laws to accurately record and pay its employees for overtime work. The complaint seeks an estimated \$20 million Canadian (\$20.4 million) in general damages.

- The Bank of Nova Scotia was sued in December 2007 for an overtime policy that allegedly requires or permits members to work overtime hours for which they are not paid, in violation of the Canada Labour Code. The complaint seeks an estimated \$350 million Canadian (\$356.7 million) in total damages and an order restraining the bank from enforcing its current overtime policy.

Source: Court documents

L.L.P. in Toronto, which is jointly pursuing the complaints filed against CIBC and Scotiabank with Mr. Elliott's firm. "It's there to discourage subtle or not so subtle pressures in the workplace for employees to start donating their time," he said.

Companies often mistakenly believe their employees fall within limited exceptions to employment laws, leading them to improperly deny overtime pay requests. "Really, the burden is on the employer to demonstrate the employee is exempt from the overtime provisions," Mr. Juroviesky said.

Another misperception is that salaried employees in Canada are

See **OVERTIME** next page

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Gen Re: Trial to examine reinsurance deal

CONTINUED FROM PAGE 3

of two separate subpoenas that Mr. Ferguson issued to affiliates of Verizon Communications Inc. seeking phone records.

"The court concludes that evidence that could disprove that certain calls alleged by the government occurred—or that certain exculpatory calls alleged by the defendants occurred," Judge Droney wrote in a Jan. 2 filing. "Beyond this purpose, however, Ferguson has not demonstrated how many phone records will be relevant."

The reinsurance deal in question began with an Oct. 31, 2000, phone call during which Maurice R. Greenberg, then-AIG CEO, asked Mr. Ferguson if Gen Re would cede \$500 million of its business to New York-

based AIG by year-end, prosecutors said (*BI*, Dec. 3, 2007).

Mr. Greenberg has not been charged in the case.

Following Judge Droney's ruling last week, Mr. Ferguson's counsel also agreed to drop requests for communications between Messrs. Buffett and Greenberg from Jan. 1, 2000, to the present, according to court documents. In addition, Mr. Ferguson's counsel agreed to withdraw a request for all communications between Messrs. Ferguson and Brandon "that mention (Mr. Buffett) in any manner," though the latter could later be reinstated, the filing notes.

Over the past year, pretrial motions by prosecution and defense attorneys included the government putting Mr. Buffett on a list of potential witnesses. Accord-

ing to court documents, however, the government does not plan to call him to the stand.

"To be clear, the reason Mr. Buffett appears on the government's witness list is to rebut any suggestion by the defendants that he was involved in or approved the LPT deal," the prosecution said in a Dec. 31 court filing. "Absent this evidence, the government does not intend to call him as witness in its case-in-chief and create a distracting 'trial within a trial.'"

Others charged in the case include Elizabeth A. Monrad, former Gen Re chief financial officer; Christopher P. Garand, former Gen Re senior vp in charge of U.S. finite underwriting; Robert D. Graham, former Gen Re senior vp and legal counsel; and Christian M. Milton, AIG's former vp for reinsurance.

Marsh: Realigns broker's senior management team

CONTINUED FROM PAGE 1

division, Marsh said.

All of these executives report directly to Mr. Glaser, Marsh said.

"Simplifying the current structure will enable Marsh to reduce complexity and improve efficiencies within the organization," Mr. Glaser said in a statement.

This major realignment of the broker's senior management team was the second in just four months.

Following the ouster of Mr. Storms, MMC Chairman and CEO Michael G. Cherkasky, who himself will resign from the company upon the appointment of a new CEO, tapped former Marsh Executive Vp Mr. Moyles to become CEO of its Americas division. Mr. Moyles replaced Mr. Mahoney, who in September resigned from Marsh to join Integro Ltd. but changed his mind and decided to stay with Marsh. Mr. Mahoney had been asked to lead Marsh's client services for its top global clients.

In addition, Mr. Feuer, who joined Marsh in late 2006 to grow its middle-market business and was named to the additional post of CEO of U.S. operations last July, was named COO of Marsh's U.S. operations in the September realignment.

A spokeswoman for Marsh said Mr. Moyles and Mr. Feuer both resigned from the brokerage but declined to give further details.

A person close to the matter, however, said that Messrs. Moyles and Feuer were offered positions with the brokerage in light of the latest reorganization, but declined them. Mr. Moyles specifically was offered Mr. Vietor's role as president of Marsh's global specialties unit, the person said.

Observers said that while it's not surprising that Mr. Glaser would want to appoint his own senior managers, the loss of more senior executives will be a negative for Marsh.

"Setting things right after they've been wrong for so long will involve more turmoil," said Meyer Shields, an analyst with Stifel, Nicolaus & Co. Inc. in Baltimore. "For a company where morale is bad, where there are literally dozens of competitors hoping to hire your talent away, more turmoil, even if it's short term and...the right thing to do, can be disruptive and (the departure of) Phil Moyles is a good example of that."

"He has extensive experience and enormous client contacts, so when you lose someone like that...it is a negative," Mr. Shields said.

"The resignation of Mr. Moyles...continues the management musical chairs that we have seen at Marsh the past few months. We suspect the constant turmoil will have an adverse impact on near-term operating results, as would typically be expected in a ser-

'Setting things right after they've been wrong for so long will involve more turmoil.'

Meyer Shields,
Stifel, Nicolaus & Co. Inc.

vice type business," David Small, an analyst with Bear, Stearns & Co. Inc., wrote in a note to investors last week.

"It's becoming increasingly difficult for Marsh management to hear-ken back to the glory days, as Mr. Moyles was one of the last senior old-time executives," Mr. Small said.

Greg Dickerson, director-insurance for Fitch Ratings Ltd. in New York, said that while the departures of Messrs. Moyles and Feuer were not necessarily expected, they are understandable if they simply reflect Mr. Glaser's desire to appoint his own people to key posts.

"Nevertheless, the persistent unrest and seemingly steady state of flux among senior management at Marsh adds an unwelcome element of uncertainty and a distraction," Mr. Dickerson said.

Despite all the management changes, at least one Marsh client said he has not experienced any impaired or substandard services.

"We have seen no service problems from the Atlanta and Chicago team that service us," said John Phelps, director of risk management for Blue Cross & Blue Shield of Florida Inc. in Jacksonville. "This is largely due to the fact that...staff changes have stopped as of a year or so ago at least for the team that directly services us. Other clients with other service teams may not have had the same experience."

ADA: Ruling backs hearing-impaired ban

CONTINUED FROM PAGE 4

tially all," hearing-impaired drivers pose a higher risk of accidents than their nonimpaired counterparts, court records show. UPS also would have to prove that practical criteria do not exist for determining which hearing-impaired drivers pose a heightened risk and which do not.

The ADA, in contrast, states a defense is possible against discrimination charges related to qualification standards tests if it is shown that the screening is job-related, consistent with business necessity and "such performance cannot be accomplished by reasonable accommodation," the court records state.

A UPS spokeswoman said the

delivery firm is pleased that the appeals panel rejected the "notion that persons with physical impairments can be held to a lower standard of safety." She also noted that the court found that a disabled person ultimately bears the burden of demonstrating that he or she can safely operate certain vehicles.

The National Chamber Litigation Center, a Washington-based unit of the U.S. Chamber of Commerce, also welcomed the decision.

"We applaud the court for (vacating its earlier decision because it had) established a significantly more stringent test for evaluating business necessity than was permitted under the ADA. For that reason it is a very good thing," said Robin Conrad, executive vp.

The most recent decision, however, does not end the litigation. The appeals court remanded the case to the trial court.

Larry Paradis, executive director for Disability Rights Advocates, a Berkeley, Calif.-based organization that filed the lawsuit, said the recent ruling will not change the final outcome.

Mr. Paradis said the 9th Circuit ruling only changes the standard that UPS must meet, but does not necessarily lower it.

Eric Bates; Bert Enos; Barbaranti Oloyede; Eric Bumbala; Edward Williams, on behalf of themselves and all others vs. United Parcel Service Inc., 9th U.S. Circuit Court of Appeals. No. 04-17295.

Overtime: Class actions surge in Canada

CONTINUED FROM PREVIOUS PAGE

not entitled to overtime pay, but the employment statutes distinguish between management and nonmanagement employees who are eligible for overtime pay. "The fact that they're getting a salary is no defense at all," Mr. Elliott said.

In response to the high-profile suits, many Canadian employers have launched reviews of their overtime policies to ensure compliance with the applicable statutes, lawyers

say.

Employers with overtime policies have to carefully examine whether these policies are actually being followed or implemented by their employees, employment lawyers say. For example, if a company's policy requires prior written approval for overtime, the company must ensure that the requirement is being implemented and strictly enforced.

"It's not good enough from a statutory or regulatory perspective that the policy says they're not sup-

posed to work the overtime," said Jonathan Dye, a partner and employment law specialist with Heenan Blaikie L.L.P. in Toronto. "If they worked the overtime, you have to pay them."

Employers must also ensure that accurate records are kept because employment laws place the onus on them to maintain accurate records and a failure to do so may benefit the employee in a court proceeding. "That is where (employers) seem to be in trouble the most," Mr. Dye said.



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Billionaire activist with history of success takes stake in MMC

By SALLY ROBERTS

More changes at Marsh & McLennan Cos. Inc. could soon come by way of a new shareholder.

Billionaire activist investor Nelson Peltz last week bought an undisclosed stake in New York-based MMC. His firm, Trian Fund Management L.P., is known for taking stakes in companies such as Cadbury Schweppes P.L.C., H.J. Heinz Co., Wendy's International Inc. and Kraft Foods Inc. and successfully forcing changes.

For example, last month Trian sent a 13-page letter to Cadbury Schweppes' board urging further change at the company, including setting near-term margin targets for its confectionary business, adding several new directors to the board and divesting certain beverage assets.

In the letter, Trian warned that if Cadbury fails to demonstrate meaningful operational progress in 2008 that translates to the bottom line, "Trian will look to become significantly more active in evaluating all of our alternatives as a large share-

holder."

According to a 2006 Trian press release, the investment firm seeks to invest in undervalued and underperforming public companies and work closely with management to effect change through active, hands-on influence and involvement—what it calls "operational activism."

Just what Mr. Peltz might have in mind for MMC remains to be seen, but observers won't rule out a breakup of the company. Some analysts, though, say such a move is not necessarily the right answer.

Mr. Peltz "has been one of the more vocal and more successful activist investors," said Mark Lane, an analyst with William Blair & Co. in Chicago. "It's a perfect situation I think in order to effect some change. I don't think anyone would dispute that Marsh still has very, very valuable assets and a lot to work with, that has been badly mismanaged for the last three years."

It's unknown "if it's a sale, if it's a breakup or if it's a particular CEO that is being eyed (by Mr. Peltz), but clear-

ly there's a lot to work with," Mr. Lane said.

Last month, MMC announced that Michael G. Cherkasky would resign from the company upon the selection of a new CEO (*BI*, Dec. 24, 2007).

Meyer Shields, an analyst with Stifel Nicolaus & Co. Inc. in Baltimore, said he believes Mr. Peltz will look to break up the company by spinning off its various units.

"The big shareholder activism was already accomplished when Michael Cherkasky was let go, so he's not angling for that," Mr. Shields said of Mr. Peltz. "So that means what he's probably trying to do is break up the company, and I'm not as convinced that by breaking up the company there's enormous value to be unlocked."

MMC "has disappointed shareholders for a long, long time and this



Mr. Peltz

is not a patient shareholder base," Mr. Shields continued. "If they have to sell under pressure because of that, can they get top dollar for the assets that they are selling? Probably not."

David Small, an analyst with Bear Stearns in New York, agrees that a breakup may not be the best move. "We would remain somewhat cautious

on the ability to effectively spin off Marsh, given our view that the operating results will likely remain poor in the near term," he wrote in a note to investors last week. "At this point, without seeing significant improvements, we question Marsh's ability to stand on its own."

If Mr. Peltz aggressively seeks to break up MMC, he'd have at least one other shareholder on his side.

In November, Toronto-based

investment firm J.K. Harrison & Partners Inc. sent MMC's board a shareholder proposal—to be included in the proxy statement at MMC's next annual meeting—to spin off to shareholders its risk consulting unit, Kroll Inc., and benefit consultant Mercer L.L.C.

"We're a small Canadian firm that doesn't have the dollars behind it to make a difference that a (Mr. Peltz) would, which is why we took the route of making a proposal to get on the proxy and hopefully awaken a lot of shareholders and force them to vote with their feet at proxy time," said Joel Clark, portfolio manager for J.K. Harrison.

"We always felt that (MMC) is the type of company...that would attract value investors and having (Mr. Peltz) there is a very nice addition to the process. He's very much management- and board-driven, and that's what's totally lacking in this company," he said.

Calls to Trian Partners were not returned. An MMC spokeswoman would only say that the company is aware Mr. Peltz is now a shareholder.

EEOC: Rule exempts retiree health plans

CONTINUED FROM PAGE 1

all retirees, to avoid litigation. However, it was blocked from implementing its rule because of a legal challenge by the AARP, the retiree group.

But that roadblock was removed last June when the 3rd Circuit ruled that ADEA "clearly and unambiguously" gives the EEOC the authority to issue ADEA exemptions so long as those exemptions are reasonable and "necessary and proper in the public interest."

The EEOC rule met those tests, the court ruled because, it reasoned, if employers had to continue to provide the same level of benefits to older and younger retirees, employers would reduce health care benefits to all retirees (*BI*, June 11, 2007).

The final rule, which mirrors the rule proposed in 2003, took effect Dec. 26, the date it was published in the Federal Register.

Benefit experts say the final rule is a victory for employers, which no longer have to fear age discrimination suits for mainstream retiree health care plan designs, and for

younger retirees, whose benefits likely would have been cut to equal those provided to Medicare-eligible retirees.

"For employers, the uncertainty and fear of litigation is over," said Kathryn Wilber, health policy legal counsel for the Washington-based American Benefits Council, one of many employer and union organizations that supported the EEOC rule.

"This is very good news for employers and for retirees that have coverage. The EEOC got it right," said Andy Anderson, of counsel with the law firm Morgan, Lewis & Bockius L.L.P. in Chicago.

While welcoming the final rule, benefit experts recognize that it is unlikely to slow the erosion of retiree health care plans, for which numbers have dropped dramatically over the past decade due to higher costs and accounting rules that require recognition of retiree health care liabilities on corporate financial statements.

Without the EEOC rule, however, retiree health care benefits would have eroded more rapidly, said Cara Jareb, director of retiree medical consulting with Watson Wyatt Worldwide in Arlington, Va.

The controversy has hung over employers since the initial court decision in 2000, which stunned many employers that had long thought the ADEA did not apply to retiree health care plans. And their fears increased when the EEOC said it would incorporate the Erie County ruling in its compliance manual.

Employers and labor organizations joined forces to lobby the EEOC to reverse course, warning that with retiree health care plans costs nearly two-and-one-half times higher for younger retirees than for Medicare-eligible retirees, the result of mandating benefit equality for

the two groups would be a reduction of benefits provided to younger retirees, or the elimination of benefits.

"Employers would not have thrown boatloads of benefits at older retirees, who have Medicare. Rather, they would have reduced benefits for younger retirees," Watson Wyatt's Ms. Jareb said.

Indeed, that is exactly what Erie County did, cutting, as part of a settlement, early retirees' benefits to put their benefits more in line with older retirees' benefits.

Responding to concerns from employers and organized labor, the EEOC in 2001 announced that it would no longer enforce the Erie County ruling and later proposed exempting retiree health care plans from ADEA.

While the AARP lawsuit and an earlier adverse court decision blocked the EEOC—until the 2007 appeals court ruling—from finalizing its proposed rule to exempt retiree health care plans from ADEA, experts said they had little doubt that the EEOC ultimately would prevail.

The EEOC had public policy on its side, said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

Still, the issue could have one more chapter to play out. The AARP has asked the Supreme Court to review the 3rd Circuit ruling giving the EEOC the green light to issue its retiree health care plan ADEA exemption rule.

Experts, though, doubt the Supreme Court will review that ruling because there are no splits in circuit courts on the issue and because the high court already has ruled, in an unrelated case, that federal courts generally must defer to regulatory agencies' interpretation of law.

END OF THE ERIE COUNTY LINE

The many twists and turns in the Erie County, Pa., retiree health care saga

AUGUST 2000: The 3rd U.S. Circuit Court of Appeals rules that the Age Discrimination in Employment Act applies to retiree health care plans. The ruling, involving retiree health care plans provided by Erie County, Pa., exposes mainstream employer programs, which offer smaller benefits to Medicare-eligible retirees than to younger retirees, to litigation.

OCTOBER 2000: The Equal Employment Opportunity Commission adopts the Erie County ruling in its compliance manual.

APRIL 2001: A federal district court rules that Erie County's retiree health care plan violates ADEA because Medicare-eligible retirees receive "lesser" benefits than younger retirees.

JULY 2001: The EEOC suspends enforcement of the Erie County ruling and says it will review its earlier policy.

AUGUST 2001: The EEOC formally withdraws enforcement of Erie County ruling and pledges to develop new rules that do not discourage employers from offering retiree health care plans.

APRIL 2002: Erie County settles litigation by paying \$305,000 to retirees and their lawyers. Prior to settlement approval, the county cuts younger retirees' benefits to put them more in line with Medicare-eligible retirees.

APRIL 2004: The EEOC proposes final rules to exempt retiree health plans from ADEA. Rules make clear that employers can alter, reduce or terminate coverage when retirees become eligible for Medicare.

FEBRUARY 2005: AARP files suit to block publication of the final EEOC rule. A court bars the EEOC from publishing the rule for 60 days and agrees to hear arguments.

APRIL 2005: U.S. District Court Judge Anita Brody permanently blocks the EEOC from enforcing its rule exempting retiree health care plans from ADEA. Such an exemption, Judge Brody rules, would permit a practice that the 3d Circuit, nearly five years earlier, said violates ADEA.

SEPTEMBER 2005: Judge Brody reverses earlier ruling and says the EEOC has the right to issue its retiree health care ADEA exemption. Courts, Judge Brody rules in citing a recent Supreme Court decision on the issue, must show deference to a federal agency's interpretation of law so long as the statute on the point of contention is ambiguous and the agency's interpretation of law is a reasonable one.

JUNE 2007: The 3rd Circuit affirms the EEOC's right to issue the ADEA exemption, saying that the exemption was reasonable and in the public interest.

DECEMBER 2007: EEOC issues final rule to exempt retiree health plans from ADEA. The rule affirms that employers can—without violating ADEA—alter, reduce or terminate coverage when retirees become eligible for Medicare.

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News In Brief

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respond to catastrophic acts of domestic as well as foreign terrorism.

Berkshire Hathaway buys ING reinsurance unit

The Amsterdam-based ING Group said it has reached an agreement to sell its NRG N.V.

reinsurance unit to the Omaha, Neb.-based Berkshire Hathaway Group for about €300 million (\$441.5 million). ING said the sale is part of its strategy to focus on its core insurance, banking and asset management businesses. ING became the unit's majority shareholder in 1974 and its sole owner in 1991. The unit stopped underwriting new business in 1993, according to ING.

QBE acquires North Pointe

QBE Holdings Inc., a U.S. unit of Australia's QBE Insurance Group Ltd., is buying specialty property/casualty insurer North Pointe Holdings Corp. in a cash

transaction valued at approximately \$146 million. The deal is subject to certain closing conditions but is expected to be completed during the first half of 2008.

XL chairman resigns, stays on at SCA

XL Capital Ltd. announced that Chairman Michael P. Esposito Jr. has resigned from the board of XL Capital Ltd. but will remain board chairman of Security Capital Assurance Ltd. SCA is the Bermuda-based holding company for XL Capital Assurance Inc. and XL Financial Assurance Ltd. Both were units of XL Capital until XL spun them off in public offerings. XL

retains a 46% stake in SCA.

Worker injured on break eligible for benefits: Court

Montana's Supreme Court last week upheld a Montana District Court ruling that injuries suffered by a worker who was offsite on a paid break are compensable under the state's workers compensation law. The high court concluded that because the claimant's 15-minute breaks were paid for by her employer and there were no stipulations that prevented her from leaving work to care for her dog during her break, injuries sustained in a car accident on the way back to work should be compensated.

Pay or play: San Francisco fights for health care law

CONTINUED FROM PAGE 1

will act promptly, and we're cautiously optimistic."

The city also asked the panel to expedite its appeal of Judge White's decision.

Without the employer health care spending mandate, San Francisco will be able to make its health care services program available only to residents whose income is less than 300% of the federal poverty level, or about \$31,000 annually for an individual. That would disqualify about 39% of San Francisco's approximately 73,000 uninsured adults, according to court records and Mr. Herrera.

The ordinance calls for employers to either offer their employees health insurance or pay a fee to support the city's program, Healthy San Francisco. Private employers with 100 or more workers would be required to make minimum health expenditures of \$1.76 per hour on behalf of each covered employee, while firms with between 20 and 99 employees and nonprofits with 50 or more employees would be required to pay \$1.17 per hour.

About 90% of businesses with 20 or more employees already provide health care benefits to employees, according to court papers filed by the city.

In his decision, Judge White said, "The ordinance's health care expenditure requirements are pre-empted because they have an impermissible connection with employee welfare benefit plans."

"By mandating health benefit structures and administration, those requirements interfere with preserving employer autonomy

over whether and how to provide employee health coverage, and ensuring uniform national regulation of such coverage," the judge said in the ruling. "The ordinance's provisions also make unlawful reference to benefit plans because they refer to, are designed to act immediately upon, and cannot operate suc-

The court is not convinced that other alternatives for creating a program for providing public health are not viable.

Judge Jeffrey S. White, U.S. District Court

cessfully without the existence of employee welfare benefit plans."

However, the judge added, "The court is not convinced that other alternatives for creating a program for providing public health are not viable." These could include a tax program "that takes existing health care expenditures by private employers into account in the form of tax credits."

In a statement, San Francisco Mayor Gavin Newsom expressed confidence that "we will win" an appeal of the ruling.

"Because San Francisco's ordinance requires employers to pay for benefits, but allows them to do so without adopting an ERISA plan (or modifying an existing plan), it is not pre-empted," the city argued in a brief filed with the Court of Appeals.

In an opposing brief, however, the Golden Gate Restaurant Assn.

argued that the lower court "carefully considered, and its analysis is consistent with, the current controlling ERISA pre-emption model."

Observers say the ruling could affect California Gov. Arnold Schwarzenegger's proposed health care reform plan, which would require employers statewide to spend a percentage of payroll that ranges from 1% for smaller firms to 6.5% for the largest employers for health insurance coverage (BI, Dec. 24, 2007). Those employers not spending those amounts would have to pay into a state pool to provide coverage to the uninsured.

"Whatever the 9th Circuit's going to do obviously impacts" Gov. Schwarzenegger's plan, said Diane M. O'Malley, an attorney with Hanson Bridgett Marcus Vlahos & Rudy L.L.P. in San Francisco, "If they say it's pre-empted by ERISA, the state has to go back to the drawing board, and if they say it's not, assuming the state plan conforms significantly to what San Francisco has done, it should pass muster as well, and then it can go forward."

Nancy L. Ober, an attorney with Littler Mendelsohn P.C. in San Francisco, agreed. "The issue is the same at the state level, as I see it."

Tonie L. Bitseff, an attorney with Thelen Reid Brown Raysman & Steiner L.L.P. in San Francisco, said if the 9th Circuit agrees with Judge White's decision "they would have to reframe" Gov. Schwarzenegger's proposal. However, if the 9th Cir-

cuit overturns the ruling, that would conflict with a decision last year by the 4th U.S. Circuit Court of Appeals in Richmond, Va., in *Retail Industry Leaders Assn. vs. James D. Fielder Jr.*, which means "we're likely to have a Supreme Court review."

In that decision, the appeals court upheld a ruling striking down a Maryland law that would have required Wal-Mart Stores Inc. to spend more on employees' health insurance (BI, Jan. 22, 2007). The court said the law violated ERISA.

As far as the proposed California law, the employer spending provision was not included in a measure passed last month by the state Assembly because it lacked the two-thirds majority vote needed for tax increases under the state's constitution, said a spokesman for Assembly Speaker Fabian Núñez, D-Los Angeles.

The financing mechanism would have to be approved by voters before becoming law, and lawmakers have already begun drafting the ballot initiative even though it has not yet received state Senate approval.

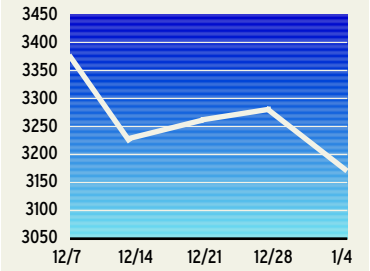
"At first blush, we do not believe (Judge White's) ruling is insurmountable to the governor's proposal," said Frank Furtek, chief counsel for the California Health and Human Services Agency in San Francisco.

"The approach to appeal will be that the trial court interpreted ERISA too broadly and we concur with that general conclusion," Mr. Furtek said. "We are considering" filing an amicus brief supporting San Francisco's appeal, although no final decision had been made, he said.

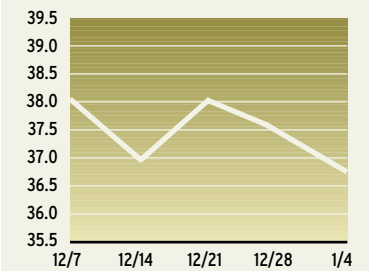
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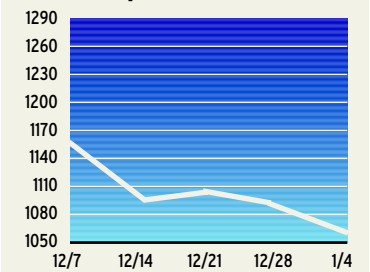
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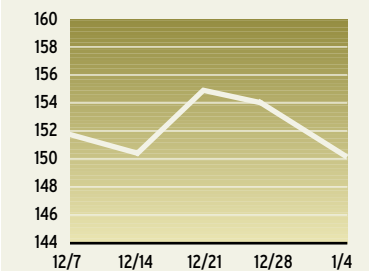
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3170.23	↓ -3.26%
DOW JONES	12800.18	↓ -4.23%
S&P 500	1411.63	↓ -4.52%

LARGEST GAINS

Humana Inc.	4.51%
Allmerica Financial Corp.	2.59%
Marsh & McLennan.	2.23%
Sierra Health Services.	2.08%
Everest Re Group Ltd.	1.63%

LARGEST LOSSES

Philadelphia Consolidated ...	-7.26%
Old Republic International ...	-6.66%
CNA Surety Corp.	-6.63%
Meadowbrook Insurance ...	-6.55%
Unum Group ...	-6.49%

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Contributing: Jeff Casale, Kristin Gunderson Hunt, Joanne Wojcik

Watchdog says Toyota ads promote insurance fraud

Burying your car under a pile of snow so a snowplow can "accidentally" demolish it or pushing it off a cliff and reporting it stolen are ways to get a new car. They also could result in a trip to jail.

Toyota Motor Sales U.S.A. Inc. features the former scheme in one of its "Toyota Phenomenon" commercials, which show people devising creative ways to total their vehicles in order to buy new ones.

This, of course, does not sit well with the Coalition Against Insurance Fraud.

Dennis Jay, executive director of the Washington-based nonprofit watchdog group, recently wrote to Toyota explaining why the ads are disconcerting, noting that "owner give-up" is a "common and costly insurance crime."

"Trivializing owner give-ups on national television helps teach millions of Americans that committing fraud is easy, acceptable and even enjoyable way to move up in the world," Mr. Jay wrote.

In response to Mr. Jay's letter, Toyota's Customer Experience Team said in a statement that it "hoped the commercial would create a pleasant moment of laughter that would help the viewer keep Toyota in mind" if they ever needed a new vehicle.

In a separate case on a related subject, Richard Way Jr. of Claysburg, Pa., was arrested last month on charges that he allegedly pushed his 2004 Ford Mustang off a cliff in April 2006 and then reported it stolen. He even stripped the car of its stereo and performance equipment before dumping it and later offered the stripped parts for sale online, according to the Pennsylvania attorney general's office.

Meanwhile, Mr. Jay said jail could be the destination for those who think a staged theft or accident will result in a new car or lucrative insurance settlement.



"Toyota Phenomenon" commercials show people devising creative ways to total their vehicles in order to buy new ones. Above, a man pushes his vehicle off of a parking garage.

Business Insurance END PAGE



ADRIAN FLUX INSURANCE

Employees of U.K. specialty car insurance broker Adrian Flux Insurance posed for a 2008 calendar for its younger customer base.

'Flux babes' barely have it covered

Well, sex sells, as they say, and Adrian Flux Insurance is hoping it might earn them a few more dollars.

The U.K.-based specialty car brokerage launched a "girl-powered" calendar for 2008. The colorful and provocative month-minder features actual Flux employees striking poses on the hoods of cars and occasionally with one another.

The "Flux Babes" calendar is aimed at the brokerage's young adult customer base and also showcases its coverage for niche market vehicles, such as classics, modified motors and high-performance cars.

"Sure, I'm a business woman, but this isn't compromising my ambitions," Jenny, a customer service department manager with Flux, said in a statement. "The main thing is, it's really good fun, and while I enjoy my work, it's great to get out of the office occasionally and do something totally, totally different."

Yes, being played across the front of a Lotus in a pair of tight black shorts and a halter top is very different than handling a customer service call.

Snow brings free vacations for Canadians

Thousands of Canadians hoping for a white New Year got their wish, and a free vacation to boot.

Online travel retailer itravel2000.com is giving away winter getaways to Montreal travelers who participated in the company's "Let it Snow" promotion, which required five inches of snow to fall on New Year's Day at the airport nearest to where the participant lived for the free trips to be awarded.

Tens of thousands of travelers throughout Canada who booked trips through itravel2000.com by early December 2007 for travel between November 2007 and April were eligible for the trips valued at a maximum of \$100 million Canadian (\$101.9 million).

Montreal travelers were the only winners, though, with 5.8 inches of snow falling at the local airport. Travelers in Alberta, Ontario and Atlantic Canada lost out when not enough snow accumulated at the Toronto, Halifax and Calgary airports.

Winning travelers will be reimbursed by check for the full retail price of their package vacation, flight or hotel that they had booked during the eligibility period.

The travel company enlisted the services of San Francisco-based WeatherBill, an online risk management service that guarantees businesses' weather-related losses, to cover the risk. The company "took out the largest single-day weather guarantee in history," according to an itravel2000.com statement.

Coverage was capped at \$100 million Canadian in losses, but it is unclear how much the contest will end up costing WeatherBill.



Mayor urges citywide diet

Oklahoma City Mayor Mick Cornett is challenging residents to collectively lose 1 million pounds so the city can shed its image as one of America's fattest communities.

2007 RANKING OF FATTEST CITIES

1. Las Vegas
2. San Antonio
3. Miami
4. Mesa, Ariz.
5. Los Angeles
6. Houston
7. Dallas
8. El Paso, Texas
9. Detroit
10. San Jose, Calif.
11. Long Beach, Calif.
12. Memphis, Tenn.
13. Chicago
14. Arlington, Texas
15. OKLAHOMA CITY
16. Indianapolis
17. Fort Worth, Texas
18. New York
19. Fresno, Calif.
20. Wichita, Kan.

Source: Men's Fitness

lifestyle."

To help residents meet their weight loss goals, the city launched an interactive Web site, www.thiscityisgoingonadiet.com, on New Year's Eve. Residents can use the site to confidentially track their progress, calculate their body mass index as well as learn more about healthy eating and exercise opportunities.

According to a 2007 survey by Men's Fitness magazine, Oklahoma City ranked 15th among "America's Fattest Cities."



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AIG **THE STRENGTH
TO BE THERE.[®]**

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