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Business Insurance

January 19, 2009

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COCA-COLA DETAILS PLAN TO USE VEBA, CAPTIVE TO FUND RETIREE HEALTH CARE / PAGE 3

INGENIX DATABASE CHANGES MAY DRIVE UP HEALTH COSTS FOR EMPLOYERS / PAGE 3

JOSEPH RESTOULE TO PROMOTE EDUCATION AS RIMS CHIEF / PAGE 4

In Brief

AIG leads cover for US Airways jet

Losses from the US Airways jet crash in the Hudson River last week would be covered under a hull and liability policy led by American International Group Inc., market sources said. All 155 passengers and crew escaped after the pilot landed the plane in the river. The hull of the Airbus A320 is worth about $40 million, according to market sources. The water landing likely renders the accident a total loss, although underwriters could recover some money in salvaging parts, experts said. Willis Group Holdings Ltd. placed the coverage, market sources said.

Inauguration cover placed by Marsh

Marsh Inc. placed the insurance coverage for the Presidential Inaugural Committee, market sources said. Marsh, citing client confidentiality, declined to comment on its possible involvement. In addition, C3 Presents L.L.C., an Austin, Texas-based business that organizes

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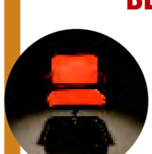
BENEFITS MANAGEMENT

WORK & LIFE BENEFITS



Sabbaticals aid work/life balance; FMLA change depends on U.S. economy; special-needs kids present employer challenges; layoffs boost EAP usage; ranking of EAP providers. **PAGE 11**

AP

Bernard Madoff leaves federal court in Manhattan after a hearing earlier this month. The disgraced financier's alleged $50 billion fraud could cause as much as $3.8 billion in insured losses, according to an Aon Benfield estimate.

Market braces for hit from Madoff scandal

D&O/E&O insurers expected to see claims from variety of firms

By COLLEEN MCCARTHY

NEW YORK—Bernard Madoff's alleged $50 billion fraud is likely to produce significant insured losses and put additional pressure on the industry's already battered professional liability lines, observers say.

Aon Benfield estimates the direct insured losses resulting from the investment fraud at $760 million to $3.8 billion, with a best estimate of $1.8 billion, according to a preliminary analysis released last week by the Chicago-based reinsurance brokerage.

Suits against money management firms that sent investors to Bernard L. Madoff Investments Securities L.L.C. have mounted since last month, when federal prosecutors charged the Wall Street fund manager with running a massive Ponzi scheme.

Claims are being directed at financial institutions, investment funds and money managers who dealt with Mr. Madoff; some lawsuits extend to include parent companies, accounting firms and auditors tied to the investments, said Kevin LaCroix, a partner with executive liability intermediary OakBridge Insurance Services L.L.C. in Beachwood, Ohio.

For example, a suit against investment adviser Ascot Partners L.P.—which invested nearly $1.8 billion in assets with Mr. Madoff—also named Ascot's auditor, BDO Seidman L.L.P.

"Basically, anyone who stood in between the investor and Madoff" could be targeted, Mr. LaCroix said. "There are a lot of links in the chain" and "burned investors will be examining all the relationships as they try to recover their losses."

The size and scope of this scheme "will add up to a lot of liability

See **MADOFF** page 20

Big brokers target smaller accounts

Marsh, Aon, Willis revamp strategies to expand business

By SALLY ROBERTS

Although the world's biggest brokers may be known for their large-account focus, they have their sights set on the smaller commercial account marketplace as an area for future growth.

Brokerage executives and others say the vast small-commercial market represents big growth opportunities for the global brokers, which recognize that there are a finite number of large accounts for which they can compete.

Trying to lure small accounts, however, is not a new strategy for the global brokers. Marsh Inc., which soon will launch Marsh & McLennan Agency L.L.C., for one, has gotten in and out of the smaller account business before.

Brokerage executives admit that while their previous small-account strategies may not have been big successes, they believe they now can thrive in the market.

The top reason the largest brokers have failed at serving the smaller commercial market in the past "is they had the wrong personnel in place," according to Bernard H. Mizel, a veteran insurance brokerage executive who, over the years, has built such middle-market brokers as American Business Insurance Services Inc. and USI Holdings Corp.

The larger brokers "tend to want

See **MEGABROKERS** page 21

High court to hear case on promotion test bias

Firefighters allege reverse discrimination after results discarded

By JUDY GREENWALD

WASHINGTON—How the U.S. Supreme Court rules in a reverse discrimination case brought by a group of firefighters could have a significant impact on public and perhaps private employers, experts say.

On Jan. 9, the court agreed to hear *Frank Ricci et al. vs. John DeStefano et al.*, which centers on whether the New Haven Civil Service Board in New Haven, Conn., was justified in refusing to certify the results of two fire department promotional exams on the grounds that the tests may have had a disparate effect on African-Americans.

The breadth of the decision's impact will depend on the language of the decision, observers say.

Experts say the board inadvertently found itself trapped in a situation that inevitably would leave some people unhappy no matter what it did.

According to the 2006 lower court opinion in the case, it appeared that the result of a captain's test administered in 2003 by the New Haven Fire Department meant that seven whites but no blacks and at most two Hispanics would be eligible for seven vacancies. The results of a lieutenant's test indicated that neither blacks nor Hispanics would be promoted, but 10 whites would be eligible for eight vacancies.

After the board failed to certify the test results, which meant high scorers would not be promoted, 17 white candidates and one Hispanic candidate filed suit, alleging violation of Title VII of the Civil Rights Act of 1964 and of the Constitution's Equal Protection Clause, among other charges.

According to the opinion, city officials believed certifying the tests'

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RICCI VS. DeSTEFANO

AT ISSUE

■ Was New Haven, Conn., justified in rejecting fire department test results?

WHAT'S NEXT?

■ U.S. Supreme Court has agreed to hear the case alleging reverse discrimination.

NEWSPAPER

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On the Web

***BI* VIDEO**

Program trains vets for jobs in risk, insurance

Finding and keeping talent is an ongoing challenge for the insurance industry. *Business Insurance* explores that in a new video report on the "Wounded Warrior" project, which helps veterans find jobs in insurance and risk management. *www.BusinessInsurance.com/video.*

AIG RECOVERY FIGHT

Online coverage includes asset sale updates

Business Insurance continues its online coverage of global insurer American International Group Inc. The package includes up-to-date coverage of AIG's ongoing asset sale, along with regular daily updates, weekly coverage from the magazine, a timeline of events leading up to the company's financial troubles and more, online at *www.Business Insurance.com/AIG.*

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 43, No. 3, is published weekly, except last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $97 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A.

Coca-Cola seeks OK for retiree captive plan

VEBA-based program could provide model for other companies

By **JERRY GEISEL**

WASHINGTON—If Coca-Cola Co. wins regulatory approval to fund retiree health care benefits through a special trust and its captive insurance company, it could blaze a trail for other employers looking to do the same.

In a filing this month with the Labor Department, Coca-Cola detailed its potentially groundbreaking approach to fund retiree health care benefits.

Under its plan, the company would use assets now held in a voluntary employees' beneficiary association to purchase medical stop-loss policies from Prudential Insurance Co. of America to pay claims over the expected lifetimes of about 4,000 retirees and dependents. Coca-Cola established the VEBA, recently valued at $187 million, in 2006.

The medical stop-loss coverage would pay claims that fall between an attachment point and an upper limit. For all retirees, the attachment point would be $100. For those younger than 65, the upper limit would be $5,800; for retirees 65 and older, the upper limit would be $3,500.

In turn, Prudential would use the premium it receives from Coca-Cola to reinsure the risk with Red Re Inc., Coca-Cola's three-year-old South Carolina captive insurer, and one of three Coca-Cola captives. Atlanta-based Coca-Cola, the world's largest beverage company, with 2007 revenues of nearly $29 billion, now uses Red Re for a wide range of risks, including benefit coverage of employees outside the United States. Red Re's 2007 gross premium volume was $11.8 million.

Coca-Cola employee benefit and risk management executives, who in November briefly outlined retiree health care funding plans as part of a broader presentation at the World Captive Forum, say the proposal would be a win-win for the company and retirees.

"This would provide additional security to participants while helping the company to manage its risks more efficiently," said Stacy Apter, Coca-Cola's senior benefits consultant in Atlanta.

"Advantages of any captive include managing risk and better control. These were our key motivators for this transaction. Also, depending on the outcome of our DOL and IRS filings, this could add to the third-party business written by our captive," said Laurie Solomon, Coca-Cola's director of risk management.

See **COCA-COLA** page 22

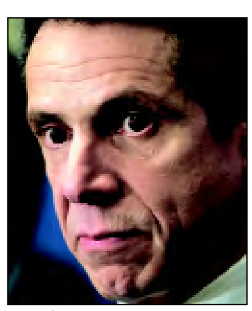
N.Y. physician pay deal may hike costs: Experts

Settlement over reimbursement rates could hit employers

By **JOANNE WOJCIK**

NEW YORK—Employers likely will pay more for health care as a result of an agreement reached last week between New York's attorney general and UnitedHealth Group Inc.

The agreement will see UnitedHealth spin off its Ingenix Inc. subsidiary's databases used by most of the nation's health insurers and third-party administrators to determine reimbursement rates for out-of-network providers. In a separate agreement, Aetna Inc. agreed to pay $20 million to help fund the new system.



Mr. Cuomo

If the agreement results in higher reimbursement rates for doctors, as is expected, self-insured employers will see their portion of out-of-network payments grow, while employers with fully insured plans likely will see their premiums increase as insurers pass on their increased costs to them, benefit experts say.

However, a component of the agreement that also requires the database's new purveyor to establish a consumer Web site disclosing out-of-network provider pricing and provide health care education services could encourage plan members to become more conscientious medical consumers, some benefit experts hope.

UnitedHealth also has agreed to pay $350 million to settle a lawsuit filed in 2000 by patients and doctors over alleged underpayments dating back to 1994.

Attorney General Andrew Cuomo also reached an agreement on Thursday with Hartford, Conn.-based Aetna, to help establish the independent database that will be used for calculating out-of-network reimbursement rates.

The agreements stem from an investigation the attorney general launched last February into the Eden Prairie, Minn.-based Ingenix's Prevailing Healthcare Charges System and its Medical Data Research products, which are used by the vast majority of the nation's health insurers to calculate out-of-network reimbursements based on usual, customary and reasonable charges for medical expenses.

Even though the agreement was reached in New York, it affects out-of-network payments by health plans nationwide.

The investigation concluded that the Ingenix databases "intentionally skewed usual and customary rates downward through faulty data collection, pooling procedures and lack of audits," and that the rate of underpayment ranged from 10% to 28%. The attorney general also found that UnitedHealth's ownership of the databases created a conflict of interest.

Under the agreement reached on Jan. 13 with UnitedHealth, the Minnetonka, Minn.-based insurer will turn over operations of both Ingenix databases to a nonprofit company that will contract with a university to develop and operate an independent UCR database derived from claims and other relevant billing information. In addition, UnitedHealth will pay $50 million to finance development of the replacement database.

In the meantime, UnitedHealth and the rest of the health insurance industry can continue to use the Ingenix databases. However, UnitedHealth must disclose its affilia-

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AP

Keith Long of Nomad Consultants photographs damage from Hurricane Ike at an oil and gas production platform near Lafitte, La., on Sept. 18, 2008.

Energy capacity shrinks as storm losses mount

By **ZACK PHILLIPS**

The departure of a Lloyd's of London insurer from the Gulf of Mexico offshore windstorm market illustrates the sector' s shrinking capacity in the wake of the 2008 hurricane season, brokers and observers say.

Lloyd's specialist insurer Advent Capital (Holdings) P.L.C. said earlier this month that it no longer would write Gulf of Mexico offshore energy business with windstorm exposure due to revised damage estimates from Hurricane Ike, which increased its projected losses from about $22 million to about $61 million. As a result, the firm said it expects to incur a loss for 2008.

Advent is not a lead underwriter, so brokers and other market observers do not expect its exit to affect the market tangibly for offshore windstorm cover in the Gulf of Mexico. But the pullout does underscore significant shrinkage in capacity that brokers and others say they already are seeing, even though most Gulf windstorm policies do not renew until spring.

"Capacity is still very scarce," said Bill Farnan, Houston-based managing director of Alesco Risk Management Services Ltd., a unit of broker Arthur J. Gallagher & Co. "As a result, it is very expensive."

Some brokers and observers say capacity could shrink as much as 50%, driven by the worldwide recession, decreased asset values resulting from the reduced price of oil, shrunken reinsurance capacity and losses from Hurricane Ike. Ike destroyed 60 production platforms and caused more than $1 billion in offshore damage, according to modelers and the U.S. Minerals Management Service.

"Even if (more) underwriters don't pull out of the Gulf of Mexico, they will have less wind capacity this year," said Frank Costa, president of New York-based Berkley Offshore Underwriting Managers L.L.C. and chairman of the Energy and Offshore Committee of the International Union of Marine Insurance. "And because of that, the clients are going to be hard pressed to find enough wind (insurance) to cover their exposures…Things are very, very tight right now—about as tight as I've ever seen them."

That has translated into a signifi-

See **OFFSHORE** page 20

In latest sale, AIG gets $308 million for Canadian life unit

By JUDY GREENWALD

NEW YORK—American International Group Inc. has reached a multimillion-dollar deal to sell a Canadian life operation, but the possible sale of its much larger aircraft leasing unit would be more important, analysts say.

AIG last week said it will sell Toronto-based AIG Life Insurance Co. of Canada to Montreal-based BMO Financial Group for $308 million in cash in what observers describe as a relatively small transaction.

Of much greater significance, they say, are reports that AIG has received the first round of bids for its aircraft leasing unit, International Lease Finance Corp. According to reports, the insurer also is expected to start the sale of its asset management business soon.

An AIG spokesman would say only: "We are in advanced negotiations on a number of our assets."

AIG Life of Canada has approximately 300 employees and 400,000 customers. The transaction is expected to close June 1, subject to regulatory approval, according to the companies.

"Given the general uncertainty, it's, I think, reassuring that there are buyers out there now," said John Wicher, principal of San Francisco-based Wicher & Associates Inc.

The price "reflects current market values generally, and we know that pricing is off in most segments of financial services because business is down" and buyers are scarce, Mr. Wicher said.

"It's good in the sense that there's some progress being demonstrated, but it is a very small transaction, and won't do much toward the bigger picture of paying off the government loan," said John L. Ward, chief executive officer of Cincinnatus Partners L.L.P. in Cincinnati.

The potential sale of AIG's aircraft leasing business is of much greater interest, observers say.

"That will be a more meaningful transaction in the relative scheme of things and that's a good, noncore asset with strong value for them to divest," said Mr. Ward.

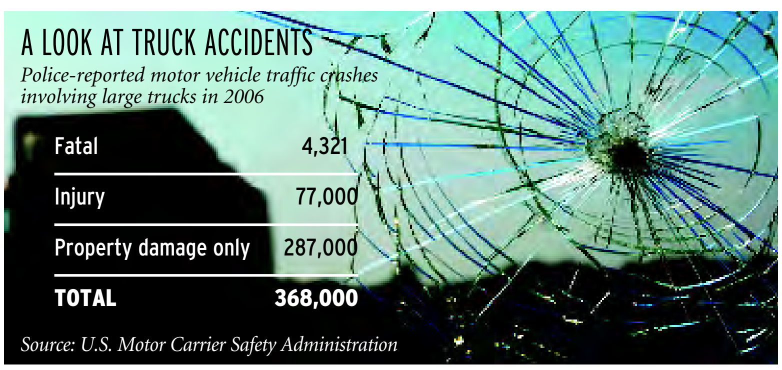
In 2007, ILFC generated $4.69 billion in revenues and an $873 million operating profit.

Stewart Johnson, a portfolio manager with Stamford, Conn.-based investment bank Philo Smith & Co., said ILFC'S profit was based on AIG's high ratings and "some tax benefits that were unique to their relationship with AIG."

"Given that there are probably very few triple A-(rated) buyers, I wonder what that's going to do to the value of the business. Or, said another way, AIG was able to produce profits from ILFC that a buyer is not likely to be able to produce," Mr. Johnson said.

Mark Lane, a principal and research analyst at William Blair & Co. in Chicago, pointed to AIG's agreement in December to sell HSB Group Inc., which includes Hartford Steam Boiler Inspection & Insurance Co., to a Munich Reinsurance Co. subsidiary for $742 million.

"The Hartford Steam Boiler sale, I think, raised a lot of eyebrows in that it was such an inexpensive valuation for a pretty good business," Mr. Lane said. "There's a lot of interest to see how much valuation discount's taken" on ILFC, he said.



11-hour truck driver limit focuses on fatigue

By JEFF CASALE

WASHINGTON—Jeff Izer was 17 years old when his car was run over by a tractor-trailer truck after the driver fell asleep at the wheel.

On Oct. 10, 1993, Mr. Izer and four other teenagers were in the breakdown lane of a Maine highway waiting for the overheated engine of his car to cool when the truck hit the car, killing Mr. Izer and three of his four friends.

Since then, his parents have lobbied for more stringent rules to prevent driver fatigue. Though the driving time rule change is being implemented, the rules are still inadequate, said Mr. Izer's mother, Daphne.

Risk managers at trucking companies, however, say the new rule should help reduce the risk of fatigue-related trucking accidents, though the rule should be only part of a wider safety program.

In December 2008, the Federal Motor Carrier Safety Administration issued its final version on commercial drivers' hours of service rule, which extends a driver's maximum time at the wheel from 10 hours in a 14-hour workday to 11 hours, but imposes other restrictions. The rule was issued in 2004, but was held up by legal challenges. The final rule goes into effect today.

Ms. Izer said driver fatigue remains the trucking industry's No. 1 issue. "Studies have shown that any driving over 10 hours poses a high risk of a crash. In fact, any driving over eight hours can increase the crash risk, so they don't need to increase the hours of service any more."

According to the FMCSA and the Department of Transportation, large-truck fatalities declined for the third year in a row in 2007 with 4,808 fatalities, down from 5,240 in 2005. Between 2004 and 2006, FMCSA said there was one fatigue-related fatality that occurred during a truck driver's 11th hour behind the wheel.

Prior to 2004, the hours of service rule allowed truck drivers to stop the clock during their 14-hour workday. So if a driver took an hour break, the clock would stop and he or she would have another hour to drive. Under the new rule, drivers

See **DRIVING** page 6

Errors & Omissions

- A story in the Jan. 12 issue, "Insurers Seek More Details on Risk Changes," misstated loss control advice provided by Randy Schreitmueller, vp at Johnston, R.I.-based Factory Mutual Insurance Co. It should have read: "Straightforward precautions such as making sure fire protection valves are locked open can prevent major losses."

- An insurance recovery law firm listing in the Dec. 29 Market Sourcebook contained incorrect information. Saxe Doernberger & Vita P.C. has one managing partner and 12 attorneys.

P/C sector 'in good shape:' Forum

By RODD ZOLKOS

NEW YORK—The property/casualty insurance industry performed far better than other sectors of the financial services industry in 2008, according to a group of industry insiders and experts gathered in New York last week.

The property/casualty industry's 2008 performance leaves it "in good shape and ready to take on 2009," said Vincent J. Dowling, managing partner of Farmington, Conn.-based Dowling & Partners Securities L.L.C.

Speaking as part of a panel of industry experts at this year's Property/Casualty Insurance Joint Industry Forum, Mr. Dowling said, "The property/casualty industry actually did quite well last year on a relative basis," adding that the industry "comes out (of 2008) with its model unbroken."

Speaking as part of a chief executive officer panel at the event, Charles Kavitsky, chairman, president and CEO of Allianz of America Corp. in Novato, Calif., said the property/casualty industry did well last year, despite facing a "double whammy" of natural catastrophe losses and the financial crisis.

Michael S. Pritula, a director at McKinsey & Co. in New York, agreed, saying the property/casualty industry appears "a relative isle of calm" compared with recent turmoil in financial services sectors such as life insurance, wholesale and retail banking, and the securities industry.

Pierre L. Ozendo, chairman and CEO of Swiss Re America Corp. in Armonk, N.Y., and a member of the executive board of Swiss Re Group, credited the property/casualty industry's resilience to conservative risk management and that the industry "is focused on a business model that has been proven over hundreds of years and continues to be proven today."

While agreeing with others' assessments of the property/casualty industry's performance, Michael S. McGavick, CEO of XL Capital Ltd. in Hamilton, Bermuda, cautioned those in the industry "whose eyes might occasionally wander" from the proven property/casualty business model to other financial operations.

"The problems that we're working through at XL are a consequence of that wandering eye," Mr. McGavick said.

Mr. Pritula said one of the lessons of 2008 is that with industry executives concentrating on such issues as regulation, exposures and market issues—sometimes differing by jurisdiction—"If I give you all that as a management team and I say, 'By the way, while you're doing all that…why don't you price some variable annuities correctly; why don't you start a financial guarantee business?'" companies can find themselves in trouble.

Daniel S. Glaser, chairman and CEO of Marsh Inc. in New York, said the financial crisis has prompted many insurance buyers to

See **JIF** page 6

RIMS leader optimistic about future

By COLLEEN McCARTHY

NEW YORK—Challenging risk managers to take their professional development to the next level and helping risk practitioners bring value to their organizations in today's economic climate are key priorities of the new president of the Risk & Insurance Management Society Inc.

Joseph Restoule, the leader of risk management at Calgary, Alberta, Canada-based NOVA Chemicals Corp., succeeded Janice Ochenkowski as president of the New York-based organization at the start of the year.

In describing the theme for his term, Mr. Restoule said he will call on risk practitioners to "take action to challenge your risk IQ." The initiative will build on work started by his predecessor, particularly the Risk Management Professional Growth Model launched last year. The tool is designed to help risk mangers assess their skills and advance their careers.


Mr. Restoule

RIMS is developing programs and services to help members' professional development efforts. To promote the initiative, RIMS is boosting its educational offerings this year with more professional development courses, online courses and other workshops, Mr. Restoule said.

He said in this economic climate, "everybody is faced with budget constraints, so how do we best optimize our risk management practices?" As recessionary measures erode resources, risk managers need to keep abreast of the market to ensure they put together the best insurance program possible and they will be pressed to examine various aspects of their programs, such as retention levels, risk financing and ways to optimize a captive, he said.

To help members stay current, RIMS will offer webinars to provide real-time data and information to help risk managers monitor the financial situation, he said. Upcoming webinar topics include "Reducing Uncertainty in Volatile Times" and "ERM Boot Camp."

"We want risk managers to look for opportunities. Basically the more ways a member can contribute to their organization, the

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JIF: Regulatory reform views mixed

CONTINUED FROM PAGE 4

become more involved in the selection of their insurers. "I would say the crisis has given way to kind of a lasting concern, but not a crisis mode," he said.

He said he sees buyers emphasizing coverage diversification and considering risk transfer alternatives. In looking at insurers, fundamentally his company's clients are seeking comprehensive coverage, competitive prices, good service quality and relative security, Mr. Glaser said.

Panelists had mixed views on how regulatory reform will play out for the insurance industry.

"I think we're going to see some level of systemic risk regulation at the federal level. I don't see any way around that," said Connecticut Insurance Commissioner Thomas R. Sullivan. But, he said he expects the state-based system of insurance regulation to remain largely intact.

Mr. Pritula suggested there could be more dramatic changes, however. "There could be things coming from the banking side that open all kinds of room in 2009 in terms of re-regulation of financial services," he said. Once the re-regulation ball starts rolling, "the question arises, 'What do we do about insurance?'"

Lisa A. Rickard, president of the U.S. Chamber Institute for Legal Reform in Washington, said she expects liability issues to emerge as elements of the financial services regulatory debate.

"I think there are going to be a lot of liability issues that crop up in the context of the financial crisis," she said. As discussion of regulation moves forward, "there will be a lot of discussion of liability."

Other panelists in this year's event included Franklin Montross IV, chairman and CEO of General Re Corp.; John T. Hill II, president and chief operating officer of New York-based Magna Carta Cos.; and Sam Friedman, editor in chief of the property/casualty edition of National Underwriter.

Robert P. Hartwig, president of the Insurance Information Institute in New York, moderated the CEO panel, while Charles M. Chamness, president and CEO of the National Assn. of Mutual Insurance Cos., moderated the industry expert panel.

The annual Joint Industry Forum is sponsored by a group of 16 industry organizations.

Driving: Limit aims to reduce fatigue

CONTINUED FROM PAGE 4

can't stop the clock and can drive only a maximum of 11 hours in a 14-hour nonextendable window from the start of the workday.

"The misconception out there is that drivers are driving 11 hours every day and they are working 14 hours every day, and they're not," said Don Osterberg, vp-safety and driver training with Green Bay, Wis.-based Schneider National Inc. "The 14-hour rule is sufficiently restrictive and it is rare that a driver will actually drive 11 hours."

Mr. Osterberg said Schneider National conducted a driver fatigue test and found that over two months less than 7% of the its drivers penetrated the 11th hour.

The FMCSA used a Virginia Tech Transportation Institute study when formulating the rule. The study found there was no increased risk resulting from commercial drivers driving in the 11th hour as compared with any other hour.

Neil Voorhees, director of safety and security for Houston-based Tri-Mac Transportation Group, said he thinks the rule helps improve safety, but trucking companies have to be vigilant in managing their drivers.

"This rule is only as good as the people who manage the process," Mr. Voorhees said. "If you allow drivers to drive over 11 hours and they have accidents and they falsify their log books, there will be problems."

But David Snyder, vp and assistant general counsel at Washington-based American Insurance Assn., said he hopes the hours of service rule will be re-evaluated by the incoming administration, and said there may be further legal action. "Litigation is always an option and it seems to be a particularly strong option as courts have thrown out this virtually identical rule twice in the past," he said.

Commentary

Likely to see federal insurance regulation

RODD
ZOLKOS

Senior Editor Rodd Zolkos can be reached at: rzolkos@businessinsurance.com

If you needed any convincing of the business benefits of sticking close to core competencies—and, conversely, the risks of straying too far afield—the experiences of several major companies in the financial crisis make a pretty compelling case.

Last week I had the pleasure of attending the annual Property/Casualty Insurance Joint Industry Forum in New York, where the consensus among various panelists was that property/casualty insurers who'd stuck close to the property/casualty business model were weathering the financial crisis relatively well.

Various speakers at the annual event noted that those companies having a tougher time, notably American International Group Inc. and XL Capital Ltd., can trace their problems to ventures outside the property/casualty realm such as financial guarantees, credit default swaps and securities lending.

Another cautionary example of the risks of business scope creep, I think, is Citigroup Inc. Almost unbelievably, the company once seen as shaping the new paradigm of the financial services industry with the all-things-to-all-customers "financial supermarket" now finds itself poised to sell off various departments of that supermarket, presumably with a goal of returning its focus to its core banking operations and regaining its business footing.

> **I bet those 'modest' property/casualty returns don't look so bad now!**

Remember that before embarking on its growth plan with its 1998 merger with Travelers Group—while it might not have been a supermarket, the company then called Citicorp was hardly a mom and pop deli—it was the largest bank in the country.

At the time, there were a lot of articles written about financial services convergence, banks in insurance, insurers engaging in activities that were previously the province of banks. I wrote many of them. The year after the Citicorp/Travelers deal, enactment of the federal Gramm-Leach-Bliley Financial Services Modernization Act blessed the anticipated trend, repealed portions of 1933's Glass-Steagall Act and set the stage for combinations of investment banks, commercial banks, insurers and securities brokers.

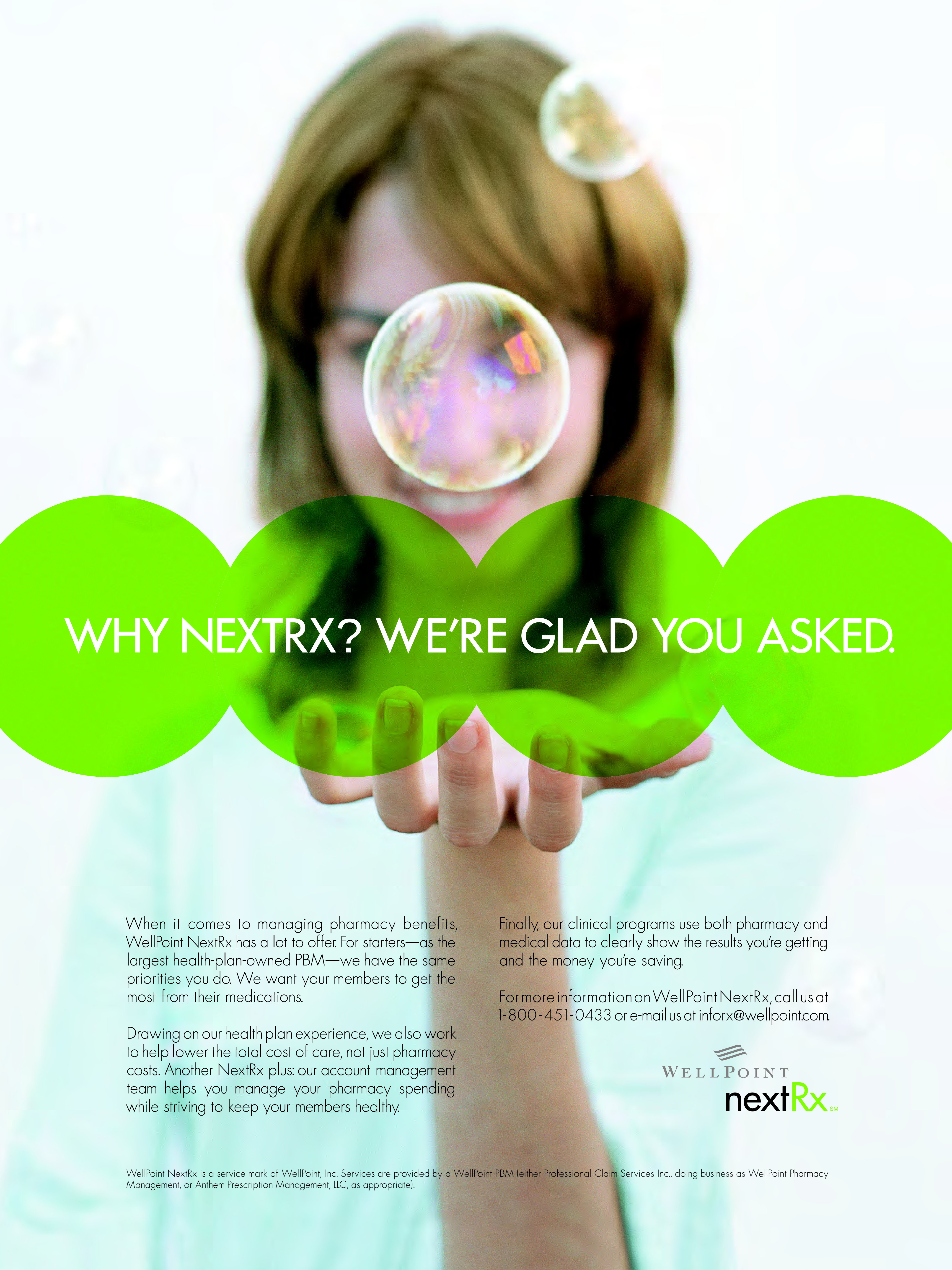
For Citigroup, one might argue that the supermarket started coming apart in 2002, when the company spun off Travelers Property Casualty Corp. (Modest property/casualty returns and the operation's exposure to catastrophe losses was considered a drag on the financial giant. I bet those "modest" property/casualty returns don't look so bad now!) In a move possibly less significant to Citigroup but hugely important to Travelers, the insurer's umbrella logo followed in early 2007 as the financial services company sold it back to the insurer.

But it was last week that Citigroup's formal plan to get out of the financial supermarket business really began, as the financial services company, reeling from the impact of the financial crisis and the economic downturn, and already twice the recipient of federal assistance, said it plans to sell off 51% of its Smith Barney brokerage to Morgan Stanley, with the remainder possibly to follow in three years.

As a new year—and with it a new presidential administration and a new Congress—begins, the recent experiences of Citigroup and others will be front and center as public officials look to address what they see as the causes of the financial services crisis.

Having lived through the age of financial services deregulation, it seems a given that we'll now experience financial services re-regulation. As Congress opens the lid on rewriting financial services regulation, the insurance industry certainly will be affected by whatever comes out of the box.

What shape will that new regulation take for insurance? With the federal government now seeing itself as having skin in the game, it seems a safe bet that there will be some sort of federal role in insurance regulation. And with the new regulations, will there be unintended consequences? Probably. There always are.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Business Insurance OPINIONS

Group effort needed for health care reform

SIXTEEN YEARS AGO, the Clinton administration embarked on what became its ill-fated drive to revamp the nation's health care delivery and financing system, and employers by and large stayed on the sidelines.

That reticence to get involved was understandable. Health care costs then were relatively low and employers saw little need for dramatic change.

And even if employers had tried to influence the Clinton administration, they probably wouldn't have gotten anywhere. Hillary Clinton, who directed the reform effort, wasn't much interested in employer input or listening to outsiders, even congressional leaders.

Now there is a new reality in Washington. The Obama administration has made clear that it wants ideas and suggestions to help it frame health care reform legislation.

It is crucial for employers to play an active role in the reform drive.

That's encouraging. Successful reform of something so complex and important as health care is possible only if all major interest groups get involved and offer their perspectives and experience.

Another new reality is that health care reform is more likely to happen. The nation's incoming chief executive is committed to seeing it happen and has the political skills—not the least of which is an understanding of the importance of developing consensus—to win passage of reform legislation. It also helps that he has big majorities in both houses of Congress.

Given their frustrations with the nation's health care system, chiefly the huge cost, we think it is crucial for employers to play an active role in the reform drive and let policymakers know their ideas to overhaul the system, expand coverage, keep costs under control and improve quality.

New truck driving rule needs risk management

A FEDERAL TRUCK DRIVING hours of service rule that goes into effect this week leaves plenty of room for risk management.

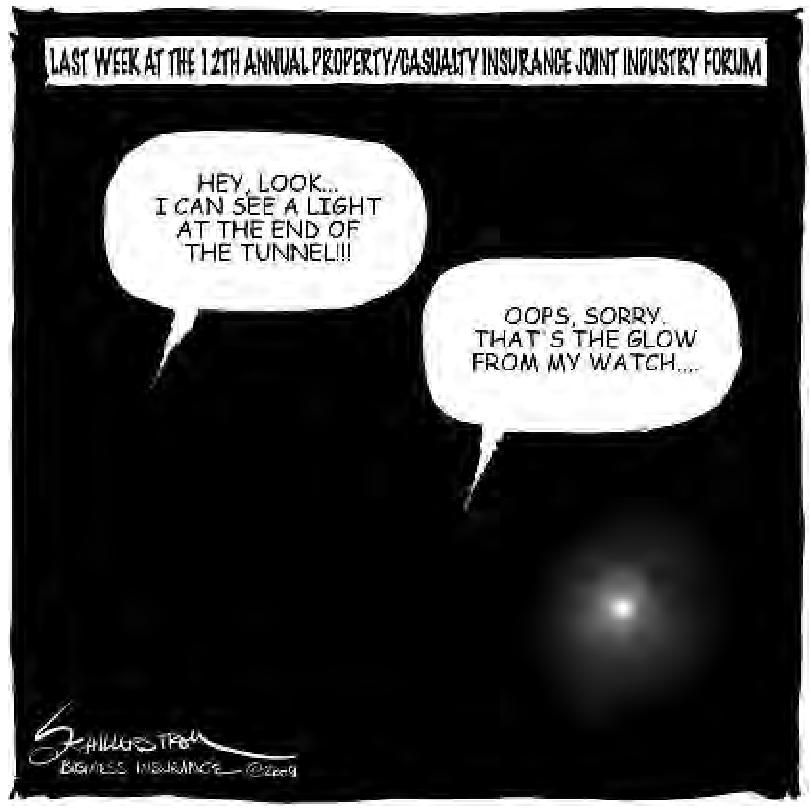
While the restriction on the time truck drivers are allowed behind the wheel during their workday goes some way toward easing concerns about driver fatigue, it could go a lot further.

As we report on page 4, the final version of the Federal Motor Carrier Safety Administration's commercial drivers' hours of service rule now is in effect. The rule, which restricts driving to 11 hours within a 14-hour period, modifies previous regulations that allowed truck drivers to drive for longer periods during a work period.

Trucking firms say drivers rarely drive for 11 hours, but the fact that they are allowed to drive for such long periods understandably worries road safety advocates. And the rules don't address the issue of when a driver begins a shift—for example, a driver who is awake all day before starting a night shift is in no condition to start an 11-hour journey.

In addition, as the economy continues in what is expected to be a prolonged recession, pressure on trucking firms and drivers to work as efficiently as possible may lead more drivers to push their driving times to the limit.

Of course, effective management of any risk is not limited to merely following federal rules. Trucking firms must take in to account their own operations and driver working conditions as they map realistic and enforceable restrictions on driving times. Whatever the government says, it's incumbent on businesses to make sure their risks are managed well.



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THIS WEEK'S RESULTS

Q Should policyholders be able to stack liability limits in pollution coverage cases?

YES, there is no real alternative — 40%

NO, it penalizes insurers — 60%

NEXT WEEK'S QUESTION

Q: Should the federal government subsidize COBRA payments for laid-off workers?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

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ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Los Angeles 323-370-2405; New York: 212-210-0133
SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain Communications Inc.
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Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, *biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401, Fax: 303-733-9941; 12524 Acuff Court, Olathe, Kan. 66062, Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. $5 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: The YGS Group, 1808 Colonial Village Lane; Lancaster, PA 17601; 800-290-5460, ext. 160; *BusinessInsurance@ reprintbuyer.com.*

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WORK & LIFE BENEFITS

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Poor economy sparks surge in use of EAP benefits programs / Page 16

BENEFITS MANAGEMENT

Sabbatical programs aid work/life balance

Time-off benefits seen as retention tool by some employers

By SALLY ROBERTS

In addition to family and medical leave programs, some employers offer their employees extended leaves of absence to pursue personal endeavors or just rejuvenate.

The purpose of such leaves or sabbaticals is simple: give valued employees the time off they want and avoid the costs associated with turnover by keeping them tethered to the company.

Given today's turbulent economic times, such leave programs offer employers an alternative to layoffs, experts say (see story, page 14).

Sabbaticals are a response in part to today's 24/7 work world, said Kathie Lingle, Scottsdale, Ariz.-based director of the Alliance for Work-Life Progress, a global human resources association.

"We're just burning people out right and left," Ms. Lingle said. "Smart organizations are looking at how to keep people whole and sane with them."

Despite this, the number of employers offering such leaves and sabbaticals remains low, experts say. According to Hewitt Associates' latest figures, only 4% of employers offer unpaid sabbaticals.

"Many employers still have a hard time offering a big chunk of time off, whether it's paid or unpaid, to employees just because it's difficult in terms of operations," said Carol Sladek, head of Hewitt Associate Inc.'s work/life consulting practice in Lincolnshire, Ill.

Additionally, "when you have an employee out for a long period of time, there's always a concern that the employee might not return," Ms. Sladek said.

She noted, though, that "we have seen a significant increase in the number of employers looking at these kinds of programs as a way to attract, engage and retain talent" in the past five to 10 years. "Employers realize that one of the key work/life needs we all have is time."

New York-based consulting firm Accenture Ltd. is one of those employers.

Although the firm offers a variety of work/life programs, an employee survey revealed that the most requested work/life program the company lacked was a sabbatical, said Sharon Klun, Accenture's Phoenix-based director of work/life initiatives.

"It was not necessarily about the pay," Ms. Klun said. "It was about having time in their lives to do what was really important to them."

> **'Smart organizations are looking at how to keep people whole and sane with them.'**
>
> Kathie Lingle, Alliance for Work-Life Progress

In response, Accenture launched a self-funded sabbatical program in 2007 called Future Leave for all U.S.-based employees, under which workers can take up to three months time off every three years to do whatever they want.

Although the program is unpaid, employees can set money aside each paycheck or each month, "so when the leave does come, they are not necessarily as strapped" for money, Ms. Klun said.

"The beauty of it is it's not so static or confined," she said, noting that each quarter the company has between 100 and 200 employees taking leave under the program. The idea is that an employee can figure out what they need or want to do in life—whether it's taking care of an elderly parent or climbing the Himalayas—and plan for it by putting money away, she said.

For Accenture, the return on

See **SABBATICAL** page 14

By ROBERTO CENICEROS

Whether President-elect Barack Obama will expand the Family and Medical Leave Act as promised during his race for the White House could depend on the nation's economic health, consultants say.

But even without another expansion of the FMLA, employers already are struggling to track employee leave under a growing number of state and city time-off mandates, some of them requiring time off with pay, which federal law has yet to require.

The growing pressure on employers to comply with various leave laws—including recent FMLA changes—comes as the faltering economy could slow a trend of companies outsourcing the tracking of absences and their compliance with the expanding leave mandates, said Marcia Carruthers, chief executive officer for the San Diego-based Disability Management Employer Coalition.

> **'It's definitely going to be harder on (employers) to stay in compliance.'**
>
> Marcia Carruthers, Disability Management Employer Coalition

"It's definitely going to be harder on (employers) to stay in compliance," Ms. Carruthers said. "We may see a slight shift (away from a trend for employers to outsource) because they are not going to have the funds to do that. So they are going to have to try to figure it out for themselves."

Recent time-off mandates include one that voters in Milwaukee approved in November for a Feb. 10 implementation. The Metropolitan Milwaukee Assn. of Commerce has mounted a legal challenge, but the referendum would require private sector employers in Milwaukee to allow workers to accrue up to 72 hours of paid sick leave.

Businesses with fewer than 10 employees would have to provide fewer hours, up to 40 hours of sick leave.

The leave could be used for an employee's medical care, family care or to seek help for domestic abuse or sexual assaults. San Francisco and Washington have adopted similar laws, observers say.

The expanding number of leave laws is making it more complex for employers to remain compliant, said Tom Klett, senior consultant at Watson Wyatt Worldwide in Stamford, Conn. When added to the paid time off that companies traditionally provide their workers, employers also are increasingly concerned that additional mandates will harm business operations and productivity, Mr. Klett said.

The time employees spend away from work because of workers comp or disability claims, as well as issues such as bereavement leave, adds to the complexity of tracking and complying with the expanding leave laws, said Joanne Archer, manager of leave services in Dover, N.H., for Liberty Mutual Group Inc.

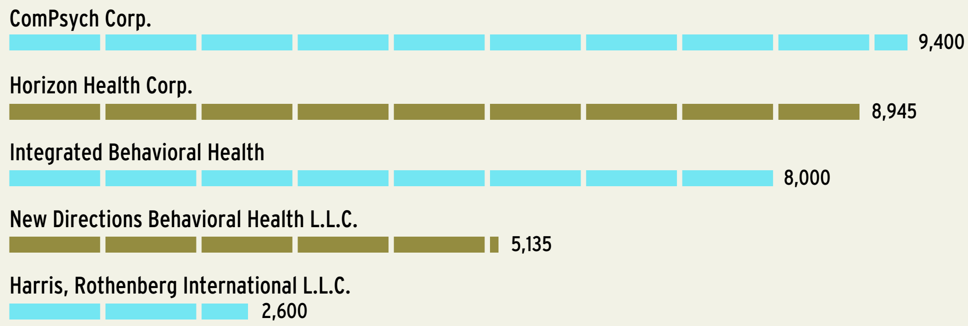
"The complexity comes from the employer having to track the amount of time an employee has available both under federal, and now state, leave benefits," Ms. Archer said.

States—such as Vermont last year—also have adopted laws requiring time off for crime victims and to allow parents to attend functions at their children's schools, said Bryon Bass, absence management practice lead for Sedgwick Claims Management Services Inc. in Albuquerque, N.M.

"We are seeing such a prevalence in the number of

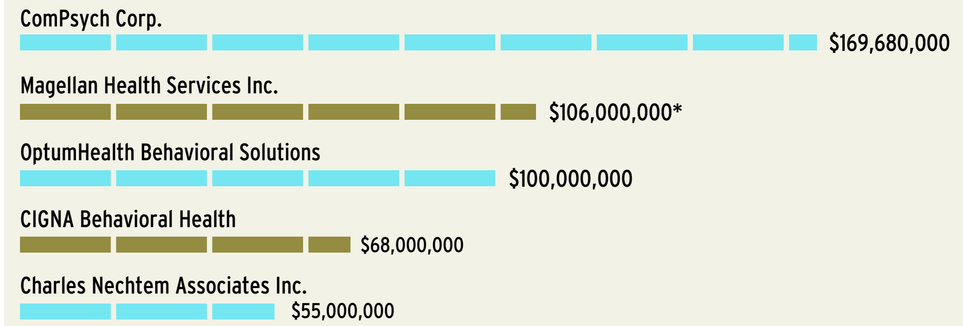
See **COMPLIANCE** page 16

LARGEST EAP PROVIDERS BY NUMBER OF EMPLOYER CLIENTS



Source: BI Survey

LARGEST EAP PROVIDERS BY REVENUE



* *Estimated*
Source: BI Survey

Largest employee assistance program providers

Ranked by number of lives covered at year-end 2008

Rank	Company/Address	Phone/Web site	Lives covered	Employer clients	Total salaried employees	Total contracted professionals	Principal officer
1	**ComPsych Corp.** NBC Tower, 455 Cityfront Plaza Drive, Chicago, Ill. 60611	800-851-1714 *www.compsych.com*	29,848,000	9,400	428	34,000	Dr. Richard A. Chaifetz, chairman/CEO
2	**OptumHealth Behavioral Solutions** 425 Market St., 27th Floor, San Francisco, Calif. 94105-2426	866-427-6845 *www.optumhealth.com*	16,445,548	1,498	2,836	84,684	Gregory A. Bayer, CEO
3	**Horizon Health Corp.** 2941 S. Lake Vista Drive, Lewisville, Texas 75067	866-440-5192 *www.horizonhealth.com*	15,638,008	8,945	196	13,785	Cindy Sheriff, president/CEO
4	**Magellan Health Services Inc.** 55 Nod Road, Avon, Conn. 06001	860-507-1900 *www.magellanhealth.com*	14,700,000	1,200	5,600	75,000	Dr. René Lerer, president/CEO
5	**Harris, Rothenberg International L.L.C.** 99 Wall St., New York, N.Y. 10005	800-441-7509 *www.harrisrothenberg.com*	8,592,863	2,600	82	23,226	Beatrice Harris, Edward Trieber, managing directors
6	**CIGNA Behavioral Health** 11095 Viking Drive, Suite 350, Eden Prairie, Minn. 55344	952-996-2426 *www.cignabehavioral.com*	8,000,000	769	150	18,000	Keith Dixon, president/CEO
7	**ValueOptions Inc.** 240 Corporate Blvd., Norfolk, Va. 23502	757-459-5200 *www.valueoptions.com*	6,800,000	238	1,800	49,185	Barbara Hill, CEO
8	**Bensinger, DuPont & Associates** 134 N. LaSalle St., Suite 2200, Chicago, Ill. 60602	312-726-8620 *www.bensingerdupont.com*	6,625,000	1,325	72	18,100	Peter Bensinger, president/CEO
9	**ACI Specialty Benefits Corp.** 5414 Oberlin Drive, Suite 240, San Diego, Calif. 92121	800-932-0034 *www.acispecialtybenefits.com*	5,675,000	684	109	44,849	Dr. Ann D. Clark, CEO
10	**MHN Inc.** P.O. Box 10697, San Rafael, Calif. 94912	800-327-2133 *www.mhn.com*	4,712,429	829	1,028	45,141	Juanell Hefner, president/CEO

Source: *BI* survey
Researched by Kevin Edison and Karen Tucker

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Sabbatical: Time-off programs aid work/life balance

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investment is "huge because you're keeping people you would normally lose," Ms. Klun said.

Sabbaticals are embedded into the culture of Intel Corp., said Dana Vandecoevering, work/life program manager based in Hillsboro, Ore.

The Santa Clara, Calif.-based technology giant has been offering two-month fully paid sabbaticals to all full-time employees after every seven years of service for more than 20 years, she said.

"The goal is to return to Intel revitalized, with new ideas and a fresh perspective," said Ms. Vandecoevering, who has taken two sabbaticals herself.

At the same time, sabbaticals open opportunities for other employees to cross-train and assume greater responsibilities, she said. "So when people are out, depending on the job and the work involved, it represents an opportunity for someone to come in and cover for that person," Ms. Vandecoevering said.

Since 2006, eligible employees at Deloitte L.L.P. can take up to five years of unpaid leave under its Personal Pursuits program.

While employees are technically severed from the company and receive no health benefits while on the program, they are given a host of resources to keep them connected to the company, including mentors, short-term work assignments and subsidized training to keep their skills and professional licenses up to date, said Rebecca Amoroso, vice chair and U.S. insurance leader for Deloitte, a Parsippany, N.J.-based financial advisory firm.

"There are situations where people leave the work force for a period of time to deal with something personal," Ms. Amoroso said. "If these are highly valued individuals, we wanted to find a way to make it easy for them to re-enter the workforce and we would be at the top of their list to get them back, rather than leave the firm, get disconnected and not come back," she said.

Not only does Personal Pursuits differentiate Deloitte as it competes for talent, it also allows the company to retain proven, experienced employees, Ms. Amoroso said. On average, the cost of replacing an employee is twice the employee's salary, which "is significantly higher than the $2,500 a year" per person that the Personal Pursuits program costs Deloitte, she said.

Currently, about 72 people are taking advantage of the program, she said.

Sabbaticals seen as alternative to staff layoffs

Sabbaticals can be more than a tool to attract and retain employees. They also can be an alternative to layoffs, experts say.

In today's turbulent economy, a host of employers are cutting their workforces to reduce costs. But when the economy rebounds, many of those employers once again will look to fill out their employee rosters.

By placing employees on extended unpaid leave rather than severing ties with them completely, experts say employers can reduce their payroll costs and, at the same time, keep employees connected to the company and bring them back on board when the economy permits.

"From a talent perspective, it's an excellent strategy," said Laurie Bienstock, national director of strategic rewards for Watson Wyatt Worldwide in San Francisco.

When the economy rebounds, the cost of recruiting, retraining and rehiring could outweigh what an employer achieved in cost savings through layoffs, she said.

Carol Sladek, a principal in Hewitt Associates Inc.'s work/life consulting practice in Lincolnshire, Ill., agrees.

"It's a longer-term solution than just saying, 'OK. Today we're in trouble. We need to eliminate jobs.' Certainly there are times when that is unavoidable, but this is a good alternative—especially in an economic downturn," Ms. Sladek said.

While there always is the risk that employees on extended unpaid leave will find another job, "that's not as easy as it sounds" in today's economy, Employers, however, do need to offer "hooks" for those employees to wait in the wings, such as access to employer-subsidized health care coverage, she said.

Sharon Klun, director of work/life initiatives for Accenture Ltd., said that while the New York-based consulting firm has not yet explored it, sabbaticals such as its Future Leave program "could be a tool to help get companies through a bumpy economy."

Under Accenture's leave program, employees can subsidize through payroll deductions up to three months of leave every three years.

"Is this another tool that could be tweaked a little, like could we expand Future Leave to six months or could we expand it in a different way? I don't know, but I think the opportunity is there," Ms. Klun said.

—By Sally Roberts

Sabbatical: Time-off programs aid work/life balance

CONTINUED FROM PAGE 11

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When the economy rebounds, the cost of recruiting, retraining and rehiring could outweigh what an employer achieved in cost savings through layoffs, she said.

Carol Sladek, a principal in Hewitt Associates Inc.'s work/life consulting practice in Lincolnshire, Ill., agrees.

"It's a longer-term solution than just saying, 'OK. Today we're in trouble. We need to eliminate jobs.' Certainly there are times when that is unavoidable, but this is a good alternative—especially in an economic downturn," Ms. Sladek said.

While there always is the risk that employees on extended unpaid leave will find another job, "that's not as easy as it sounds" in today's economy, Employers, however, do need to offer "hooks" for those employees to wait in the wings, such as access to employer-subsidized health care coverage, she said.

Sharon Klun, director of work/life initiatives for Accenture Ltd., said that while the New York-based consulting firm has not yet explored it, sabbaticals such as its Future Leave program "could be a tool to help get companies through a bumpy economy."

Under Accenture's leave program, employees can subsidize through payroll deductions up to three months of leave every three years.

"Is this another tool that could be tweaked a little, like could we expand Future Leave to six months or could we expand it in a different way? I don't know, but I think the opportunity is there," Ms. Klun said.

—By Sally Roberts

Disabled, ill kids pose workplace challenges

By KRISTIN GUNDERSON HUNT

The population of special-needs children is rising, but few U.S. employers realize how that group affects the workplace, experts say.

According to the Boston-based Center for Child and Adolescent Health Care Policy, an estimated 8.6% of U.S. workers care for a child younger than 18 with physical disabilities, mental disabilities or chronic conditions. That has tripled since 1960, according to the organization.

Further, nearly 24% of such families said the condition caused family members to reduce their work hours or stop working entirely, according to the U.S. Department of Health and Human Services.

Eileen Brennan, associate dean of social work at Portland State University in Oregon and co-principal investigator of the Work-Life Integration Project at the university's Research and Training Center on Family Support and Children's Mental Health, said more employers need to be aware of the prevalence and strain of being a working parent with a special-needs child.

"It affects so many people in this country," Ms. Brennan said. "As doctors are able to save more children (born prematurely), and children with special needs are not institutionalized as much and are living in communities, many more employers really need to be aware of this."

Parents of such children experience a host of workplace dilemmas. The Sloan Work and Family Research Network in Boston estimates that nearly 14% of parents need more than 10 hours a week to coordinate their child's care, and 25% have been fired at least once due to their child's exceptional care needs.

"Depending on the level of care that's needed by the child, it can be a pretty demanding, unpredictable stressor for these employees," said Judi Casey, principal investigator and director at Sloan.

Experts say a lack of communication between employers and employees often hinders progress on these issues. Companies are concerned about their employees' privacy, said Janice Dragotta, a senior consultant for health and productivity at Watson Wyatt Worldwide in San Francisco. Employees are worried they will face scrutiny if they openly discuss their child's condition, said Sloan's Ms. Casey.

Ms. Dragotta said employers need to facilitate an environment where all employees feel they can be open about their personal circumstances. Allowing flexible work schedules and sick leave policies are ways to support a wide range of employees, including those with special-needs children.

Ophelia Galindo, national leader of the absence and productivity solutions group at Buck Consultants L.L.C. in Los Angeles, said flexibility is what parents in this situation need most.

Flexibility essential

"Flexibility is the key word," Ms. Galindo said. "With a special-needs child, there is some unpredictability around their needs."

She said employee assistance programs are companies' most common form of support, but some companies go beyond EAPs and offer specific programs.

New York-based professional services firm Ernst & Young L.L.P. established a network for such employees. Services include telephone conferences on general and condition-specific topics such as Down syndrome and autism, as well as consultation and support around estate planning, internal and external benefits as well as resources. It also sponsors parent mentoring, whereby experienced families mentor parents with newborns or children just diagnosed with special needs.

Newark, N.J.-based Prudential Financial Inc. also offers a support network for its employees with special-needs children. The group goes beyond educating those directly affected by such circumstances. It informs the entire organization about this population's challenges, helping colleagues to understand and empathize rather than judge a co-worker for frequent absences or need for more flexible schedules.

Additionally, Prudential's employee assistance and work/life programs offer emergency backup child care, referrals to services such as summer camps geared for special-needs children and a limited number of free counseling sessions. Maureen Corcoran, Prudential's vp-diversity, said offering such programming helps the company keep its most valuable employees.

"Employees tell us they stay because they are supported," Ms. Corcoran said. "I've had people tell me often that they know that if they left the firm, they wouldn't get the flexibility or understanding around their particular life situations."

The Canada Post Corp. in Ottawa, Ontario, supports its employees with special-needs children who also are members of the Canadian Union of Postal Workers and the Union of Postal Communications Employees by funding two programs developed and delivered by the CUPW.

The first program offers direct support from special-needs advisers; $100 each month for each member with a special-needs child to offset extraordinary costs such as respite child care, transportation and uninsured health expenses; information and resources, including a newsletter; and a Web site to connect with other parents.

The second program supports union members who have disabled children transitioning from youth services provided before age 19 to adult services. It provides information, resources and financial support similar to those in the first project.

Jamie Kass, national child care coordinator for the CUPW, said the programs help with employee retention and productivity.

"All of those kinds of things help to make workers more effective at work," Ms. Kass said. "I think it's made a big difference in terms of people's morale and how they feel in the workplace."

Watson Wyatt's Ms. Dragotta said employers and employees benefit from such supportive work environments.

"If an employer is able to offer some supports, it really becomes a win-win, because the employee has that fabric of support and resources they need, which I think, in turn, translates into the employee being able to be at work and focus on work," Ms. Dragotta said.

AP

Arzu Forough of Kirkland, Wash., kisses son Shayan, who has autism, during a break from home therapy that costs his parents more than $1,000 a week.

Layoffs spark surge in assistance program usage

By NICK WHITFIELD

Demand for the services provided by employee assistance programs is growing as the slumping economy results in more layoffs, experts say.

A membership survey released in December by the Employee Assistance Society of North America, in Arlington, Va., found an 88.2% increase in requests for financial services from 2007 to 2008 and an 82.4% increase in requests for help coping with stress.

"We've seen an immense increase in employers using the EAP for layoffs," said Jodi Prohofsky, senior vp-operations and health with CIGNA Behavioral Health Inc. in Eden Prairie, Minn. "Our call volume for layoff counseling is up about 60% from the same time last year."

Adequate employee assistance during layoffs can help not only those losing their jobs but also maintain post-layoff productivity and morale of the staff that remains, experts say.

"We know that stress is a main contributor to workers compensation claims, and that leads to both direct and indirect costs," said Stella Antonakis, senior consultant in the national clinical practice with Buck Consultants L.L.C. in San Francisco.

"I do workers compensation and disability audits, and you can be sure that we're looking at the files for evidence of how what's going on in the workplace is affecting this particular claim," said Sandra Routledge, senior consultant in the group health care practice of Watson Wyatt Worldwide in Vancouver, British Columbia. "Good employers and EAPs can do some very good preventative work around that," she said.

EAPs also can offer a number of layoff-related services, such as financial and emotional counseling in addition to outplacement services. However, extending EAP services for laid-off workers may involve additional cost to the company, experts say.

"Usually, EAP companies will charge an extra fee if you extend it more than a month beyond the (layoff) date. Most people will already be covered for that first month," Ms. Antonakis said.

"For those remaining on the job, we talk to them about how to deal with their survivor guilt, control their attitude to remain positive and productive, and use the opportunity for career growth and development," said CIGNA's Ms. Prohofsky.

"There is also a value in working with the survivors, and that will include working very closely with the managers to keep morale up with employees and themselves," said Beth Lundholm, manager-management services with Ceridian Corp., a Minneapolis-based EAP provider.

"(Managers) will call in and talk with our counselors about having dealt with that situation," said Ani-

See **LAYOFFS** page 18

Compliance: Employer burdens rise

CONTINUED FROM PAGE 11

new laws that are either being put on the docket or being enacted that we have had to resort to providing a monthly bulletin to our clients of these changes and changing our administrative (tracking) procedures," Mr. Bass said.

At the same time, the FMLA recently has grown more complex with new regulations, Ms. Carruthers and others agreed.

A year ago, President Bush signed legislation expanding the FMLA to allow employees up to 12 weeks of unpaid leave when a spouse, child or parent is on active military duty. It also allows 26 weeks of FMLA leave to care for a service member injured on duty.

The changes took effect Jan. 16, and mark the first expansion of the FMLA since 1993, when the law first was adopted.

Among other requirements, the new federal regulations also call for employers to inform employees about the amount of remaining leave time available to them under the FMLA within five business days of a request, Ms. Archer said. Periodic notification of remaining leave days also is required.

Additional FMLA expansion may be on the way, several observers said. They cite President-elect Obama's campaign pledges to help workers balance work and family.

That could include allowing employees to take time off for elder care, a child's school activities or caring for any individual residing in their home for six months, according to the Obama/Biden Web site.

But efforts to boost the economy could hamper those efforts, consultants agree.

Employees, meanwhile, are likely to weigh the scarcity of jobs in the economy when deciding whether to exercise leave rights, the consultants point out.

Some will take less time out of fear for their jobs, said Carol Tavella, senior manager of compensation and benefits at SMART Business Advisory & Consulting L.L.C. in Devon, Pa. Others will take more time off for mental health purposes because of the "stress component of the economy," she said.

During the nation's last economic contraction, employers saw a net increase in absences, said Mr. Bass. That happened because enough employees, fearing they might eventually lose their jobs and the accompanying medical benefits, underwent surgeries and other medical care they previously had postponed.

To assure employers remain in compliance with the growing number of leave scenarios, it is best to centralize the effort under one person or one group, Ms. Tavella said.

Over time, more large employers have hired consultants to track the leaves for them. But as, Ms. Carruthers and others pointed out, that practice also could become a casualty of the economy.

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Layoffs: EAP usage soars

CONTINUED FROM PAGE 16

ta Madison, vp-training and consulting with ComPsych Corp. in Chicago, another EAP provider.

Benefit consultants say EAP providers are uniquely positioned to offer the services that employees might need during layoffs.

"The EAP is really able to look at the wider ramifications for employees," said Ruth Donahue, director of business development with benefit consultant Segal Co. in Chicago. "It's sort of one-stop shopping. If you can get high-level services in all these areas from one vendor or provider, you don't miss anything—there's nothing falling through the cracks."

"EAP and work/life programs (that include financial, legal and other advice) are usually bundled together nowadays," Buck Consultants' Ms. Antonakis said. "Some employers just offer (an) EAP, without those additional work/life services, but it's not a significant financial addition. It's just a few more cents per employee per month.

"There is some perceived stigma for employees to ask for (emotional) help, and work/life services are a good way for people to access the therapy side of things," she said. "Sometimes, it's easier to call for financial services or child care services, and the people who take those calls are very well-trained at getting people into the therapy side of the program."

To get the full benefit from these resources, experts advise benefits managers to work with their EAPs to establish goals and metrics to gauge their success. "For all EAPs, it's critical that they be measured on various aspects," Segal Co.'s Ms. Donahue said. "EAPs typically provide quarterly and annual reports to their clients, giving them information on utilization and success.

"Every employer should require that those reports be as thorough as possible…while maintaining employee confidentiality," Ms. Donahue said. "I would also advise any employer to ask for reports specific to that cohort who are laid off—not only to check usage, but I'd want to know on a case-by-case basis how these people were moving through the program."

To get the desired results, EAP providers and consultants agree the employer has to build relationships with the program prior to layoffs.

"The most effective EAPs are the ones that are already embedded in the organization, almost an extension of the human resources department," said Watson Wyatt's Ms. Routledge. "They meet regularly with human resources groups. Their communications with employees are consistent. They have effective Web sites. There has to be a level of trust between the employees and the EAP vendor, because these are really delicate issues people are dealing with."

However, Ms. Donahue said some benefits of using EAPs and work/life programs to ease the sting of layoffs cannot be measured.

"A lot of it, frankly, is doing the right thing," she said.

UP CLOSE

Comings & Goings

JEFFREY M. PHILLIPS

NEW JOB TITLE: Partner with the western region property damage claims consulting practice of Wilton, Conn.-based Dempsey Partners L.L.C.

PREVIOUS POSITION: Principal with Chicago-based Claro Group L.L.C.

GOALS FOR NEW POSITION: Make Dempsey Partners the premier claims recovery practice in the country.

CHALLENGES FACING THE INDUSTRY: With the tightening of the credit markets, I see some issues that are facing our clients. Cash flow is very important on large losses. When a company had a large loss in the past, they could tap into their credit lines in the early stages of (a) loss. Most of the companies need advance payments quickly. That's something we've seen with Hurricane Ike. There's a big push to get early advance payments quickly. In the past couple of years…there have been a lot of conflicts of interest where companies have been working on both sides of the fence to some extent, where they have a relationship working with an insurance company and working with companies making claims against the insurance company. I see an inherent conflict of interest in that.

WHAT I WOULD CHANGE ABOUT THE INDUSTRY: I would say expansion of communication. On large losses, the most important thing for a good outcome for everybody is open communication…between the insurance company adjuster, their experts, the insured, the broker, any consultants or advisers. If everybody can get on the same page early on in the process, it ends up working better for everybody. The way things are right now…there is not a lot of sharing of information across the board.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: I have an engineering background and came out of the school working for Factory Mutual as an engineer, and that was a great learning experience because every single day I was out in the field looking at a different company. I learned a tremendous amount about every industry…You learn about companies in general and how they operate and what their issues are.

Comings & Goings ONLINE

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- Locke Lord Bissell & Liddell L.L.P.

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- Medical Care Coordinators Inc.

Can ERM solve the auto crisis?

Enterprise risk management does not have to be complicated. It does have to be useful. Can it help with the crisis at General Motors Corp., Ford Motor Co. and Chrysler L.L.C.?

Risk identification

The Big Three have the following risks:

LAGGING SALES. GM alone once had half of the U.S. auto market. Now GM, Ford and Chrysler combined have less than half the market. While GM remains No. 1, Toyota Motor Corp. is a close No. 2 in U.S. market share.

HIGH COSTS. The companies have bloated salaried staff, probably 25% more than needed. Hourly labor costs are not competitive.

LEGACY COSTS. The companies provide prohibitively costly retirement and health care benefits.

DEALERSHIPS. All three have too many dealers. With the same level of U.S. market sales, GM had 7,000 dealers before closings. Toyota had 1,500.

CONTRACTUAL COMMITMENTS. Contracts support a Jobs Bank program with 90% of wages and benefits to laid-off employees and revenue bonds for municipalities that financed closed facilities.

AUTO COMPANY MANAGEMENT. The companies have not had the ability or the courage to make desperately needed changes.

Risk mitigation strategies

The Big Three can mitigate the risks as follows:

LAGGING SALES. Become smaller. Some brands, such as Chevrolet, Buick, Cadillac, Ford, Chrysler and Jeep have considerable loyalty. Even the quality is acceptable. Focus on them along with hybrids. Reduce U.S. manufacturing plants from 35 to 20 or so. Sales will come into balance with available and desired vehicles.

HIGH COSTS. Cut them to competitive levels. Streamline salaried positions. Reduce hourly labor costs.

LEGACY COSTS. Face the reality that legacy costs are not affordable. Ask the government for help to reduce economic disruption during a transition.

DEALERSHIPS. Close many of them. A horrible action for local communities, but a probable outcome in any case.

CONTRACTUAL COMMITMENTS. Break them. Sorry about that. Tough times can be tough.

MANAGEMENT. Ford President and Chief Executive Officer Alan Mullally and Chrysler CEO Robert Nardelli may be crisis managers. GM CEO Rick Wagoner is more problematic. For all three companies, change the managerial cultures.

Risk mitigation options

The companies, in partnership with the U.S. government, have specific options:

LAGGING SALES. Reduce production. Eliminate brands. Close plants. Whoops. The United Auto Workers and municipal contracts make it cost-prohibitive to close plants. Score one for Chapter 11 bankruptcy reorganization.

HIGH COSTS. Reduce the number of salaried and hourly employees. Whoops. A UAW hourly worker was quoted as saying, "I think we've given enough." It reflects the union mood and position. Score two for Chapter 11.

LEGACY COSTS. Reduce them big time. There's no chance for success if they continue. The costs are contractual with no sign that workers will give them up easily. Score three for Chapter 11.

DEALERSHIPS. State laws make it prohibitively costly to close dealers. Score four for reorganization.

CONTRACTUAL COMMITMENTS. Who signed these things? Nevermind. Score five.

MANAGEMENT. We do not need a "car czar," a position proposed by the House of Representatives to oversee the U.S. auto industry. We need functioning boards of directors and executive leadership.

Emerging Risk STRATEGIES

John J. Hampton is the KPMG Professor of Business and Dean of the School of Professional and Continuing Studies and Graduate Business Programs at St. Peter's College in New Jersey. To read Mr. Hampton's columns and interviews, visit www.BusinessInsurance.com/ERM.

Differing views

A good ERM analysis looks for opposing views. Some are:

BANKRUPTCY AS AN OPTION. Mr. Wagoner is quoted as saying, "bankruptcy is not an option." He may be right. The word "option" implies other choices. If there are none, bankruptcy is not an option. It is an eventuality.

PROTECTING DEALERS. Michael Jackson is the CEO of AutoNation Inc., the largest U.S. retailer of cars. He says automakers have improved quality, reduced labor costs and rationalized production. Does this mean the companies need all the local dealers included in AutoNation?

LABOR COSTS. The UAW view? "I think we've given enough."

LIKELIHOOD OF CHANGE. Mr. Wagoner said he would not resign.

EFFECTS OF BANKRUPTCY. CNW Marketing Research Inc. in Brandon, Ore., said 80% of car buyers would not purchase a car from a bankrupt company. Another survey said 51% would not buy a car from GM in any case.

Choose a strategy

Are we ready to choose? A Chapter 11 bankruptcy reorganization has negative effects offset by the possibility of fixing high costs, legacy costs, excessive number of dealerships and burdensome contractual commitments. A bailout without conditions offers short-term continued operations. Suddenly ERM comes into play.

We are not choosing between bankruptcy and a bailout. Our choice is between bankruptcy alone and a bailout contingent upon filing Chapter 11. This could be a useful insight in the discussions in Washington, Detroit and elsewhere.

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Madoff: Insurers preparing for fallout from scandal

CONTINUED FROM PAGE 1

somewhere" said Greg Flood, the New York-based president of IronPro, a professional liability division of Bermuda-based Ironshore Insurance Ltd. "Industrywide claims costs between $1 billion and $2 billion would be very easy to imagine," he said. Mr. Flood said he was not aware of any Madoff-related exposure at Ironshore.

Focus on due diligence

Lawsuits are likely to focus on the due diligence performed by the institutions that invested clients' money with Mr. Madoff. Other allegations could include negligence, mismanagement and breach of fiduciary duty, legal experts say.

New York-based Fairfield Greenwich Group, a large institutional investors in Madoff funds, faces a $7.5 billion suit by investors. In the suit, plaintiffs argued the hedge fund managers collected millions of dollars in fees while failing to carry out due diligence that would have uncovered the fraud.

Claimants primarily will call upon firms' errors and omissions and directors and officers liability policies, but other types of coverage also may be sought to pay for the losses, including crime insurance and fidelity bonds, observers say.

AP

Insurers expect lawsuits to stem from the scandal surrounding Wall Street fund manager Bernard Madoff.

Subprime loan-related claims already have generated an estimated $3.5 billion worth of D&O claims for financial institutions and pushed up prices for liability coverage for financial institutions by as much as 100%, according to market experts (*BI*, Jan. 12, 2009).

D&O rates for financial institutions have risen for the past five quarters year over year and, given the Madoff impact, "we expect that trend may continue," said Michael O'Connell, New York-based managing director of the financial institutions practice for Aon Risk Services, a unit of Aon Corp.

"It's certainly something the E&O and D&O lines are bracing for," said Michael White, senior vp-financial institutions industry leader for the executive risks practice for Willis HRH in New York. He noted that recent renewal negotiations for financial institution coverage have featured a heightened interest by underwriters in clients' potential exposure to Mr. Madoff. Industry observers also say they would not be surprised to see insurers writing Madoff exclusions into policies.

Among the leading providers of financial institution insurance generally are American International Group Inc., Chubb Corp., ACE Ltd. and XL Capital Ltd. are likely to face the highest claims, observers say. AIG and ACE declined to comment, while Chubb and XL did not respond to requests for comment.

The final cost to insurers may depend on the amount of coverage the institutions bought, but losses could be restricted because money management firms typically cannot purchase high limits, observers say.

"Most of the firms would not have adequate limits of coverage to indemnify the people who would sue," said Marshall Gilinksy, a shareholder in the New York office of Anderson Kill & Olick P.C. He noted that typical E&O policy limits for financial advisory firms might be about $15 million to $20 million and available up to $30 million. Limits for financial institutions are more difficult to generalize, he said.

"It would not be unusual for a money management firm to have limits of $10 million" for E&O liability, Mr. LaCroix said.

Defense costs, which are expected to be "significant," are likely to erode policy limits because liability coverage typically includes defense costs inside limits, legal experts say.

Insurers also may be looking closely to see whether the allegations raised trigger coverage exclusions, particularly those around conduct resulting in personal profit or gain, said Mr. LaCroix.

But Willis' Mr. White said he thinks "it's going to be difficult (for the carriers) to try to deny coverage" broadly due to the nature of the investors' claims.

Offshore: Energy insurer exits Gulf of Mexico market

CONTINUED FROM PAGE 3

cant increase in prices and deductibles.

Mr. Farnan said some early renewals had a rate on line, the ratio of premium to limits, of more than 30%.

"It's going to be (a) very difficult season for people wanting to buy," said Peter Mortlock, a broker with the energy unit of Alliant Insurance Services Inc. in Houston. He and others see the possibility of energy companies with offshore interests eschewing insurance for alternatives such as self-insuring.

Steve Foster, assistant treasurer-risk management at Woodlands, Texas-based Anadarko Petroleum Corp., which has deep water facilities in the Gulf of Mexico, said the company self-insures for windstorms and similar decisions have saved some companies significant money in recent hurricane seasons.

"The premiums they charge for capacity to insure windstorm—we don't think it's worth it," Mr. Foster said. "We are not alone."

Before Hurricanes Katrina and Rita in 2005, Mr. Foster said offshore companies could buy windstorm cover as part of their property policies, sometimes at no additional cost. That changed significantly after 2005, but modest hurricane losses in 2006 and 2007 led to softening rates. Ike halted further rate declines in 2008.

Like 2005, some observers anticipate new players will enter the sector to exploit the hardening insurance market.

Andrew Barile, president and chief executive officer of Andrew Barile Consulting Corp. in Rancho Santa Fe, Calif., said he has been contacted by equity firms looking for help entering the energy insurance market.

Others remain dubious that new players will boost capacity, given the battered condition of many investment firms.

"In the last hard market (after Hurricanes) Katrina and Rita, you had a lot of hedge funds coming in," Berkley Offshore's Mr. Costa said. "I don't think they're in any position to do that now."

Mr. Mortlock agreed the arrival of investment firms is unlikely. "It's a very different financial environment today that it was in 2005," he said.

In a statement about its exit, Advent said its increased hurricane losses stemmed primarily from Syndicate 780's offshore energy account. The account's loss estimates in 2008 were about $32 million higher than expected and largely as a result of subsea physical damage, which has been responsible for 60% of incurred Hurricane Ike losses to date, the firm said.

Advent said it discontinued its offshore windstorm business to prevent a repeat of last year's "unacceptable performance."

Ike loss estimates increasing by millions

Insurers and underwriters are increasing their Hurricane Ike loss estimates by tens of millions of dollars, highlighting the challenges of catastrophe models for the offshore energy sector, industry observers say.

Advent Capital (Holdings) P.L.C. this month increased its Ike loss estimates by about $39 million, and Platinum Underwriters Holdings upped its loss estimates by about $60 million last week.

Catastrophe models also underestimated losses from Hurricanes Katrina and Rita in 2005.

Experts say predicting storm damage to oil rigs, production platforms and other offshore facilities is more difficult than cat modeling for refineries and onshore energy structures. One reason is that most offshore modeling began after Hurricane Ivan in 2004, said Tommy Laurendine, assistant vp-U.S. exploration and production at Liberty International Underwriters in Houston.

"It's really in its infancy," Mr. Laurendine said of offshore modeling. "Quite frankly, we only have three storms that the modelers can use to test their models against" because 2008 hurricane data is not yet available, he said.

While hurricane and earthquake damage to onshore facilities often is made public, offshore damage typically has been guarded closely by individual companies, said Mr. Laurendine, who worked at an oil company and for the U.S. Minerals Management Service prior to Liberty International.

Also, the decline in oil production in the 1980s caused many industry firms to cut back on hiring and training offshore structural engineers, who now are outnumbered by onshore structural engineers, he said.

Having capable engineers is important, he and others say, because modeling offshore damage is far more complicated than onshore losses.

"Ocean, current, wind action—none of these things are very predictable," said Steve Maloney, senior consultant in the enterprise risk management practice at Stamford, Conn.-based Towers Perrin. "The combination can be reinforcing or canceling."

Offshore models predict the wind created by the hurricane, the waves created by the wind and the structural damage caused by the waves. The relationship between those variables is not linear, Mr. Laurendine said.

"What causes the destruction is waves, not wind," he said. "The problem is it's much easier to teach wind-force calculations than it is to teach wave-force calculations."

—By Zack Phillips

Products & Services

XL extends contractors pollution coverage

EXTON, Pa.—XL Insurance, a unit of XL Capital Ltd., has extended its pollution program for contractors to protect onsite and offsite operations.

The contractors pollution liability construction package includes emergency cleanup costs up to $500,000 for up to seven days without advance notification; coverage of accidental pollution from an owned property, such as an equipment yard; disposal of construction and demolition debris; coverage for transporting materials beyond the job site; extended coverage for environmental liability arising from assembling, fabricating or installing products; and third-party property damage.

The endorsement has limits up to $50 million. The program is underwritten by Wilmington, Del.-based XL Specialty Insurance Co. and Greenwich Insurance Co., and Bismarck, N.D.-based Indian Harbor Insurance Co.

For more information, contact Laura Wagner, construction and environmental services assistant manager in the environmental unit of XL Insurance, at 800-327-1414 or *Laura.Wagner@xlgroup.com*.

Austin & Stanovich program offers risk management aid

PROVIDENCE, R.I.—Austin & Stanovich Risk Managers L.L.C. has established a program for organizations that need risk management support on a project basis.

A&S Risk Assist offers risk management services for a variety of insurance issues such as reviewing nonlegal construction, lease or vendor agreements; risk management administration issues; internal claims procedures review; exposure analysis; policy coverage issues; and difficult claims including claims denials.

According to the company, the program features quick turnaround time and single-project billing.

For more information, contact Bill Austin, principal consultant, at 401-751-2644 or e-mail *wkaustin@austinstanovich.com*.

ADVERTISER INDEX

Issue of January 19

Megabrokers: Big brokers take aim at smaller accounts

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to institutionalize the business so it's not (about) the relationship with the producer, it's (about) the relationship with the company," said Mr. Mizel, chairman of San Ramon, Calif.-based CCI Financial & Insurance Services, a small-account broker. Smaller accounts tend "to be more community-driven and relationship-driven and those guys (at the global brokers) tend to be employees serving business, not necessarily what I call pure producer types."

Peter Breitstone, who is in charge of Aon Corp.'s small-commercial account strategy as president and CEO of Agency Specialty Product Network, disagrees.

"I grew up in this business and the local community is very important from the independent agency perspective," he said. "However, I don't think that today that is necessarily the only way you service clients."

"What we're beginning to do (at Aon) is to put together products that are far superior than the ones you normally get on the street and offering those products in a streamlined and efficient way to the client," Mr. Breitstone said.

"We can't spend the resources entertaining clients for their small commercial business," he said. "So if we can't do that, we have to provide them with better service, better coverage, more competitive programs and a more efficient way of getting what they need."

While Aon has been building out its smaller-account business—those with less than $100 million in revenue—since 1995, it continues to refine its strategy.

"Our challenge is to provide clients with the clout of a big broker, the efficiencies that we can invest in systems and also to give the client the experience they're used to in the agency business," Mr. Breitstone said.

After several attempts at servicing smaller commercial accounts, New York-based Marsh is forming Marsh & McLennan Agency, a standalone unit that will serve the property/casualty, risk management and employee benefit needs of companies nationwide that generally have less than $100 million in revenue.

COURTING SMALLER COMMERCIAL ACCOUNTS

'To ignore the small to midsize enterprise is ignoring potentially a way to get sustainable organic growth for an indefinite period of time.'

Tom Ealy
Willis HRH

'Top leadership gets the fact that it's got to have a difficult culture…it's got to have a different DNA' from its traditional large account strategy.

David L. Eslick
Marsh & McLennan Agency

'Our challenge is to provide clients with the clout of a big broker…and also to give the client the experience they're used to in the agency business.'

Peter Breitstone
Aon Corp.

"The key thing this time around for Marsh…is that top leadership gets the fact that it's got to have a difficult culture…it's got to have a different DNA (from its traditional large account strategy) and, frankly, it's got to be led by somebody who's lived that market and that's what excited me about joining them," said David L. Eslick, whom Marsh named as chairman of the agency earlier this month. Mr. Eslick previously was chairman, president and chief executive officer of Briarcliff Manor, N.Y.-based USI, which he helped build through dozens of acquisitions.

Marsh & McLennan Agency will use a similar growth-by-acquisition strategy, Mr. Eslick said. "Our goal is to make this a big and important part of" Marsh, he said.

The brokerage may be more successful this time around, said Meyer Shields, a principal with Stifel Nicolaus & Co. Inc. in Baltimore.

"Over the past couple of years—really under (former CEO Michael G. Cherkasky)—Marsh has been in the small account market and out and there's been a lot of confusion… about what Marsh actually wants," he said. "Now, I think that under a management team that understands insurance, they've got a direction that's been well thought through and will be executed upon."

Keith Walsh, an analyst with Citigroup Investment Research in New York, said that while Marsh "clearly has buy-in from top management," he's not entirely convinced that the strategy can work. Acquiring dozens of agencies is not an easy thing to do, he said. "It's not something you can replicate overnight."

With $1.5 billion in cash and another $500 million in stock set aside to fund future acquisitions, however, several observers say that rather than rolling up dozens of smaller acquisitions, Marsh may make a big buy to fill out its small agency initiative (*BI*, Dec. 8, 2008).

That was the route London-based Willis Group Holdings Ltd. took when it decided to embrace the small-account segment as a growth opportunity in 2006, said Tom Ealy, who recently was named national partner in charge of Willis HRH's commercial segment, which houses accounts that generate up to $25,000 in commission revenues.

Previously, "frankly, we treated small and medium enterprises just like other major brokers. We simply wanted to be able to accommodate them without losing a lot of money on it," Mr. Ealy said.

Then in 2006, "We said, 'Why should we ignore a segment of clients just because it doesn't fit our current service platform and our current thinking? Why ignore a segment that represents most employers in the United States?'" he said.

Toward that end, Willis acquired Chicago-based InsuranceNoodle, an Internet-based broker for small businesses in 2007, and Hilb Rogal & Hobbs Co. last year.

InsuranceNoodle, which Mr. Ealy describes as the "beating heart" of Willis HRH's commercial segment, provides a Web portal for independent agents to buy insurance for their retail customers and the technology platform for Willis HRH's smaller commercial clients.

Mr. Ealy said the brokerage is in the process of connecting HRH's existing 40 business units—which provide local to near-local service to small and midsize clients across the United States—to InsuranceNoodle's platform, providing an efficient means to place client business.

"We obviously recognized that to grow in the commercial segment we'd have to do some things differently," Mr. Ealy said. "But to ignore the small to midsize enterprise is ignoring potentially a way to get sustainable organic growth for an indefinite period of time."

Restoule: Optimistic

CONTINUED FROM PAGE 4

more value they offer," Mr. Restoule said.

RIMS will continue legislative initiatives in Washington and has identified the federal terrorism insurance backstop, surplus lines and insurance regulation reform as key issues. (*BI*, Jan. 12)

Mr. Restoule, who has served on the RIMS board of directors since 2001, said he also plans to strengthen the organization's relationships with industry partners, including brokers, insurers, educational institutions and other professional organizations in an effort to "share critical information."

The organization also will continue its focus on enterprise risk management and will introduce an additional 15 sessions on the topic at the RIMS 2009 Annual Conference & Exhibition in Orlando on April 19-23.

Mr. Restoule, who has been Nova Chemicals' risk manager for nearly 20 years, said he hopes to bring the company's culture of creativity and leadership to his role at RIMS. "At NOVA we are always asking ourselves 'How we can be better? How can we learn from our experience?'"

RIMS' presidential transition has been a smooth one and Ms. Ochenkowski will remain a "very important part of the organization," Mr. Restoule said.

Ms. Ochenkowski, managing director at Chicago-based Jones Lang LaSalle Inc., is heading a RIMS task force to develop a strategy as the organization tries to reach members outside North America.

Ms. Ochenkowski said she is setting up alliances to help members meet their needs for global risk management. "We are working in a global economy, and we want to reflect that," she said.

Bias: Discrimination alleged after promotion test results scrapped

CONTINUED FROM PAGE 1

results "could subject the city to Title VII litigation by minority firefighters." But the plaintiffs contended the decision not to certify the test "was due to political pressure."

The court granted summary judgment to the defendants, saying their "motivation to avoid making promotions, based on a test with a racially disparate impact, even in a political context, does not, as a matter of law, constitute discriminatory intent, and therefore such evidence is insufficient for plaintiffs to prevail on their Title VII claim."

The decision was upheld by the 2nd U.S. Court of Appeals in New York in June 2008. In its brief opinion, a three-judge panel said Mr. Ricci, one of the firefighters that took a promotion test, did not have a viable Title VII claim. "To the contrary, because the board, in refusing to validate the exams, was simply trying to fulfill its obligations under Title VII when confronted with test results that had a disproportionate racial impact, its actions were protected."

The full appellate court subsequently voted 7-6 against hearing the case en banc.

Some observers say the Supreme Court's decision to even hear the case is somewhat unusual, because the court often selects cases in which there are conflicting appellate court decisions, which is not the case here.

Some observers are hesitant to say how they think the court will rule. Pointing to the decision by the appellate court against an en banc hearing, Daniel A. Schwartz, an attorney with Hartford, Conn.-based law firm Pullman & Comley L.L.C., said, "I would not be surprised to see similar fractures developing at the (Supreme Court) level. This is a very difficult question because there are arguments on both sides that have validity."

"You can see from the town's perspective they didn't want to risk a race discrimination lawsuit, so it threw out the test results. On the other hand, you have this group of firefighters who say, 'Wait a minute, it's not our fault about the test results, we should be promoted,'" Mr. Schwartz said.

"So what's the employer really supposed to do in that situation? Are they supposed to promote the white employees and then face a discrimination lawsuit later on?"

asked Mr. Schwartz.

Ilya Somin, assistant professor at George Mason University School of Law in Arlington, Va., said he expects the appellate court decision to be reversed, given the composition of the Supreme Court. "However, a very important question going forward is what sorts of standards the court sets up to justify its decision."

The Supreme Court could strike down the appellate court decision "but still have fairly permissive standards under which cities and private employers engage in similar policies," he said.

But it could also present a "broader rationale which will make it very difficult, particularly for public employers, to do similar things in the future," said Mr. Somin.

Gerald Maatman, an attorney with law firm Seyfarth Shaw L.L.P. in Chicago, said, "A decision in essence allowing a cause of action by the majority for reverse discrimination probably would have a chilling effect on what public employers would do in this area."

But, "a decision upholding the district court would give more credence or maneuverability to employers to examine these issues without running afoul with" or interfering with the rights of majority employees, said Mr. Maatman.

The decision could affect private employers as well as public entities, observers say. Marcia L. McCormick, an assistant professor at Cumberland Law School at Samford University in Birmingham, Ala., said depending on the decision, "basically any employer who uses any kind of a neutral test...for hiring and promotion decisions may have to scrutinize them more carefully—or may not have to worry quite as much about the use of these tests."

Mr. Schwartz said a broad decision could be significant for private corporations with diversity programs "which are specifically geared toward minority applicants."

But Mr. Maatman said court's ruling is more likely to be based on the Equal Protection Clause, which says the government may not "deny to any person…the equal protection of the laws." The clause applies to public employers, but not private employers. Title VII applies to both public and private employers.

"The Supreme Court tends to decide cases on the narrowest grounds possible, so I don't see the court making a decision" based on both issues, said Mr. Maatman.

News In Brief

CONTINUED FROM PAGE 1

special events and concerts, hired Dallas-based insurance agency CSI Entertainment Insurance and insurer Indemnity Insurance Corp. of D.C., Risk Retention Group to oversee insurance and risk management for some of the events connected with Tuesday's inauguration, CSI said in a statement.

Bill would create COBRA subsidies

The federal government would pay 65% of COBRA health care continuation premium for one year for eligible beneficiaries who have lost their jobs since Sept. 1, 2008. The provision is part of a massive economic stimulus bill unveiled last Thursday by the House Democratic leadership. The bill also would allow other beneficiaries to hold on to COBRA coverage, for decades in some cases.

U.S. captive domiciles see formations drop

Captive growth in several of the largest domestic domiciles slowed significantly in 2008. In Vermont, regulators licensed 16 new captives in 2008, down from 32 in 2007. Vermont is the largest U.S. domicile and the third largest in the world, with 557 captives at year-end 2008. In Hawaii, the second largest domestic domicile with 165 captives, eight new captives were licensed in 2008, down from 10 in 2007, and South Carolina, which had 163 captives at year-end 2008, licensed 11 new captives in 2008, down from 27 in 2007. In addition, Nevada, which had 123 captives at year-end 2008, licensed 19 captives last year, down from 20 in 2007.

House OKs expansion of SCHIP program

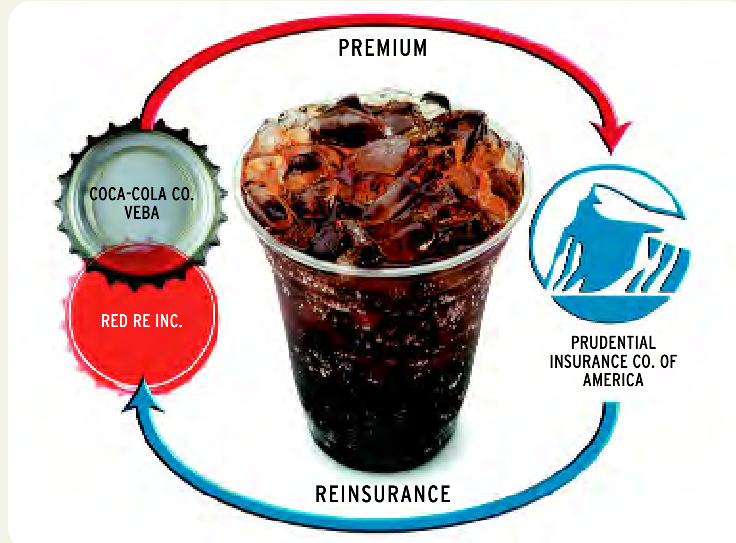
Legislation overwhelmingly approved by the House of Representatives on Wednesday to expand a federal/state program that provides health insurance coverage to children in low-income families could shift more children from state programs to employer-sponsored plans. The legislation, H.R. 2, would give states the option to provide premium subsidies to low-income employees eligible for coverage through state Children's Health Insurance Plans and employer-sponsored plans. Employers would have to give notification about the premium assistance to employees living in states that offer such assistance. In addition, employers would have to offer open enrollment periods.

Noted

A federal judge has ruled that **former General Re Corp. Chief Executive Officer Ronald Ferguson can remain out of jail** as he appeals his sentence. Mr. Ferguson is one of several executives convicted for involvement in a sham reinsurance transaction between Gen Re and American International Group Inc.…Former Iowa Insurance Commissioner and academic Therese M. Vaughan will become the **chief executive officer of the National Assn. of Insurance Commissioners** on Feb. 18. She replaces Catherine J. Weatherford, who left the NAIC in July 2008.…The Group of 30—a nonprofit group of international financial experts—last week issued a **report calling for "national-level" regulation of large insurance companies**. Paul Volcker, a former chairman of the Federal Reserve who now serves as a special adviser to President-elect Obama, was chief author.

HOW THE MONEY WOULD FLOW

Under Coca-Cola Co.'s proposed retiree health care benefits funding plan, a company-established and -funded voluntary employees' beneficiary association would pay a premium to Prudential Insurance Co. of America for medical stop-loss coverage. Prudential then would fully reinsure the risks through Coca-Cola captive insurance company Red Re Inc.



Coca-Cola: Plan OK sought

CONTINUED FROM PAGE 3

If Coca-Cola wins regulatory approval for its retiree health care funding approach, other employers are likely to follow, some say.

"This is something that can work to the benefit of participants and employers. It is a safe assumption that others will follow," said George O'Donnell, a senior vp with Aon Consulting in Somerset, N.J.

In fact, he said other employers now are considering similar arrangements.

Linking a VEBA to a captive to fund retiree health care benefits has several advantages, outside observers said earlier.

Under federal law, assets contributed to a VEBA must be used to pay benefits or purchase insurance policies that provide benefits. Employers cannot remove VEBA assets for other purposes, even when a benefit program is being wound down.

By contrast, using a captive to fund benefits gives a company greater financial flexibility. For example, investment gains on contributions made to the captive can be paid out as dividends to the parent.

In addition, because the Internal Revenue Service considers employee benefit risks to be third-party business, funneling benefit programs through a captive could increase the likelihood that an employer can deduct property/casualty premiums paid to its captive, observers said.

Coca-Cola is seeking a Labor Department decision within 45 days. Coca-Cola also intends to seek a private-letter ruling from the IRS providing its position on Coca-Cola's plan to use the VEBA.

The Groom Law Group in Washington filed the Labor Department application. Towers Perrin is Coca-Cola's consultant on the project.

UnitedHealth: Consumers, doctors see win-win situation

CONTINUED FROM PAGE 3

tion with Ingenix on its Web site.

Although the agreement was hailed by Mr. Cuomo, UnitedHealth and health care providers as a victory for consumers, it is being viewed by the payer community as a win for doctors who have been resisting cost-containment efforts by employers and insurers.

"Our agreement with UnitedHealth removes the conflicts of interest that have been inherent in the consumer reimbursement system," Mr. Cuomo said at a Jan. 13 press conference in Manhattan, urging other insurers using the Ingenix system contribute to finance the new system. "This has been an industry-wide problem, and it demands an industry-wide reform," he said.

Aetna, an Ingenix user, responded later in the week by announcing it would put $20 million into development of the new database.

In a statement, Thomas L. Strickland, executive vp and chief legal officer of UnitedHealth, said the company is "committed to increasing the amount of useful information available in the health care marketplace so that people can make informed decisions, and this agreement is consistent with that approach and philosophy."

"It's a huge victory for consumers," said Dr. David Nielsen, president of the American Medical Assn. "It's very clear that the doctors were underpaid. It misled patients and drove a wedge between them and their doctors."

But Karen Ignagni, president and chief executive officer of America's Health Insurance Plans in Washington, said the agreement sheds light "on one of the root causes of rising medical costs in America: wide variations in charges by out-of-network providers across the country."

"Health plans create provider networks to ensure that patients have affordable access to a wide choice of high-quality health care providers. Enabling out-of-network providers to charge whatever they want would create a powerful incentive for providers to opt out of networks altogether, forcing consumers and employers to pay significantly higher health care costs," Ms. Ignagni said in a statement.

Ed Kaplan, national health practice leader at Segal Co. in New York, agreed, saying that "doctors used to bait the system by putting inflated charges so that it would affect UCR the next year. Ingenix had a way to smooth out those inflated charges."

Although "people were definitely uncomfortable with Ingenix being owned by UnitedHealth," if the new database is "heavily influenced by providers, that would be worse than if it is owned by an insurer," Mr. Kaplan said.

"The biggest beneficiary of this is going to be the doctors," said Bruce Boissonault, president and chief executive officer of the Niagara Health Quality Coalition in Williamsville, N.Y. "Reasonable and customary could be whatever somebody wants to charge. Good may come out of this, but there's also a risk that the cure could be worse than the disease."

"From an employee point of view, it's a good thing. But not for employers," said Tom Billet, a senior consultant at Watson Wyatt Worldwide in Stamford, Conn.

Laurel Pickering, president of the New York Business Group on Health, said her membership "thinks it's a good thing for this database to be removed from Ingenix…but we have concerns it might increase costs for employers."

Helen Darling, president of the National Business Group on Health in Washington, expressed concerns that employers' health care costs could grow, but said the consumer Web site could have a tempering effect on employer costs.

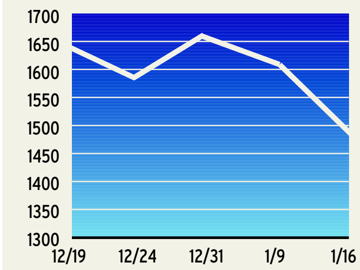
"It might boost consumerism to a certain extent," she said. "Consumers may stay in network" because "they will see how much they're being charged."

Stock Index

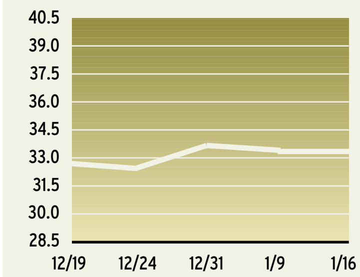
[1/12-1/16]

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

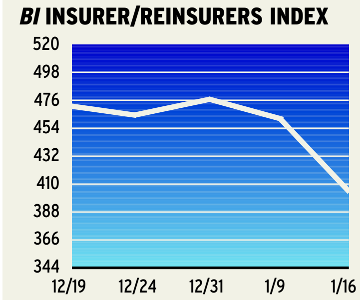
BI STOCK INDEX



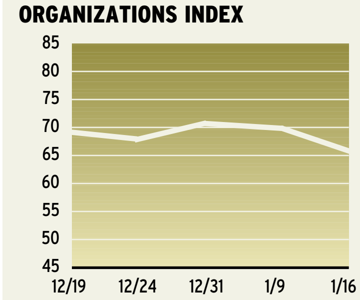
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

***BI* STOCK INDEX** 1492.76	-6.99%
DOW JONES 8281.22	-3.70%
S&P 500 850.12	-4.52%

LARGEST GAINS

NYMAGIC Inc.	13.45%
Zenith National	9.66%
Baldwin & Lyons Inc.	3.10%
Axis Capital Holdings	2.77%
PartnerRe Ltd.	2.40%

LARGEST LOSSES

Citigroup Inc.	-48.15%
XL Capital Ltd.	-26.05%
Hartford Financial Services	-24.01%
AEGON N.V.	-22.66%
Ambac Financial Group	-19.59%

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

Business Insurance
END PAGE

Contributing: Jeff Casale, Roberto Ceniceros, Mark A. Hofmann

Porn agents may be liable for injuries to actors

Porn star injuries captured the spotlight when an adult entertainment industry Web site reported that California's State Compensation Insurance Fund had changed its policy on coverage for talent agents.

The site, Xbiz.com, reported that San Francisco-based SCIF recently took the position that talent agents who fail to confirm that a film production company has workers comp coverage could be liable if an actor were injured.

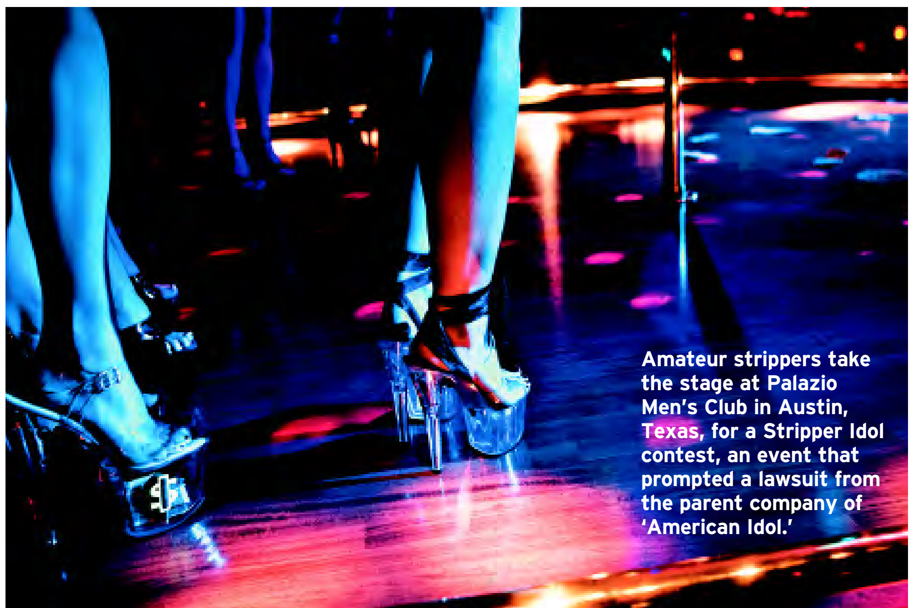
That reportedly was a shift away from a common industry belief that performers are not employees of their talent agents.

But a SCIF spokeswoman said the state insurer has not changed its position on entertainment talent and its practices are the same for insurance covering live theater, television and adult movies.

In general, she said, talent agents are not required to insure the people they represent. But she also said that can vary on a case-by-case basis, depending on the talent agency's business relationship with the actors.

The Web site also reported that the California Division of Occupational Safety & Health occasionally verifies that film sets have workers comp insurance. Do Cal/OSHA inspectors draw straws to decide who visits the sets?

Work-related injuries and illnesses that adult film stars suffer reportedly include everything from slip-and-falls to contracting disease. The site didn't mention anything about repetitive stress injuries.



Amateur strippers take the stage at Palazio Men's Club in Austin, Texas, for a Stripper Idol contest, an event that prompted a lawsuit from the parent company of 'American Idol.'

ERIN TRIEB

Suit seeks profits from 'Idol' knockoff

The popular TV show "American Idol" has featured more than its share of wannabes of the pop star persuasion.

But now "American Idol" is suing what it considers to be a totally unacceptable wannabe—a strip club. FremantleMedia North America Inc., the parent company of "American Idol," has sued Palazio Men's Club in Austin, Texas, over its Stripper Idol contest.

According to the Dallas Morning News, the rules for Stripper Idol are perhaps a bit looser than "American Idol." In fact, the weekly Thursday night contest consists of women dancing topless for 60 seconds with the winner, as decided by audience applause, going home with $500.

FremantleMedia's suit accuses the club of using a logo with "color scheme, design and font" similar to the TV show in the strip club's ads.

Stripper Idol, according to the suit, constitutes a trademark violation that might lead some to think FremantleMedia sponsored the contest. The suit asks that the contest be stopped and that Palazio be stripped of any profits generated by the contest.

The report said Palazio's managers thought the suit was a joke at first, denied that the contest is anything like "American Idol" and last week said they intend to continue the contest that began about three months ago.

Palazio's owners may hope that the federal judge who presides over the case is more like Paula Abdul than Simon Cowell when it comes to determining the fate of wannabes, even wannabes who say they're no such thing.

Texas pulls uninsured motorists off the road

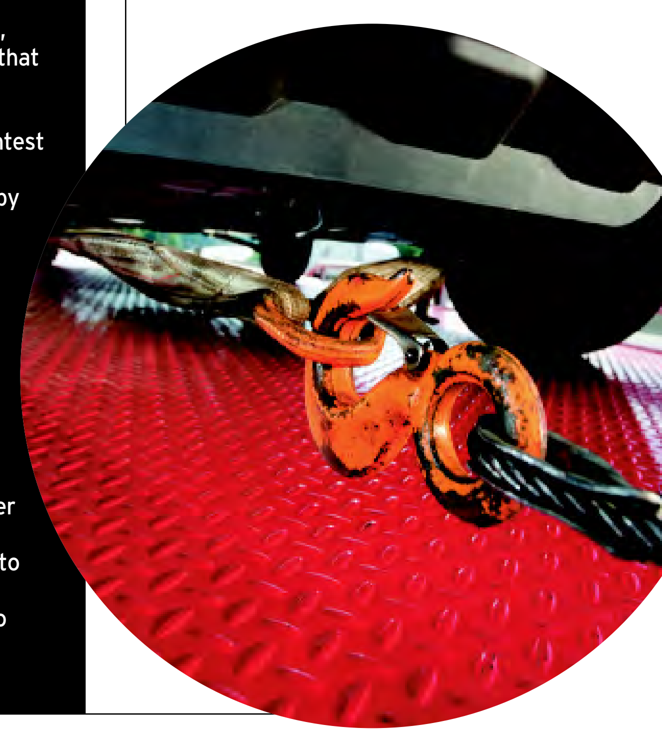
If you live in Texas and your auto insurance premium is sky high, blame your neighbor who may be uninsured.

According to a Jan. 11 report by the Dallas Morning News, Texas insurance officials estimate that 20%, or about 4 million, of all Texas drivers are not properly insured, which costs insured drivers an extra $1 billion in extra premiums annually.

Since Jan. 1, Dallas police have towed 256 uninsured vehicles during traffic stops. The Dallas Morning News reported that as of Jan. 10, officers have been checking the state insurance database to see whether vehicles are insured during traffic stops. Before then, police had to phone insurance companies to verify the driver was insured.

The state is enforcing a new ordinance that says the cars of drivers without vehicle insurance will be towed.

Texas state law mandates that all drivers carry proof of insurance with them. But those without the proof also may be without a car.



Excess of innards spurs suit against poultry packer

If too many cooks spoil the broth, do too many giblets turn the chicken into a garbage can?

That's the allegation in two recently filed federal class action lawsuits—one in New Jersey and the other in Chicago.

The suits, brought against Perdue Farms Inc., hold that the Salisbury, Md.-based poultry company has been disposing of excess giblets by stuffing them into whole chickens. According to the suits, the additional giblets—defined as "more than one heart, liver, gizzard, neck per bird"—make the chickens weigh more.

By adding the giblets without informing consumers of its practice, Perdue "disposes of its extra giblets by essentially having plaintiff and class 'pay' the disposal costs Perdue itself would incur if it wanted to properly dispose of them," the suits contend. "Further, by this improper method, Perdue incorporates the additional giblet parts in the price per pound of Perdue whole chickens sold to retail customers."

"The majority of our complaints are about missing giblets," a spokeswoman for Perdue told a Salisbury, Md., newspaper.

The New Jersey suit says the potential size of the class is unknown, given that it consists of all people in 11 states who purchased a whole Perdue chicken between October 2003 and December of last year. Both suits hold, however, that the amount of money at stake exceeds $5 million.

Both suits, which were filed by separate law firms but are nearly identical, demand jury trials.

If the cases get that far, it appears safe to say that jurors can expect some gutsy arguments as they attempt to get to the heart of the matter.