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IRS GUIDANCE CLARIFIES TAX RULES FOR PREMIUMS TO CELL CAPTIVES / PAGE 3

ZURICH'S SCHIRO HONORED FOR HIS WORK / PAGE 4

JUDGE REJECTS ERISA CHARGES IN CLASS ACTION LAWSUIT OVER BROKER PAY / PAGE 4

In Brief

High court to hear retaliation case

The Supreme Court will determine whether employees who cooperate with an internal investigation of sexual harassment charges are protected from retaliation under the Title VII of the Civil Rights Act of 1964. The justices agreed to hear *Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*, a case brought by a school system employee who alleges she was terminated because she agreed to be interviewed about allegations of sexual harassment made by several employees against a director.

MBIA credit woes hit Bermuda reinsurers

Bermuda reinsurers PartnerRe Ltd. and RenaissanceRe Holdings Ltd. will report fourth-quarter

See **IN BRIEF** page 22

BENEFITS MANAGEMENT

RETIREE BENEFITS: HEALTH CARE

Employers look to VEBAs to shift billions of dollars of retiree health liabilities; early retirees more often offered HSA-linked plans; public entities slow to deal with accounting rule change; new breed of retiree health plans spur employer interest.

Page 9

Talk of Willis bid for Marsh returns

Questions abound on report of letter to MMC board

By SALLY ROBERTS

NEW YORK—Talk of Willis Group Holdings Ltd.'s interest in buying its much larger rival Marsh & McLennan Cos. Inc. resurfaced last week, with some analysts noting that such a deal could make sense.

They note, however, that combining the world's largest and third-largest brokerages would likely prompt antitrust objections from regulators and that cultural differences could make integration difficult. And some analysts note that insurance buyers, particularly those using multiple brokers, could face challenges from reduced choice.

Financing for such a deal is not clear—MMC's market capitalization is about $14.13 billion, compared with about $5.14 billion for Willis—but market observers note that even overtures generally are not made without some plan to achieve the goal. An all-stock transaction is one possibility, as would be a combination of cash and stock or a leveraged cash deal.

Citing sources close to the matter, CNBC reported last week that Willis recently sent a letter to MMC's board once again indicating interest in entering negotiations to acquire the entire company. No asking price was included in the letter, CNBC reported.

In 2006, MMC rejected an informal acquisition offer by Willis. That offer included financing from Kohlberg Kravis Roberts & Co., which purchased Willis in 1998 and took it public again in 2001 (*BI*, Oct. 23, 2006). KKR is not believed to be involved in Willis' latest approach, according to the CNBC report.

Representatives from London-based Willis, New York-based MMC and New York-based KKR declined to comment.

News of the potential deal briefly sent MMC's share price up 11.8% last Thursday to $29.56. Shares later closed at $27.28, up 3.1% over Wednesday's closing price. Shares closed at $27.17 on Friday, up 3% from the previous week. Willis shares closed Friday at $35.99, off 3.9% from the previous week.

MMC has been the target of breakup and buyout speculation stemming from concerns that its Marsh Inc. brokerage unit has yet to fully recover from its 2004 fraud and bid-rigging suit and resulting $850 million settlement with former New York Attorney General Eliot Spitzer.

As part of its 2006 bid, Willis not only was hoping to capitalize on Marsh's challenges, but it also wanted to benefit from cross-selling opportunities it saw in MMC's various operating units, including Putnam Investments and Mercer Human Resource Consulting.

Marsh last year sold Putnam to Winnipeg, Manitoba-based Great-West Lifeco Inc. for $3.9 billion in cash.

When news of Willis' initial offer emerged, observers said they were not surprised by MMC's rejection of a deal, saying there was more shareholder value in MMC building itself back up than through a sale.

Since then, though, Marsh has continued to struggle both financially and within its management ranks. And some disgruntled shareholders have begun demanding that the company sell various units, including Kroll Inc. and Mercer.

See **MARSH** page 21

Supreme Court curbs third-party liability

Stock fraud case doesn't preclude all claims

By DAVE LENCKUS

WASHINGTON—The victory the U.S. Supreme Court has handed to two companies facing securities fraud charges from another company's investors does not shield third-party defendants such as accountants and lawyers from all so-called "scheme liability" claims, legal and insurance experts agree.

In its 5-3 decision in *Stoneridge Investment Partners L.L.C. vs. Scientific-Atlanta Inc.; Motorola Inc.*, the high court on Jan. 15 limited defrauded investors' ability to recover from third parties to cases in which the investors can show they relied on the defendants' deceptive actions.

As a result, a similar lawsuit by Enron Corp. investors and other lawsuits like it continue to have a relatively strong legal foundation, experts said.

In the high-profile Enron case, the future of which many experts predicted would hinge on the *Stoneridge* decision, investors also are advancing the scheme liability theory in an effort to recover $33 billion of losses from a group of investment banks. The investors charge the banks helped Enron deceive them about the energy trader's precarious financial condition before its colossal 2001 collapse.

Plaintiffs attorneys developed the scheme liability theory in recent years in an attempt to hold co-conspirators in securities fraud liable along with stock issuers, or "primary violators" in Supreme Court parlance. That was necessary because the Private Securities Litigation Reform Act of 1995 and a year-earlier Supreme Court ruling barred defrauded investors from recover-

See **LIABILITY** page 22

Defense looks for holes in Napier's testimony

Witness grilled in trial of ex-Gen Re, AIG execs

By DOUGLAS McLEOD

HARTFORD, Conn.—Defense lawyers opened fire last week on the credibility of a key government witness in the trial of five former General Re Corp. and American International Group Inc. executives, accusing former Gen Re Senior Vp Richard Napier of changing his story and fabricating details of an alleged sham reinsurance deal at the heart of the case.

After outlining development of the 2000 loss portfolio deal for federal prosecutors, Mr. Napier spent most of last week parrying questions from defense lawyers, who pointed to inconsistencies in his statements and accused him of inventing a meeting and phone conversation in which some defendants discussed the transaction.

"Mr. Napier, you just make up stuff to help fill in (the government's) theories, don't you?" asked Reid Weingarten, a lawyer with Steptoe & Johnson L.L.P. in Washington, who represents former Gen Re Chief Financial Officer Elizabeth Monrad.

"That's not true," Mr. Napier replied.

The impact of defense efforts to undermine Mr. Napier's credibility with the jury remains to be seen.

Prosecutors are relying on evidence in three

ONLINE: Reports and resources are available at *www.businessinsurance.com/GenReTrial*

See **GEN RE** page 21

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On the Web

GEN RE/AIG TRIAL

Complete Gen Re/AIG trial coverage online

The criminal fraud trial of five former executives of General Re and American International Group began Jan. 7 in Hartford, Conn. The case centers on a finite reinsurance deal between Gen Re and AIG that prosecutors allege was a sham transaction. *Business Insurance* is following this trial closely and will update readers on the latest developments online at *www.BusinessInsurance.com/GenReTrial.*

THIS WEEK IN *BI*

New podcast takes you behind the *BI* headlines

"This Week in Business Insurance" is a new weekly podcast that reviews the headlines in each new issue of *Business Insurance* and interviews reporters for insights to the top stories of the week. Listen to these reports online at *www.BusinessInsurance.com/thisweek* to stay informed.

CONFERENCE EXTRA

More online from Embry-Riddle symposium

Business Insurance offers additional coverage from the 2008 Embry-Riddle Aeronautical University Aviation Law and Insurance Symposium, held Jan. 9-11 in Orlando, Fla. Go to *www.BusinessInsurance.com/extra.*

BI DIRECTORIES

Available online: *BI's* 2008 Market Sourcebook

The *Business Insurance* 2008 Market Sourcebook is a one-stop source for data on risk management and employee benefits vendors. Copies can be downloaded for $50 in digital format at *www.BusinessInsurance.com/BuyDigitalMSB.* Comprehensive data on all companies is at *www.BusinessInsurance.com/directories.*

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IRS rules on cell captive premium deductibility

Risk transfer essential to count premiums paid as insurance

By JERRY GEISEL

WASHINGTON—New Internal Revenue Service rules provide the first official guidance on when premiums paid to cell captive insurance arrangements are tax-deductible, with the IRS signaling that more clarification will be coming.

IRS Revenue Ruling 2008-8 comes about 2½ years after the IRS asked for comments—a sign of its interest in making cell captive rules—on what factors should be taken into account in determining whether cell arrangements should be considered insurance.

CELL CAPTIVES

Typically are used by middle-market businesses and organizations that lack the time and resources to set up their own captive insurers.

That request for comments came as cell arrangements have proliferated, with many domiciles now permitting them.

In typical cell arrangements, a commercial insurer will "sponsor" a captive known as a protected cell company. That company, in turn, will be broken down into segregated cells funded by individual insureds to cover their own risks.

Cell captives typically are used by middle-market businesses and organizations that lack the time and resources to set up their own captive insurers.

"It can be cheaper and faster to enter a cell than forming a captive yourself and then having to hire the necessary service providers," said Mike Rogers, president of captive manager Risk Services L.L.C. in Sarasota, Fla.

In providing the first guidance on when premiums paid to cells are for insurance and thus are tax-deductible—and when they are not—the IRS is closely following its earlier rules, as well as court decisions, laid down for more traditional captives.

"The IRS has applied their captive rulings to segregated cell arrangements. It is common sense," said Richard Irvine, a partner with PricewaterhouseCoopers in Hamilton, Bermuda.

"The IRS has set certain litmus tests for tax deductibility of premiums for captives, and they are running the tests the same way for cells. People may be disappointed, but they shouldn't be surprised," said Charles Lavelle, a member of the tax and finance group of law firm Greenebaum, Doll & McDonald P.L.L.C. in Louisville, Ky.

Central to whether payments made by a participant to a cell are deductible as insurance premiums under the IRS revenue ruling is whether there is risk transfer and risk distribution. Risk distribution occurs when the party assuming the risk transfers, at least in part, its potential liability to others.

See **CAPTIVES** page 18

Vendor summits put providers on 'same page'

Employers find cost savings, efficiencies in face-to-face meetings

By KRISTIN GUNDERSON HUNT

Large employers that contract with numerous health and wellness plan vendors increasingly are bringing those providers together to streamline inefficiencies and improve services.

Vendor summits—at which companies ranging from health insurers to employee assistance program providers to pharmacy benefits managers meet to get better acquainted with the employer and each other—are gaining popularity, benefits managers and consultants say.

"Vendor summits are a way of getting people together, getting them on the same page and addressing any issues where things may not have been as integrated or well-coordinated," said Dr. Bruce Hochstadt, a Chicago-based national health management practice leader for Buck Consultants L.L.C.

Benefits managers say coordinating resources helps vendors enhance programs. For example, when a disease management program provider realizes a vision plan vendor offers tests that indicate the onset of diabetes, they can work together by sharing information.

While protecting a patient's privacy, the vision plan provider can pass an employee's diagnosis to the health plan provider, which can follow up and enroll the patient in a disease management program. Such integration cannot happen unless vendors are aware of each other's services, experts say.

Helen Darling, president of the National Business Group on Health in Washington, said vendor summits are a best business practice. She said exchanging data, brainstorming and collaborating at these meetings often result in more effective, efficient delivery of health benefits.

Tammy Schoenert, manager of corporate benefits for HEB Grocery Co. in San Antonio, said vendor summits have positively affected its health benefits delivery system. She said HEB has been hosting annual meetings for its approximately 15 to 20 vendor companies for about five years with success.

"The summit allows vendors to step out of their silos and begin to solve our problems as a unit," Ms. Schoenert said.

At the heart of the summits is the desire to create a more seamless and effective experience for employees, Ms. Darling said. In return, employees are less likely to become frustrated with the often overwhelming web of vendors and services related to their health and wellness, she said.

'The summit allows vendors to step out of their silos and begin to solve our problems as a unit.'

Tammy Schoenert, HEB Grocery Co.

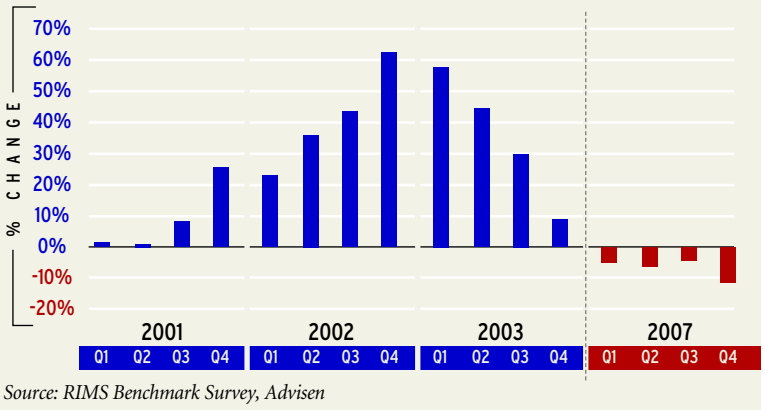
"The last thing you want is to spend a lot of money on benefits and then have employees not value them because they can't figure out how to use them," Ms. Darling said. "You want employees to value what you're doing for them, and the only way that is going to happen is if the service is excellent."

Lilly Maisel, vp of wellness and human capital management for Goldman, Sachs & Co. in New York,

See **VENDOR** page 20

D&O PREMIUM CHANGES

Directors and officers insurance coverage experienced a big drop in premiums in the fourth quarter of 2007. The decline came after premium rates shot up from 2001 to 2003 following accounting scandals at Enron and WorldCom. More recently, improving loss experience has added pressure on rates.



Source: RIMS Benchmark Survey, Advisen

D&O leads commercial rate plunge: RIMS survey

Market conditions could begin firming as soon as midyear

By KRISTIN GUNDERSON HUNT

NEW YORK—Directors and officers liability premium prices dropped substantially during the fourth quarter of 2007—more so than any other commercial line of coverage, according to a survey of U.S. risk managers released last week.

D&O premiums declined an average of 11%, according to the fourth-quarter "RIMS Benchmark Survey." The survey is based on risk managers' premium renewal rates, which are submitted to the New York-based Risk & Insurance Management Society Inc. by approximately 1,200 risk managers a year.

David Bradford, editor-in-chief of Advisen Ltd., a New York-based insurance industry analyst and data provider that produced the report, said D&O premium prices are falling faster than other types of commercial coverage because the rates increased far more than any other business line earlier in the decade, when they shot up 105% between 2001 and 2003 following the accounting scandals at Enron Corp. and WorldCom Inc., Mr. Bradford said.

"A combination of sharp rate increases and improving loss experiences have been putting a lot of downward pressure on the rates," Mr. Bradford said.

Rates for D&O coverage have eroded steadily over the last several quarters, a trend he said is likely to continue at least for the short term as long as such coverage continues to be profitable for insurers.

However, he said D&O premium rates might start rising again if looming concerns regarding the subprime mortgage market and related losses come to fruition, and banking and mortgage companies' leaders are tied to those losses. More than 100 lawsuits have been filed against companies related to the

See **SURVEY** page 20

Zurich executive honored as Insurance Leader of the Year

Client-focused CEO hailed for spurring insurer's turnaround

By GLORIA GONZALEZ

NEW YORK—James J. Schiro says he had no idea what he was getting into when he decided to join Zurich Financial Services Group more than five years ago, but his success in transforming the once-troubled company has drawn accolades from admirers inside and outside the insurance industry.

Mr. Schiro joined the Zurich, Switzerland-based insurer as chief operating officer-finance in March 2002 and was appointed chief executive officer in May 2002 during a turbulent period when the company was dealing with a falling share price and ratings downgrades.

Since taking the helm at Zurich, Mr. Schiro has led the company to improved profitability by adopting a more customer-centric approach to doing business and developing a uniform underwriting structure. "It was a very difficult time, but it was a challenging assignment," he said.

Mr. Schiro's successful stewardship of Zurich is a key reason he was honored last week as the 2007 Insurance Leader of the Year by the School of Risk Management Insurance and Actuarial Science at St. John's University in New York.

His involvement in the industry began while he was working at the accounting firm Price Waterhouse in the early 1990s. While the company did not have a major presence in the industry, Mr. Schiro saw insurance as a sector with great upside potential and began working to build its insurance practice.

JAMES J. SCHIRO

JOB: Chief Executive Officer, Zurich Financial Services Group

EDUCATION: St. John's University, B.S., Accounting and Business Administration (1967); Dartmouth College, Amos Tuck School Executive Program

AWARD: 2007 Insurance Leader of the Year, St. John's University School of Risk Management, Insurance and Actuarial Science

As CEO of the firm since 1995, he supervised the 1998 merger between Price Waterhouse and Coopers & Lybrand, which formed PricewaterhouseCoopers L.L.P. He retired from the company in 2001 to explore different opportunities and when the position at Zurich arose, he saw an opportunity for travel and adventure in Europe.

"I didn't fully comprehend or appreciate the condition the company was in," Mr. Schiro said.

Recognizing that the company's business model needed to change, Mr. Schiro's overhaul strategy included the development of global underwriting standards. The result has been a strong balance sheet and the restoration of the company's AA- ratings.

Having an accounting background, he faced skepticism after taking the CEO position at Zurich because of his lack of industry expertise, Mr. Schiro said. But his experience in other financial sectors was helpful to Zurich because he was able to incorporate best practices from other industries into the company's operations, said Mario

See **SCHIRO** page 20

REUTERS

While last year's crash of a Garuda Airlines jet in Indonesia killed more than 20 people, the Aircraft Crashes Record Office said the number of accidents in 2007 was the lowest since 1963.

Improving airline safety challenges attorneys

Rise in manufacturing may bring opportunity

By DAVE LENCKUS

ORLANDO, Fla.—With commercial airline safety improving substantially and the industry appearing capable of maintaining that record, aviation attorneys should turn to general aviation risks to sustain their practices, according to attorneys and insurance executives.

General aviation losses also have been falling, but other factors point to a need for growing legal representation in that area, panelists said during separate sessions at the 2008 Embry-Riddle Aeronautical University Aviation Law and Insurance Symposium, held Jan. 9-11 in Orlando, Fla.

Meanwhile, recent inroads by large law firms into aviation litigation also threaten clients' best interests, some panelists said.

Despite an unprofitable year for airline underwriters in 2007 because of heated insurance market competition, the number of aircraft accidents fell to its lowest level since 1963, the Geneva, Switzerland-based Aircraft Crashes Record Office reported earlier this month. ACRO also reported that the number of passenger deaths last year fell 25% from 2006.

"Statistically, this is the safest period of aviation," said defense attorney L. Richard Musat, a partner at Treece, Alfrey, Musat & Bosworth P.C. in Denver.

Airlines use "all sorts of new technology to record data, review it and act on it," Mr. Musat said. "The checks and balances within the cockpit are phenomenal."

The 2007 general aviation accident year also demonstrated improving safety, as accidents dropped to their lowest level in 40 years, Mr. Musat said.

But defense attorney Patrick E.

See **AVIATION** page 19

Errors & Omissions:

Due to an editing error, a Jan. 7 profile of Maurice R. Greenberg misstated charges filed against him by former New York Attorney General Eliot Spitzer. In 2005, Mr. Spitzer accused the former American International Group Inc. chairman of involvement in accounting fraud but not bid rigging. AIG subsequently agreed to a $1.64 billion settlement.

Undisclosed commissions, other pay do not violate ERISA, judge rules

Dismissal of claims in class action a win for insurers, brokers

By SALLY ROBERTS

TRENTON, N.J.—Six health insurers that allegedly conspired with brokers to steer customers their way in return for hidden commissions did not violate the Employee Retirement Income Security Act, a New Jersey district court judge ruled last week.

Judge Garrett E. Brown Jr.'s dismissal of the ERISA claims against American International Group Inc., CIGNA Corp., Hartford Financial Services Group, MetLife Inc., Prudential Insurance Co. of America and Unum Corp. is the latest ruling in the ongoing consolidated litigation in New Jersey that stems from industrywide investigations into bid-rigging and client-steering allegations.

Brought on behalf of commercial property/casualty insurance policyholders and employee benefit plan sponsors, the litigation centers on allegations that several dozen insurers and brokers engaged in a conspiracy in which they stifled competition by steering clients and fixing prices in violation of the Racketeer Influenced and Corrupt Organizations Act, the Sherman Antitrust Act and ERISA.

In two separate rulings last year, Judge Brown threw out the RICO and antitrust claims against the insurers and brokers, citing a lack of factual evidence (*BI*, Oct. 1, 2007; Sept. 10, 2007).

Those rulings are now on appeal in the 3rd U.S. Circuit Court of Appeals in Philadelphia.

In his latest ruling, Judge Brown said the plaintiffs were unable to support their claim that the insurers were fiduciaries under ERISA with respect to the employee benefit plans involved in the

See **BID RIGGING** page 18

U.S. property/casualty losses total $6.5 billion during 2007: ISO

By MARK A. HOFMANN

JERSEY CITY, N.J.—Catastrophes cost U.S. property/casualty insurers an estimated $6.5 billion in 2007, the Insurance Services Office Inc.'s Property Claim Services unit reported last week.

That was the eighth-lowest catastrophe loss total in a decade, according to PCS.

PCS reported that 23 catastrophes—which PCS defines as an event that causes $25 million or more in insured property losses and affects a significant number of policyholders and underwriters—affected 41 states last year.

California sustained the largest loss at $1.23 billion, about $1.1 billion of which stemmed from a wildfire in San Diego County. Minnesota suffered the second-largest amount of catastrophe-related damage in 2007 at an estimated $747 million, followed by Texas at $677 million, Georgia at $320 million and Illinois at $272 million.

PCS estimated that last year's catastrophes resulted in about 1.18 million claims, the bulk of which were personal lines claims. Catastrophes during 2007 gave rise to 721,000 personal lines claims worth about $4.4 billion, 144,000 commercial lines claims worth an estimated $1.3 billion and 315,000 vehicle claims worth approximately $800 million.

The Jersey City, N.J.-based PCS reported that catastrophe claims cost insurers $1.7 billion during the fourth quarter last year. Once again, California sustained the most catastrophe-related insured property damage at an estimated $480 million.

ZUMAPRESS

California was No. 1 in property/casualty losses during 2007, due primarily to wildfires.

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BI promotes three on editorial staff


Mr. Scroggins


Ms. Peinado


Ms. Gonzalez

Business Insurance has promoted three members of its editorial staff.

In Chicago, Matt Scroggins was named assistant managing editor-news. Mr. Scroggins, who previously was news editor, will continue to coordinate the news reporting and story assignments for the weekly magazine as well as *BI*'s online products. He can be reached at 312-649-5483.

Also in Chicago, Carrie Peinado has been named copy editor. Ms. Peinado, who previously was assistant copy editor, will continue to edit news and features for the magazine and its Web site, *www.businessinsurance.com,* and to coordinate *BI*'s Perspective section. She can be reached at 312-649-5313.

In New York, Gloria Gonzalez has been named New York bureau chief. In her new role, Ms. Gonzalez, who previously was associate editor, will help coordinate assignments in the New York bureau and will continue to cover the managed care industry, the marine market and Canada. She can be reached at 212-210-0143.

Commentary

What kind of year will 2008 turn out to be?

REGIS COCCIA

Editor Regis Coccia's commentary appears periodically.
He can be reached at:
rcoccia@businessinsurance.com

The Chinese calendar attributes each year to a different animal, cyclically. For example, 2007 was the Year of the Pig, and 2008 will be the Year of the Rat. According to the Chinese zodiac, people born during the "rat" years are usually leaders, pioneers and conquerors. I was born in the Year of the Monkey, sharing such traits as inventiveness, intelligence and wit. Go figure.

As we begin a new year in the Gregorian calendar, I'm wondering what will characterize the next 11 months. Below are some of my own hypotheses. Will 2008 be the Year of the...

• **Megamerger?** We know consolidation tends to come amid soft markets, and we're in one now. Several big mergers or acquisitions could occur, as brokers and insurers seek growth.

As we report on page 1, for the second time, Willis Group Holdings Ltd. has expressed interest in acquiring Marsh & McLennan Cos. Inc. Such a deal would reshape the brokerage landscape. Odds appear low, as MMC is far larger than Willis, but MMC is under pressure to increase its shareholder value.

My personal view is a Willis-MMC combination would narrow buyers' choices in a competitive market. While there is no question that a megabroker created by such a deal would have tremendous clout with underwriters, that argument also was made during the M&A frenzy in the 1990s—and it later led to the abuses that have put the biggest brokers in a quandary about compensation.

Will this be the Year of the Megamerger or the Megacat?

On the insurer side, we may see several large M&A deals. Premium growth is easy to come by if insurers just say yes to risks, but the trick is making an underwriting profit. The property/casualty industry has been fortunate the past two years, and it has posted rare underwriting profits, largely due to a benign loss environment. I'm not convinced that economic conditions will enable insurers to offset bad underwriting the way the bull market of the 1990s did.

• **Megacatastrophe?** If I were a betting man, I would put money on a costly hurricane season in 2008. Insurers got reprieves in 2006 and 2007. After two of the most active hurricane seasons ever, in 2004 and 2005, meteorologists and catastrophe modelers suggested we're in a long-term cycle of intense windstorms. No one should be lulled into a false sense of security. Why is no one talking about earthquake risk? Windstorm and quake perils remain very serious dangers worldwide.

• **Megaverdict?** Two significant insurance industry fraud trials are taking place this year. In Hartford, Conn., four former executives of General Re Corp. and the former reinsurance officer of American International Group Inc. are on trial for securities fraud and conspiracy to manipulate AIG's loss reserves in what prosecutors call a sham finite reinsurance deal. The verdict will mean more than just what happens to the defendants; it could well determine the future of finite re as a risk-financing tool in the United States.

Later in 2008, former AIG Chairman Maurice R. Greenberg and ex-AIG Chief Financial Officer Howard Smith will get their day in court on fraud charges first brought by then-Attorney General Eliot Spitzer. After distinguished careers at AIG, Messrs. Greenberg and Smith are now top executives at C.V. Starr & Co. Inc., and the verdict in their trial could well determine that company's future.

* * *

On the subject of people, *Business Insurance* will again publish its annual Women to Watch feature on Dec. 1. This feature has drawn attention to the role of women in insurance, and I recently had the pleasure of attending an event in New York hosted by Crum & Forster Inc. that honored the New York-area women on *BI*'s 2007 list. Crum & Forster's senior management, led by Chairman and CEO Douglas Libby and President and COO Joseph Braunstein, enthusiastically support recognizing women leaders. Crum & Forster is planning similar events in the future.

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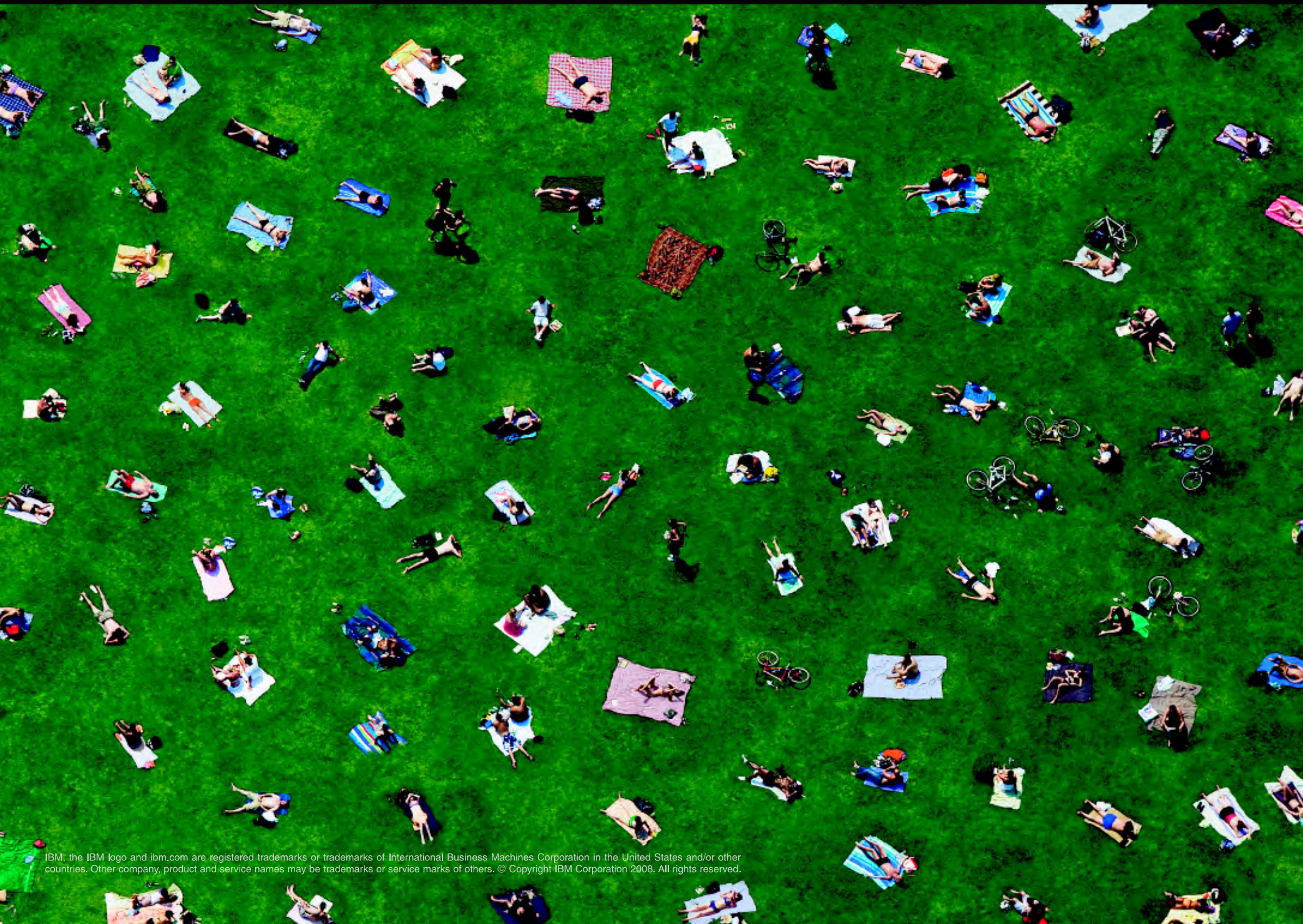

Business Insurance OPINIONS

Court panel overlooks purpose of ERISA

DOES A SAN FRANCISCO ORDINANCE that requires most employers to either pay for employee health insurance or pay into a fund that covers uninsured residents run afoul of the federal statute that pre-empts state and local laws that relate to employee benefit plans?

That's a question that the 9th U.S. Circuit Court of Appeals will address sometime this year. Already, though, as we reported recently, an appeals court panel ruled unanimously that San Francisco's law, which requires larger employers to make a minimum health care expenditure of $1.76 per hour per employee, can take effect.

In allowing enforcement of the spending mandate, the panel said the city has a "strong likelihood" of prevailing in its argument that the pre-emption provision of the Employee Retirement Income Security Act does not apply.

Without ERISA pre-emption, there would be no check on legislators' mischief-making in the benefits arena.

In coming to that conclusion, the court noted that the San Francisco law doesn't require employers to offer specific health care benefits, which would clearly violate ERISA pre-emption.

We think the appeals court panel missed the point. If one city or state is allowed to require employers to spend a certain amount on health insurance, others might impose different requirements and make it very expensive, and perhaps impossible, for a multistate employer to offer uniform health care benefits nationwide—a key purpose of ERISA pre-emption.

And without ERISA pre-emption, there would be no check on legislators' mischief-making in the benefits arena. It was only a couple years ago when Maryland lawmakers, egged on by organized labor, passed legislation that only would have applied to Wal-Mart Stores Inc., a nonunion employer, to spend 8% of payroll on health care benefits or pay the difference to a state fund.

A federal judge struck that law down, a decision upheld by the 4th U.S. Circuit Court of Appeals, which noted that if the Maryland law were allowed to stand, other states and cities would follow with their own mandates that would defeat ERISA's purpose.

We hope those rulings are read closely by the judges on the 9th Circuit before they decide the fate of the San Francisco ordinance.

Third parties not fully shielded from litigation

THE SUPREME COURT majority's decision last week in *Stoneridge Investment Partners vs. Scientific-Atlanta Inc.; Motorola Inc.* is an understandable one in light of existing law. And to a large degree, it is a welcome one that will discourage frivolous litigation in securities cases.

What it is not, however, is a new blanket grant of immunity to third-party defendants who allegedly aided and abetted the fraud perpetrated by first-party defendants. Instead, the court majority simply ruled that the Private Securities Litigation Reform Act of 1995 and an earlier Supreme Court ruling barred defrauded investors from recovering from "secondary violators" that aid and abet primary violators.

Investors can still go after third-party defendants in securities cases under some circumstances. If those circumstances prove to be too restrictive as a matter of public policy, then it is Congress' job to act. And there were some specifics in the conduct of the third parties in this case that may lead some lawmakers to act. After all, the author of the PSLRA—Sen. Chris Dodd, D-Conn.—has already criticized the decision as going beyond the intent of the original bill.

But if Congress does act, we only hope that it does so in a judicious way that does not undermine the intent of the PSLRA, which is to rein in frivolous lawsuits.

BI beats list

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

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Benefits—health care and ancillary benefits: Joanne Wojcik.

Benefits—retirement savings/pensions: Jerry Geisel.

Canada—risk management and benefits: Gloria Gonzalez.

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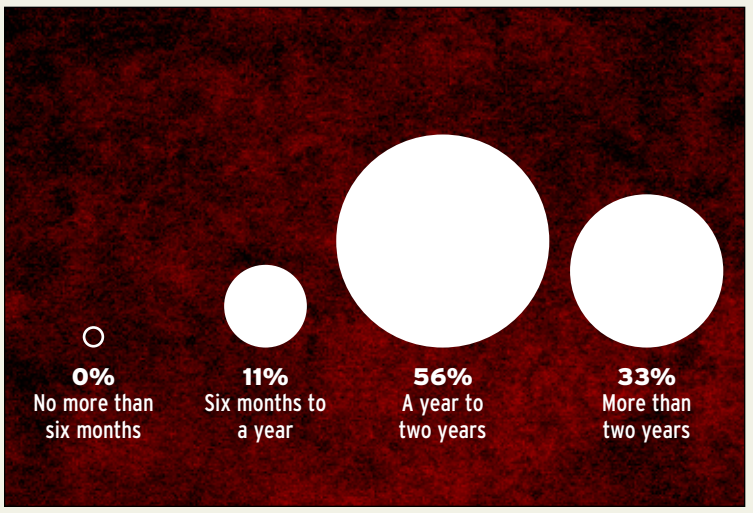
Online Poll at www.businessinsurance.com

How much longer will the current soft property/casualty insurance market last?



NEXT WEEK'S POLL: *How would an acquisition of Marsh & McLennan Cos Inc. affect insurance buyers?*

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

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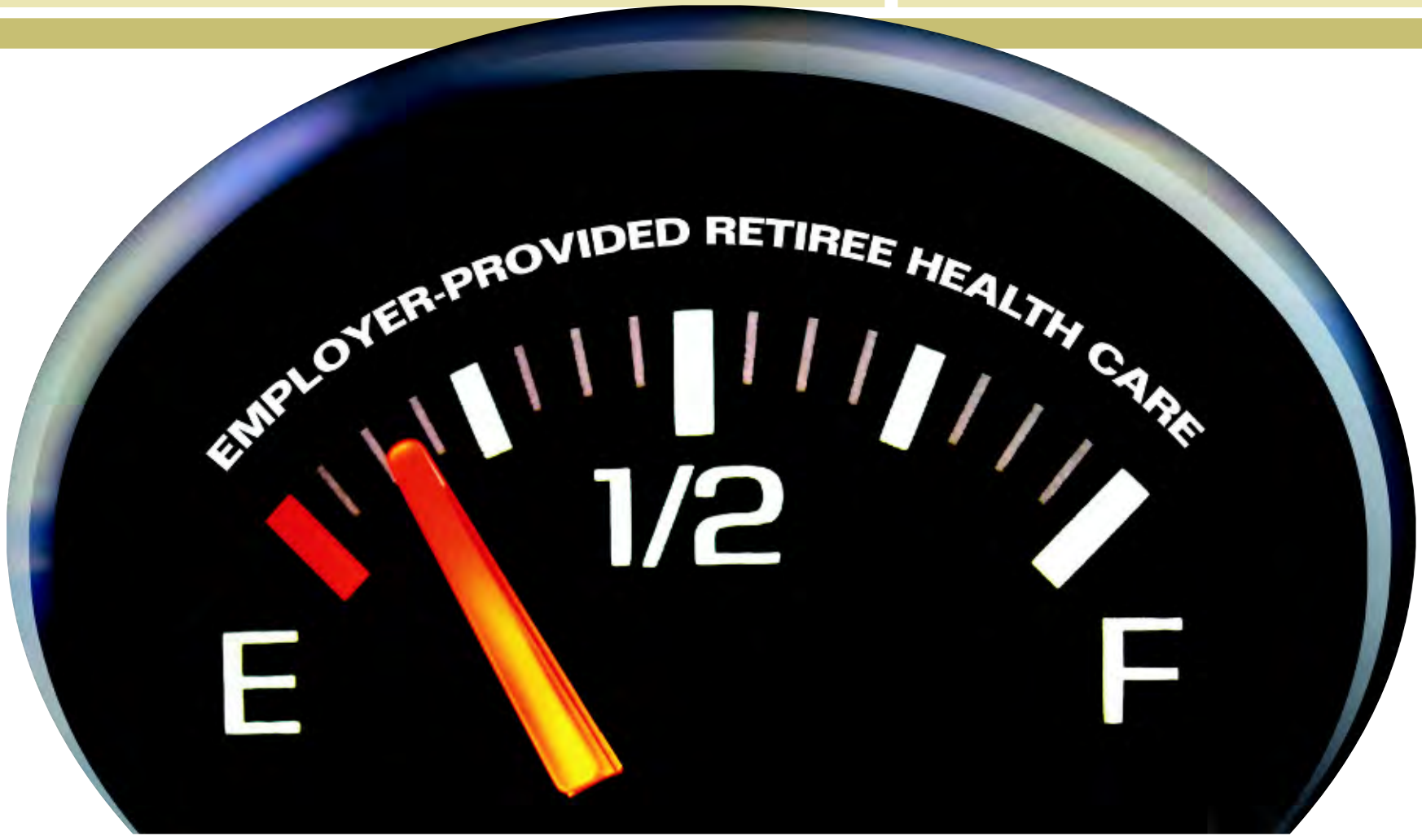
RETIREE BENEFITS: HEALTH CARE

Employers offer HSA-linked plans as option for early retirees / Page 12

Many public entities slow to address accounting rule change / Page 14

Interest grows in new breed of retiree health plans / Page 15

BENEFITS MANAGEMENT



Employers look to VEBAs to shift retiree health liabilities

Financially distressed companies fund tax-free trusts, but offload to unions responsibility for managing benefits

By KRISTIN GUNDERSON HUNT

Voluntary employees' beneficiary associations, or VEBAs, are gaining more attention as some of the nation's largest corporations have hammered out deals—unprecedented in size—with labor unions to transfer billions of dollars in retiree health care liabilities to the trusts.

VEBAs have been around for decades and typically have been used to fund employees' health care, long-term disability and life insurance benefits. In such an arrangement, the employer makes tax-deductible contributions to the VEBA, which earns tax-free interest. The funds may be withdrawn only for benefit-related expenses, such as paying a claim.

Corporate interest in funding the trusts and then transferring their control to labor unions—and thereby transferring their retiree health care liabilities to the unions—has grown. Companies are drawn to eliminating their obligations to provide or fund retiree benefits after kicking in a fixed contribution.

Last year, General Motors Corp., Ford Motor Co. and Chrysler L.L.C. reached agreements with the United Auto Workers union to transfer their retiree health care benefit liabilities to UAW-controlled VEBAs in exchange for making one-time contributions to fund the liabilities.

The agreements mean that tens of billions of dollars in retiree health care liabilities will be removed from the companies' financial statements.

In addition, retiree health care benefits no longer will be part of collective bargaining with the UAW, giving the auto companies more financial security once they have made their contribution. In the case of GM, it will contribute $30 billion to the UAW administered trust and walk away from retiree health care obligations valued at nearly $50 billion.

That ability to cap retiree health care expenditures is a key reason corporations are interested in VEBA retiree health care liability transfer arrangements.

BENEFITS OF VEBAS

A voluntary employees' beneficiary association is a trust that allows employers to fund benefit programs on a tax-favored basis. Contributions are tax-deductible and funds can be withdrawn tax-free to pay for benefit expenses.

"Companies that provide retiree heath care are faced with very high costs," said Christine Faris, a senior manager for Smart Business Advisory & Consulting L.L.C. in Devon, Pa. "The magnitude of costs is huge, but the health care costs are also unpredictable. From a company's perspective it is looking to transfer that unpredictability to another entity."

Still, experts say, while these highly publicized deals have piqued employers' interest, they are uncertain as to how popular such transactions will actually become.

Jonathan Nemeth, a senior vp with Aon Consulting in Somerset, N.J., said he doesn't anticipate widespread adoption of VEBA liability transfer deals. "I don't think it will be the mainstay of the industry, but for financially distressed organizations, it might be an option they consider. What the auto industry did could be right for some organizations," he said.

Derek Guyton, a Chicago-based principal with Mercer L.L.C., said financially distressed organizations with large union populations, such as manufacturing, utility and airline entities, are the most likely candidates to turn to VEBAs to transfer their retiree medical obligations. The advantage lies in shedding the responsibility of funding such benefits while also improving a company's financial statements, experts say.

"The liability for retiree health care is huge and it affects the value of the company because it's on the balance sheet," Ms. Faris said. "By removing that liability the company is much more attractive to investors and it puts the company in a better financial situation."

She said unions stand to gain financial certainty for their members by accepting such deals.

"The unions would rather take control of the VEBAs and retiree health benefits than (realize) the alternative of an employer going bankrupt and employees being left in the cold without any benefits," she said.

However, unions are being left with a huge burden of responsibility to which they are not accustomed, while financially distressed companies such as the automakers are coming out ahead on such transactions, essentially paying "pennies on the dollar," said Cara Jareb, director of retiree medical consulting for Watson Wyatt Worldwide in Arlington, Va.

"There is backlash from some union (leaders) who are not happy about this," Ms. Faris said. "They feel as a union, its job is not to manage benefits. Its job is to protect

See **VEBAS** page 12

RANKING: Long-term care insurers / Page 10

Next Benefits Management Section: Feb. 11 - Voluntary Benefits

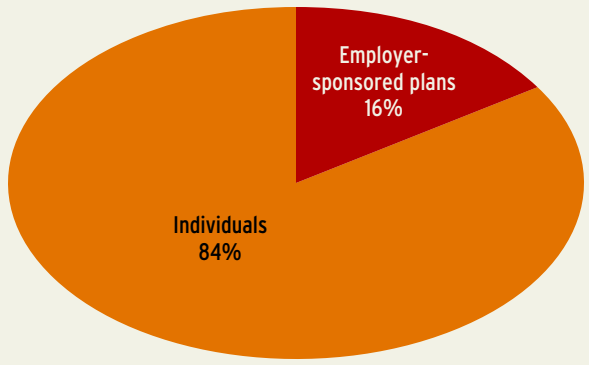
LTC INSURANCE PREMIUMS

Ranked by 2007 total gross premiums from long-term care policies

Bankers Life & Casualty Co.	$556,000,000
Northwestern Long Term Care Insurance Co.	$143,600,000
New York Life Insurance Co.	$142,462,000
Mutual of Omaha Insurance Co.	$141,000,000
MedAmerica Insurance Co.	$139,000,000

Source: BI survey

EMPLOYER-SPONSORED VS. INDIVIDUAL POLICYHOLDERS



Source: BI survey

LTC POLICY OFFERINGS

Ranked by number of long-term care policies offered

Mutual of Omaha Insurance Co.	14
Bankers Life & Casualty Co.	6
Allianz Life Insurance Co. of North America	5
New York Life Insurance Co.	4

Source: BI survey

Largest long-term care insurance providers

Ranked by number of total long-term care policyholders in 2007

Rank	Company/Address	Phone/Web site	Total policyholders	Number of policies	Total gross premiums	Policy issue age range	Daily benefit range	Principal officer
1	**Genworth Financial** 6620 W. Broad St., Richmond, Va. 23230	888-436-9678 *www.genworth.com*	1,078,154	3	N/A	18 to 79	$50 to $400	Buck Stinson, president-long-term care
2	**Metropolitan Life Insurance Co.** 200 Park Ave., New York, N.Y. 10166	888-776-3882 *www.metlife.com*	693,373	3	$100,000,000	18 to 84 for individual policyholders; no age limit for employer-sponsored groups	Group, $50 to $500 per day (in $50 increments); LifeStage Advantage, $3,000 to $15,000 per month (in $3,000 increments); VIP2 Policy Series, $50 to $400 per day	David Acselrod, vp
3	**Bankers Life & Casualty Co.** 222 Merchandise Mart Plaza, Chicago, Ill. 60654-2001	312-396-6000 *www.bankerslife.com*	383,000	6	$556,000,000	18 to 89	ages 18 to 79, $40 to $400; ages 80 to 84, $40 to $250; ages 85 to 89, $40 to $200	Scott Perry, president
4	**Allianz Life Insurance Co. of North America** 5701 Golden Hills Drive, Minneapolis, Minn. 55416	763-582-6500 *www.allianzlife.com*	128,984	5	$119,115,542	18 to 84	$50 to $500	Gary C. Bhojwani, president/CEO
5	**MedAmerica Insurance Co.** 165 Court St., Rochester, N.Y. 14647	800-544-0327 *www.medamericaltc.com*	115,000	2	$139,000,000	18 to 85	$1,500 to $16,000 per month	Chris Perna, president
6	**New York Life Insurance Co.** 51 Madison Ave., New York, N.Y. 10010	800-224-4582 *www.newyorklife.com*	101,000	4	$142,462,000	18 to 85	$50 to $400	Dennis O'Brien, senior vp
7	**Mutual of Omaha Insurance Co.** Mutual of Omaha Plaza, Omaha, Neb. 68175	402-342-7600 *www.mutualofomaha.com*	83,000	14	$141,000,000	18 to 79	$50 to $400 ($50 to $500 in New York)	Dan Neary, chairman/CEO
8	**Northwestern Long Term Care Insurance Co.** 901 Wilshire Drive, Suite 300, Troy, Mich. 48084	248-362-2220 *www.nmfn.com*	75,000	1	$143,600,000	18 to 79	$50 to $400	Edward Zore, president/CEO
9	**MassMutual Life Insurance Co.** 1295 State St., Springfield, Mass. 01111-0001	800-767-1000 *www.massmutual.com*	54,000	1	$126,000,000	40 to 84	$50 to $300 ($350 in Alaska; Fairfield County, Conn.; and metro-area New York)	Melissa Millan, senior vp-U.S. Insurance Group, product management
10	**Equitable Life & Casualty Insurance Co.** 3 Triad Center, Salt Lake City, Utah 84180-1200	800-352-5150 *www.equilife.com*	30,457	3	$60,467,268	18 to 84	$50 to $500	E. Rod Ross, chairman/president/CEO

N/A=Not available
Source: *BI* survey
Researched by Kevin Edison and Karen Tucker

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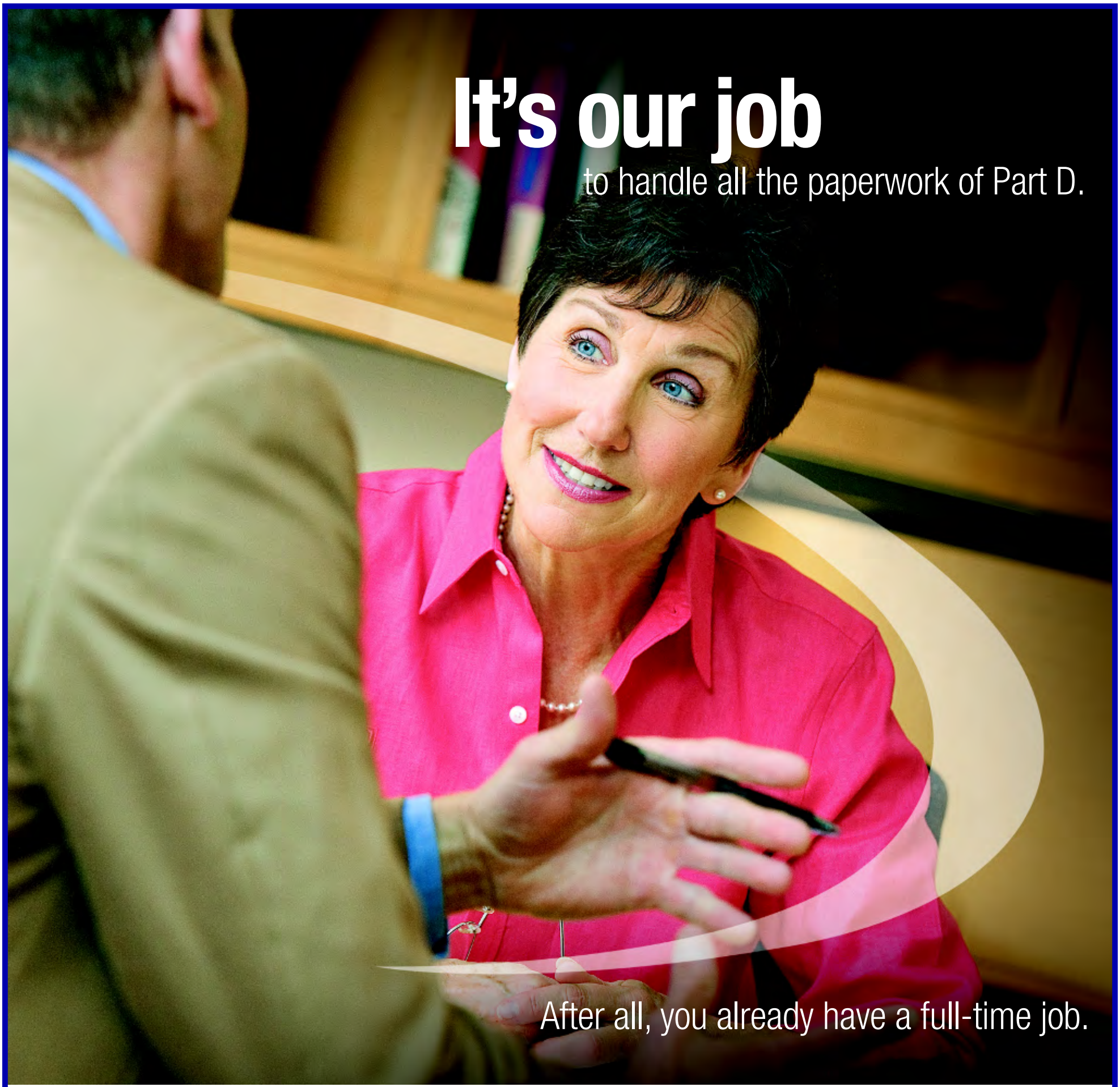

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HSA-linked high-deductible plans offered to early retirees

Set-up helps stretch benefit contributions for workers, employers

By JOANNE WOJCIK

When Moline, Ill.-based Deere & Co. announced last fall that it would offer its nonunion pre-65 retirees a high-deductible insurance plan linked to a health savings account starting this month, it joined a growing number of employers taking an approach that many experts say has advantages for both employers and retirees.

Other employers offering an HDHP/HSA to their early retirees usually do so as an option alongside other, traditional plans, retiree benefit experts say. Deere, however, went the full-replacement route and made its HDHP/HSA program the only option for its 5,000 nonunion early retirees.

Deere also decided to fund its pre-65 retirees' HSAs with one-time contributions of $1,300 in seed money. In contrast, other employers rarely contribute to retirees' HSAs, the experts note.

By making its HDHP/HSA program the only option for its nonunion early retirees, Deere is "on the leading edge," said Mike Morfe, a senior vp with Aon Consulting in Somerset, N.J. "Larger employers aren't quite as gung-ho on pushing all of their retirees into this particular type of insurance product."

Most employers venturing into HDHP/HSA territory for early retirees are doing so on an optional basis, just as they might do for their active employees, retiree benefit experts say.

"As the offerings to actives go up, so do the offerings to retirees," said David Speier, senior retirement consultant with Watson Wyatt Worldwide in Arlington, Va. "It's a continuation of the trend."

Raleigh, N.C.-based Progress Energy Inc., for example, rolled out its HDHP/HSA program for its 8,500 active employees and 2,100 early retirees last fall as part of a companywide consumerism strategy, said Don Carll, principal human resource specialist.

"The goal was not to single out the early retiree population, but to let them tag along," Mr. Carll said.

When it was first offered, the optional program attracted 670 of the company's active population and only 30 early retirees. But 2008 enrollment grew slightly to 800 active employees and 31 retirees, Mr. Carll said.

Small but growing

Currently, about 5% of U.S. employers with 500 or more employees offer HSA-compatible HDHPs to their pre-65 retirees, according to benefit consultant Mercer L.L.C. But that number is expected to grow as more employers offer such plans to their active workers, because benefits offered to retirees often follow those offered to actives.

A survey by Towers Perrin and the International Society of Certified Employee Benefit Specialists found that 35% of employers were considering plans that are compatible with HSAs, which came into being in 2004, for their pre-65 retirees. "These plans…have become increasingly popular with employers as an effective means to help provide increased financial security to people as they make the transition from employment to retirement," said the summary of the January 2007 survey of 157 U.S. employers.

RETIREE HEALTH CARE

Employers long term strategy regarding retiree medical coverage.

34% Continued sponsorship and subsidy for current retirees, actives and new employees

44% Maintaining existing financial commitment to current retirees and grandfathered active employees

16% Exit both pre-65 and post-65 retiree sponsorship and subsidization

Source: Towers Perrin/CEBS

"In addition to their tax advantages, these plans allow individuals over age 55 to make additional pretax 'catch-up' contributions that can help build up their savings for post-retirement medical expenses," the report noted.

Early retirees can contribute to their HSAs until they become eligible for Medicare.

Regardless of whether they are offered on a full-replacement or optional basis, HDHP/HSA plans can be beneficial for both employers and early retirees, health benefit experts say.

First and foremost, they often cost less than traditional health plans, which could help employers that have caps on contributions to retiree health benefits make those contributions go a bit further, they say.

"If an employer goes from a $300 to a $1,200 deductible, that might save $500 to $600 in premium a year," said Derek Guyton, a Mercer principal in Chicago. "But if you go to a $2,500 deductible, then it would be way cheaper. It definitely will help, but plan design has a big impact."

As for retirees, because the premiums for HDHPs are usually lower than traditional health plans, these plans can ease the blow of increased cost-sharing that retirees are experiencing as employers reach the caps they've set on contributions, benefit experts note.

For example, if the employer has set a contribution cap of $200 per month per retiree and premiums for standard preferred provider organization plans reach upwards of $800, a $300 premium for a HDHP may seem more attractive to the retiree, especially since he or she can put the balance of what might have gone to the PPO plan into an HSA where it can be used either to fund expenses or saved to pay medical expenses after the retiree becomes eligible for Medicare.

"Most pre-65 retirees are dealing with the premium cost issue, especially since most employers only offer coverage to them on an access-only basis, or it is subject to a contribution cap," said John Grosso, a health care consultant and actuary in Norwalk, Conn., for Hewitt Associates Inc. "An HDHP can provide some premium relief to early retirees. In addition, HSAs allow retirees to put away on a tax-deductible basis money that they're going to spend on health care anyway."

HSAs also present a tax break for pre-65 retirees who, by law, no longer can contribute on a tax-favored basis to their retirement plans, said Watson Wyatt's Mr. Speier. "For high-income retirees, it's an opportunity to save in a tax-preferred way. They don't have a 401(k) deduction anymore," he said.

However, "they are trading a lower premium for more potential out-of-pocket costs," which might make it more attractive for healthy retirees than for those who are not, Mr. Speier noted.

But big users of medical care also may fare well with such plans, provided they have the wherewithal to fund their deductible and out-of-pocket expenses, said Jay Savan, a consultant with Towers Perrin in St. Louis.

"If you're very sick, it almost doesn't matter what the size of the deductible is. You're going to exceed it as well as reach the out-of-pocket max," he said. "So they might as well elect a lower-premium HDHP option and use the premium savings to fund an HSA, with which they can tax-protect their out-of-pocket expenses," Mr. Savan said.

"It's pretty hard to throw darts at the HSA piece," he said. "The challenge is, in order to have it you've got to have an HDHP. That's where people are wringing their hands. The downside is people have to behave differently, and the older we are, the less comfortable it is for us to start thinking differently."

Acknowledging this hurdle, agricultural, forestry and commercial equipment maker Deere hired an outside consultant to help its early retirees adjust to the new plan, a spokesman said.

"There's a big understanding factor for people," said Mercer's Mr. Guyton. "These plans are new and hard to understand. If the company doesn't contribute to the HSA, that's scary for people. Just as we've had slow but building uptake in some active populations, some of the same forces will operate" with the early retiree population, he predicted.

VEBAs: Benefit trusts have limited appeal

CONTINUED FROM PAGE 9

benefits for its workers."

As a result, Steve Ferruggia, principal and national director for New York-based Buck Consultants L.L.C., said he doesn't see labor unions pressuring companies to formulate such agreements. They, too, are aware of the possibility of facing funding shortfalls.

After all, Ms. Jareb said, unions cannot guarantee they can manage retiree medical funds any more effectively than employers.

She highlighted the example of a VEBA retiree health care transfer deal worked out in the late 1990s in which Peoria, Ill.-based manufacturing company Caterpillar Inc. transferred—as part of an agreement with the UAW—retiree health care liabilities to a VEBA. The UAW-controlled VEBA was depleted in a few years after medical benefit costs leaped.

Experts maintain while transfers of retiree benefits via VEBAs might gain momentum, such transfers will likely occur among a narrow population of benefit-rich companies, whose workers are largely represented by unions.

AP

Members of the United Auto Workers union last year ratified an agreement with General Motors that included setting up a VEBA, which UAW President Ron Gettelfinger said "will secure the benefits of all our retirees."

"Unless there is a real compelling business reason, I don't think we're going to be seeing a big increase in prefunding retiree medical benefits," Mercer's Mr. Guyton said. "Employers will continually decide they could get a better return on investing money back into their business rather than a trust."

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Public entities slow to address new retiree health care rules

Accounting mandate requiring actuarial basis for estimating future liabilities may lead to benefits cuts, funding changes

By TINA EICHNER

Change may not come easily for public employers, but change is at hand for U.S. public entities in accounting for their massive retiree health care obligations.

The implementation deadline for an accounting standard that requires most public entities—including schools, municipalities, counties and states—to reflect the future costs of health care for retirees on an actuarial rather than a pay-as-you-go basis already has arrived for many public employers.

Governmental Accounting Standards Board Statement No. 45 has been phasing into effect since 2006. It began with the largest units of government, those with $100 million or more in annual revenue; last year, it expanded to entities with revenue of $10 million or more; and after Dec. 15 this year, it will affect even the smallest units of government, or those with less than $10 million in annual revenue.

GASB No. 45 requires governments to disclose their future liability for other post-employment benefits that include health, dental, vision and life insurance. Although there is no legal enforcement of the standard by the independent nonprofit organization, compliance or noncompliance can affect bond ratings for future borrowing.

As the first wave of baby boomers moving into retirement begins, the potential unfunded liabilities are staggering. Credit Suisse estimates the total nationwide liability for state and local governments to be about $1.5 trillion.

Governmental entities have some options, including establishing trusts to fund the liabilities as well as reducing or eliminating benefits. But implementing such changes at large public entities "is like turning the Titanic," said Robin Simon, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

"They don't change quickly because they are so big. Many are just beginning to measure the impact. Some are still just staring at it and saying, 'What do we do?' There are not a heck of a lot of concrete action plans, but there is some noise," Ms. Simon said.

To-do lists include examining the costs of various benefits and what sources are available to fund them. Governments can use an actuary to figure out what such liabilities are projected to be and then make changes now to reduce the liability in the future.

But before many groups get down to solving the problem, they first must assess the problem, and many public entities have not gotten even that far, said Mike Miele, president of APEX Management 's Consulting Group in Princeton, N.J.

"I am shocked at how few (public entities) have pursued a GASB valuation. Are they thinking that this is like a Y2K—that the consultants have overhyped it?" said Mr. Miele. "As bad as some pension situations might be, there is very little put away on the health care side."

Although other post-employee benefits must be recognized as a current cost during the working years of the employee, nailing down OPEB figures in the future is challenging. A recent report from the Washington-based Pew Charitable Trusts said there are several factors that go into the equation, including the projected annual rise in health care costs and the actual number of beneficiaries.

The Pew report found that many state governments are in better shape than municipalities and school districts, having at least calculated the bill that will come due over the next 30 years.

"I think most of the state governments have addressed this at some level," agreed Carl Mowery, senior managing director, SMART Business Advisory & Consulting in Chicago. "What we have seen is that there are many entities—California, Illinois, New York and the Eastern Seaboard states—that are pretty far along."

"But we are finding that municipalities and schools are just now waking up to GASB with a few exceptions," Mr. Mowery said. Most are acting like the proverbial ostrich with its head in the sand, he said.

"Some people have an attitude that this is just an accounting issue and, 'We will deal with it when we deal with it' and, 'It is not going to really affect how we operate.' But this may turn out to be a bigger issue because of the sheer numbers and (credit) ratings implications," said Mr. Mowery.

In Iowa, the West Des Moines school district is looking at reducing its liability as a first step and is using its GASB liabilities to change its early retirement incentive policy.

"This is a step toward compliance for West Des Moines. Historically people can retire early at 55 years old and with 10 years of service we would pay for single insurance until the person was eligible for Medicare," said Kurt Subra, chief financial officer for West Des Moines school district. With this scenario, "We can have 10 years of exposure for insurance coverage. This is 100% paid insurance coverage, so we looked into making some changes to get control over the costs."

"The decision from our board was to limit the amount of (pre-Medicare) coverage to six years," he explained, meaning that if an employee retires at 55, the district would pay for six years of coverage prior to age 65 but not all 10 years. "This was the first fundamental change. The second was to cap the dollar amount of the insurance cost to further reduce our liability. This will begin in June 2009 going forward, which also happens to be the year of (GASB) applicability for our district," Mr. Subra said.

Early retirement benefits are at the school board's discretion and do not have to be negotiated with unions, he said.

West Des Moines also is beginning to approach the funding part of the equation but faces some Iowa laws that limit how the district can pay for those liabilities and how taxes can be used. One solution might be to set up a trust. "We are not sure right now what we are going to do on the funding side. We are exploring our options," said Mr. Subra.

Private Fee-For-Service plans expand retirees' care options

Seamless health plans win more support from employers

By JUDY GREENWALD

Employers are showing growing interest in offering Medicare Advantage Private Fee-For-Service plans to their retirees.

Authorized under the Medicare Prescription Drug Improvement and Modernization Act of 2003, the PFFS plans offer several advantages to employers, including multistate firms' ability to offer a uniform plan nationwide; the absence of any formal health care provider network; administrative ease; predictable, lower costs; and improved benefits compared with previous plans.

With their PFFS plan, retirees "have great benefits with low costs that's totally integrated into a single seamless plan and they love it," said Michael J. Stapley, president and chief executive officer of Salt Lake City-based Deseret Mutual Benefit Administrators, which provides benefits for about 13,000 retirees of the Church of Jesus Christ of Latter-day Saints and its operations, including Brigham Young University.

'Some employers will see little to no opportunity for savings. Others may find they can reduce the cost of their programs 20% or more.'

Joe Altman, United Healthcare

But one problem associated with the plan is some providers' reluctance to accept its retiree enrollees.

Furthermore, some employers are wary of introducing the plan because many of the predecessor Medicare+Choice plans withdrew from the market in the late 1990s in response to federal funding cuts, and there are indications PFFS plans are an attractive target for congressional budget cutters.

PFFS plans generally are offered by private insurers that contract with Medicare, which then reimburses them. The plans offer medical, hospital and sometimes prescription benefits similar to what employers may be offering under their Medicare supplemental plans. Some employers offer the plans as a full replacement for their retiree medical program, while others offer it as an option. All Medicare-eligible retirees are eligible to participate.

One approach to structuring a plan would be for an employer to contract with a health plan to provide 80% of revenues from Medicare, with the remaining 20% funded by a combination of employer and retiree payments, said Sam Srivastava, president of CIGNA Senior and Retirement Services in Bloomfield, Conn.

Employer-sponsored PFFS plans lag the popularity of plans offered in the individual PFFS market, which now has about 1.7 million enrollees, according to Medicare. But interest in the plans by employers is growing and the popularity of the plans is taking off, so the number of enrollees could grow significantly, say observers.

"When employers look at the program, they see the potential to shift their retiree liability out of their own books" and to access a federal government subsidy for the care of Medicare-eligible individuals, said Dan Mendelson, president of Washington-based consulting firm Avalere Health. "Over the next year, it's going to continue to grow dramatically," he predicted.

Savings will vary, observers say. "Some employers will see little to no opportunity for savings. Others may find they can reduce the cost of their programs 20% or more," said Joe Altman, Trumbull, Conn.-based senior vp- retiree solutions, for United Healthcare. This depends on factors including retirees' age and geographical location, including whether they live in rural or urban areas

Columbus, Ohio-based Nationwide Mutual Insurance Co. has found that its PFFS plan reduces its retiree health care liabilities somewhat, but "we didn't do this to save on company liability" for 3,300 retirees participating in the Aetna Inc. plan, said Jack Towarnicky, associate vp-benefits planning. Rather, it "really does substantially reduce retiree contributions on a pay-as-you-go basis."

One plan nationwide

The absence of any provider network is a big attraction, say observers. Under the plan, any health care provider who accepts Medicare is deemed to accept Medicare Advantage as well. Observers note the concept was originally developed to serve retirees in rural areas, where provider networks may be less accessible.

"The beauty of the PFFS is it allows you essentially to put one plan in place over all your retirees countrywide, so obviously it's a whole lot less work," said Derek Guyton, Chicago-based worldwide partner with Mercer L.L.C.

That is a benefit for the 1,300

See **ADVANTAGE** page 16

Advantage: Some fear federal reimbursement may be reduced

CONTINUED FROM PAGE 15

retirees of the Minneapolis-based Twin City Pipe Trades Welfare Fund, said Executive Administrator James Hynes. The fund has a United Healthcare plan, with New York-based Segal Co. as its adviser.

Its benefits can be structured the same for retirees in all states, so it does not look like the fund is "penalizing or rewarding anyone," said Mr. Hynes.

"I think the biggest combination of advantages is the flexibility of the contract and the fact that you can pretty much design the benefits that you want," said Dave Ostendorf, a Milwaukee-based principal and senior health care consultant for Towers Perrin.

Having one plan instead of a Medicare plan, a supplemental Medicare plan and perhaps a pharmaceutical plan is also welcome to both employers and retirees, observers say.

"It's a one-stop shop for hospitals, physicians and drugs through one vendor," said Edward Kaplan, Segal's New York-based national health care practice leader.

Frank McCauley, Hartford, Conn.-based senior vp of Aetna's consumer business segment, said retirees previously may have had three different identification cards and received the same number of communications. "By integrating it in one place, you get one ID card, you get one set of communications and it provides for a much more integrated communication," said Mr. McCauley.

The plan also provides a platform to offer other cost-reduction programs, such as disease management and wellness, say observers. Janet Fosdick, vp and general manager of Indianapolis-based WellPoint Inc.'s employer group retiree business, said WellPoint treats each retiree individually and tries to "proactively identify members before they need care through health risk assessments."

> **'I think the biggest combination of advantages is the flexibility of the contract and the fact that you can pretty much design the benefits that you want.'**
>
> Dave Ostendorf, Towers Perrin

Among the drawbacks of the plan is some providers' refusal to accept Medicare Advantage enrollees, even though providers are reimbursed at the same rate as Medicare.

In some communities the refusal is fairly broad, while in others it involves a "fairly narrow set" of providers, said Cara Jareb, director of retiree medical consulting at Watson Wyatt Worldwide in Arlington, Va.

In many cases, say observers, it is because providers misunderstand how the program works.

"I think a part of it is just the confusion" providers feel when they see it marketed under a brand name, said Paul Kersting, a principal in the Atlanta office of Buck Consultants L.L.C. Insurers say they address this issue through educational efforts.

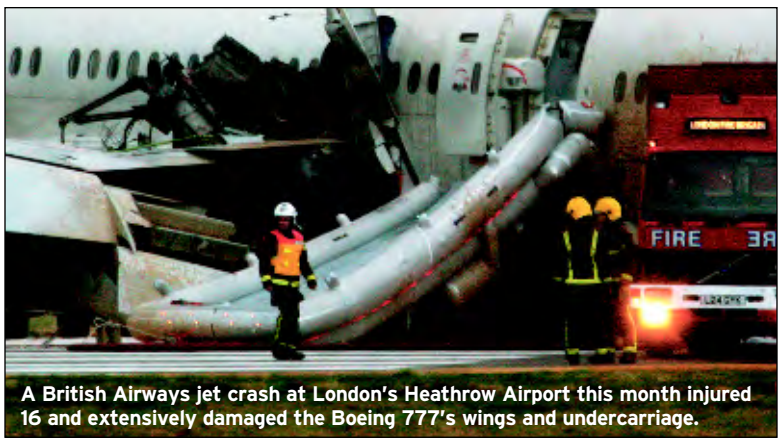
In some cases, Mr. Ostendorf said, providers' refusal to accept enrollees is an effort to reduce their total Medicare patient load.

Another issue that may be hindering PFFS plans' growth is the fear of cutbacks in the program, say observers.

"Some employers are actually implementing it with the understanding they may need to reverse it at some point in the future if the government reimbursement may make it noneconomic in the future," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

"If it works for a number of years and something changes and the funding isn't there, then we go back to doing things the way we were doing it prior," with a supplemental plan, said Mr. Hynes.

International NEWS



A British Airways jet crash at London's Heathrow Airport this month injured 16 and extensively damaged the Boeing 777's wings and undercarriage.

REUTERS

AIG leads $2.25B cover in British Airways crash

LONDON—Damage to a British Airways jet that landed hard short of a runway last week at Heathrow Airport, along with some passenger injuries, will be covered by a hull and liability program led by American International Group Inc. of New York, according to sources.

The Boeing 777, carrying 136 passengers and 16 crew members on a flight that began in Beijing, is valued at £63 million ($123.3 million), sources said. A reserve on the loss had not been set as of early Friday, but brokers predicted that damage to the aircraft's undercarriage and wings would be extremely costly to repair if the hull is not a total loss.

Marsh Inc. placed the coverage for BA, which has an unusual April 1 renewal date, sources said. Most airlines renew in the fourth quarter.

No fatalities were reported in the incident, though BA reported that 12 passengers as well as four crew members were injured. The airline has $2.25 billion of liability insurance to cover passenger injuries.

The loss came just weeks after airline underwriters posted their first unprofitable year since 2001. Still, the market is overcapitalized, so market experts have predicted that rates would likely either fall by smaller amounts this year or stabilize (*BI*, Dec. 10, 2007).

The BA loss, however, likely eliminates any chance of a rate reduction for the airline, sources said.

—By Dave Lenckus

Ontario law targets on-the-job psychological harassment

Employer attorneys worry about potential flood of litigation

By GLORIA GONZALEZ

Governments in Canada are cracking down on workplace bullying by making employers legally responsible for preventing and mitigating harassment and violence in the workplace.

A proposed bill in Ontario is the latest step to curb harassing behavior that often leads to high stress levels, lower employee productivity and, in some instances, violence. Employers, though, may face serious compliance challenges, observers say.

Ontario Bill 29 would amend the province's Occupational Health and Safety Act to require employers to protect workers from harassment and violence in the workplace. It would give workers the right to refuse to work but still collect their pay when such behavior could endanger the worker or colleagues (see box).

The bill aims to fill a void in Ontario human rights law that bars discrimination and harassment based on grounds such as gender and race and OHS law that generally outlines employers' duty to protect employees, which Ontario regulators have interpreted to include violence in the workplace.

The statutes, though, are silent on psychological harassment, meaning that bullying is not necessarily contrary to law, employment lawyers say.

"The bullying, overly critical manager seems to be the new thing" among problems the government is trying to tackle, said Jonathan Dye, a partner and employment law specialist with Heenan Blaikie L.L.P. in Toronto.

Although several provinces have broadened their statutes to include workplace violence as part of employers' protection duty, Quebec was the first to specifically address psychological harassment. In June 2004, Quebec passed a law mandating that employers take reasonable action to prevent and stop psychological harassment. Additionally, Saskatchewan last year amended its Occupational Health and Safety Act to broaden the definition of harassment to include psychological harassment.

Canadian courts also have found employers liable for failing to address harassing behavior. In *Sulz vs. Canada (Attorney General)*, a British Columbia court in 2006 found an employer liable for breaching its duty to protect an employee who endured extreme verbal abuse by her supervisor, which caused her to suffer depression and forced her to take a disability leave.

Bullying in the workplace often leads to higher rates of absenteeism, illness and turnover of employees victimized by such behavior and lower rates of productivity, according to studies. Moreover, in several high-profile incidents in Canada, harassment or bullying preceded a violent workplace incident.

Employer attorneys stress that implementation of the bill would be extremely challenging for employers because it could lead to numerous complaints about less egregious workplace conduct, said Andrea York, a Toronto-based partner in the labor and employment practice of Blake, Cassels & Graydon L.L.P. For example, employees could attempt to claim harassment when receiving

See **HARASSMENT** next page

ONTARIO BILL 29 SPECIFICS

Proposed legislation in the Canadian province would require employers to curb workplace harassment and violence by following these steps:

- Develop and deliver regular harassment and violence prevention training to employees, including those who exercise managerial functions, and mandate employee attendance at training sessions.
- Investigate allegations of workplace harassment or violence.
- Identify the source of harassment or violence and remove the source if necessary.
- Ensure adequate steps are taken to prevent and remedy the effects of the harassment or violence.
- Compensate victimized workers for any absences related to the harassment or violence that are not compensated through the workers compensation system.

Political, economic risks lessen in 11 nations: Aon analysis

By MARK A. HOFMANN

The level of political and economic risk decreased in 11 nations last year, but remained elevated in 25 of the world's 50 largest economies, according to an analysis released last week by Chicago-based Aon Corp.'s Aon Trade Credit Global unit.

China, Russia and India were rated as being at medium economic and political risk levels by Aon.

In China, for example, Aon found that continued growth resulting in widening economic disparity could lead to unrest, while Western investors in Russia face being caught up in terrorism or having to deal with issues related to government interference, Aon noted in "Political & Economic Risk Map 2008."

While India continues to face ethnic and religious tensions, that should "not slow" India's move toward global economic prominence, according to the report.

Sam Wilkin, a senior consultant with Oxford Analytica Ltd.—a U.K.-based consulting firm that partnered with Aon to draft the map—said, "We have seen incidents of political risk related to economic nationalism" in countries such as Venezuela and Ecuador.

Also during the Washington press conference, Mr. Wilkin noted that economic nationalism is increasing in commodity exporting countries. As commodity prices, such as that of oil, have surged, deals cut between countries and foreign companies don't appear nearly as attractive as they did initially, he said.

Mexico, Israel and Saudi Arabia were among the 11 countries where political and economic risks have eased in Aon's 2008 assessment. Belarus, Guinea Bissau and Yemen all experienced increases in their level of economic and political risk.

AON

Russia, China and India pose medium levels of economic and political risks to Western investors, Aon says.

Captives: IRS issues rules on cell companies

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In its ruling, the IRS noted, citing several court decisions involving single-parent captives, that a transaction between a parent and its wholly owned subsidiary does not satisfy the requirements of risk shifting and risk distribution when only the risk of the parent is being insured.

Using those decisions as a basis, the IRS looked at a cell arrangement in which the cell was used to provide professional liability coverage to its sole shareholder, which paid capital and premiums to the cell. The cell did not have any other policyholders.

The arrangement between the cell and its shareholder is akin to a captive and its single-parent in that it lacks the necessary risk shifting and distribution to be considered insurance, the IRS said.

Because the cell has not entered into any arrangements with policyholders other than its sole shareholder, the arrangement is not an insurance contract, and the shareholder cannot take a tax deduction for the premiums it paid to the cell, the IRS said.

But, according to the IRS, if a cell is used to fund the risks of 12 subsidiaries of a corporation that holds all the preferred stock of the cell, for example, then the premiums paid by the subsidiaries would be considered insurance and thus would be tax-deductible.

In that situation, the IRS noted, the subsidiaries are shifting their risks to the cell in exchange for premiums that are determined at arms-length. The premiums are pooled so that a loss by one subsidiary is not substantially paid from its own premiums, the IRS said.

In fact, if the subsidiaries had entered into a similar agreement with a sibling corporation that was regulated as an insurer, the arrangement would be considered insurance.

As a result, the fact that "the subsidiaries' risks were shifted to a cell of a protected cell company and distributed within that cell does not change that result," the IRS said.

That analysis is along the lines of court decisions and an earlier IRS revenue ruling that an arrangement between a captive and subsidiaries of the same parent is considered insurance, so long as there is risk shifting and risk distribution.

In a separate notice, which was released at the same time as its revenue ruling, the IRS said it is considering proposing guidance in which a cell would be treated as an insurance company if it met certain tests, most significantly that the cell's assets and liabilities are segregated from the assets and liabilities of other cells.

Bid rigging: Judge dismisses all claims

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alleged conspiracy.

Among other charges, plaintiffs alleged that the insurers breached their fiduciary duty by failing to disclose contingent commissions and other types of compensation on Schedule A of Form 5500, which is provided to ERISA plan participants.

While Judge Brown has dismissed all the claims pending in the class actions, there are still a number of individual plaintiffs' cases centering on the same issues against the insurers and brokers that were filed in federal courts around the country and subsequently transferred to Judge Brown, noted Mitchell J. Auslander, an attorney with Willkie, Farr & Gallagher in New York, who represents Marsh & McLennan Cos. Inc. in the multidistrict litigation.

Judge Brown noted in his ruling that he will hold a conference call on Jan. 24 to discuss remaining motions and other open issues in the case before the court.

While Judge Brown did not elaborate, Mr. Auslander said the court may address remaining individual policyholder cases.

He noted that most of the defendants and plaintiffs class counsel have taken the position that the individual cases should be stayed pending the appeal in the 3rd Circuit.

Products & Services

Watson Wyatt offers financial services modeling

WASHINGTON—Watson Wyatt Worldwide is offering VIPitech, its financial and actuarial modeling tool, to financial services companies in the United States.

According to Watson Wyatt, VIPitech can be used to model any aspect of a company's business, including complex reporting requirements, within the framework of a single, scalable and auditable model.

VIPitech's interface enables users to handle a wide range of financial analyses, including statutory valuations, product pricing, financial reporting, stochastic projections, business planning, asset liability management and evaluation of alternative risk management strategies.

For more information on VIPitech, visit *www.watsonwyatt.com*.

Lexington forms social services unit

BOSTON—Lexington Insurance Co. has formed AIG Human & Social Services Risk Solutions to provide insurance and risk management services to the social services sector.

The new industry practice serves for-profit and nonprofit organizations in the social services industry, including alcohol and drug rehabilitation clinics, adult day care, mental health facilities, community service organizations, counseling service organizations and crisis centers.

The unit provides coverage for the entity, its volunteers and employees. Coverages include: professional liability, general liability, directors and officers liability, workers compensation, property, inland marine, automobile, employee benefits liability, sexual abuse/molestation liability, crime/fidelity, umbrella liability, employment practices liability, accident and health, and boiler and machinery.

For more information, contact Frank T. Nosek, practice leader at Boston-based Lexington, at 617-330-4370 or at *frank.nosek@aig.com*.

RLI revamps D&O policy

PEORIA, Ill.—RLI Corp.'s executive products group has introduced RLI Executive Plus, an updated Side A directors and officers policy.

Filed in all 50 states and already approved in 35 plus the District of Columbia, the revamped Executive Plus policy includes provisions exclusive to RLI Executive Plus such as: Sarbanes-Oxley Act Section 308 civil penalties coverage, a definition of defense expenses that includes extradition expenses, a definition of insured person that includes trusts, a definition of loss that includes public offerings of securities and civil penalties under the Foreign Corrupt Practices Act, and an insured vs. insured exclusion with an explicit carve-out for whistleblowers.

For more information about Executive Plus, contact A.Q. Orza, RLI EPG vp, at 908-598-8375 or at *aq_orza@rlicorp.com* or visit the EPG Web site at *www.rli-epg.com*.

Harassment: Bill proposed

CONTINUED FROM PREVIOUS PAGE

a performance evaluation or when the employer attempts to implement a performance improvement program, she said.

"I'm worried about the floodgates opening and having numerous complaints that are not bona fide, especially when the worker can stay home with pay," Ms. York said.

The bill has also raised concerns about how to determine what constitutes harassment because what is considered harassing behavior by one employee may be considered harmless by another. "These psychological claims are always difficult for employers to deal with," Ms. York said.

Additionally, the scope of the law is a concern because it applies not only to employee behavior against other employees, but also to harassing behavior from individuals outside of the workplace, such as customers or patients, whose actions employers may have difficulty controlling.

Moreover, the bill does not specify the appropriate level of discipline when a complaint is deemed legitimate, meaning employers will face a quandary in determining whether counseling, a suspension or termination is the appropriate remedy. They may find themselves vulnerable to wrongful termination claims from employees fired for harassing behavior, lawyers say.

In an effort to reduce potential liability, employers should perform a risk assessment to identify their vulnerabilities to workplace violence and harassment and develop a prevention strategy, said Glenn French, president of the Canadian Initiative on Workplace Violence, a Toronto-based research firm that helps organizations develop preventative and remedial programs aimed at reducing workplace aggression. Employer workplace policies should include clear procedures for reporting violence and harassing behavior, he said.

"Progressive employers should now start to think about having a policy in place that defines what violence means to them," said Mr. French, who added that such policies should be reviewed at least once a year.

From a risk management perspective, the most important step is to conduct a thorough investigation to determine if there is any merit to the complaint, lawyers say.

"You need to look into it properly, do a full investigation and make a valid assessment of if something is a problem or it's not," Mr. Dye said.

Suing government in air crashes requires proper procedures

By DAVE LENCKUS

ORLANDO, Fla.—Suing the U.S. government over its role in an airplane crash presents tricky issues that could not only complicate the litigation but also jeopardize a plaintiff's case, a U.S. Department of Justice official warned.

Even extremely competent, veteran attorneys representing airlines or aviation product manufacturers in subrogation cases against the government occasionally contact the Justice Department for guidance in structuring or filing their cases, said Kathlynn J. Fadely, assistant director for aviation litigation in the civil division of the Justice Department in Washington.

"Getting money does happen" in lawsuits against the government, but "we try to not let it happen often," Ms. Fadely said.

Ms. Fadely outlined a series of common mistakes when seeking damages from the government—and how to avoid those mistakes—during a presentation at the 2008 Embry-Riddle Aeronautical University Aviation Law and Insurance Symposium, held Jan. 9-11 in Orlando, Fla.

Before filing a lawsuit, a plaintiff must submit an administrative claim to the appropriate federal agency, Ms. Fadely said. The claim must include sufficient information so the agency can investigate it, and it must seek a specific amount of damages.

If the agency that receives the claim is not the appropriate one, the claim could be dismissed. The agency, however, may transfer the claim to the correct agency, but the statute of limitations for filing the claim continues to run until the appropriate agency receives it, she said.

Under those circumstances, if the claim arrives at the appropriate agency late, a court still might rule that the plaintiff met the filing deadline under the "constructive filing" theory. But courts typically are not lenient if the claim was filed with the wrong agency or just before the filing deadline, Ms. Fadely said.

"The excuse of, 'We didn't know who did us wrong until we read the NTSB report'—that argument is summarily rejected" by courts, Ms. Fadely said, referring to last-minute filings with the inappropriate agency because the National Transportation Safety Board had not finished its crash investigation.

In addition, a claim should be submitted to each agency involved in the activities that resulted in the claim. Failing that, the final action taken by the agency that received a claim will apply to all of the agencies.

An agency has six months to review and act on the administrative complaint.

For plaintiffs that receive a denial letter, their court complaint must be filed within six months of date of the denial letter, not the date the plaintiff received it, she said. If the agency does not act within six months, the plaintiff should proceed as though the claim had been denied.

If a plaintiff files a lawsuit, the only named defendant can be the U.S. government, Ms. Fadely stressed. No federal agency or government employee can be sued, she said. But if an attorney does name a specific agency, "We won't try to get you thrown out," Ms. Fadely told session attendees. "We have other tricks for that."

For example, although the Federal Tort Claims Act contains a government waiver of sovereign immunity, a few exceptions to the waiver frequently arise in aviation tort litigation and can trip up unsuspecting attorneys, she said.

The discretionary function exception shields the government no matter how egregiously negligent an official's actions were, Ms. Fadely said. So, for example, Federal Aviation Administration functions involving inspections, certification and enforcement as well as decisions involving contracting, training, staffing and equipment are protected under the exception.

While the FTCA waives immunity for damages caused by government employees' negligence, government contractors are not protected from liability, unless the government physically supervises the day-to-day conduct of a contractor's employees. Detailed standards and contract specifications do not count as day-to-day supervision, Ms. Fadely noted.

During discovery, plaintiffs should not use the Freedom of Information Act to obtain evidence from the government, Ms. Fadely cautioned. She noted that the U.S. Supreme Court has stated the FOIA is not intended as a discovery tool.

In addition, NTSB documents are not obtainable from the Justice Department, she said. Those materials must be obtained from the NTSB.

She also noted that NTSB reports that contain the probable cause of an accident cannot be used in any lawsuit or demand for damages. Only NTSB accident reports that do not contain subjective language may be used.

Even with those restrictions, plaintiffs can obtain significant evidentiary material from the government, Ms. Fadely said.

Aviation conference draws 148

The 2008 Embry-Riddle Aeronautical University Aviation Law and Insurance Symposium attracted 148 attendees, speakers and exhibitors, compared with 115 last year.

The symposium featured 14 educational sessions covering a variety of issues facing attorneys for general aviation and commercial airline risks.

The next symposium is scheduled for Jan. 7-9, 2009, at the same venue, the Villas of Grand Cypress Golf Resort in Orlando, Fla.

Additional information about the symposium is available from Greg Carlile or Casey High at Venu Inc. by calling 816-221-8551. Alternatively, Mr. Carlile can be contacted at *greg@robstan.com*, and Ms. High can be contacted at *casey@robstan.com*.

—By Dave Lenckus

Aviation: Concerns remain over security

CONTINUED FROM PAGE 4

Bradley said that general aviation's improving safety record "is not affecting the overall number of claims" against component manufacturers. Indeed, those manufacturers face a growing number of claims, said Mr. Bradley, a partner at ReedSmith L.P. in Princeton, N.J.

More significantly, he said, general aviation manufacturers have greatly increased their production over the past five years.

That is important because they would not be immune from product liability lawsuits over those products for many years under the General Aviation Revitalization Act of 1994, he noted. GARA shields manufacturers from liability on products that were sold 18 years or more before their involvement in an accident.

Another area of concern in the general aviation sector is security, said Russell M. Mirabile, a New York-based vp and aviation claims manager in the aerospace group at XL Capital Ltd. He said the lack of security at general aviation airports would be an important issue over the next several years.

An attorney in the audience disagreed with Mr. Mirabile during the panel discussion. While acknowledging that there is no police presence at general aviation airports, the session attendee asserted that "they have been remarkably safe because of the self-policing" at those facilities.

Mr. Mirabile conceded that general aviation airports' safety record is sound, but he maintained that "some kind of screening process" must be implemented. If that does not happen, then "the first time something happens, there will be a hue and cry," he predicted.

"I'd rather see them do it today, rather than have the government stick it down my throat," he added.

Despite the commercial airline industry's improving safety record, there likely will be one area where attorneys will find more work, Mr. Musat said. He noted that the airline industries in China, India, Vietnam and Indonesia are still in their early stages. While training in those countries is going well, the nations' airports and air traffic control are "not up to speed."

Meanwhile, several panelists asserted, large law firms that are creating aviation practices or buying boutique firms are unnecessarily driving up litigation costs.

"I just don't think they know how to do anything without at least eight people in one room," Mr. Mirabile of XL said.

He said he was aware of one case in which a large firm that was representing an airline involved in the Sept. 11, 2001, terrorist attacks generated $40 million in legal costs over 3½ years without taking a single deposition or producing "one piece of paper" from the attorneys working the case. "It's absurd," he said.

Tracey E. Campbell, an assistant vp-airline claims for Global Aerospace Underwriting Managers Ltd. in Short Hills, N.J., concurred with the panelists' assessments about law firms. "We do get a better response from the boutique firms," she said.

But a session attendee told one panel that there is not a "black and white" distinction between all boutique and large law firms. For example, the attendee said, large firms do not have to pad their aviation billing, because they have other types of cases that generate revenue.

Vendor: Alliances bolstered

CONTINUED FROM PAGE 3

said the company intends to have its first vendor summit later this year. She said improving employee satisfaction is a fundamental reason to bring the company's multitude of vendors together.

"At the end of the day we want to offer programs that are well-thought out and meet the needs of employees," Ms. Maisel said.

Improving employee satisfaction is just one reason to encourage vendor integration. HEB's first vendor summit focused on cutting health care costs. Ms. Schoenert said meeting attendees brainstormed cost-cutting strategies in small groups. The groups then shared their plans, which HEB considered and, in some cases, implemented.

Strategies included everything from changing pharmacy and medical plan designs for immediate cost savings, to better connecting employees with the employee assistance program for long-term savings. Ms. Schoenert said implementing the suggested strategies has cut health care costs dramatically. She declined to specify the savings.

Ensuring vendors understand the employer is another common focus of the summits.

Avery Dennison Corp., a manufacturing company in Pasadena, Calif., hosted its first vendor summit last August in part to make certain its approximately 20 vendors identified with the company culture, said Suzanne Elken-Rickards, Avery's director of benefits for the United States and Canada.

To achieve this, Avery Dennison kicked off its vendor summit with an orientation emphasizing its business strategies, culture and stakeholders. Vendors then gave presentations on their financial, clinical and operational performances. They touched on opportunities for improvement and invited group discussion on possible action plans.

Ms. Elken-Rickards said Avery Dennison gained insight into its vendors' effectiveness—making it easier to assess their performance.

'By having the vendors understand the company, we end up focusing our efforts where it makes sense.'

Suzanne Elken-Rickards
Avery Dennison Corp.

The meeting also gave vendors a glimpse into their counterparts' functions, allowing them to measure their performance against others. It was beneficial for all, she said.

"(Vendors) felt it was worth the investment because they got to know the client better," she said. "By having the vendors understand the company, we end up focusing our efforts where it makes sense."

To get such positive results, time and care must be put into planning and facilitating a vendor summit, benefits managers and consultants say. Ms. Darling said the meetings typically last about two days. She said the first day often is dedicated to determining the direction for a company, while the second day is devoted to generating action plans.

Both Avery Dennison's and HEB's summits lasted about one-and-one-half days. Both companies hosted their meetings onsite, thus keeping costs down. Ms. Elken-Rickards of Avery Dennison and Ms. Schoenert of HEB said the meetings were inexpensive ventures.

As for their time resources, planning from start to finish took two to three months, they said. Determining the agenda was a big part of the planning process, because the focal point of the summits changes each year.

Whereas HEB focused on cutting health care costs during its first summit, it focused more on vendor integration and specific targets such as health fairs and diabetes during its most recent summit, Ms. Schoenert said.

Avery Dennison targeted health and welfare at its first summit, but likely will incorporate wellness at its next meeting, Ms. Elken-Rickards said. While the focus of vendor summits might change, the goal of fostering a true partnership between employers and their vendors is constant.

"The purpose is not only to utilize your vendors and leverage all of their knowledge," Ms. Schoenert said, "but also to solidify the partnership you already have with them."

Schiro: Honored with industry award

CONTINUED FROM PAGE 4

Vitale, CEO-global corporate in North America for Zurich North America.

Zurich's transformation was driven by Mr. Schiro's willingness to make the necessary changes to the company, he said. "He had the vision, the passion, the energy and quite frankly the guts to do that," Mr. Vitale said.

Mr. Schiro's dedication to client service has garnered admiration. Two weeks after Hurricane Katrina devastated New Orleans, he was in the region talking to his claims staff, trying to figure out the best way to help his customers rebuild their city.

Kenneth Feinberg, principal of the Feinberg Group L.L.P., praised Zurich for its leadership in helping New Orleans recover from the damage Katrina inflicted. "It starts with Jim Schiro," Mr. Feinberg told attendees of the awards ceremony honoring Mr. Schiro last week.

Mr. Schiro, though, is quick to pass on the credit to Zurich's 58,000 employees, noting that they have adopted the client-centric approach that has changed the company. "I'm really proud of the people who are around me," he said. "They're helping to create this environment."

The insurance industry faces critical challenges, first among them is the need to compete with other industries for young talent, he said. "We have to make the industry more attractive to young people to come into it."

'I didn't fully comprehend or appreciate the condition the company was in.'

James J. Schiro,
Zurich Financial Services Group

In addition, the softening of the markets means continued competition in 2008, but Zurich will continue to maintain underwriting discipline, Mr. Schiro said. "We will not write business that's not profitable," he said. "We spent five years restoring profitability to this company."

Unlike some of its peers, Zurich will emerge unscathed from the subprime mortgage crisis because the company has no subprime exposure. "That's not an accident," Mr. Schiro said. "That's the financial discipline that we put in place."

Developing a regulatory environment that takes into account the evolving nature of the insurance sector is another challenge, he said.

"A strong regulator is important because that demonstrates to the external world that we are being regulated," he said. "A weak regulator doesn't help enhance the credibility of the industry."

Regulators and carriers, though, need to work together to strike a balance between consumer protection and encouraging development of new products that meet the market's needs, he said, citing New York Superintendent of Insurance Eric Dinallo's recent expedited licensing of a financial guarantee insurer to be owned and operated by Berkshire Hathaway Inc.

"I think that's where regulation has to work with the industry to help provide the capacity and capital, particularly in times of crisis," he said.

Survey: Premiums drop across all lines

CONTINUED FROM PAGE 3

subprime mortgage market, he added.

"Once the losses start to mount—if they start to mount—there will probably be a reaction by underwriters to raise rates," Mr. Bradford said.

He said the effect of those lawsuits likely will be localized in D&O and errors and omissions coverages with little effect on other commercial lines.

While no other line of coverage experienced percentage dips in premiums as great as D&O, premiums dropped across the board in the fourth quarter of 2007. Property premiums decreased by an average of 1.27%, while workers compensation premiums fell an average of 1.42% and general liability premiums dropped an average of 3%.

Mr. Bradford said the competitive marketplace probably will persist through the first part of this year.

"Risk managers can look forward to rates continuing to fall for the foreseeable future," Mr. Bradford said. The soft market will eventually affect insurer earnings, though—possibly starting as early as the second quarter, he said.

The question remains as to when the next big catastrophe will hit the United States, he said. Consistent, modest declines in premium prices throughout 2007 were tied closely to two consecutive benign hurricane seasons and light losses.

Mr. Bradford said everything could change at a moment's notice if a major hurricane or natural catastrophe did strike and cause significant damage.

"That could turn the market fairly quickly," Mr. Bradford said.

More information about the survey is available at *www.rims.org/benchmark*.

GM settles 401(k) class action suit

By JEFF CASALE

DETROIT—General Motors Corp. last week agreed to settle a class action lawsuit for for $37.5 million filed by 401(k) plan participants who suffered huge losses after GM shares fell sharply.

The suit was filed in 2005 after Detroit-based GM's shares plunged 75%, causing GM employees and retirees to suffer substantial financial losses in their 401(k) plans.

The agreement enforces changes that GM has already made to its 401(k) plans, which includes GM no longer matching employees' salary deferrals with GM stock or requiring employees to invest some of their own 401(k) plan contributions in GM common stock.

Also as part of the agreement, retirees will be offered discounted financial counseling from Ayco, a subsidiary of Goldman Sachs, for which employees will pay $30 for a year of advising services. This type of service usually costs employees about $200. GM has agreed to pick up the balance for those employees who elect to participate in this program.

U.S. District Judge Nancy G. Edmunds will hold a hearing to grant preliminary approval of the settlement. That hearing date has not yet been scheduled.

Several charges were filed against GM in the suit, including that it "breached fiduciary duties in violation of the Employee Retirement Income Security Act of 1974, failed to provide participants with complete and accurate information regarding stocks and the true risks of investing," according to court documents.

GM's poor financial state was disclosed in a 2003 filing with the U.S. Securities and Exchange Commission, which promptly launched an investigation into the automaker's accounting practices.

According to court documents, 260,000 employees and retirees were participants in plans that held assets of $21 billion as of 2003. The settlement covers anyone enrolled in GM's 401(k) plans between March 1999 and May 2006.

Gen Re: Defense lawyers challenge credibility of witness' testimony

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general categories: testimony, including that of Mr. Napier and John Houldsworth, former chief executive officer of Gen Re's Cologne Re Dublin unit, both of whom have pleaded guilty to conspiracy; dozens of e-mails among the defendants discussing the transactions; and recordings of phone conversations among the defendants and Mr. Houldsworth.

"The key word is corroboration," said Anthony Sabino, a law professor at the Peter J. Tobin College of Business at St. John's University in New York, in commenting on the case. "When you link (testimony, e-mail and recordings) together, it's a very powerful combination."

"Poking holes in a witness' statements is much more difficult when you have the corroboration" of other evidence, agreed Philip Hilder, a former federal prosecutor who now is with Hilder & Associates P.C. in Houston. "Still, it's going to be up to the jury to decide what weight to give to some of the discrepancies" in witness testimony.

"It's very typical that government witnesses take on water" during cross-examination, Mr. Hilder added. "The slightest opening, and the defense will always burrow in and make the most of it."

Aside from Ms. Monrad, those charged in the case are Ronald E. Ferguson, Gen Re's former CEO; Christopher P. Garand, Gen Re's former senior vp in charge of U.S. finite underwriting; Robert Graham, the reinsurer's former senior vp and legal counsel; and Christian M. Milton, AIG's former vp for reinsurance.

Prosecutors allege the five helped engineer a pair of sham loss portfolio contracts from Cologne Re Dublin that allowed AIG to inflate its loss reserves by $500 million in 2000 and 2001. While the contracts appeared to transfer $600 million of losses, Gen Re and AIG had an oral agreement that no risk would actually be transferred and that AIG would secretly refund a $10 million premium from Gen Re and pay the reinsurer a $5 million fee for the deal, prosecutors charge.

During the first week of the trial, which began Jan. 7 in U.S. District Court in Hartford, Conn., Mr. Napier traced the deal's development from its inception in an October 2000 phone call from former AIG CEO Maurice R. Greenberg to Mr. Ferguson seeking $200 million to $500 million in reserves.

Mr. Greenberg has been identified as an unindicted co-conspirator but has not been charged in the case.

Over four days of cross-examination last week, though, Mr. Weingarten and Frederick P. Hafetz, a lawyer for Mr. Milton, challenged Mr. Napier's memory of events, pointed to discrepancies between his trial testimony and earlier statements to government investigators, and accused him of concocting some of his testimony.

Mr. Napier told jurors, for example, that he and Ms. Monrad met with former AIG CFO Howard Smith at AIG's New York headquarters to emphasize—at Mr. Ferguson's request—that Gen Re would account for the loss portfolio deal as a deposit rather than as reinsurance. The meeting, which occurred sometime in November or early December 2000, was the first time he met Mr. Smith, Mr. Napier said.

In a series of questions from Mr. Weingarten, though, Mr. Napier conceded that there were no notes, e-mails, corporate car service receipts, building security sign-in sheets or other evidence to show that the meeting ever took place. Mr. Weingarten also produced documents showing that Mr. Napier had met with Mr. Smith in October 2000 on business unrelated to the loss portfolio deal.

"Isn't it true you made it up to curry favor with the government?" Mr. Weingarten asked about the loss portfolio meeting.

"That's not true," Mr. Napier said, conceding that he might have been "confused" about the timing of his first meeting with Mr. Smith.

Mr. Weingarten also questioned Mr. Napier's testimony that Mr. Garand was involved early in the transaction and was the first to propose structuring it as a no-risk deal, noting that Mr. Napier previously told government investigators that Mr. Garand only got involved later to help arrange AIG's payments to Gen Re.

Mr. Weingarten asked repeatedly whether Mr. Napier, at various points in the deal's development, thought he was committing a crime. When Mr. Napier answered repeatedly, "No," Mr. Weingarten said, "The truth is you got rolled over by the government, isn't it?...You pleaded guilty to a crime you didn't believe you committed."

Mr. Napier responded that he now believes he committed a crime.

Lawyers for Ms. Monrad and other defendants maintain the executives never thought the loss portfolio deal was improper, and thus lacked criminal intent.

Mr. Hafetz, who is with the New York firm of Hafetz & Necheles, pointed to a March 2001 phone conversation in which Mr. Napier and Mr. Houldsworth mentioned sticking AIG with losses under the contracts if AIG failed to refund Gen Re's premium. Mr. Hafetz asked Mr. Napier if this didn't show that he believed the contracts exposed AIG to risk.

"I never thought that AIG could be ceded the losses," Mr. Napier replied. "There's a difference between threatening and being able to do it."

Mr. Napier's cross-examination resumes this week.

Former Gen Re, AIG executives on trial

LANDOV

Ronald E. Ferguson, former Gen Re CEO; Christopher P. Garand, Gen Re's former senior vp in charge of U.S. finite underwriting; Robert Graham, former Gen Re senior vp and legal counsel; Christian M. Milton, AIG's former vp for reinsurance; and Elizabeth Monrad, former Gen Re CFO are being tried on charges of conspiracy, securities and mail fraud and making false statements to the SEC.

Marsh: Potential deal between brokers would face regulatory scrutiny

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After reporting disappointing third-quarter 2007 results, MMC Chairman and Chief Executive Officer Michael G. Cherkasky fired Marsh CEO Brian Storms. MMC then replaced Mr. Storms in December with former American International Group Inc. executive Daniel Glaser, who quickly overhauled the broker's senior management team. Shortly after Mr. Glaser's appointment, MMC's board announced that Mr. Cherkasky would resign once a replacement is found.

How receptive Mr. Glaser and Marsh's new senior management team might be to Willis' reported offer remains to be seen, but many of the current executives have former ties to Willis.

Mr. Glaser is a former president and chief operating officer of Willis Risk Solutions, and Joseph M. McSweeny, who was named president of Marsh's new U.S./Canada division earlier this month, is a former chairman of that Willis operation. In addition, Alexander W. Vietor, who was named president of Marsh's global specialties unit, is a former executive vp of Willis North America. All three spent time working for Marsh before joining Willis.

Meyer Shields, an analyst with Stifel Nicolaus & Co. Inc., for one, sees the execs' history with Willis as a positive should a deal occur.

"This level of inter-company familiarity should significantly reduce the potential for culture clash," he wrote in a report last week. He noted that in addition to Marsh's senior management previously working at Willis, "we estimate that a least a plurality of the approximately 550 people hired by Willis in 2004 and 2005 came from Marsh."

Mr. Shields also noted that Willis CEO Joseph Plumeri has a "successful track record of rigorous expense discipline that could readily be put to use to improve Marsh's materially disappointing brokerage margins."

"It's easy to see how this sort of deal would be good for MMC shareholders, many of whom likely own the stock in hopes of a buyout or corporate breakup," he noted.

Overall, analysts say that while a deal could make sense, there will be hurdles to overcome.

"In our view, we believe (Willis') superior management track record combined with Marsh's underperforming brokerage franchise could be value enhancing," Keith F. Walsh, an analyst with Citigroup's equity research division in New York, wrote in a report issued last week. He said that Willis' timing is to its advantage, "as MMC is currently vulnerable" with an outgoing CEO.

Mr. Walsh noted, however, "there are cultural issues between the two organizations that could make a combination difficult in the short term, giving Aon the opportunity to increase its share in MMC's core large-case business."

In addition to culture clashes between the two brokers that "could challenge a smooth integration," large insurance buyers could be left with fewer choices, Mr. Shields said. "To the extent that Willis has won partial accounts from Marsh clients looking to split their business among multiple brokers, consolidation undoes some of this diversification."

Moreover, though, analysts say that a potential Marsh-Willis combination, which would have an estimated 40% market share, would likely face regulatory scrutiny.

More than five times larger than Willis, MMC reported $11.9 billion in total 2006 revenues, compared with $2.43 billion at Willis.

"We believe that there is a decent chance that antitrust regulators, especially in Europe, would object to this level of market concentration within one brokerage company," Mr. Shields said.

"One of the concerns that people would raise is the antitrust implications," said Bill Bergman, an analyst with Morningstar in Chicago. "My view of it is it shouldn't be a concern…there's a lot of competition in the marketplace even with the combination" of Marsh and Willis. "But the political angle is hard to predict," he said, and that "could be a possible snag in a deal."

According to Myron Picoult, an independent insurance consultant: "I don't think Willis would be so naïve to embark upon this not realizing that that could be a problem and not already have figured out how they would approach it."

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writedowns totaling more than $200 million in connection with their investments in financial guarantee reinsurer ChannelRe Holdings Ltd. ChannelRe assumed a $27 billion portfolio of in-force business from financial guarantee reinsurer MBIA Corp., a 17.4% owner in the company. According to PartnerRe, the writedowns follow MBIA's announcement that it will record a fourth-quarter 2007 charge of $3.3 billion, including about $200 million in credit impairments, which will lead to writedowns at ChannelRe. PartnerRe, which has a 20% ownership of Channel Re, will record a nonoperating charge of $74 million, while RenaissanceRe, with a 32.7% interest, will report a $126.7 million charge.

Everest Re to take charge on asbestos reserve boost

Everest Re Group Ltd. said it expects to report a $311 million net pretax charge for 2007 as a result of asbestos reserve strengthening. The Bermuda-based reinsurer said it expects to report fourth-quarter 2007 net income of between $4 million and $24 million, with results also reflecting $51 million in aftertax net realized capital losses. That compares with net income of $206.4 million for the fourth quarter of 2006. For all of 2007, the reinsurer said it expects to report $831 million to $851 million in net income, which would range from a 1.2% loss to a 1.2% increase over 2006 results.

Greenberg hires firm to analyze AIG stake

Former American International Group Inc. Chairman Maurice R. Greenberg has hired investment banking firm Perella Weinberg Partners L.P. as a financial adviser to conduct a "valuation analysis" of the insurer, according to a Securities and Exchange Commission filing. The filing said that C.V. Starr & Co. Inc., which is controlled by Mr. Greenberg, will "determine what action, if any, is appropriate" after considering the analysis. The filing says that no party making the filing "has a current plan or intention to sell all or a substantial part of their shares of common stock except as needed for liquidity for other investment activities," although they "reserve the right to change their plans and intentions, including the right" to decrease their AIG investment.

Court lifts Florida ban on Allstate writings

Florida's 1st District Court of Appeal Friday stayed Florida Insurance Commissioner Kevin McCarty's suspension of Allstate Corp.'s ability to write new insurance coverage, pending the outcome of an appeal. The commissioner instituted the ban earlier in the week after accusing the personal lines insurer of failing to comply with a subpoena seeking information on its relationship with rating agencies, modeling companies and trade groups. Allstate said it had already produced 40,000 pages of information.

In Brief

Leonard Crouse, **Vermont's deputy insurance commissioner** and the state's top captive regulator since 1990, will retire on June 1....Factory Mutual Insurance Co., which does business as **FM Global**, has opened a representative office in Beijing....The **Supreme Court**, which agreed last month to review a case that would have decided whether the Americans with Disabilities Act requires employers to offer disabled workers a vacant job if a more qualified applicant is available, dismissed the lawsuit last week after the parties settled. The court was to have reviewed the 8th U.S. Circuit Court of Appeals ruling in *Pam Huber vs. Wal-Mart Inc.*

Liability: Ruling doesn't shield third parties from all suits

CONTINUED FROM PAGE 1

ing from "secondary violators" that aid and abet primary violators.

Clearly, however, the *Stoneridge* decision is a victory for third-party defendants that were involved in another company's securities fraud, experts said. Regardless of whether those defendants knowingly or unwittingly facilitated the misdeed, the ruling bars defrauded investors from tapping them for damages if the investors were unaware of those activities when making investment decisions.

Aiders and abettors, however, still could face penalties from the U.S. Securities and Exchange Commission, regardless of when their deceptive actions are uncovered.

"The case, overall, is still a big victory for corporate America and a big loss for the plaintiffs' bar," said insurer and defense attorney Dan A. Bailey, a partner with Bailey Cavalieri L.L.C. of Columbus, Ohio.

"But the plaintiffs aren't left without anything to talk about," he added.

"There's still room under the right facts" where third-parties can be held liable, said insurer attorney Arthur J. Washington, a partner with Mendes & Mount L.L.P. in New York. "But it's going to take more acts in respect to the plaintiffs than these companies in *Stoneridge* committed."

While critical of the restrictions that the ruling placed on defrauded investors, plaintiffs attorney Carol Gilden noted that the court "affirmed that under circumstances different from those in the *Stoneridge* case, secondary actors—which in certain cases could include accountants, bankers, lawyers and others—may continue to be found liable for deceptive conduct." Ms. Gilden, is president of the Washington-based National Assn. of Shareholder and Consumer Attorneys.

The decision also drew a stiff rebuke from Sen. Chris Dodd, D-Conn., who sponsored the PSLRA, which was designed to eliminate frivolous securities fraud lawsuits. The Supreme Court analyzed the law—along with SEC regulations and the court's own 1994 ruling—in arriving at its decision.

In a statement, Sen. Dodd said he continues to oppose frivolous lawsuits, but that the high court's ruling "goes beyond" the "commonsense" PSLRA.

"Instead of protecting innocent businesses, it would protect wrongdoers from the consequences of their actions. Such a misguided standard will do nothing to strengthen the competitive position of America's businesses and capital markets," said Sen. Dodd, chairman of the Senate's Banking, Housing and Urban Affairs Committee.

In the *Stoneridge* case, investors in Charter Communications Inc., a St. Louis-based cable television and Internet service provider, sued two of the company's business partners for allegedly participating in a scheme designed to help Charter conceal its disappointing financial results in 2000.

In the alleged scheme, Charter paid suppliers Scientific-Atlantic and Motorola $17 million more than they were owed under a contract for cable TV boxes they produced for Charter. The companies then returned the $17 million to Charter as payment for a new advertising program. In accounting for the transaction, Charter inflated its revenues by immediately booking the advertising fees as new revenue but spreading out the overpayment to its suppliers over time, the investors allege.

When that deal and others were uncovered, Charter was forced to restate its results from 2000 through 2002, which reduced its revenue by about $292 million. The restatements triggered a dramatic drop in Charter's share price.

Charter's investors sued Scientific-Atlanta and Motorola, charging that their deal with Charter facilitated the company's fraud. In upholding a lower court's decision against the plaintiffs, the 8th U.S. Circuit Court of Appeals in 2006 ruled that the defendants did not make any misstatements on which the plaintiffs relied.

In writing for the Supreme Court's majority, which upheld the lower courts, Justice Anthony Kennedy noted that if the 8th Circuit's decision "were read to suggest there must be a specific oral or written statement before there could be liability…it would be erroneous. Conduct itself can be deceptive."

But, the majority concluded, the defendants' "deceptive acts, which were not disclosed to the investing public, are too remote to satisfy the requirement of reliance."

The majority explained: "Unconventional as the arrangement was, it took place in the marketplace for goods and services, not in the investment sphere. Charter was free to do as it chose in preparing its books, conferring with its auditor, and preparing and then issuing its financial statements. In these circumstances the investors cannot be said to have relied upon any of (the defendants') deceptive acts in the decision to purchase or sell securities; and as the requisite reliance cannot be shown, (the defendants) have no liability" to the plaintiffs.

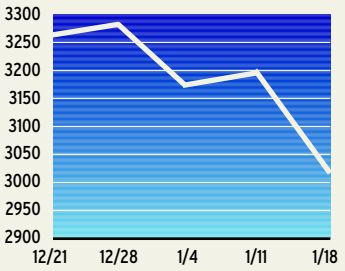
Stoneridge Investment Partners L.L.C. vs. Scientific-Atlanta Inc.; Motorola Inc., U.S. Supreme Court, Jan. 15; No. 06-43.

Stock Index

[1/14 - 1/18]

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**



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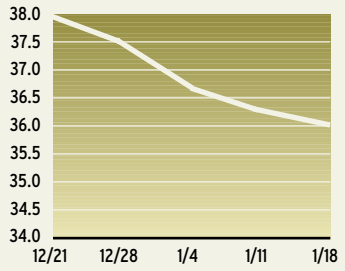
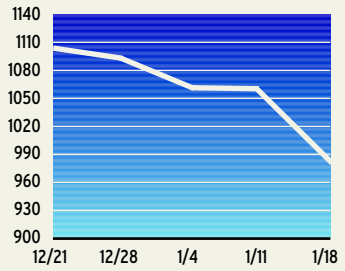
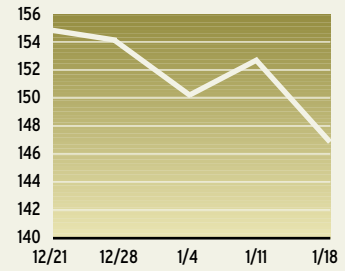


***BI* INSURER/REINSURERS INDEX**



***BI* MANAGED CARE ORGANIZATIONS INDEX**



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

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3008.46	-5.85%
DOW JONES	▼
12099.30	-4.02%
S&P 500	▼
1325.54	-5.39%

LARGEST GAINS

Fairfax Financial Holdings	5.40%
Marsh & McLennan	2.96%
American Safety	1.68%
ProAssurance Corp.	0.70%
Humana Inc.	0.08%

LARGEST LOSSES

Ambac Financial Group	-71.47%
MBIA Inc.	-48.46%
XL Capital Corp.	-20.47%
Citigroup Inc.	-14.39%
Alleghany Corp.	-11.02%

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Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann, Joanne Wojcik

Cop takes delivery of 'stolen' cars

Some good, old-fashioned police work uncovered an insurance scam that nabbed 61 individuals, including a New York police officer, a doctor and an employee of the U.S. Department of Homeland Security.

The 18-month investigation, dubbed Operation Disappearing Act, led to last week's New York bust that authorities described as a $1.7 million insurance fraud scheme. They also said they had recovered 70 vehicles that their owners had falsely reported stolen to collect insurance.

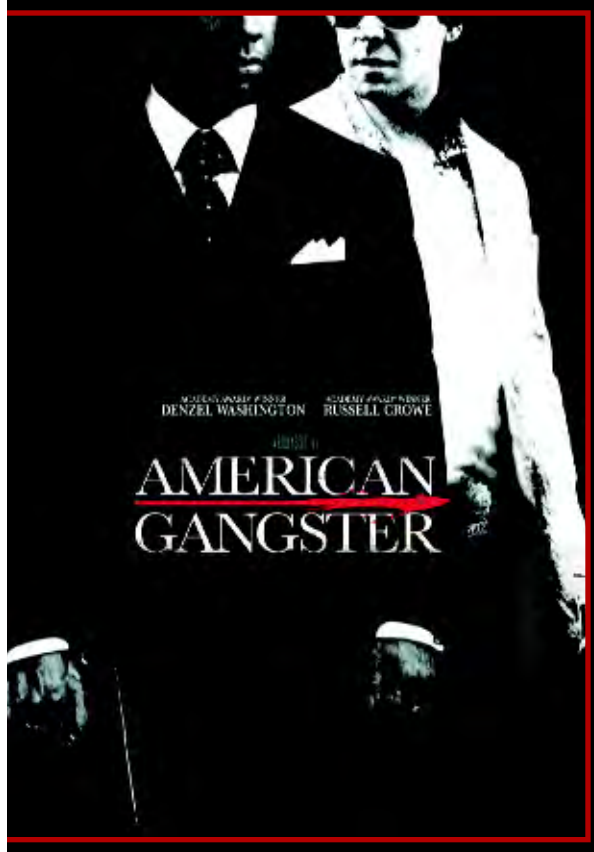
The highly organized scheme featured a "middleman," to whom owners would deliver their vehicle with the understanding that the middleman would then dispose of it, according to the charges by the Queens County, N.Y., district attorney's office. The owner then would report the vehicle had been stolen to police and the insurance company.

The middleman then delivered the car to a garage for a fee. However, the garage owner was really a New York police detective working under cover, authorities said.

"The cost of automobile insurance fraud is enormous—estimated by the insurance industry at $23 billion nationwide each year—and it's ultimately passed on to the consumer by way of ever-increasing insurance premiums," Richard A. Brown, Queens district attorney, said in a statement.

The 61 face a traffic jam of charges that include insurance fraud, falsifying business records, grand larceny and possession of stolen property. Most of the defendants face up seven years in prison if convicted, according to the district attorney's office.

Former feds file suit over movie ending



Call it character assassination by characterization.

That's pretty much the charge in a $55 million defamation suit against NBC Universal that three former federal Drug Enforcement Administration agents brought on grounds that they were defamed by blockbuster movie "American Gangster."

The movie chronicles the life and times of Frank Lucas, a New York drug lord of a generation ago.

The former DEA agents' suit charges that the movie slandered them by running a closing statement saying that Mr. Lucas' "collaboration led to the convictions of three-quarters of New York City's Drug Enforcement Agency," according to the New York Daily News.

A lawyer for the former agents says that while Mr. Lucas cooperated with officials, he did so against competitors in the drug trade and not the officers who were attempting to shut down the drug trade.

A DEA spokesman told the newspaper that no agents were ever charged in connection with the Lucas case.

NBC Universal argues that it never defamed the men because the movie specifically cited city drug enforcement agents, not federal agents.

Either way, the suit may ultimately spell out exactly how much artistic license extends at the intersection of fact and fiction.

Jake goes Progressive for Cleveland Indians

Clevelanders heading out to the ballpark to catch the Indians this year will pass through turnstiles with a Progressive Insurance Corp. logo over their heads.

The Mayfield Village, Ohio-based auto insurer purchased the naming rights of the Cleveland ballpark formerly known as Jacobs Field, or simply The Jake. The deal, inked last week, has Progressive paying the Indians $58 million over 16 years. The new name is Progressive Field.

"Progressive is the perfect fit for the Cleveland Indians, a hometown, world-class organization," Indians President Paul Dolan said in a statement. "We look forward to continuing to provide our fans with a championship-caliber team in an atmosphere of superior customer service and entertainment at Progressive Field."

Jacobs Field, opened in 1994, was named after former owners Richard and David Jacobs. The stadium, which sold out a record 455 consecutive games between June 1995 and April 2001, is a fixture in Cleveland's downtown area.

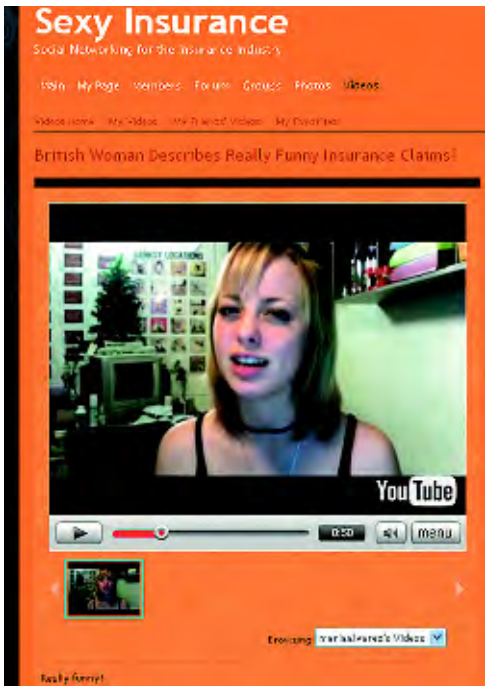
The renaming of the ballpark has caused a bit of a stir among the Indians faithful, who have to deal with the dilemma of still calling it "The Jake" or adopting the new name some have suggested—The Prog.

"The name Jacobs Field, in 14 relatively short years, has ingrained itself into the fabric of the community," Mr. Dolan told MLB.com. "In due time, Progressive Field will have that same place in our collective psyche. Maybe it will take the next generation of kids who only know it as Progressive Field. It won't happen overnight. But, I think Progressive Field will mean to this community every bit what Jacobs Field means now."

AP

Glenn Renwick, left, Progressive Corp. chairman and CEO, and Cleveland Indians President Paul Dolan hold up a jersey announcing the renaming of Jacobs Field to Progressive Field.

"We are very excited about getting exposure to an estimated 120 million baseball fans around the nation, the exposure we'll get on national television, and, clearly, the support in the local community will be enhanced by this arrangement," Glenn Renwick, Progressive's president and chief executive officer told MLB.com.



The Web site *www.sexyinsurance.com* offers industry professionals a place to get together online.

Social network Web site gets on sexy side of insurance

While most people working in the insurance industry hardly think of their jobs as "sexy," Sean Bourgeois does, and has created a Web site to promote the more provocative side of the business.

The social networking site, *www.sexyinsurance.com*, encourages members of the insurance community to come together, albeit "virtually."

"Drop into any pub around the Lloyd's building in London, or in lower Manhattan after the close of business on a Thursday evening, and you will find an eclectic mixture of brokers, agents and underwriters mixing and mingling," said Mr. Bourgeois, a former reinsurance underwriter, who is now a Web site designer. "Not only is insurance a social industry, it's a networking-based industry."

Insurance is sexy because of its size—"several trillion dollars in premiums are paid annually around the globe—and the fact that it operates from sexy financial centers like New York, London and Bermuda," Mr. Bourgeois said.

Moreover, "not many industries can match the insurance business when it comes to its annual meeting at the Monte Carlo Rendez-Vous every September. This industry knows how to get together and have a good time."

The Web site, which officially launched Jan. 11, has received more than 1,000 hits with nothing more than word-of-mouth advertising, he said.

"I don't know how people in China are finding out about it, but we've had visitors from there and 24 other countries," Mr. Bourgeois said.

And it's already helped at least one claims adjuster with his job hunt.

"One of the first registrants was a Georgia claims adjuster who had been laid off and was looking for work," Mr. Bourgeois said. Within days, "a California recruiter contacted him and offered to connect him with his contacts in Georgia."

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— Daniel R. Madock, General Counsel, Rescar, Inc.

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