

GALLAGHER PLANS SALE OF REINSURANCE BROKER OPERATION / PAGE 3

PROBLEMS AT PACIFICARE LEAD TO \$3.5 MILLION FINE AGAINST UNITEDHEALTH / PAGE 3

BILL CALLS FOR BROADER DEFINITION OF 'DISABILITY' UNDER ADA / PAGE 4

In Brief

Bush signs measure to expand FMLA

President Bush has signed legislation that expands the Family and Medical Leave Act for family members of those in the military. The law gives employees who are close relatives of a military service member who is seriously ill or injured up to 26 weeks of FMLA leave, while another provision permits employees to take up to 12 weeks of FMLA leave when a spouse, child or parent is on active duty or is called for active duty. The 26-week provision is effective immediately, while the 12-week provision goes into effect after final regulations are issued.

Cephalon gets approval for benefits in captive

Major biopharmaceutical maker Cephalon Inc. has received

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SECTOR BRIEFING

SPORTS & LEISURE

Olympic Games risks extend far beyond sports; terrorism insurance capacity available for most large events; health clubs weigh liability issues as interest in fitness grows; extreme sports firms mitigate risks. **Page 9**

Duperreault to lead MMC

Former ACE chief seen as good choice to get firm back on track

By **SALLY ROBERTS**

NEW YORK—The hiring of industry veteran Brian Duperreault as the new president and chief executive officer of Marsh & McLennan Cos. Inc. will help restore morale and growth at the struggling firm, observers say.

The former ACE Ltd. CEO last week took over from Michael G. Cherkasky, whose three-year tenure at the helm of New York-based MMC was fraught with turmoil.

The addition of Mr. Duperreault should end speculation that MMC might be bought by Willis Group

Holdings Ltd., which reportedly sent a letter to MMC's board last month seeking to begin acquisition talks (*BI*, Jan. 21), analysts say.

Given Mr. Duperreault's successful track record in growing ACE, he likely was not brought in to sell MMC, they say. Whether he decides to break up MMC and sell certain assets, which some disgruntled shareholders have begun demanding, remains to be seen, they note.

The hiring of Mr. Duperreault, who stepped down as ACE's CEO in 2006 and as its nonexecutive chairman last week, is the latest in a

string of management changes at MMC and its Marsh Inc. brokerage unit over the past three years. In just the past few months, Mr. Cherkasky fired Brian Storms as CEO of Marsh after two years at the helm and assumed his position until the company hired former American International Group Inc. executive Daniel Glaser in December. Shortly thereafter, MMC's board said Mr. Cherkasky would resign once a new CEO was appointed (*BI*, Dec. 24, 2007).

Management issues, however, are not the only challenge facing MMC, which has not fully recov-



Mr. Duperreault

ered from its 2004 fraud and bid-rigging suit and resulting \$850 million settlement with former New York

See **MMC** page 21

Credibility of witness attacked by defense

Existence of alleged AIG side deal questioned

By **DOUGLAS McLEOD**

HARTFORD, Conn.—Defense attorneys' cross-examination of a key government witness in the General Re Corp. finite reinsurance trial last week revealed common themes but also differences—some subtle and some stark—in the positions of the five executives on trial.

Lawyers for four former Gen Re officials and a former officer of American International Group Inc. last week spent four days grilling John Houldsworth, former chief executive officer of

Gen Re's Cologne Re Dublin unit, about a 2000 loss portfolio reinsurance deal allegedly designed to help AIG inflate its loss reserves.

The Gen Re defendants' lawyers repeatedly questioned the existence of an alleged side deal in which the companies agreed that no risk would be transferred to AIG. They also emphasized that Gen Re and Cologne Re Dublin disclosed the deal to their auditors and accounted for it properly as a deposit transaction.

At the same time,

See **GEN RE** page 22



ONLINE: Daily reports, other resources available at www.businessinsurance.com/GenReTrial



ZUMA PRESS

A California health care reform bill backed by Gov. Arnold Schwarzenegger died in a Senate committee last week, largely because of budget concerns.

Cost concerns doom Calif. health reforms

Senate panel fails to pass 'play or pay' measure

By **JOANNE WOJCIK**

SACRAMENTO, Calif.—A play-or-pay health reform measure in California proved to be the wrong bill in the wrong place at the wrong time, observers say.

The California reform bill, which died last week in the state Senate's 11-member Health Committee, failed largely because of the state's huge budget deficit and concerns about the cost of the state subsidiz-

ing health insurance premiums for millions of low-income uninsured state residents, health experts note.

In addition, some say that broadly expanding coverage is especially difficult in states that, like California, have a large uninsured population, and that ways to better control the costs of such programs have to be addressed at the federal level.

See **PLAY OR PAY** page 20

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The criminal fraud trial of five former executives of Gen Re and American International Group began Jan. 7 in federal court 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, witnesses and evidence. Go to www.BusinessInsurance.com/GenReTrial.



Group began Jan. 7 in federal court in Hartford, Conn. The case centers on a finite reinsurance deal between Gen Re and AIG that prosecutors allege was a sham transaction.

THIS WEEK IN BI

Podcast takes you behind the BI headlines

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Gallagher to sell reinsurance brokerage unit

Competitive market spurs effort to shed noncore operation

By ROBERTO CENICEROS

ITASCA, Ill.—In an attempt to improve its earnings during the soft market and focus more on its core brokerage business, Arthur J. Gallagher & Co.'s announced last week that it will sell its global reinsurance operations.

Analysts welcomed the move, saying that Gallagher Re was a drag on earnings for the Itasca, Ill.-based brokerage.

The past five years were challenging for the brokerage's reinsurance operations, which lost nearly \$16 million in 2007 after breaking even

in 2006 and losing more than \$10 million in 2005, according to Dean Evans, an analyst at Keefe,



'People were buying less reinsurance, and the reinsurance they were buying was going down dramatically.'

J. Patrick Gallagher Jr., Arthur J. Gallagher & Co.

Bruyette & Woods Inc. in New York.

"Two of those five years, it lost a lot of money; two of those five years, it made a tiny bit of money;

and one of those years, it broke even," Mr. Evans said. Those are "not really great results."

As recently as last fall, in a 2007 third-quarter earnings conference call, J. Patrick Gallagher Jr., chairman, president and chief executive officer of the brokerage, told analysts that despite a challenging reinsurance market, it remained committed to building Gallagher Re.

However, in last week's fourth-quarter 2007 earnings conference call, Mr. Gallagher said after further review, the brokerage shifted its

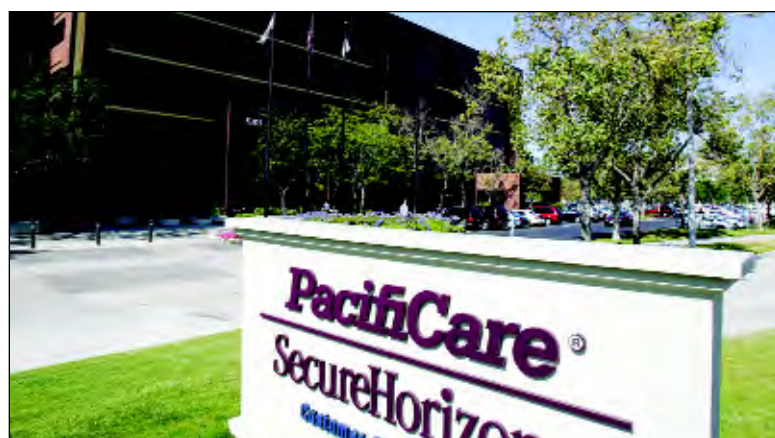
plan for the company.

"But what we realized in 2007 (after a fourth quarter strategic review) is that the market was changing dramatically," Mr. Gallagher said. "People were buying less reinsurance, and the reinsurance they were buying was going down dramatically. The cost to compete...was rising. We were caught in a position where we really had to take a hard look at this, do a hard thing, and make a decision whether we could compete going forward."

Gallagher reported that its reinsurance unit earned about \$51 million in revenue during 2007.

Overall, Gallagher reported total revenue of \$1.62 billion for 2007, up from \$1.47 billion in 2006. The

See **GALLAGHER RE** page 19



UnitedHealth Group says its PacifiCare unit, which it bought in 2005, is making good progress in resolving disputes with medical providers.

UnitedHealth hit with \$3.5M fine in California

PacifiCare cited in claims, provider violations

By GLORIA GONZALEZ

SAN FRANCISCO—A record fine against a unit of UnitedHealth Group Inc. highlights service problems that the company has acknowledged have hurt its commercial membership base.

While California regulators are unlikely to obtain \$1.3 billion in penalties they are seeking from the Minnetonka, Minn.-based insurer's PacifiCare unit in addition to the state record \$3.5 million fine, last week's action is likely to focus the company's attention on fixing the service problems, observers say.

California Insurance Commissioner Steve Poizner launched the enforcement in response to market conduct examinations that identified 130,000 alleged violations in PacifiCare's handling of claims and provider data.

Under state law, each nonwillful violation carries a penalty up to \$5,000 and each willful violation carries a penalty up to \$10,000—

meaning the penalty could be as high as \$1.3 billion if all the violations are shown to be willful, something experts doubt.

"I would be extremely surprised if the maximum fine was levied," said Bradley Ellis, director at Fitch Ratings Ltd. in Chicago. "I think it's an attention-getter."

UnitedHealth said it does not believe most of the violations warrant the maximum penalty.

In addition to the fine, the California Department of Managed Health Care outlined steps PacifiCare must take to correct

claims payment problems, including hiring an independent monitor to oversee changes and more staff.

The state accused PacifiCare of numerous violations, including: wrongful denial of covered claims, incorrect payment of claims, lost documents including certificates of creditable coverage and medical records, failure to timely acknowl-

Firm considers options after stock fraud award

Rare securities verdict puts Apollo on hook for massive damages

By DAVE LENCKUS

PHOENIX—The final judgment that a federal judge issued last week on the huge securities fraud damages that a jury awarded investors in a major for-profit higher education organization gives the company until next week to decide its next move.

The company, Apollo Group Inc., likely will attempt to overturn the jury verdict by raising arguments about the size and timing of investors' losses and its obligation to disclose a problem it considered immaterial, one source says.

Some of those arguments are stronger than others, experts say. The plaintiff's attorney in the case says the arguments are questions of fact—not law—that a jury already has resolved.

With U.S. District Court Judge James A. Teilborg in Phoenix entering his final judgment in the case on Jan. 30, Apollo now can pursue various moves, including seeking a new trial or appealing to a federal appellate court. A spokeswoman for Phoenix-based Apollo said only that it would pursue its legal options. The company has until Feb. 13 to act.

The trial ended Jan. 16 with a jury awarding damages of \$5.55 per share, which could amount to between \$166.5 million to \$277.5 million of aggregate damages, based on a plaintiff's expert's estimate of outstanding shares during the Feb. 27 through Sept. 14, 2004, class period. But the final judgment could affect plaintiffs' recovery (see story, page 21).

The case was a rare example of a securities fraud suit making it to a

jury.

Investors, led by the Policemen's Annuity and Benefit Fund of Chicago, sued Apollo for failing to reveal a government investigation of the University of Phoenix's student recruitment practices. The government charged in a February 2004 preliminary report that the Apollo subsidiary's method of compensating recruiters violated federal regulations. Violators face penalties as severe as losing their accreditation.

Lead plaintiff's attorney Stephen R. Basser, a partner with Barrack, Rodos & Bacine in San Diego, acknowledged that the government did not seek that penalty. But he said that Apollo's officials knew they faced an undetermined fine when they issued public statements during the class period and failed to disclose the investigation. On Sept. 14, 2004, a week after Apollo settled with the government for \$9.8 million without admitting any wrongdoing, news reports revealed the investigation and the fine.

Apollo contended that it was not obligated to disclose the investigation because it believed it would prevail or settle the dispute for an immaterial amount. Attorneys it consulted at that time agreed, and the fine amounted to less than 1% of its cash and cash equivalents, Apollo said.

Statistical analyses presented by both sides showed that Apollo's stock did not drop a significant amount until Sept. 21, 2004. That was the only date when the share price was down significantly during a three-week period after the news reports appeared, Apollo's analysis shows.

In its post-trial motions, Apollo can be expected to argue that the trial judge erred by allowing the jury to deliberate on a few points related to the organization's share

See **PACIFICARE** page 19

See **APOLLO** page 21

ADA reform measure would widen definition of 'disability'

Opponents of bill say change would weaken protections

By MARK A. HOFMANN

WASHINGTON—An effort to strengthen the Americans With Disabilities Act could actually dilute its effectiveness, according to some observers.

That's because the ADA Restoration Act, which is co-sponsored by more than half of the members of the House of Representatives, would define disability in an overly broad fashion, say the measure's critics. But supporters of the approach argue that they are not expanding

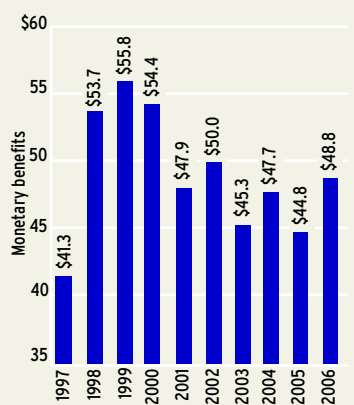
the ADA but are returning it to its drafters' intent. A series of court decisions that pared back the ADA's scope justify the change, they say.

Under current law, "disability" means "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."

But as currently drafted, the ADA Restoration Act would change the definition of disability to cover any physical or mental impairment, and would eliminate the requirement that the impairment substantially limit a major life activity. It would also ban courts from considering mitigating measures, such as medi-

ADA AWARDS

Benefits awarded under the Americans With Disabilities Act, in millions of dollars



Source: EEOC

ation, for determining whether someone qualifies for ADA protection.

In a House Education and Labor Committee hearing on the measure last week, the bill's chief House sponsor—House Majority Leader Steny Hoyer, D-Md.—said that ADA's drafters "could not have fathomed" that people with diabetes or mental illness could have had their claims rejected in court because, with medication, they would be considered too functional to meet the definition of disability.

"This bill does not seek to expand the rights guaranteed under" ADA, Rep. Hoyer told the committee. "Instead, it seeks to clarify the law, restoring the scope of protection available under the ADA. It

responds to court decisions that have sharply restricted the class of people who can invoke protection under the law."

But another witness said that while courts have gone too far in excluding people from ADA protection, the bill would go too far in that it can be interpreted to apply to temporary conditions. "Somebody with the flu could be competing with somebody with breast cancer" for accommodation, said David Fram, director of ADA and EEO Services for the National Employment Law Institute's Washington office.

And the committee's ranking member—Rep. Howard McKeon, R-Calif.—warned against "harmful

See **ADA** page 18



AP PHOTO

A dispute between Watson Wyatt and SBC Holdings Inc. stems from data entry error that was made when Watson Wyatt valued the Stroh Brewing Co.'s pension plan. Stroh was dissolved in 2000, but SBC sponsors the ongoing plan.

Appeals court upholds arbitration agreement

Consultant's pact with client ruled retroactive

By DAVE LENCKUS

CINCINNATI—Watson Wyatt Worldwide may compel a client to arbitrate its multimillion-dollar professional services claim against the consultant, even though the consultant's error occurred before the two companies signed an arbitration agreement, a federal appeals court has ruled.

The 3-0 ruling by a 6th U.S. Circuit Court of Appeals panel in Cincinnati reverses a federal trial court's decision in June 2006.

The dispute between Arlington, Va.-based Watson Wyatt and its client, Detroit-based SBC Holdings Inc., stems from a 2001 data entry error. Predecessor company Watson Wyatt & Co. made the error in valuing the Stroh Brewing Co.'s pension plan. Stroh was dissolved in 2000, but SBC sponsors the ongoing plan.

The data entry mistake led to erroneous actuarial valuations and financial disclosures that underestimated the plan's liabilities and overestimated SBC's net worth,

according to court papers. The consultant discovered the error in 2004 and notified SBC.

SBC does not allege that Watson Wyatt committed fraud, but the company asserts that it relied on the erroneous information when, among other things, it determined the value of its stock in six stock redemptions.

The plan sponsor asserts that its damages exceed \$46 million, but Watson Wyatt disputes that amount, according to court papers.

The consultant wants the disagreement resolved through arbitration, under the terms of the services contract that SBC signed with Watson Wyatt in October 2002. But SBC argues that it should not be bound to arbitration, because the error occurred before it signed the contract.

The federal district court ruled in favor of SBC, largely because the service agreement did not address pre-agreement issues. As a result, Michigan law would not allow the

See **ARBITRATION** page 20

Big employers retool retiree medical

Health account-based plans seen as way to stabilize costs over long term

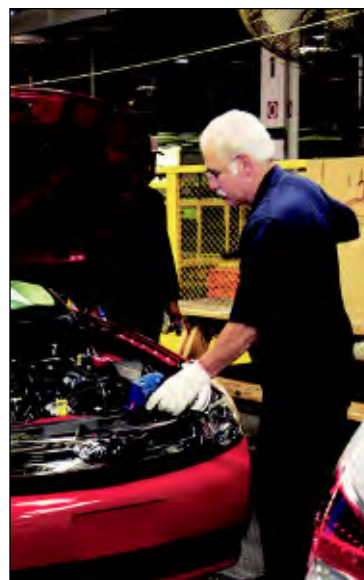
By JERRY GEISEL

WASHINGTON—Some of the nation's largest employers are taking new approaches to providing health care coverage to retired workers that avoid the extremes of benefit-rich plans that over the long run are unaffordable or not providing coverage at all.

The new approaches were outlined last week at the third annual Employer Health and Human Capital Congress in Washington by Ford Motor Co. and Deere & Co., which recently have put new designs in place for both pre-Medicare and Medicare-eligible nonunion retirees.

The approaches rely heavily on either health reimbursement arrangements or health savings accounts, which retirees can use to pay for uncovered health care expenses. Such expenses can include medical claims that fall under a deductible, as well as in the case of older retirees, Medicare Part B and Part D premiums.

For Ford, several forces drove the



LANDOV

Ford Motor Co. has recently implemented a new health care coverage design for its retired workers.

Dearborn, Mich.-based automaker to account-based plans, the main one being the need to limit its costs to a fixed and predictable amount

that won't mushroom out of control in the future.

"We wanted to provide a coverage option whose costs would be sustainable over time," said Diane Bechel Marriott, manager-health care strategy and design.

Ford's approach involves HRAs. For both pre-Medicare and Medicare-eligible retirees, Ford contributes \$1,800 per retiree, plus an additional \$1,800 for a retiree's spouse, to an HRA. In the case of pre-Medicare eligible retirees, Ford continues to provide retiree health care plans, though its contribution to the plans is capped at what it paid in 2006, with future cost increases born by retirees.

Ford took several steps to ease the transition, Ms. Marriott said. First, it gave retirees plenty of time to prepare for the changes. It announced the new program in November 2006 and the program went into effect Jan. 1. In a June 2007 mass mailing, the company explained to 65,000 beneficiaries what an HRA is

See **RETIREE** page 20

AIG settles more broker pay probes

Insurer pays \$12.5 million to end investigations in 10 jurisdictions

By SALLY ROBERTS

NEW YORK—American International Group Inc. has agreed to pay \$12.5 million to 10 jurisdictions to settle allegations associated with industrywide investigations into producer compensation and insurance placement practices.

Regulators in Florida, Hawaii, Maryland, Massachusetts, Michigan, Oregon, Texas, West Virginia, Pennsylvania and the District of Columbia accused AIG of paying agents and brokers undisclosed contingent commissions and in collud-

ing in a scheme with Marsh Inc. to rig bids for excess casualty business.

As part of the settlement, New York-based AIG will continue to disclose producer compensation, AIG said.

The multistate agreement is the latest in a string of agreements reached between state regulators and various insurers and brokers following former New York Attorney General Eliot Spitzer's fraud and bid-rigging suit against Marsh & McLennan Cos. Inc. in October 2004.

AIG agreed to pay \$1.6 billion in

February 2006 to settle fraud, bid-rigging and other charges leveled by Mr. Spitzer and former New York State Insurance Superintendent Howard Mills (*BI*, Feb. 13, 2006).

The latest AIG settlement comes on the heels of a similar agreement reached late last year between the Travelers Cos. Inc. and the same 10 jurisdictions in which the St. Paul, Minn.-based insurer agreed to pay \$6 million (*BI*, Jan. 7).

In a statement AIG said it denies the allegations, but agreed to settle to "avoid the expense and uncertainty of protracted litigation."



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Commentary

Subprime loans crisis casts a long shadow

Groundhog Day, a day devoted to the spectacle of me being forcibly dragged from the comfort of my cozy home, also seems a suitable occasion to write about the subject of the subprime mortgage debacle.

What's the connection between little old me, Punxsutawney Phil, and the tens of billions of dollars in losses that financial institutions have written off due to the mortgage mess? Well, both of us owe our existence to a massive suspension of common sense.

Think about it: The reason I am so famous is because humans (lots of 'em) cling to the belief that a burrowing rodent can predict the weather each February 2nd...by looking for its shadow.

Similarly, thousands upon thousands of people in the financial services industry—mortgage brokers, mortgage bankers, institutional investors, rating agencies and more—were apparently hoodwinked into believing that “subprime” meant something other than lousy credit risk. Or that a lot of lousy credit risks bundled and securitized could be transformed somehow into a solid gold investment.

To be sure, this is a tangled mess with lots of blame to go around. Some of those at fault include: borrowers biting off more than even a groundhog could chew, greedy mortgage brokers selling subprime mortgages like there was no tomorrow, regulators not looking out for unsophisticated consumers at risk of default nor for lenders overextending themselves writing too much junk, investment banks not adequately assessing the risk of subprime mortgage loans they were packaging for securities, and rating agencies not asking more about the investment caliber of the subprime-backed obligations. Intangibles like a cooling housing market, a weakening economy and a falling stock market also contributed.

At the end of the day, I have to wonder most about the judgment of institutional investors—particularly foreign banks—that bought so much of these instruments. I suppose the market for silk purses made from sows' ears was not being hawked at the time.

With nothing but time on my paws most of the year, I have watched my share of CNBC and dabbled in day trading. But I like to think that even I (or maybe perhaps because of what I am) could smell a rat. The high yield of cat bonds tied to hurricane and earthquake risks seem more palatable, by comparison.

I suppose my forbearance might have to do with the fact that, unlike most of the big professional investment managers, I



PUNXSUTAWNEY PHIL

Guest commentator Punxsutawney Phil can be reached in care of Associate Publisher & Editorial Director Paul Winston at pwinston@crain.com.

view mortgages as more than an abstract means to a yield. Even for people and groundhogs with regular mortgages, that debt can cause anxiety, especially if one has a variable-rate loan subject to a volatile interest rate environment. Losing a job or some other financial calamity can make it difficult to make ends meet.

Put a subprime borrower in that same situation, with more

If you get greedy and consume too much of anything, you are going to get sick.

fragile financial resources and payments made dramatically higher by an ARM, and the outcome is not pretty. Even so, it should have been predictable. Unfortunately, apparently not to the risk management wizards in the financial departments who thought these looked like an attractive bet.

Unfortunately, as a consequence of these bad bets, the rest of us are feeling the pain. The housing market has worsened as foreclosures have blossomed, lending standards and credit have tightened for all in knee-jerk fashion, mortgage bond insurers are in trouble, lawsuits looking to pin the blame on someone are flourishing and the risk of recession looms large.

And at the bottom of it all are fundamentals we all should have learned a long time ago. If an investment carries a high yield, it also carries a higher risk. If someone is giving away free money, someone else eventually will bear the cost. If you get greedy and consume too much of anything, you are going to get sick.

Regardless of what I told you about the outlook for winter a few days ago, I advise you to prepare for this storm to take longer than six weeks to blow over.

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Business Insurance OPINIONS

California should try other reform ideas

ENACTING HEALTH CARE reform at the state level to achieve universal coverage—or something close to it—is a tough business.

Only two states—Massachusetts and Vermont—have accomplished that in recent years, while many others have failed.

The most recent failure, as we report on page 1, was in California, where a Senate committee last week overwhelmingly rejected a reform bill.

We are not surprised that the bill went down in flames. It was, to borrow a phrase from then-President Bill Clinton when his own plan failed in 1994, “too much, too soon.” At a time when California is facing a big budget deficit, lawmakers understandably were concerned about a proposal with a cost pegged at around \$14 billion.

Should that be it for health care reform in California, where more than 6.5 million people lack health insurance coverage? Hardly.

There is plenty that lawmakers can do to reduce the number of uninsured for far less than \$14 billion. One idea, recently put in place in Indiana, is to give lower-income uninsured residents access to state-subsidized, lower-cost consumer-driven health plans. The plans give enrollees financial incentives to use preventive health care services.

Another way is to offer health insurance plans in which employees can pay premiums with pretax dollars. That approach, used in Massachusetts, significantly cuts the true cost of coverage.

The defeat of the latest California proposal should inspire state lawmakers to develop a reform package that can win approval. State residents expect no less.

Just as Rome wasn't built in a day, neither can one expect rapid enactment of reform legislation in the nation's most populous state and one that has the highest number of uninsured as well as significant fiscal problems.

There is plenty that lawmakers can do to reduce the number of uninsured for far less than \$14 billion.

Beware consequences of broadening ADA

IT'S EASY to understand why more than half of the House members have signed on to cosponsor the ADA Restoration Act.

According to its backers, the measure is necessary to restore the scope of the Americans With Disabilities Act's protections to those envisioned by its drafters nearly two decades ago. The bill comes in response to several court decisions that have severely restricted the scope of those protections, they note. But, in its current form, the bill could instead end up reducing the effectiveness of the ADA.

That's because the measure would remove the requirement that an impairment substantially limit at least one “major life activity.” The current bill could be read to treat even a temporary impairment, such as a short-term illness or injury, as a covered disability. Such a reading could indeed make just about every worker subject to ADA protection, whether disability existed or not.

And that, of course, has the potential to strain the already limited government resources available to investigate claims of disability-related job discrimination. If all impairments become in effect disabilities under the law, authorities' ability to deal with the most egregious cases would be hampered.

The intent of the proponents of the ADA Restoration Act is admirable; no one should suffer discrimination because of disability. But we believe the bill's language must be tightened to ensure the ADA remains focused on those who need its protections most.



BI beats list

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

Agents/brokers:
Sally Roberts.

Benefits—health care and ancillary benefits:
Joanne Wojcik.

Benefits—retirement savings/pensions:
Jerry Geisel.

Canada—risk management and benefits:
Gloria Gonzalez.

Employment practices:
Judy Greenwald.

Environmental risk management: Sally Roberts.

Federal regulation/legislation—benefits:
Jerry Geisel.

Federal regulation/

legislation—risk management:
Mark A. Hofmann.

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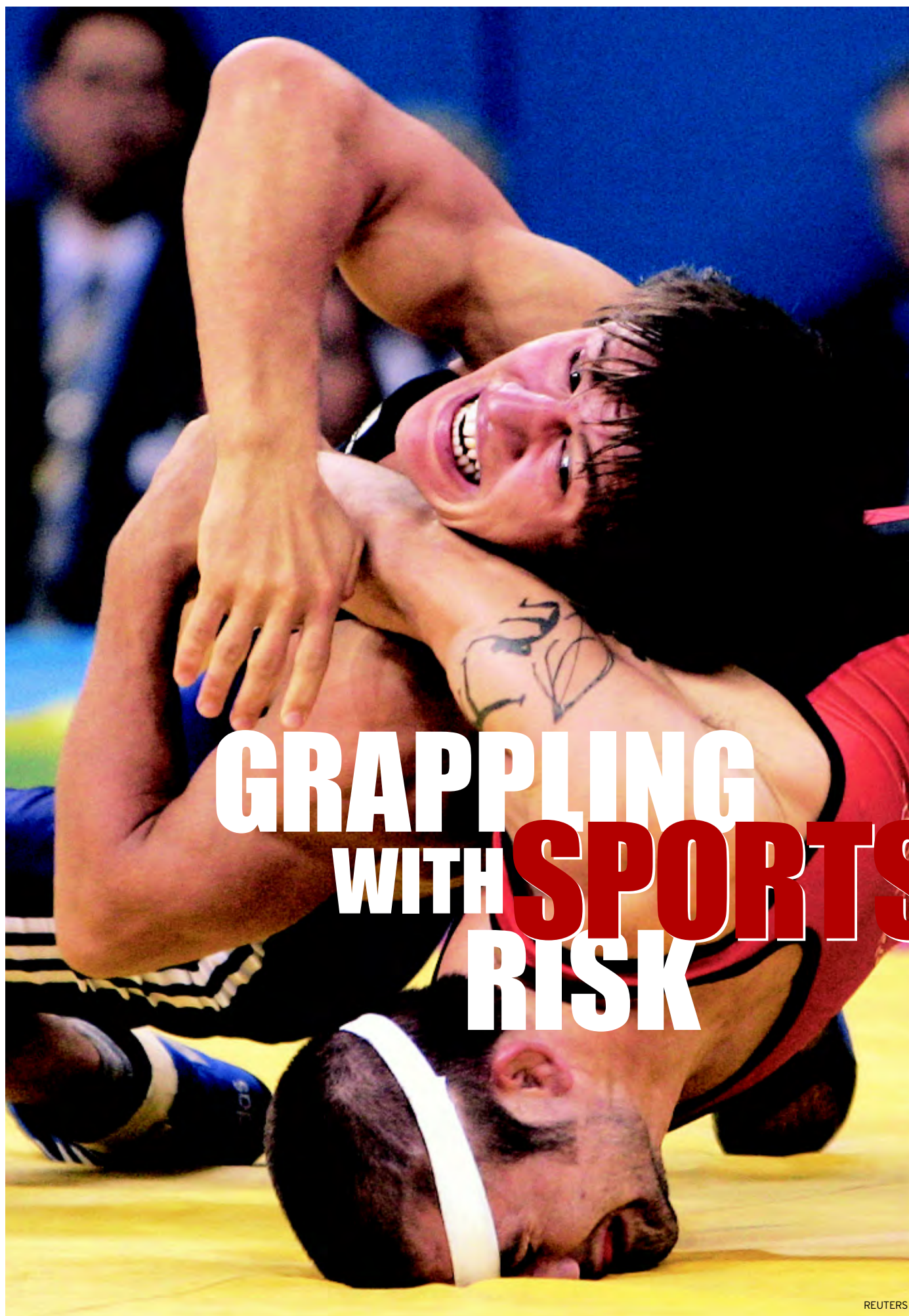
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Off-field risks top concern for Olympics

Organizers of London games tackle numerous exposures in preparation for 2012

By **MICHAEL BRADFORD**

Organizers of large sporting events are well-equipped to deal with the traditional property/casualty exposures they face before and during the competition, but they are on less solid footing when it comes to risks they face off the field and after the event.

The London Olympics scheduled for 2012, for example, face not only a bewildering array of financial risks that have little to do with what happens on the field, but organizers also must be sure that the industrial land where the venue will sit is environmentally safe for the post-Olympics revitalization that is planned for the area, experts say.

The London games are still four years away, which means organizers may face risks they have no way of identifying until the competition is closer, perhaps just before it begins, sources say. The Winter Olympics held in Salt Lake City in 2002 realized that difficulty when the Sept. 11, 2001, terrorist attacks in the United States occurred about five months before the games' opening ceremonies and changed how organizers treated the risk of terrorism.

Organizers of the London games

See **OLYMPICS** next page

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Questions & Answers

When it comes to managing risks of major sporting events, the Olympic Games are among the most challenging competitions to safeguard. Warren Harper had that responsibility as risk manager for the 1996 Olympics in Atlanta. Late last year, he was named to head Marsh Ltd.'s newly created global events practice, which is part of the brokerage's global sports, entertainment and events unit. From his Atlanta base, Mr. Harper talked to Business Insurance Europe Senior Reporter Michael Bradford about how proper planning helped the 1996 games stay on track after a Centennial Park bombing that killed two people, injured more than 100 others and disrupted the event. He also described steps that organizers of large sporting events can take to make sure the risk management bases are covered.



A four-corners strategy

Q: What are some of the major risk management issues faced by large sporting events in Europe and the United States?

The big one is construction delays on venues. There are others: pandemic, of course, terrorist-type activities or threats, cost overruns, boycotts. There are critical infrastructure situations such as loss of power. Sometimes there are accommodation problems—having the required level of housing, such as four- and five-star hotels for various constituency groups. There's traffic and the potential for gridlock. And there are supply-chain issues; for those, you need to make sure there are good contingency plans and secondary services that can be implemented on short notice.

Q: With all those challenges, what are the first steps organizers should take to put together a risk management program?

The first step is conducting a comprehensive risk assessment. There are four risk quadrants to consider: strategic, operational, financial and hazard. Select a good broker and risk adviser. And, I would add, determine where in the organization risk management sits. For example, is it under the chief financial officer or the chief operating officer?

Q: Do these organizations generally use an enterprise risk management approach in planning a large sporting event?

We are seeing them go to an enterprisewide approach. How it works will vary, but risk management is now more deeply embedded into the organizations. That's a reflection of proactive risk management and loss prevention.

Q: How well-prepared were the Atlanta games to respond to the bombing that disrupted that event?

I was the risk manager and Marsh was the broker and risk adviser

for the Atlanta Olympics. There were plans for critical events like the bombing in place and, in practice, the plans worked well. The events were only delayed two to three hours. The fact that there wasn't a longer delay or postponement is evidence that the plans worked. When Centennial Park was reopened, attendance was way up.

Q: Are large sporting events generally covered by traditional insurance or are self-insurance alternatives such as captives and others a good fit, too?

The events usually have been covered by traditional insurance. The reason being, they are short-term events with tight budgets. And it's hard to forecast what the loss levels will be, especially for events that move around the world, from country to country. They are usually better suited to traditional insurance.

Q: How has Marsh changed its approach to providing products and services to large sporting events?

In the past, our focus was on designing and placing comprehensive programs and on risk management and claims administration. That has been expanded. We do risk assessments early on, contingency planning, business continuity management and crisis management planning. Insurance coverage obviously is critical, but now is just one part of our expanded suite of offerings.

Q: What is the most important advice you can offer to a risk manager planning a large event?

First, make sure risk management is seen as an integral part of the organization, not an audit or control function. Second, engage service providers who have real, practical experience to assist in the design of insurance and risk management programs. It's a one-time event and you only have one chance to get it right.

Olympics: Wide variety of risks to tackle

CONTINUED FROM PREVIOUS PAGE

refused to discuss their insurance and risk management arrangements, but experts pointed out that the Olympics, a worldwide media spectacle still four years away, is the biggest of sporting risk management challenges. And, they say, those in charge of risk management may still be in the dark about some of the exposures they face.

"The principle risks for the Olympics may not have been thought about yet; it could be that something else will come along in a couple of years that will cause them to reappraise their priorities," said William Jennings, British Academy

according to Mr. Jennings.

Plans were in place to react swiftly to the consequences of the bombing, though, and the Atlanta games were able to continue with high attendance figures after the incident, said Warren Harper, who was risk manager for the 1996 games and is now head of Marsh Ltd.'s London-based newly created global events practice, which is part of the brokerage's global sports, entertainment and events unit.

Other risks, such as environmental exposures, could pose some post-event risk liabilities for the London Olympics, sources say.

The venue is part of a neighborhood revitalization that calls for much of the sporting infrastructure

Environmental efforts are important not only for the Olympics, but for businesses that will consider locating at the site after the games are finished, Mr. Jennings pointed out. Despite the cleanup that will go on at the site before the competition, no one really knows whether it will be completely clean, he said, and businesses that move in need to first be certain there are no unknown risks.

It would be unusual for Olympics organizers to face environmental claims after the games are finished because their liability generally does not extend beyond the competition, said Richard Tolley, managing consultant in the global events practice at Marsh Ltd. in London. A



At the London site of the 2012 Olympic Games, a heavy equipment operator dumps contaminated soil into a machine that rids it of impurities to produce clean fill before building London's Olympic Stadium (above, in an artist's rendering). The project is also expected to revitalize a long-polluted area in the host city.



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postdoctoral research fellow at the London School of Economics and Political Science.

Mr. Jennings has studied risk management around the Olympics and wrote about it in a paper, "London 2012 and the Risk Management of Everything Olympic." What is certain, he said, is that apart from the run-of-the-mill property/casualty exposures, the games face a jumble of complex financial, reputational, security and environmental hazards.

The Olympics is such a high-profile event that it is particularly vulnerable to reputational risk, according to Mr. Jennings. The heightened media attention and symbolic status of the games means that practically anything that goes wrong has the potential to damage the Olympic image. "It is a pure reputational event," he said.

The Olympics has taken some hits to its image over the years.

The International Olympic Committee left the Atlanta Olympics in 1996 with a bruised reputation after a bombing that left two dead and more than 100 injured. The event also was tainted by over-commercialization and traffic problems,

to remain in place to be used for other purposes. For that to happen, developers will clean up land that was "badly degraded and highly polluted," according to material published by organizers.

It is unclear whether Olympic organizers face post-event pollution liabilities, but if plans for a makeover at the site are successful and create what organizers describe as a "sustainable games," the land will be pristine and the risk of future pollution problems diminished. In addition, the community that sprouts from the Olympic site will be environmentally friendly.

Land and waterways are slated to be cleared and cleaned. Buildings at the site will be designed to use less energy than conventional structures and will be built from materials that require less energy to produce. Ninety percent of the materials from the demolition of existing structures will be reused or recycled. Among other efforts, the organizers plan an open space of 252 acres, which, they say, is the largest new urban green space in Europe. Footpaths and cycle routes will reduce dependency on automobiles.

bigger potential problem is the risk that venues constructed for a one-time competition will become money pits, he noted.

Private entities, municipalities or governments that own the stadiums and other facilities should consider whether there is a financial risk linked to the future use of those structures, said Mr. Tolley.

When the 2004 Athens Olympics were completed, the owners of the baseball stadium realized there would be little need for such a facility in Greece, Mr. Tolley said. "The decision was made to knock it down. They managed the financial risk in that way. Otherwise, they would have had a huge maintenance cost."

"Once the games have come and gone, they need to attract subsequent world-class events or use them for training camps," Mr. Tolley said of the Olympics facilities. "Sydney has done reasonably well," he said of the post-Olympics use of facilities in that Australian city. "In Athens, I do not think the usage has been as high as anticipated."

Financial risks can be particularly

Continued on next page

Large sports events find coverage for increased terrorism threats

Established market offers organizers insurance options for risk

By **MICHAEL BRADFORD**

Experience is one thing London has in its favor when it comes to terrorism insurance and security for the 2012 Olympic Games, which it is hosting.

A city that suffered attacks by the Irish Republican Army for decades, dealt with deadly July 2005 bombings of its transport system and thwarted two attempted car bomb-

ings last summer—that could have killed hundreds—is more than familiar with the threats it faces. It also is able to rely on insurers in its own back yard that have plenty of experience underwriting terrorism coverage.

“We have been blown up by the IRA for years; terrorism coverage for the London market is not much of a hassle,” said David Bruce, head of specialty underwriting at Hiscox

Ltd.’s Syndicate 33 at Lloyd’s of London. “It is a coverage you can happily give because you know the risk.”

Mr. Bruce did not have specifics on the terrorism insurance for the games or who will write it, but said it is likely to be part of a cancellation and abandonment package.

Altogether, insurers are expected

See **COVERAGE** next page



Police use a network of cameras covering London in advance of recent New Year celebrations. Security efforts in the city have intensified since bomb attacks on the transit system in 2005.

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bewildering for an event as large as the Olympics, Mr. Jennings said. “There is a huge amount of complex budgeting when looking at future liabilities,” he said.

Financial risks associated with hosting the Olympics are well-documented, Mr. Jennings noted in his paper on the London games. “Over the past 30 years, staging costs have varied, but typically the final figures have far outreached initial estimates,” he said. “Total costs for Athens 2004 escalated from £3.2 billion (\$6.34 billion) to £6.3 billion (\$12.49 billion).”

Some Olympic hosts apparently have overlooked the financial risks,

‘The principle risks for the Olympics may not have been thought about yet; it could be that something else...will cause them to reappraise their priorities.’

William Jennings, London School of Economics and Political Science

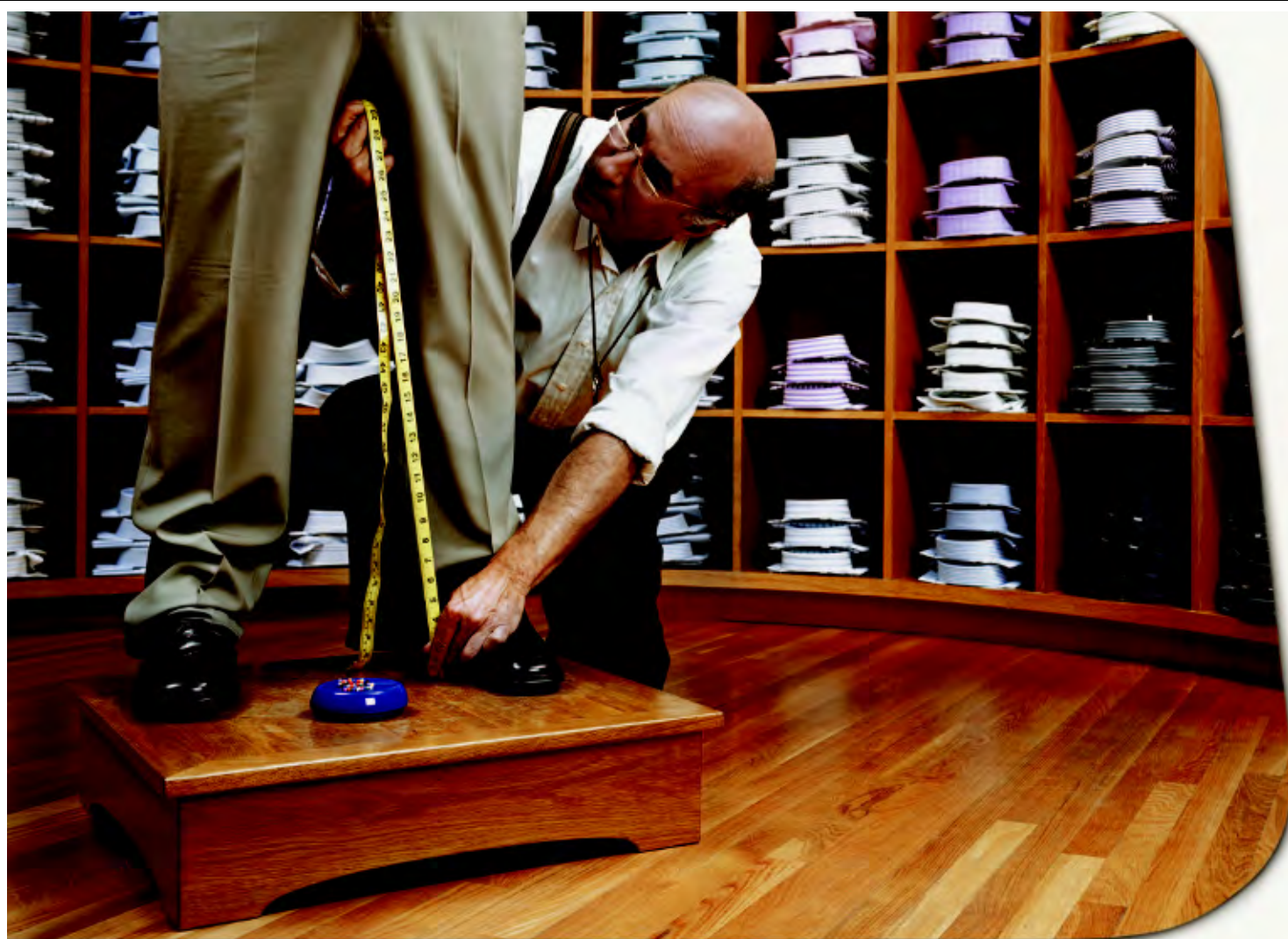
according to Mr. Jennings, and the 1976 Montreal games provides a good example.

Before the 1976 games, Mr. Jennings wrote, Montreal Mayor Jean Drapeau declared: “The Olympics can no more have a deficit than a man can have a baby.”

The city then proceeded to incur a budget deficit of more than \$1 billion, Mr. Jennings said.

A more immediate concern for large sporting events is weather-related, experts say, especially for events such as the Olympics where much of the competition is outdoors. “It is clear that if anything could cause an interruption, it is a natural hazard pertinent to that risk,” said Steve Mitchell, London-based media, sport and leisure manager with Zurich Financial Services Group.

Flooding has become an increasing concern for all big events, sporting or otherwise, and will doubtless be one of the major concerns of the London Olympics organizers, Mr. Mitchell suggested.



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Coverage: Terrorism insurance available for large sports events

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to provide around \$2 billion in such coverage for the International Olympic Committee, sponsors, advertisers, broadcasters and others that have a stake in seeing the competition run to its planned conclusion, according to Mr. Bruce.

Meanwhile, the risks are the same for sporting events that take place much sooner than the London games, and those events have their cancellation and terrorism insurance secured—among them, the summer Olympics to be held in Beijing this year.

Jürgen Göring, managing director of Hamburg-Mannheimer Sports GmbH, an underwriting agency in Hamburg, Germany, said he understands that there is a cancellation policy in place for the International Olympic Committee that includes terrorism coverage for the Beijing games. It was written for underwritten limits shared by several large insurers, he said in an e-mail.

Hamburg-Mannheimer wrote a cancellation policy with a \$12 million limit for a sports association to protect it from loss of income from television broadcasters if the Beijing games are called off, said Mr. Göring. That coverage excludes losses from terrorist acts, war or an outbreak of avian influenza.

Terrorism coverage written for large events, such as the Olympics and the 2008 UEFA European Football Championship, generally exclude nuclear, chemical and biological attacks, Mr. Bruce said. "Can the insurance industry afford a nuclear attack? Probably not."

Euro 2008 kicks off this summer in Switzer-

land and Austria, and the football tournament was probably not a difficult event to underwrite, given that it takes place in countries that are seen as politically stable, according to Mr. Bruce.

"It is a similar sort of process on a slightly smaller scale," Mr. Bruce said, comparing the process of arranging cancellation and terrorism coverage for Euro 2008 with that of the London Olympics.

'Can the insurance industry afford a nuclear attack? Probably not.'

David Bruce, Hiscox Ltd.

"It helps that it is in Switzerland and Austria, two very stable countries," said Mr. Bruce. "You would think it will be very well-organized and they are going to be very well-prepared."

The tournament's coverage limits do not have to be nearly as high as the \$2 billion in coverage held by the London Olympics, Mr. Bruce said, and rates for the Euro 2008 coverage is likely to be lower than those for the Olympics. "There have not been too many problems in Switzerland and Austria. And, (underwriters) like Swiss and Austrian business because it usually makes money," he said.

Finding enough capacity to write terrorism

insurance for large sporting events can be a challenge, said Richard Tolley, London-based managing consultant in Marsh Ltd.'s global events practice.

The coverage has to be placed for sponsors, broadcasters, organizing committees and other policyholders that need protection against losses that would result from a disruption by terrorists, he pointed out. Add in the complexity of protecting events when they are played across national boundaries and the task of finding enough capable underwriters gets tougher.

Events that look for cancellation and abandonment coverage that does not exclude terrorist acts will find what they need, as long as they are willing to pay the price, said Mr. Bruce. "It depends on what you want to buy," he said.

"Some are prepared to say, 'This is the coverage we need'" and pay what it takes to have broad coverage and high limits in place, said Mr. Bruce.

Taking a pass on the cancellation coverage can be a costly decision, as the Issy-les-Moulineaux, France-based Amaury Sport Organization found out when it had to cancel the Dakar Rally off-road car, truck and motorcycle race last month. The 30-year-old race was scheduled to run with about 550 teams from Lisbon, Portugal, to Dakar in West Africa. However, it was called off because of threats against the event from terrorist groups.

"I can only tell you that we lost a lot of money," said a spokesman for ASO, in an e-mail. "And that our insurance policy will not cover the money we lost."



REUTERS

In January, the annual Dakar Rally, an off-road car, truck and motorcycle race, was canceled for the first time in 30 years due to threats from terrorist groups.

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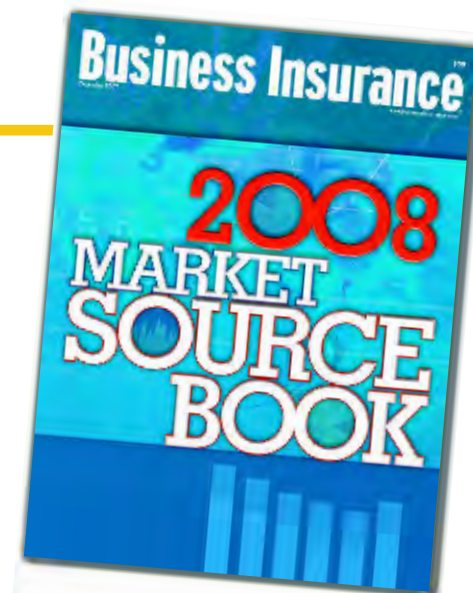
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Health clubs weigh liability risks as interest in fitness grows

Waivers help, but have been rejected in some California courts

By **LOUISE ESOLA**

As individuals strive to lead healthier lifestyles, health clubs and fitness centers have sprouted nationwide. But with growth, new risks are created, and the clubs are businesses already wrought with liability pot-holes, according to experts.

A dumbbell can drop on one's foot. A person could have a heart attack while running on the treadmill. Someone could slip and fall in the showers. The possibilities are endless, both legal and risk management experts say.

"They may have no control over someone misusing equipment, but they can be drawn into a lawsuit pretty quickly," said James Ropp, a Spokane, Wash.-based insurance agent with Pacific Insurance Agency Inc., which specializes in commercial insurance for health clubs. These "kinds of losses could be in the millions."

In addition to personal injury claims arising from equipment use and slip-and-falls, health clubs also face claims that arise when a member works out under the guidance of a personal trainer.

Most, if not all, health clubs carry general liability policies that provide at least \$1 million in coverage and \$2 million aggregate, according to Rebecca Neal, Atlanta-based vp and senior broker with Aon Entertainment Group. Those that employ on-site trainers also have professional liability policies or shift that risk to independently contracted trainers, who typically obtain insurance on their own, she said.

Facing the high probability of lawsuits, health clubs have long used hold-harmless agreements and liability waivers to protect the gyms from potential litigation. All insurers require health clubs to issue liability waivers in order to obtain coverage, according to Ms. Neal.

Waivers, drafted by insurers and their attorneys, have been helpful in avoiding lawsuits and are almost always required for club memberships, she said.

However, some say waivers can only do so much.

"The waiver definitely helps, but it's never a guarantee," said Mr. Ropp, adding that jurisdictions take different views of the waivers. "The same waiver in one state can mean something different in another state."

Furthermore, waivers are losing traction in the courts, according to Gary Bradley, a partner with Bradley & Gmelich in Glendale, Calif., a law firm that represents large health clubs and their insurers.

"Generally, courts uphold them," he said. "But there is some backlash in the courts."

Waivers have been rejected as loopholes in negligence suits in several recent cases in California, which is often viewed as a bellwether state for legal decisions.

In a 2006 case against Los Angeles-based L.A. Fitness International L.L.C., a gym member slipped and fell on some algae that had grown on the health club's swimming pool

deck. The health club's first response to the lawsuit was to seek a summary judgment, claiming the member had signed a waiver and release agreement. The Superior Court of Los Angeles upheld the waiver but an appeals court reversed the ruling, stating that the health club was negligent and violated the state's health code by allowing algae to grow by the pool, according to the court documents.

Similarly, in 2007, another California appeals court ruled that Los Angeles-based L.A. Workout Inc.'s

liability release did not bar one woman from successfully filing a negligence suit after her foot became stuck on a sticky substance left on a treadmill, causing her to lose her balance and fall.

"Waivers are a real hot button issue right now," said Denise Caldwell, an account executive with Concord, Calif.-based brokerage Jenkins Athens Insurance Inc., which operates ProFitness Insurance, its subsidiary for the health

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Health clubs and fitness centers generally buy liability insurance coverage with at least \$2 million in aggregate limits.

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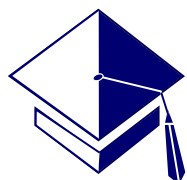
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Clubs: Liability concerns

CONTINUED FROM PREVIOUS PAGE

club sector. "We're very concerned about what's going on in the courts."

Because waivers are never a guarantee against liability claims, health clubs rely on a myriad of best practices to help avoid injuries and claims, including equipment maintenance, cleanliness and a well-trained staff, according to experts.

Health clubs are urged to keep maintenance records up to date and to keep centers clean by enlisting staff to regularly inspect workout areas.

Mr. Ropp of Pacific Insurance said health clubs can limit their liability if they post signs requesting that members wipe down equipment after use. "Something as simple as that can go miles in court," he said. "It shows that the gym is being proactive."

While slip-and-fall injuries and other workout-related injuries have received the most attention, experts say health clubs are now facing new exposures.

The influx of health club child care facilities and branded dietary supplements, while making health clubs more attractive to consumers, have also increased clubs' liability.

"There have been some issues with child care lately and I am sure there will be more," said Mr. Ropp,

listing abuse and molestation accusations as some of the issues facing health clubs. Employee "background checks are huge right now."

Health clubs with child care facilities are also advised to adhere to strict rules of care and to limit what child care workers are supposed to do, Aon's Ms. Neal said. "As a general rule, we tell them that their job is to keep the children occupied (while parents exercise) and to limit their level of care. For example, we tell them to not change diapers."

On another front, national health club chains have gotten involved in the business of promoting their own branded "nutraceuticals," or dietary supplements such as fat burners. And while claims haven't skyrocketed in this area, the threat is there, especially after long court battles against supplement companies that once sold ephedra, a weight-loss supplement now banned nationwide, according to Ms. Neal.

"This is one of the first questions asked when drawing up an insurance agreement and insurance companies are asking a lot about (branded supplements)," she said.

In most cases the supplements are produced by a supplier and the liability is shifted to the supplier, she said. But that may not protect a health club, she added. "There is a lot of concern over this."

Managing risks taken to the extreme

Sports tourism companies often forgo coverage, even when available

By LOUISE ESOLA

Because those signing up for extreme sports vacations have a lot more to lose than their luggage, tourism and adventure companies that offer such trips rely on a mixed bag of risk management strategies to shield themselves from the lawsuits and perils of operating some of the riskiest ventures, according to experts.

"We are seeing this emergence of adventure companies and as with any liability scenario, you can avoid (risk), manage it, or transfer it," said Lori Shaw, Charlotte, N.C.-based senior vp for Aon Entertainment Group. "With this industry, you try to manage it."

Insurance for sports vacations often takes a back seat in most risk management plans, according to operators. Historically, though, insurance hasn't been readily available or has been littered with exclusions, experts say.

Rick Lindsey, president and underwriter for Chicago-based Prime Insurance Co., and an underwriter for Salt Lake City-based Worldwide Outfitters & Guide Assn., which offers insurance through Lloyd's of London, said insurance is increasingly becoming

available for extreme sports. For example, Prime Insurance began offering coverage for sky-diving operations in the past year, he said.

He said at least eight insurers now offer coverage for high-risk operations. Those operations rarely see lawsuits, and when they do the suits settle in their favor.

Insurance coverage is "more than affordable," he said. "Premiums are too low, to be honest," he said. "I predict (insurers) will stop writing (eventually), because you will have claims, you will have losses."

Many insurers offering relatively inexpensive coverage for up to \$1 million run the risk of going out of business themselves if they see claims roll in, he said.

Still, operators of extreme sports venues said they put insurance on the backburner and often forgo coverage, even if it is available.

Instead, adventure companies put into place such risk management tools as waivers and hold-harmless agreements.

Also among the first lines of



Sports vacation companies often concentrate on risk mitigation rather than risk transfer.

defense against accidents are providing rigorous training for staff and purchasing the best, safest equipment, operators said. Lastly, the tour companies typically keep the novices at bay.

"How do we manage our risk? Where does the protection come from? Doing things by the book," said Craig Olsen, owner of Ogden, Utah-based Diamond Peaks Heli-skiing, one of the few businesses in the United States that offers adven-

See **EXTREME** page 16

SECTOR SNAPSHOT

SPORTS & LEISURE

SPORTS & LEISURE includes a wide variety of companies and service providers in a growing sector of the global economy. Information provided by Advisen Ltd. offers insights into the insurance purchasing practices of various organizations, including hotels, restaurants, and other leisure-related companies.

\$33 BILLION

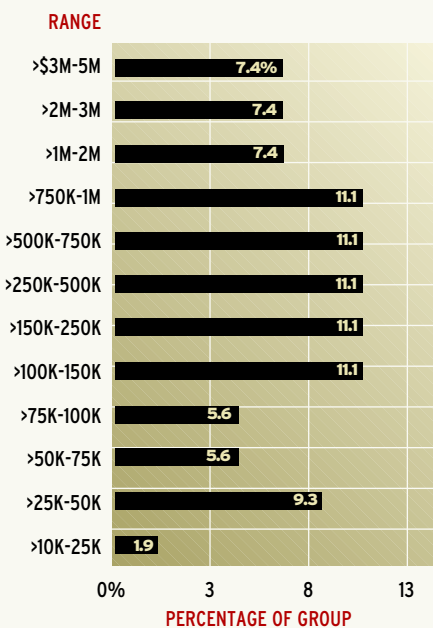
The size of the fitness market in the United States and Europe, from the IHRSA's 2006 report "European Market Report: The size and scope of the health club industry."

	Europe	USA
Number of fitness clubs	36,900	29,069
Members in millions	38.65	41.3
Average number of members per club	1,047	1,421
Market size, in billions	\$20	\$13

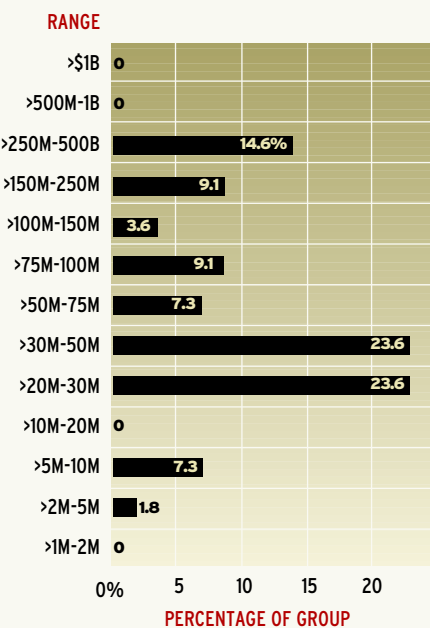
Source: International Health, Racquet & Sportsclub Assn.

Premium and limits distributions for hotels, restaurants, leisure, leisure equipment and products companies with over \$100 million in revenues

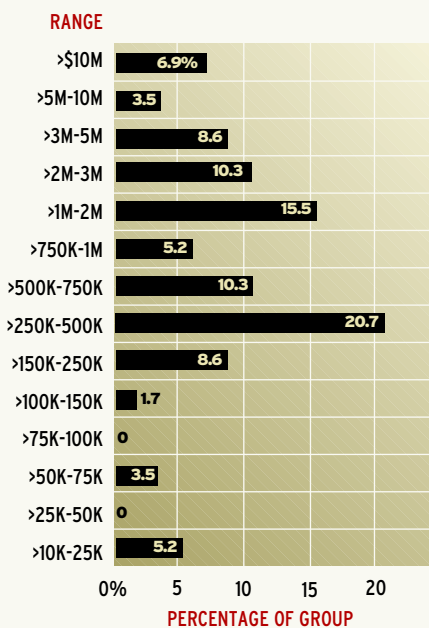
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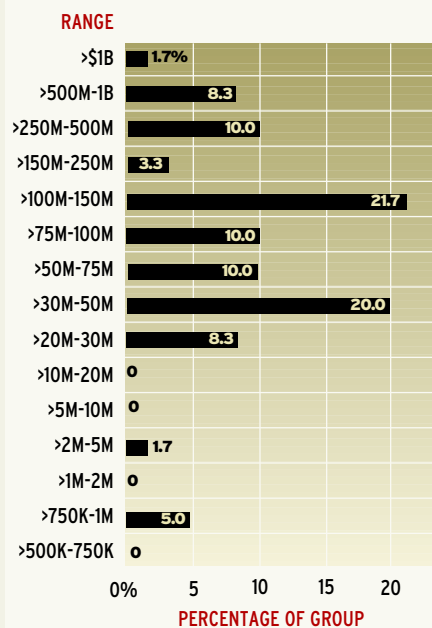
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Extreme: Sports operators often rely on waivers rather than insurance

CONTINUED FROM PAGE 14

tures where participants are flown by helicopter to fresh snow at high altitudes to ski. "For us that means lots of training and a lot of requirements."

To be one of Mr. Olsen's tour guides, for example, a skier needs to be a member of the National Ski Patrol, which includes a laundry list of certifications requiring avalanche survival and emergency medical training, and must possess a significant amount of skiing experience, among other must-haves. Mr. Olsen's guides also receive annual training in these areas, he said.

Richard Quist, owner of Salt Lake City-based Moki Mac River Expeditions, which offers Colorado River tours at all levels from beginner to advanced, said his guides spend much of their time studying the river runs and making sure they know all the turns and rapids well. "When

we go out there (with a group), we know that we've seen it and we know what to do," he said.

John Duncan, co-owner of Telluride, Colo.-based Telluride Outside Inc., which offers adventure trips such as whitewater rafting and four-wheel jeep mountain tours, said in addition to well-trained, highly skilled personnel, equipment is another risk management focus.

"Our company made a conscious decision to make the investment in the best equipment," he said. For example, "our oldest vehicle is two years old."

Both Mr. Duncan and Mr. Quist said their businesses have general liability insurance coverage policies because most of their tours are family-oriented beginner courses, generally steering clear of riskier tours.

That's not the case for operations that specialize only in the riskiest of sports, which are usually only available to experienced individuals.

For example, heli-skiing trips are only open to experienced skiers, according to Mr. Olsen. Like most extreme sports that come with a high price tag to participate, the high cost tends to keep the newcomers away, he said. "An inexperienced skier isn't going to pay \$750 for a day of skiing," he added. Mr. Olsen said he rejects any participant who can't demonstrate advanced skiing skills.

Mr. Olsen said lawsuits are uncommon given that most participants typically are not new to the sport and know the risks.

Dangers explained plainly

"We tell people it's hazardous and that we are going to avalanche terrain...You could be hurt or killed," said Mr. Olsen. "Most skiers already know this."

James Chalot, a Denver-based attorney with Chalot Hatten Law Offices P.C., which specializes in ski

accident cases, agreed that few lawsuits stem from heli-skiing accidents and when they do, often times the suits are resolved in favor of the operators. However, a helicopter crash would result in a lawsuit, according to Mr. Chalot.

Mr. Olsen said helicopter flights are the only insured aspect of his operation.

In addition, lawyers often steer clear of representing injured parties or surviving family members after reviewing the lengthy accident waivers and hold-harmless agreements, according to Rook Nelson, owner of Ottawa, Ill.-based Skydive Chicago, which offers jumps for beginners to advanced thrill-seekers.

"Our waiver is eight pages long," said Mr. Nelson, who boasts several decades of experience in extreme sports. "You're not bowling; you're jumping out of a plane. We really get into detail."

Mr. Nelson said it's common to receive one or two "letters" from lawyers threatening lawsuits, but that the issues never gain steam because of the waivers.

According to Aon's Ms. Shaw, legal matters can't be avoided overall.

"We advise clients that they will likely face suits because of the high level of risk involved," she said. "You can't stop someone from suing."

Prime Insurance's Mr. Lindsay said operators of high-risk adventures that forgo insurance are often the ones that haven't seen a lawsuit. Defense costs, he said, could put a significant dent in their budgets.

"They probably haven't had a major accident yet, so they don't worry about it," he said. "In my 20 years (in the business) there have been at least four deaths (heli-skiing). There will be losses."

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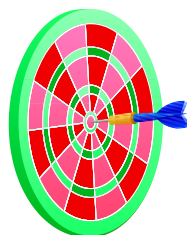
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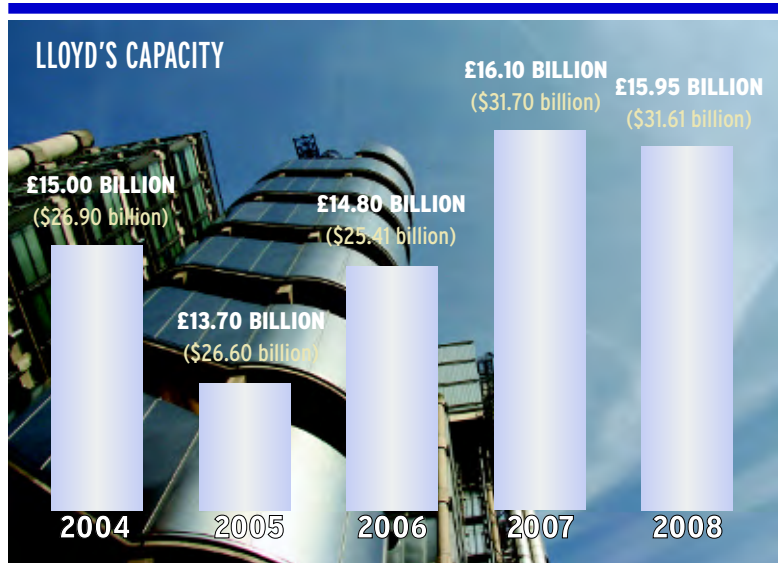


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International NEWS



Lloyd's sees slight dip in capacity for 2008

By SARAH VEYSEY

LONDON—Lloyd's of London had underwriting capacity of £15.95 billion (\$31.61 billion) on Jan. 1, the market announced last week.

That capacity, which will be underwritten by 75 syndicates managed by 46 managing agents, is a slight reduction on the just-over £16 billion (\$31.7 billion) of capacity in 2007.

Lloyd's said that given the unique

nature of the underwriting capacity structure of the Lloyd's market, and its lack of comparability with other insurers, Lloyd's would henceforth stop publishing capacity figures at the start of every year.

Instead, Lloyd's said in a statement, it will each April release data including gross premium figures for the previous year and a breakdown of Lloyd's capital base and providers.

Internet outage may spark claims

Various policies could offer coverage for disruptions to Asian businesses

By MARK A. HOFMANN

Business interruption implications of last week's disruption of the Internet throughout the Middle East and Asia depend on the speed of service restoration and the details of individual insurance policies responding to the outage, observers say.

The outage occurred when a ship's anchor cut a pair of undersea cables in the Mediterranean Sea near Alexandria, Egypt. The accident cut Internet and international call capacity as far away as India. According to published reports, cable repairs were to begin early this week, and businesses and governments switched to alternative systems where available to restore capacity.

Both property policies and some network risk policies could provide business interruption coverage, although the breadth of coverage and speed with which it's triggered varies from policy to policy.

Outages such as last week's can have a substantial impact, said James H. Costner, senior vp and senior property resource consultant at Willis Risk Solutions in Nashville, Tenn. "It is potentially a very major problem because it affects all your (business-to-business) sales," he said.

"I should expect most of the large businesses have Internet service interruption coverage. Usually that coverage is triggered by physical damage to the line, so that's going to have to be determined as to what caused the interruption," Mr. Costner said. "I've never seen a policy that would have an exclusion" for a ship's anchor causing the damage.

Time is of the essence in determining coverage, he said. The time deductible before business interruption applies is negotiable, ranging anywhere from a few hours to five days, he said.

For businesses that are dependent on the Internet, 'one day of lost sales could be a huge number.'

James H. Costner, Willis Risk Solutions

"I've never seen an Internet service interruption deductible longer than a few days," he said.

"Underwriters don't want to pay for a three-hour outage," but for businesses that are dependent on the Internet, "one day of lost sales could be a huge number," said Mr. Costner.

"From a first-party standpoint, the issue with most property policies is the waiting period is 24 to 48 hours," said Kevin Kalinich, managing director for the financial services group, professional risk solutions, at Aon Risk Services Inc. of Illinois in Chicago. Over recent years, though, some network risk insurers have begun providing first-party coverage of business interruption with reduced waiting periods, sometimes as short as six hours, he said.

"Generic" property policies do not respond to a reduction in service, also known as degradation,

said Aon's Mr. Kalinich. Such coverage can be negotiated into policies, but that coverage also is subject to a waiting period.

In order to be insured, an Internet service interruption would have to cause a reduction or loss of revenue, said Mr. Costner. A temporary delay in booking revenue would not be insured under most policies.

Mr. Kalinich also pointed out that basic property policies and network risk policies differ in their application. Property policies would be written on a country or area basis, whereas network risk policies could apply to the whole network regardless of borders.

A consultant questioned how effectively traditional business interruption coverage might respond to a situation such as the Middle Eastern outage.

"Most direct business interruption losses would not be covered because the Internet comes up quickly, therefore it falls into the typical BI deductible," said Anita Schoenfeld, a senior consultant with Towers Perrin in Dallas.

"But the contingent business interruption is the other issue. Contingent business interruption is generally written on scheduled location basis. The market has not yet responded or acknowledged this more widespread type of exposure—it's not a specific location that goes down but it's a lack of access to your client. That stream of business is cut off. Unless you've been able to model it and talk your underwriters into manuscripting coverage for that exposure, you probably won't have contingent business interruption in a case like this," she said.

Canadian high court to hear appeal of pension expenses case

By GLORIA GONZALEZ

OTTAWA—The Supreme Court of Canada has agreed to hear an appeal of a key pension decision that was favorable to plan sponsors.

The Supreme Court last week said it would hear an appeal of the *Kerry (Canada) Inc. vs. DCA Employees Pension Committee* decision, in which the Ontario Court of Appeal overturned a divisional court ruling that challenged several common practices in pension plan management.

In the June 2007 decision, the

Court of Appeal ruled that the divisional court erred in finding that the company was not allowed to pay expenses from the fund. The court ruled that there was no statutory requirement that the employer pay the expenses and the language of the plan documentation did not prohibit the payment of expenses from the fund, except those paid to trustees (*BI*, June 11, 2007).

In addition, the Court of Appeal said that Woodstock, Ontario-based Kerry (Canada)'s decision to introduce a defined contribution compo-

nent to its plan did not create two separate pension plans, overturning the divisional court's ruling that the amendments created two plans and that cross-subsidization—the use of surplus funds in the defined benefit plan to fund contributions on the defined contribution side—was impermissible.

The court's decision to hear the appeal surprised pension experts.

"Both sides of the bar were a little shocked at this," said Mitch Frazer, a senior associate at Torys L.L.P. in Toronto and chair of the strategic

communications committee of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada. "For plan sponsors, it's clearly disappointing that there's no longer certainty in this area."

Since the Supreme Court does not specify its reasons for hearing a case, it is unclear whether the justices disagree with one or more of the tenets of the Court of Appeal decision or whether they want to provide guidance that will extend to all parts of Canada, said Ronald Walker, a senior

partner in the litigation group of Fasken Martineau in Toronto who represents Kerry (Canada) in the case.

"It's a decision that has a wide-ranging impact so, it doesn't strike me as odd that the Supreme Court would deal with it," he said. "I think (the Ontario Court of Appeal ruling) was absolutely the correct decision, and I hope the Supreme Court will agree with that."

Mr. Walker said he anticipates oral arguments to occur by the end of this year.

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Comings & Goings

BROKERS:

Willis Group Holdings Ltd. has named **Cees van der Slikke** executive vp and managing partner of the Calgary, Alberta, office for the company's energy business in Canada. Before his promotion, he was national business leader of energy in Calgary.

Dubuque, Iowa-based **Cottingham & Butler** has named **Timothy L. Berns** chief financial officer. He joins Cottingham & Butler from Arthur J. Gallagher & Co., where he was corporate controller over financial reporting.

Edgewood Partners Insurance Center has named **Jim Halbleib** principal and executive vp for the San Mateo, Calif., office. Previously, he was area executive vp at Arthur J. Gallagher.

West Chester, Pa.-based **Harvey Insurance Group** has appointed **Brian Dietrich** executive vp. Previously, he was a vp of Addis Group.

Hylant Group Inc. has named **Patrick Savage** as the regional chief operating officer in Michigan, serving offices in Detroit, Ann Arbor and Grand Rapids. Before his promotion, he was COO of the Ann Arbor office, where he will be based.

INSURERS:



Ms. Kerrigan

New York-based **Valiant Insurance Group Inc.** has named **Ursula M. Kerrigan** general counsel and senior vp. Before joining Valiant, she was chief counsel at Liberty International

UP CLOSE

Frederic Goldstein

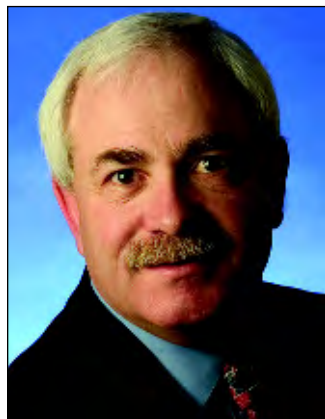
NEW JOB TITLE: President and chief operating officer of U.S. Preventive Medicine Inc. in Dallas.

START DATE: Jan. 1

BEFORE THE PROMOTION: President and CEO of U.S. Care Management Inc., a USPM subsidiary.

VITAL STATISTICS: Education: Master of Science in health care administration from Trinity University in San Antonio and a Bachelor of Arts in zoology from the University of California at Berkeley. I have been pretty fortunate to hold positions that provided me with a wide range of experiences and interaction with some talented people. Most recently, I founded and was president of Specialty Disease Management Services Inc. Prior to that, I was vp and general manager of HealthCare USA, and an administrator with Charter Medical.

GOALS FOR NEW POSITION: U.S. Preventive Medicine is building the first health network focused on prevention, so my No. 1 goal is to ensure the company delivers on its promise of "More Good Years" through the development of innovative and effective programs for



people nationally and internationally.

FIRST TIME IN THE JOB MARKET: My first job was working for the California Conservation Corp. as a forest firefighter.

TOP ADVICE: During my years as a springboard diver, my coach, Brett Evans, always told me to, "Get back up there and do it again," whenever I badly missed during practice.

OUTSIDE THE INDUSTRY, A DREAM JOB: My dream job would be conducting research on shark behavior.

Underwriters.

Branchville, N.J.-based **Selective Insurance Group Inc.** has made several senior-level promotions.

- **Michael H. Lanza**, previously a senior vp and general counsel, has been named executive vp and general counsel in Sparta, N.J.

- **John J. Marchioni**, previously a government affairs specialist, has been named executive vp and chief field operations officer in Andover, N.J.

- **Mary T. Porter**, previously a senior vp and director of corporate claims, has been promoted to executive vp and chief claims officer in Annapolis, Md.

- **Eduard J. Pulkstenis**, previously a vp and manager of the company's actuarial pricing unit, has been named executive vp and chief underwriting officer in Lafayette, N.J.

Chicago-based **Specialty Underwriters' Alliance Inc.** has named **Daniel Cacchione** chief underwriting officer and vp. Before his promotion, he was a program director.

Greg Maguire has been appointed director of customer and distribution management for **Zurich Financial Services Group's Global Corporate North America** unit in Schaumburg, Ill. Previously, he was executive vp and director of Zurich's Global Corporate property unit in North America.

Canton, Mass.-based **OneBeacon Insurance Group Ltd.** has named **Terry Thompson** senior vp and chief underwriting officer of the company's U.S. operations. Before his promotion, he was vp of risk management.

Louisiana Medical Mutual Insurance Co. in Metairie, La., has named **Dr. Thomas H. Grimstad** president and chief executive officer. He succeeds Dr. John E. Lemoine. Previously, Dr. Grimstad was senior vp of underwriting.



Dr. Grimstad

Chicago-based **CNA Financial Corp.** has named **John A. Beckman** senior vp and chief risk officer. Previously, he was president of ReAdvisory, a unit of Carvill America Inc.

Elaine Sarsynski, executive vp of Springfield, Mass.-based **MassMutual Financial Group** and chairman, president and CEO of MassMutual International L.L.C., will assume additional responsibilities as head of the retirement services division. The appointment came as Executive Vp Fred Castellani of retirement services announced that he will retire at the end of February.

MANAGED CARE:

Irvine, Calif.-based **Prescription Solutions** has named **Dr. Brian Solow** medical director for clinical programs and vp. Most recently, he was Bristol Park Medical Group's medical director.

REINSURANCE:

BMS Intermediaries Inc. has named **Jim Brost** and **Mike Joyce** as executive vps in Minneapolis. Before joining BMS, Mr. Brost was CEO and agriculture practice leader at Cooper Gay Intermediaries L.L.C., and Mr. Joyce was executive vp at Cooper Gay.

Also at BMS, **Christopher J. Farina** has been named senior vp in Burlington, N.C. Formerly, he was a vp at Axiom Re Inc.

PartnerRe Ltd. has named **Eric Gesick** as group chief actuary in Pembroke, Bermuda. Most recently, he was chief actuary in the financial, professional and international insurance segment of Travelers Cos. Inc.

OTHER PROVIDERS:

Julie Egbert has joined **Buck Consultants L.L.C.** as a principal in the firm's San Francisco office. Previously, she was a principal at SAP America Inc.

Also at Buck, **Vikram Singh** has been named director in the Secaucus, N.J., office. He joins Buck from PricewaterhouseCoopers L.L.P., where he served as senior consultant.

And **John Lapinski** has joined Buck as a principal in the Detroit office. Previously, he was a principal at Mercer L.L.C.

Sandler O'Neill + Partners L.P. has named **J. Paul Newsome** managing director of the firm's research department in Chicago, where he will cover a wide variety of companies in the insurance industry. Previously, he was vp and senior equity analyst at A.G. Edwards & Sons Inc.

ASSOCIATIONS:

Cozen O'Connor member **Francine L. Semaya** has been elected president of the **International Assn. of Insurance Receivers** in New York. IAIR was formed in 1991 to promote standards for the administration of insurance

receiverships, including enacting a code of professional and ethical standards, developing educational programs and providing a forum for discussion for industry professionals, as well as informing the public about the quality of IAIR-affiliated insurance receivers.



Ms. Semaya

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joe Walker, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; jwalker@businessinsurance.com. Photos should be sent to: Kathy Barnes 360 N. Michigan Ave., Chicago, Ill. 60601-3806; kbarnes@businessinsurance.com.

ADA: Measure would broaden definition of 'disability'

CONTINUED FROM PAGE 4

unintended consequence" that sometimes arise out of "the best of legislative intentions."

"If the protections are dispersed to virtually every individual in the workplace—as some fear this bill would do—protections for those with the most substantial and limiting disabilities could be diluted," he said. "Resources could be stretched too thin, leaving those who need help the most without the accommodations they deserve."

The Justice Department also weighed in with a Jan 28 letter to the committee's chairman, Rep. George Miller, D-Calif. The letter said the Bush administration supports legislation that would "clarify the treatment of mitigating measures under the ADA" but believes the reform bill "goes too far and unnecessarily broadens the scope" of the ADA.

In an interview after the hearing, a disability rights advocate said the change is necessary to preserve the spirit of the ADA.

"The act is needed to bring back the original protections that

The change 'would dilute the value' of the ADA and turn it 'into a litigation machine to be abused.'

Gerald Maatman, Seyfarth Shaw L.L.P.

Congress intended when the ADA was enacted in 1990," said Laurence Paradis, executive director of the Disability Rights Advocates, a Berkeley Calif.-based nonprofit law firm specializing in disability litigation. "In terms of who is protected, the original intent was that it be a very

broad civil rights statute, and that people with a large variety of conditions ranging from epilepsy to learning disabilities to cancer survivors would all be protected. But the courts have interpreted it very narrowly, and as a result, many people never get a hearing on their claims on the merits, instead their cases are being thrown out because they're being held not disabled enough to be protected."

But an employment lawyer said that erasing the "major life activity" clause "would stand the law on its head and have incredible impacts in the workplace for employers.

"One of the problems an employer might have is there is no limit on the definition of disability and there would be an expansion of the types of impairments that would be covered in the future," said Gerald Maatman, a partner in the Chicago office of Seyfarth Shaw L.L.P. He said the change "would dilute the value" of the ADA and

turn it "into a litigation machine to be abused."

The Alexandria, Va.-based Society for Human Resource Management is also concerned about the act's potential impact. "While SHRM strongly support employment opportunities for individuals with disabilities and our members are committed to removing barriers to employment for individuals with disabilities, it is precisely for these reasons SHRM is concerned about" the act, said Michael Layman, manager of labor and employment policy. "We're concerned that the legislation could reduce the effectiveness and availability of workplace accommodations for employees with the most severe disabilities. The legislation would make the terms disability and impairment synonymous."

No vote has been scheduled for the act or for the companion bill that has been introduced in the Senate.

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Gallagher Re: Broker plans sale of unit

CONTINUED FROM PAGE 3

company said its retail brokerage operations' fourth-quarter revenues were up 10.5%, 1% of which was organic.

But the growth was offset by weak results from its global wholesale operations, the company reported, but it did not break out those figures.

Additionally, to rein in costs, Gallagher announced that it plans to sell its wholesale brokerage business in Ireland, eliminate 400 back office positions within six to nine months, and reduce workforce costs related to travel and entertainment expenses, among others.

As for Gallagher Re, Mr. Gallagher said its sale will not affect the broker's retail clients. In a statement, he said his company is working on a sale. He did not elaborate on a potential buyer, but he said a sale is expected early this year and indicated there are interested parties.

The acquisition could be attractive to a number of potential buyers that are likely to be established reinsurance brokers that could combine the purchase with their existing operations to increase their revenue at a time when such operations are struggling with growth, said Rob Lieblein, managing director of investment banker Hales & Co. in Harrisburg, Pa.

While some analysts said Gallagher likely won't sell the unit to a competing retail broker, Citigroup analyst Keith Walsh said Aon Re, a unit of Chicago-based Aon Corp., could be a likely suitor. A spokesman for Aon declined to comment.

Analysts said they have questioned Gallagher's ownership of its reinsurance unit because it wasn't a part of the broker's core competency and it was too small to compete.

Two significant market trends make it difficult for a reinsurance broker of Gallagher Re's size to operate profitably, said Meyer Shields, an analyst at Stifel, Nicolaus & Co. Inc. in Baltimore.

Rather than purchase reinsurance, more insurers with strong balance sheets are retaining risk, especially profitable business. Secondly, because insurers have grown larger over time, their reinsurance demands are more sophisticated than "simply risk sharing or borrowing someone's capital," Mr. Shields said.

Therefore, reinsurance brokerages increasingly need elaborate resources and technology, such as catastrophe modeling capabilities, that make it "tougher and tougher for a smaller reinsurance brokerage to...truly make a go at it," Mr. Shields said.

By "small," he means earning less than a \$100 million in annual revenues, Mr. Shields said.

Last year, *Business Insurance* ranked Gallagher Re as the world's 9th largest reinsurance brokerage based on its 2006 gross revenue of \$71.3 million.

PacifiCare: California cites service woes for record fine

CONTINUED FROM PAGE 3

edge receipt of claims, and failure to manage provider network contracts and resolve provider disputes, among others.

Company officials said UnitedHealth's December 2005 acquisition of PacifiCare created administrative challenges related primarily to its interactions with providers, but said it has largely corrected processing errors involving point-of-service claims and is making good progress on ensuring the timely and accurate resolution of provider disputes.

UnitedHealth Chief Executive Officer Stephen Hemsley, in a December analyst call, acknowledged that service issues had caused membership declines among small and midsize businesses, which he described as "disappointing" and in need of change, according to Reuters.

"It's a problem and they have put measures in place to correct the issues, and they will continue to do so," said Sally Rosen, managing senior financial analyst with Oldwick, N.J.-based A.M. Best Co. Inc.

During a fourth-quarter 2007

earnings conference call late last month, Mr. Hemsley said the company expects a first-quarter 2008 decline in risk-based commercial product enrollment of about 400,000 individuals, more than half of which will come from its PacifiCare unit. The company has focused leadership and resources on rebuilding and enhancing its service, which has affected UnitedHealthcare's growth, he said.

"We have more to do with legacy PacifiCare, but we are otherwise back to market performance levels and will further improve our service

metrics throughout the rest of this year," Mr. Hemsley said.

Prior to the acquisition by UnitedHealth unit UnitedHealthcare, PacifiCare had commercial enrollment of about 2.5 million.

The PacifiCare acquisition "didn't seem to go quite as smoothly as the other acquisitions United has done in the past," such as the acquisitions of Mid Atlantic Medical Services Inc. and Oxford Health Plans Inc., Fitch Ratings' Mr. Ellis said. UnitedHealth also is contending with a delay in its acquisition of Sierra Health Services Inc. (see story).

Last week's regulatory action reflects UnitedHealth's reputation as the most difficult insurer for providers to interact with, said Dr. William Plested, immediate past president of the Chicago-based American Medical Assn. "UnitedHealthcare is behaving the way they always have," he said. "They are extremely heavy handed when they come into the market."

The California Insurance Department is considering similar broad reviews of other health insurers, although a spokesman declined to identify them.

In a year in which political campaigns have put health care at the forefront, such announcements are to be expected, analysts said.

"I think the states are either going to be working on universal health programs or bringing some of these issues to light," said Shellie Stoddard, credit analyst with New York-based Standard & Poor's Corp. "It's going to be a challenging year for the health insurers."

Sierra purchase raises monopoly worries

UnitedHealth Group Inc. has yet to receive federal approval for its proposed \$2.6 billion acquisition of Sierra Health Services Inc., leading observers to believe that federal regulators have concerns about the company's consolidated share of the Las Vegas market.

UnitedHealth Chief Executive Officer Stephen Hemsley said during an earnings conference call on Jan. 22 that the company is in "very advanced and productive discussions" with the Department of Justice and plans to complete the deal in the near future.

The combined entity would hold a 94% share of the health

maintenance organization market in the Las Vegas area and an 80% share of the HMO market in Nevada, according to the Chicago-based American Medical Assn.

"I think that there may be some issues with the Justice Department regarding the market share in that region," said Bradley Ellis, director at Fitch Ratings Ltd. in Chicago.

Dr. William Plested, immediate past president of the AMA, said he hopes the announcement of a record fine by California regulators related to alleged claims payment violations following UnitedHealth's 2005 acquisition of PacifiCare will

alert federal regulators to what will happen in Nevada if they approve the transaction involving Las Vegas-based Sierra Health. "No one can say this isn't monopolistic," he said.

The Justice Department required UnitedHealth to sell portions of PacifiCare's commercial health insurance businesses to secure approval for that purchase. "So it's certainly not uncommon to negotiate a settlement that results in a not unfavorable concentration of business post-acquisition," said Shellie Stoddard, credit analyst with New York-based Standard & Poor's Corp.

—By Gloria Gonzalez

dy·na·mize \dī'nə-mīz\'
v: to make more active, productive

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California: Health reform bill fails

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The measure—A.B. 1X1—which was crafted by Republican Gov. Arnold Schwarzenegger and Assembly Speaker Fabian Núñez, D-Los Angeles, would have required employers either to provide health care coverage to their workers or pay a tax to the state, which would have provided coverage on their behalf.

The bill, which passed the Assembly in December, also included a requirement that all state residents obtain health insurance.

Last week's panel vote also nixes a companion November ballot initiative that would have provided funding provisions, including the employer spending requirements, an increase in the cigarette tax and fees paid by hospitals to support increases in provider reimbursement from the state's Medicaid program.

The demise of California's reform measure was largely blamed on the state's economic troubles.

"If the bill had gotten to the Senate six or eight months ago, it might have passed," said Mike Langan, a principal at Towers Perrin in Valhalla, N.Y., who has been following California's reform efforts.

However, because the bill did not go to the Health Committee until January—after lawmakers discovered the state was facing a \$14 billion budget deficit—"the soft economy caught up with the realities of the bill," he said.

"Financing was everything, as it is with most big policy questions, and I think from the remarks that he made publicly and also from a common-sense perspective, it appears that Sen. (Don) Perata and others were concerned about the perceived disconnect between the idea of a new \$14 billion health program juxtaposed against the state's \$14 billion deficit," said Marian Mulkey, senior program officer for the California Healthcare Foundation, an Oakland-based nonprofit organization.

"The notion of selling that pub-



Assembly Speaker Fabian Núñez worked with Gov. Schwarzenegger to craft the health care reform bill.

licly through a ballot initiative felt like an uphill battle at best. I do think the financial circumstances of the state made it an even more difficult prospect," she added.

Aside from its high price tag, another aspect of the legislation that made it untenable was its failure to address rising health care costs, according to Peter Lee, former president of the Pacific Business Group on Health, who recently assumed a new role as executive director of national health policy for the organization made up of about 50 large health care purchasers.

"The reform in California collapsed under a budget deficit and the absence of a credible path for cost control," he said.

The defeat of the measure also underscores the fact "that many of the levers to really address cost trends are not ones that states can affect," Mr. Lee added.

For example, "you can't change the physician payments to encourage and reward better doctors, because the payment system is largely driven by Medicare," Mr. Lee said.

In addition, any research to assess what treatments are the best and most cost-effective "has to be

national," he said.

The failure of the California reform measure "does tend to shift the focus to the federal government," because "many of the things that the government can do to address costs can only be done at the federal level, such as investigations into cost-effective treatment options, changing the provider payment system and tax treatment of health insurance," said Paul Ginsberg, president of the Washington-based Center for Studying Health System Change.

He added that the failure of California's reform efforts is likely to dissuade other states with similar ambitions from enacting similar proposals.

"In fact, I think other states have been having pause, which is why none of the others have gotten to the finish line" except Massachusetts, Mr. Ginsberg said.

"There may be states like Massachusetts where a significantly low part of population is uninsured, where it was easier to rearrange existing health care spending to expand coverage to more people," said Mr. Langan. "But even if they pass such legislation, there's still the looming question about pre-emption" by the Employee Retirement Income Security Act, which precludes states and cities from dictating the content of employee benefit plans.

"If the California legislation had passed, we'd be talking about ERISA pre-emption," he said.

Even though the state reform measure died, "the debate in California was extremely useful from a public-policy standpoint," said J.D. Piro, an attorney at Hewitt Associates Inc. who is based in Norwalk, Conn.

"You did see played out all the various issues: operational, administrative, financial, underwriting," he said.

"It's difficult to say California is a microcosm of the country, but every one of the issues that were addressed in California will be addressed on a national level," Mr. Piro said.

NBGH supports mandate for individuals

WASHINGTON—The National Business Group on Health, a consortium of around 300 of the nation's largest employers, has come out in support of legislation that would require individuals to buy health insurance coverage for themselves and their dependent children.

The Washington-based organization, which typically does not take positions on such issues, said it supports the concept of an individual mandate because the group's members believe it is a vital element to reforming the nation's health care system.

"I think we are on the cusp of big change in the U.S. on

health care. We also have a significant number of people who will be elected or re-elected" who are ready to enact reforms, said NBGH President Helen Darling. "Things are coming together."

"To require everyone in the U.S. to have coverage and give them access to affordable packages" will change the market, "and people will be able to afford it whether employees buy it themselves or employers" provide it for them, she said.

While the NBGH supports an individual mandate, it continues to oppose any requirement that employers provide coverage.

The NBGH contends that

states and the federal government should work together with the health plans, employers and other stakeholders to develop low-cost, voluntary programs that would cover working families with low or moderate incomes, as well as programs that would help small employers offer health coverage to their employees, Ms. Darling said.

NBGH members also support retaining the current favorable tax treatment of employer-sponsored health care coverage and would like individuals who purchase health insurance on their own to receive the same tax breaks.

—By Joanne Wojcik

Arbitration: Contract with client ruled retroactive

CONTINUED FROM PAGE 4

contract to apply retroactively, the court ruled. It did, however, order arbitration of damages related to post-agreement claims.

In reversing the lower court, the 6th Circuit panel focused on a provision in the contract that stated the companies would submit to arbitration to resolve "any dispute or claim arising from or in connection with...the services provided by Watson Wyatt."

In its decision, which cited earlier rulings by the 6th Circuit, the appellate panel noted that the arbitration clause was "broadly written." In such cases, it ruled, a dispute can escape arbitration only when "an express provision" in the agreement or "the most forceful evidence" dictates that a dispute is not subject to arbitration.

"It is noteworthy that the language of the agreement specifically extends its application to any claims arising from 'the services

provided by Watson Wyatt," the court continued, adding the 1st Circuit ruled likewise in 2006.

The 6th Circuit also rejected arguments by SBC that forward-looking language in the contract—such as those relating to services that Watson Wyatt "will provide" and "will perform"—illustrates that the contract was not intended to apply retroactively. The panel noted that in the consultant's cover letter to the contract, it explains that it "was undertaking a companywide initiative to formalize the terms and conditions of its engagement with all of its clients, which indicates that it is referring to a prior relationship. The cover letter also stated that the terms would 'apply to all the services that Watson Wyatt provides to SBC Holdings,' and did not indicate that it only applied to services to be provided in the future."

SBC is reviewing the decision and its options, said attorney Michael F. Smith, a partner at Butzel Long P.C. in Washington.

Retiree: Health care plans retooled by employers

CONTINUED FROM PAGE 4

and why the changes were being made, among other things. Then, in September 2007, another mailing went out explaining the steps beneficiaries would have to take to obtain coverage.

"You want to give people plenty of time to prepare," but sending information too early increases the likelihood that it might be lost, Ms. Marriott said.

In its HRA design, Ford took steps to make the arrangements user-friendly. For example, Medicare-eligible retirees can make one annual election so that monthly Medicare Part B premiums are automatically paid from their HRAs.

Additionally, the full amount Ford credits annually to retirees' HRAs is available at the beginning of each year.

Like Ford, Moline, Ill.-based Deere & Co. also started account-based plans in January for early and Medicare-eligible retirees. But unlike many other corporations that either have cut back or eliminated retiree health care benefits because of the huge costs, the changes Deere made were not about survival.

"We are making record profits. Our intent was not to have a bottom-line impact" but to have retirees more engaged, said Steve Clark, Deere's manager of benefits planning and strategic design.

In designing its account-based plans, Deere chose to link HSAs with insurance plans for younger retirees, while using HRAs for Medicare-eligible retirees.

Tax law drove those decisions, Mr. Clark noted. Under law, while employers and employees can both

contribute to HSAs, such contributions are not allowed after an individual is eligible for Medicare, though accumulated HSA contributions can be tapped to pay for health care expenses.

Contributions to HRAs, though, can be made at any time, but only employers can fund HRAs.

Employers considering whether to offer HRAs or HSAs as a vehicle to help retirees pay for health care expenses need to be aware of other differences in the accounts, Mr. Clark said.

For example, an HRA is a notational account, which means an employer contributes to it when a retiree needs to pay for a claim or premium. As a result, there is no buildup of investment income.

On the other hand, HSAs are funded by actual contributions. That means investment income is earned on contributions, and HSAs are completely controlled by beneficiaries.

What HSAs and HRAs have in common, Mr. Clark said, is that withdrawals are tax-free when used to pay for health care expenses.

Communicating with retirees about HRAs and HSAs, though, can be challenging. For example, some Medicare-eligible retirees have seen the program as a takeaway because they have to pay the full premium of about \$90 a month for dental and vision coverage, which previously only cost a few dollars a month.

What retirees don't understand, Mr. Clark said, is that Deere is continuing to pay for the bulk of the coverage—through its HRA contribution—rather than directly paying the dental and vision care premiums.

MMC: Duperreault to lead effort to turn around ailing brokerage

CONTINUED FROM PAGE 1

Attorney General Eliot Spitzer. Marsh continues to struggle with weak revenue growth, client retention issues, lagging operating margins and low employee morale.

Mr. Duperreault described coming out of retirement to lead MMC as a "worthy cause" that he's "honored" to take on.

"Clearly I'm here because there are some problems" principally at Marsh, he said. "There's no question about that, but I think they're all solvable."

In terms of the challenges, Mr. Duperreault said Marsh's operating margins "are not anywhere near where they should be.... We've got to work on expenses in particular, but also revenue generation and client service. There's a whole list of things that need to be done and can be done."

He said that "the board did a great thing in hiring Dan Glaser" to run Marsh. "He's taking actions and I'll be helping him do his strategic planning and execution."

While Mr. Duperreault has no direct experience in running an insurance brokerage firm, he noted that MMC isn't just an insurance brokerage operation. "It's a diversified multinational company and I know those things," he said. "I think my insurance experience certainly helps in helping Dan do his job and my experience on a global basis helps with the diversity of MMC's assets."

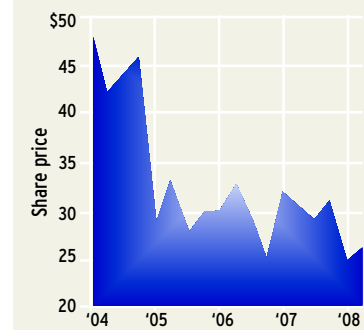
Market observers say that if anyone can turnaround MMC it is Mr. Duperreault, who is a well-respected

insurance executive credited with growing Bermuda-based ACE from a specialist liability insurer into a global multiline commercial insurer and reinsurer (see story).

"I think it's a tremendous coup for Marsh," said Donald Kramer, chairman and CEO of Bermuda-based ArielRe and former vice chairman of ACE who worked with Mr.

MARSH DECLINE

MMC stock price decline since the contingent commissions problems started in 2004.



Source: yahoo finance.com

Duperreault for nine years. "Other than Brian, there really is no other high-profile name in the insurance business that you could identify who would come in and be what I call a 'savior.'"

Not only is Mr. Duperreault "an extraordinary people person," he has great strategic vision, Mr. Kramer said. "I really hope Brian, using all of his people skills, his high profile in the business and his tremendous historic record with ACE, will be able to hold the organization together."

"I have seen (Mr. Duperreault) in action at ACE and he brings instant credibility and stability to the position," said Mark Lane, an analyst with William Blair & Co. in Chicago. "He is a seasoned insurance executive who guided ACE successfully through a major transformational period between 1994 and 2004. He is an optimist who I believe has a chance to revive morale at Marsh a lot more quickly than a lot of other candidates."

"In our view Mr. Duperreault is very well prepared to evaluate and address the ongoing weaknesses at Marsh," Meyer Shields, an analyst with Stifel, Nicolaus & Co. Inc. in Baltimore, wrote in a report. "In contrast to his predecessor, we believe that he can attract significant talent to the company and we also expect him to see greater success in winning higher revenue levels from both clients and insurance carriers."

Long-term, "given Mr. Duperreault's track record, we are optimistic that he brings the experience and capabilities necessary to begin to restore MMC to its former splendor," Christopher M. Neczpor, an analyst with Goldman Sachs Group Inc. in New York, echoed in a report.

With Mr. Duperreault now at the helm, any speculation about MMC being acquired by Willis should end, analysts say.

"I don't think he would take the job if his job was to dress it up and sell it," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York. "I think he wants to build it and fix it."

William Blair's Mr. Lane agreed: "The hiring takes the speculation of any potential overture from Willis off the table. Brian would not come to MMC with the intention of cleaning it up and selling it, in my opinion. By hiring a CEO of his caliber, I believe they are pursuing an independent path."

Mr. Duperreault declined to discuss the Willis matter, but noted that such "breakup and sell-off" questions never come up if everything is working well within the organization. "I have to make sure everything is working well; that's an

obvious first priority," Mr. Duperreault said.

With respect to MMC's various assets and what to do with them, Mr. Duperreault said CEOs and boards think about those things all the time. "But your principle job is to make sure the things that you have are all working well. That's what I really have to concentrate on and I think we can get that done."

Marsh "has a well-deserved reputation for taking care of its clients," he said. "Those skills and capabilities are still there. We just need to unlock that a little."

New MMC chief to bring years of experience to job

Before joining ACE Ltd. in 1994, Brian Duperreault spent more than 20 years at American International Group Inc. and held numerous positions. He eventually rose to become executive vp of AIG Foreign General Insurance and chairman and chief executive officer of AIG's American International Underwriters.

It was Mr. Duperreault's tenure at Bermuda-based ACE, however, where he truly made his mark on the insurance industry.

As CEO of ACE, which Marsh & McLennan Cos. Inc. helped form in 1985 amid the industry's liability crisis, Mr. Duperreault

oversaw the firm's transformation from a specialty liability insurance company into a global multiline commercial firm. He presided over several acquisitions, including the 1999 \$3.5 billion acquisition of CIGNA Corp.'s property/casualty operations, which provided much of ACE's global expansion.

Mr. Duperreault resigned as ACE's CEO in June 2006, turning the reigns over to Evan Greenberg. He remained nonexecutive chairman of the firm's board until his appointment last week as president and CEO of MMC.

—By Sally Roberts

Apollo: Company considers options after massive stock fraud verdict

CONTINUED FROM PAGE 3

price movement, said a source who did not want to be named.

Apollo likely will contend that a key argument by the investors flies in the face of the so-called efficient market theory, the source said. That theory holds that the stock market will correct the value of a fraudulently inflated stock within a day after a corrective disclosure—including a news media report—about the stock issuer is publicized.

The one-week delay before Apollo's

stock price fell presents problems for the investors because that suggests that either the government's investigation was an immaterial issue or that it was material but did not cause any damages, some securities defense attorneys agreed.

"I see it as an issue for appeal," said Robert W. Brownlie, a partner at DLA Piper U.S. L.L.P. in San Diego.

But securities defense attorney John Pernick said that investors do present expert analyses that show that the market needs several days to correct some stocks that are inefficient. "I think it's hard to argue that that's a pure legal issue," said Mr. Pernick, a partner at Bingham McCutchen L.L.P. in San Francisco.

Apollo also likely will argue that the judge should not have permitted the investors to argue that a stock analyst's Sept. 20, 2004, reports on the implications of Apollo's settlement were additional corrective disclosures that the market needed to react, the unnamed source said. Apollo will argue that under case law, including a New York federal court's Jan. 29 summary judgment in favor of Omnicom Group Inc., an analyst's report is not a corrective disclosure if it only repackages previously available information,

according to the source.

Mr. Basser, the lead plaintiff's attorney in the Apollo case, said the analyst's reports "clearly" contained "more information," because the analyst stated she had "more regulatory concerns" about Apollo.

Another key argument for Apollo

will be that federal securities regulations do not require a stock issuer to disclose preliminary investigations that the issuer expects will be resolved for an immaterial amount, the source said.

A U.S. Securities and Exchange Commission spokesman largely agreed but said stock issuers should

rely on securities attorneys to guide them in those cases.

Trivial problems do not have to be disclosed, but some issues leading to immaterial financial hits still might have to be revealed if investors would consider them qualitatively material, attorneys said.

Judge details rules for damages payments

PHOENIX—The final ruling in the securities fraud class action suit against Apollo Group Inc. contains provisions that could increase damages that some investors recover and decrease damages for other investors.

A jury on Jan. 16 awarded \$5.55 per share in damages to investors that purchased Apollo stock from Feb. 27 through Sept. 14, 2004. Based on share estimates provided by a plaintiffs' expert during trial, Apollo faces aggregate damages of \$166.5 million to \$277.5 million.

In his Jan. 30 ruling in Phoenix, U.S. District Court Judge James A. Teilborg also awarded the plaintiffs both pre- and post-judgment interest,

which Apollo had opposed.

The judge also established a 90-day share-price bounce-back period of Sept. 21 through Dec. 21, 2004. The Private Securities Litigation Reform Act requires courts to incorporate these periods into their rulings to prevent plaintiffs from being unjustly enriched if a stock recovers quickly from a temporary market correction.

In his bounce-back ruling, the judge set a share value of \$73.96. Investors that purchased Apollo stock at or below that level are not eligible for damages. Apollo's shares traded below that level for three weeks in August 2004.

In addition, the judge issued a ruling that could be interpreted as barring damages for class

members that sold their shares between Sept. 14 and Sept. 21, 2004. But plaintiffs attorney Stephen R. Basser, a partner with Barrack Rodos & Bacine in San Diego, said he would argue that those investors are entitled to some damages.

The judge also limited the recovery for class members that sold their shares between Sept. 22 and Dec. 21, 2004. Their per-share damages will be the lesser of \$5.55 or their purchase price minus their average share price when they held the stock during the bounce-back period.

Apollo said insurance will cover its \$25 million in legal expenses but little of the damages award.

—By Dave Lenckus

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News In Brief

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tentative approval from the Labor Department to fund employee benefit risks through the Vermont branch of its Bermuda-domiciled captive insurer. Cephalon wants to reinsure group term life, accidental death and dismemberment, and long-term disability policies underwritten by Prudential Insurance Co. of America that cover about 2,100 of Cephalon's employees.

N.Y. changes method for setting comp rates

New York Gov. Eliot Spitzer has signed into law legislation

establishing a loss-cost system to determine New York's workers compensation rates. Under the new law, a rating agency will develop loss costs that must receive Insurance Department approval. Insurers also will submit for approval their individual loss-cost multiplier, which will be determined by their expenses.

Maine governor nominates regulator

Maine Gov. John E. Baldacci has nominated an academic researcher and consumer advocate to be superintendent of the Maine Bureau of Insurance. Mila Kofman, associate research professor at the Georgetown University Health Policy Institute in Washington, also has served as a regulator with the Department of Labor and as a consumer representative to the National Assn. of Insurance Commissioners. If confirmed by the state Senate, Ms. Kofman would be Maine's insurance superintendent

through April 2009, serving the unexpired term of former Superintendent Alessandro Iuppa, who left the post about a year ago to join Zurich Financial Services Group.

Assurant CEO Pollock reinstated after leave

The board of Assurant Inc. has reinstated Robert B. Pollock as president and chief executive officer. The New York insurer in July announced that it had placed Mr. Pollock on administrative leave after he received a "Wells notice" from the Securities and Exchange Commission related to an investigation into finite reinsurance contracts. The SEC has not concluded its investigation, and Assurant said it cannot predict the investigation's outcome or how long it will continue. But the insurer said its own "special committee" has completed a review in which the company's board concluded that Assurant would be best served

if Mr. Pollock returned to his leadership responsibilities.

IRS to hold hearing on captive tax change

Members of the captive insurance industry will get the opportunity at a public Internal Revenue Service hearing Feb. 29 in Washington to tell the IRS what they think of its proposal to strip a key tax break now enjoyed by hundreds of captives. The proposed rule, which the IRS issued in September, would affect sponsors that use their captives to fund risks of various corporate affiliates and that file a consolidated tax return covering the affiliates and the captive. Under current tax law, such captives can take an immediate tax deduction for reserves established to pay for future losses of affiliated companies. But under the IRS proposal, a tax deduction—with only a narrow and largely irrelevant exception—could be taken only at the time a loss is actually paid.

Gen Re: Defense attacks credibility of key witness

CONTINUED FROM PAGE 1

though, the lawyers stressed different aspects of the deal's development to counter evidence against their own client. And a lawyer for one defendant, former AIG reinsurance Vp Christian M. Milton, contended that Mr. Milton was deceived about the degree of risk transfer in the deal by Gen Re officials, including Mr. Houldsworth.

Defense attorneys in multiple-defendant cases often take varying approaches, said Theodore T. Chung, a former federal prosecutor now with Perkins Coie L.L.P. in Chicago. "That's not necessarily a problem, as long as the individual defenses are not completely incompatible with each other."

Antagonistic defenses increase the odds of a split verdict, though, unless the prosecution produces compelling evidence that all the defendants worked together to knowingly commit fraud, he added.

Charged with conspiracy and fraud along with Mr. Milton are Ronald E. Ferguson, Gen Re's former CEO; Christopher P. Garand, former senior vp in charge of U.S. finite underwriting for Gen Re; Robert Graham, former senior vp and legal counsel for the reinsurer; and Elizabeth Monrad, Gen Re's former chief financial officer.

Prosecutors allege the defendants engineered the loss portfolio transfer to fraudulently boost AIG's reserves to help it counter stock analyst concerns about its reserve levels. While the contract appeared to transfer \$600 million of risk for a \$500 million premium, the defendants agreed that AIG would never be billed for losses and that AIG would refund an initial \$10 million premium payment and pay Gen Re a \$5 million fee.

Witness under fire

Mr. Houldsworth, who pleaded guilty to conspiracy in the case and is cooperating with the government, testified that he understood

from an initial call from Ms. Monrad on Nov. 13, 2000, that the transaction was to be a no-risk deal for AIG.

Prosecutors introduced dozens of Gen Re e-mails and numerous recorded phone conversations in which various defendants discussed the transaction, creation of a paper trail to make the deal appear legitimate and the mechanism by which AIG would secretly funnel \$15 million back to Gen Re, the government contends.

When the defense last week began its cross-examination of Mr. Houldsworth, though, lawyers immediately attacked his contention that there was a side deal not to transfer risk.

"Isn't it true that every time that comes up, it comes out of John Houldsworth's mouth," Reid Weingarten, Ms. Monrad's lawyer, asked Mr. Houldsworth in referring to the recorded conversations. Mr. Weingarten is with Steptoe & Johnson L.L.P. in Washington.

Mr. Houldsworth replied that it was "fairly clear" from his conversations with Ms. Monrad and other defendants that the deal was intended to be no-risk, and that no one ever corrected his understanding.

Frederick Hafetz, a lawyer representing Mr. Milton, noted that Mr. Houldsworth had testified that \$315 million of the \$500 million in reserves transferred to AIG had already been reinsured elsewhere by Cologne Re Dublin, and that it was thus virtually impossible that AIG would ever suffer a loss under the contract.

Mr. Hafetz, who is with Hafetz & Necheles in New York, asked Mr. Houldsworth whether it made any sense for the companies to have a side agreement not to cede losses if the portfolio was unlikely to produce a loss in the first place.

"It makes no sense because the story is not true, is that correct sir?" Mr. Hafetz asked. "No, that's not true," Mr. Houldsworth answered.



John Houldsworth, former Cologne Re Dublin CEO, was cross-examined by defense attorneys last week.

Alan Vinegrad, a lawyer for Mr. Graham, elicited testimony from Mr. Houldsworth that Mr. Graham reviewed the loss portfolio contract and added several clauses, including one governing AIG's right to inspect Cologne Re Dublin's records.

"You never said to him, 'Rob, you don't need to give AIG access to our records because they're never going to come look at them anyway?'" asked Mr. Vinegrad, who is with Covington & Burling L.L.P. in New York. Mr. Houldsworth said he never said that to Mr. Graham.

Lawyers also pursued different lines of questioning.

Jonathan Rich, a lawyer for Mr. Garand—who was working part-time in late 2000 and was about to retire—sought to depict his participation as minimal, eliciting testimony that only four of Mr. Houldsworth's recorded conversations were with Mr. Garand, including an initial discussion in which it was clear Mr. Garand knew nothing about the deal.

Mr. Garand's only suggestion on a draft contract was to add a commutation clause, and Mr. Houldsworth testified that such a

clause was already in the contract and that Mr. Garand's suggestion came two hours after the draft had been sent to Mr. Milton at AIG.

Mr. Graham's lawyer, Mr. Vinegrad, elicited testimony suggesting that Mr. Graham was kept in the dark about some details of the deal. Mr. Houldsworth confirmed, for example, that he never identified the contracts to Mr. Graham or informed him most of the business was already reinsured.

In a brief cross-examination, Michael Horowitz, Mr. Ferguson's lawyer, noted that Joseph Brandon took over from Mr. Ferguson as CEO in September 2001, three months before the premium and fee payments for the loss portfolio deal changed hands. Mr. Brandon was involved in early discussions of the deal and was copied on several subsequent e-mails regarding it, according to trial documents, but he has not been charged.

Mr. Horowitz, who is with Cadwalader, Wickersham & Taft L.L.P., also contrasted the fact that Mr. Houldsworth took pains to keep his file on the deal secret while Mr. Ferguson kept his documents in an open file room.

Mr. Hafetz, meanwhile, sought to show that Mr. Houldsworth joined with other Gen Re officials to deceive Mr. Milton about the extent of risk transfer in the transaction.

When Mr. Houldsworth confirmed that he never told Mr. Milton that most of the loss portfolio was already reinsured, Mr. Hafetz demanded, "You're saying that Chris Milton is your co-conspirator? He was your victim, am I right? You were defrauding Chris Milton."

"I don't think so," Mr. Houldsworth answered.

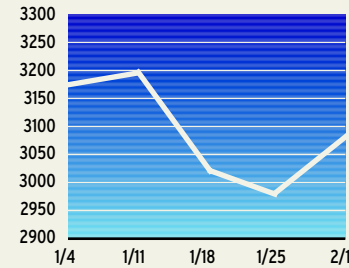
The prosecution is expected to rest its case this week after testimony from three more witnesses, including Jay Cohen, an analyst with Merrill Lynch & Co. Inc., and a postal inspector who helped investigate the transaction.

Stock Index

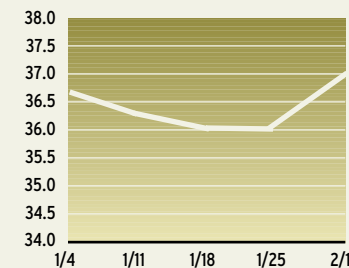
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

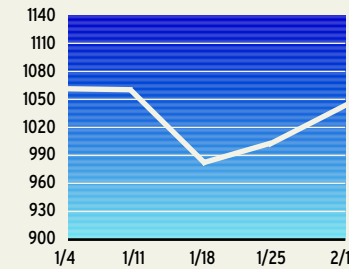
BI STOCK INDEX



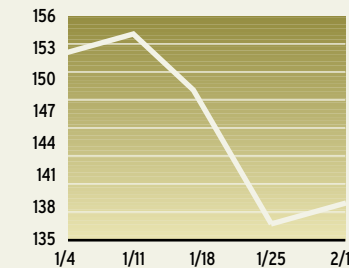
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3082.49	▲ 3.73%
DOW JONES	12743.19	▲ 4.39%
S&P 500	1395.42	▲ 4.87%

LARGEST GAINS

Old Republic Intl. Corp.	19.62%
NYMAGIC Inc.	16.79%
Ambac Financial	16.30%
MBIA Inc.	15.21%
CNA Financial Corp.	14.94%

LARGEST LOSSES

Zenith National Ins.	-11.66%
UNICO	-4.21%
Berkshire Hathaway	-2.44%
Gainsco Inc.	-2.38%
Allstate Corp.	-2.04%

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

Business Insurance END PAGE

Contributing: Jeff Casale,
Roberto Cenicerros, Joanne Wojcik

Trading saga began with bet on insurer

Even a rogue remembers his first time.

Jerome Kerviel, the so-called rogue trader who lost \$7.2 billion for France's Société Générale, recalls his first big bet, and it involved a German insurer.

The trade that started him on the path to billions in losses came when he took a position on Allianz S.E., Mr. Kerviel reportedly told investigators.

"My first experience in this direction dates back to 2005...I then took a position on Allianz, betting the markets would fall," according to published statements Mr. Kerviel made to investigators.

"It just so happened that a little while later, the market fell after the London bombings and it's the jackpot, €500,000."

That experience left him wanting more.

"I then got the idea of a deal to cover my position," he continued. "I have mixed feelings because I'm proud of the result and surprised at the same time. It makes you want to continue, there's a snowball effect."

But Mr. Kerviel allegedly schemed to conceal his winnings—reportedly using fake documents and e-mails and unauthorized computer access—and, eventually, losses followed.

Since the case came to light, the bank's risk fraud detection and management practices have come under scrutiny.



LANDOV

Last month, French banking group Société Générale announced it had been hit by a fraud carried out by a single trader, Jerome Kerviel, which cost the bank more than \$7 billion.



Medical research on diet, stress is sweet news for junk food fans

New research suggests that while junk food might bulk people up, it also may help calm them down in times of turmoil.

Baby lab rats separated from their mothers experienced less stress and agitation when they were given food high in fat and sugar than did those fed a healthy diet, a professor from the University of New South Wales reported at the Australian Neuroscience Society meeting held Jan. 27-30 in Hobart, Tasmania, according to reports.

The same reaction is likely to occur in humans because the brain pathways that regulate appetite in rats are similar to those in humans, Professor Margaret Morris said at the meeting.

So maybe that bag of chips you practically inhaled after an especially intense day was worth the extra calories.



Humana phone line for adults, not seniors

Medicare and phone sex have nothing to do with one another, yet their paths still seem to cross every now and again.

For Louisville, Ky.-based Humana Inc., the entanglement can't end soon enough.

The health insurer recently sent out a letter intending to inform seniors in Canton, Ohio, about its Medicare health plan, only to find the contact phone number printed is registered to an adult fantasy line.

A similar error occurred in 2005, when approximately 20,000 Medicare beneficiaries in Iowa received a letter from Humana with a misprinted phone number that routed callers to a phone sex line.

"We check things very thoroughly around here, but there are some things that can slip through," said a Humana spokesman. "It's an unfortunate human error."

The company quickly sought to correct the mistake, sending out 17,000 follow-up cards with the right number to those who received the misprinted version, according to the Humana spokesman.

Judge has no taste for Jell-O injury suit

A former New York University student found that he had zero "wobble room" last week when a judge dismissed his \$1 million Jell-O wrestling lawsuit.

Avram Wisnia sued NYU in 2005 and sought \$1 million for the broken hip he suffered while Jell-O wrestling during an on-campus party in May 2004.

Mr. Wisnia, then secretary of the Third Avenue North student council, organized a party dubbed the "Beach Bash Event."

Among other responsibilities, he procured food for the event, including gelatin that was dumped into a kiddie pool, court docu-

ments state.

NYU's food services department supplied the Jell-O and was aware that it would be used for Jell-O wrestling.

However, while Mr. Wisnia was "grappling" with another student "in close proximity of the kiddie pool," another student pushed both into the kiddie pool, resulting in Mr. Wisnia's hip injury.

Mr. Wisnia argued that NYU "should have supervised the student activities on the date to prevent students from engaging in a Jell-O wrestling match in a kiddie pool on a concrete surface," and that NYU's "failure to

honor that duty makes it liable for his injuries," according to court records.

However, Superior Court Justice Carol Edmead ruled last week that colleges "have no legal duty to shield their students from dangerous activity" and that the age and maturity of the students doesn't require such supervision.

"School personnel cannot reasonably be expected to guard against injury caused by impulsive, unanticipated act of a fellow student," the judge ruled in dismissing the suit.





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