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MOVES TO CUT SYSTEMIC RISK WILL LIKELY LEAD TO REFORM OF INSURER OVERSIGHT / PAGE 3

PEANUT FIRM'S GL INSURER SEEKS RULING ON LIABILITY FOR SALMONELLA / PAGE 3

WILLIS FORMS SUPPORT UNIT FOR GLOBAL COORDINATION OF COVER PLACEMENTS / PAGE 3

In Brief

Daschle won't seek HHS secretary role

Former Senate Majority Leader Thomas A. Daschle has withdrawn his name for consideration as secretary of Health and Human Services. Mr. Daschle's withdrawal followed criticism for his failure to pay more than $100,000 in taxes. He apologized for his actions and met with the Senate Finance Committee last week to provide further explanations.

Best puts Ironshore units under review

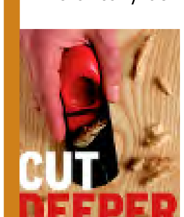
A.M. Best Co. Inc. put its financial strength rating of A- for Ironshore Inc.'s operating subsidiaries under review with negative implications. Best said that the Bermuda-based insurer's "material deviation" from its original business plan is giving the Oldwick, N.J.-based ratings agency cause for

See **IN BRIEF** page 21

BENEFITS MANAGEMENT

VOLUNTARY BENEFIT PLANS

Some employers evaluate voluntary benefits in tough economy; companies work harder to inform employees about choices on benefits; identity theft protection, legal services become more popular as employees grow more concerned about credit status. **PAGE 9**



Buffett bolsters Swiss Re capital

Speculation grows about outright takeover

By JUDY GREENWALD and MICHAEL BRADFORD

ZURICH, Switzerland—Warren Buffett's planned capital infusion into Swiss Reinsurance Co. may ultimately lead to a full takeover of the European reinsurance giant by Mr. Buffett's Berkshire Hathaway Inc., several observers agree.

But they differ over whether such a move by a rival reinsurer would benefit reinsurance buyers.

Regardless of the outcome, the desperate move by Swiss Re to raise capital is a great deal for Mr. Buffett, they say.

The cash infusion was announced last week as Swiss Re reported it anticipates a 1 billion Swiss franc ($876.2 million) loss for 2008 and an expected 4 billion Swiss franc ($3.47 billion) to 5 billion Swiss franc ($4.34 billion) erosion in its shareholder's equity in the fourth quarter. Its results are scheduled to be released Feb. 19.

The company said its loss was caused primarily by mark-to-market losses on investments and the impairments on its investment portfolio, which offset its strong

See **SWISS RE** page 20

Mr. Buffett

REUTERS

BUFFETT TO THE RESCUE

JANUARY 2008

- Berkshire Hathaway Inc. acquires a 3% stake in Swiss Reinsurance Co.
- Berkshire assumes a 20% share of Swiss Re's property/casualty business under a reinsurance contract

FEBRUARY 2009

- Berkshire says it will invest 3 billion Swiss francs ($2.59 billion) in the reinsurer in the form of convertible notes
- Berkshire provides Swiss Re with a 5 billion Swiss franc ($4.32 billion) reinsurance cover for its property/casualty reserves

TRANSPARENCY SOUGHT

- Agents and brokers would have to provide written disclosure of all compensation received in a transaction.
- Compensation includes: money, credits, loans, vacations, gifts, and payment of employee salaries, among other things.
- Rules would not apply to reinsurance, captive and wholesale transactions.

Mr. Dinallo

ZUMA PRESS

N.Y. plans to mandate broker pay disclosure

By SALLY ROBERTS

NEW YORK—Regulations proposed by the New York Insurance Department that would require insurance agents and brokers to disclose to clients all compensation drew mixed reactions from the industry last week.

New York Superintendent of Insurance Eric R. Dinallo issued the proposed disclosure rule more than six months after holding joint hearings with New York Attorney General Andrew Cuomo to address the compensation system established by their predecessors in 2005 and 2006 settlements with certain brokers and insurers.

In three hearings held during a two-week period last July in New York state, authorities heard from more than 30 interested parties who expressed different views on issues such as contingent commissions, equal treatment, disclosure requirements, and the difference between agents and brokers.

Under the proposed new rule, producers must provide written notification to clients of the "nature and amount" of any compensation received in conjunction with an insurance placement, including contingent commissions, loans, vacations, prizes and gifts, among other things. The rule makes no distinction between brokers, which represent buyers, and agents, which represent insurers.

Producers also must disclose in writing any ownership stakes between the producers and insurers involved in the transaction and must make available, upon request, any quotes or other alternative

See **DISCLOSURE** page 19

Comp concerns rise with unemployment rates

By ROBERTO CENICEROS

Job reports released last week underscore a growing challenge risk managers face: managing workers compensation losses in the midst of layoffs that can exacerbate claim frequency and severity.

Employees off the job due to a legitimate injury now may be more motivated to extend the life of their workers comp benefits when their jobs may soon be eliminated or they already have been downsized, say brokers, third-party administrators and risk managers.

Despite economic conditions, though, most employees will resolve their claims as soon as is medically possible if employers treat them fairly and with respect, said Dave Dolnick, risk manager for La Mesa, Calif., construction company The Brady Cos.

But job losses also are pressing workers and some may be motivated to extend a claim, Mr. Dolnick and others agree.

"What we have observed, both somewhat with our own (limited) claims and also in chatting with...peers, is that claims that are otherwise legitimate become much more difficult to resolve in this kind of a market, when the injured worker doesn't have the option of a job to go back to," Mr. Dolnick said.

Some employees with diminished employment prospects will be less responsive to return-to-work efforts that otherwise would help render them fit for their old job or capable of working for a new employer if a job were available, several observers agree.

"There is a (claims) cost," said Darrell Brown, workers comp prac-

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BI has updated its Directory of Long-Term Care Insurance Providers for 2009. For details and pricing, go to *www.BusinessInsurance.com/directories*.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Willis moves to coordinate cover placements

Placement strategy gives global support to local brokers

By SALLY ROBERTS

LONDON—Following the lead of its two main rivals, Willis Group Holdings Ltd. last week said it launched a global insurance placement strategy in an effort to bring clients more value from the insurance markets.

The formation of Willis Global Placement, a new dedicated unit, brings together Willis' placement professionals from around the globe to support local account executives who remain responsible for placing client business.

London-based Willis is taking a somewhat different approach to insurance placement than New York-based Marsh Inc. and Chicago-based Aon Corp., which have formalized their own placement strategies during the past few years.

Marsh, for example, last year said it was centralizing its U.S. placement activities within various hubs rather than through 60 local offices. The change is a more efficient way to place business and will generate better deals for clients, Marsh has said.

Willis' new effort is more about coordinating the placement function rather than centralizing it, said Dominic Samengo-Turner, who is chief executive officer of Willis Global Placement and chairman of global markets for Willis based in London.

Local account executives will continue to make clients' placements, but they now will be supported by a Willis Global Placement team to get the best products in clients' hands, Mr. Samengo-Turner said.

That team will be responsible for ensuring clients get the best coverage, service and terms at the best price in the marketplace, he said.

"If a customer walks into our shop, he wants to know that he's getting the best product at the best price. We, behind the scenes, have to make sure that happens. That's coordination," Mr. Samengo-Turner said.

Willis Global Placement has two segments: Willis Retail Placement, which will be responsible for regional placements that are transacted in local regions; and Willis Global Markets, which will be responsible for global placement activities transacted in London, Bermuda and Singapore.

In connection with the formation of Willis Global Placement, Leslie Nylund was named chief placement officer for Willis North America, Tom Bartleet was named chief placement officer for Willis International, Paul Maynard was named chief placement officer for Willis U.K. and Ireland, Jonathan Prinn was named chief operating officer of global placement Willis Global Placement and David Atkinson was named finance director of Willis Global Placement.

Willis' main rivals take a somewhat different approach to global placements.

Marsh, for example, is in the process of finalizing its hub strategy for U.S. placements, said Timothy J. Mahoney Jr., president of Marsh's Global Risk Management division based in New York.

See **WILLIS** page 6

Peanut firm's GL insurer seeks coverage ruling

Far-reaching recall may test programs of many companies

By MEG FLETCHER and JEFF CASALE

LYNCHBURG, Va.—The insurer for the Georgia peanut processing plant at the heart of a nationwide salmonella outbreak has filed suit to limit its coverage for liability claims arising from the incident.

But what coverage is in place for companies in the distribution chain was unclear last week. Experts say, however, that firms with specialized recall or contamination coverage would be more likely to see their claims paid than those that rely on general liability coverage.

The salmonella outbreak, which authorities said had sickened more than 575 people and may have contributed to eight deaths, has resulted in the recall of more than 1,500 products since mid-January.

Federal authorities traced the outbreak to a Peanut Corp. of America plant in Blakely, Ga., which annually produces 1% of all U.S. peanut products. The plant processed raw peanuts to produce peanut paste and related products used by many processors in ice cream, snacks and baked goods.

In a statement, Lynchburg, Va.-based PCA said it is investigating the situation that occurred despite governmental inspections. At the urging of federal authorities, PCA recalled all products it produced for the past two years.

PCA's general liability insurer, Hartford Casualty Insurance Co., filed suit last week against the manufacturer to determine whether it must pay claims for victims of the salmonella outbreak.

The suit, filed in the U.S. District Court for the Western District of Virginia's Lynchburg Division, states that one or more of the terms, conditions, exclusions or limitations in the policies "exclude or nullify coverage" for PCA for the salmonella claims.

"We are seeking a declaratory judgment from the court to deter-

See **SALMONELLA** page 21

ICE CREAM AND SNACKS TOP RECALL LIST

As of Feb. 5, more than 1,550 products containing peanuts were included in the U.S. Food & Drug Administration's recall list. By category, those products include:

Product	No. recalled	Product	No. recalled
Brownies	11	Peanut butter	7
Cakes and pies	32	Peanut paste	1
Candy	54	Peanuts	34
Cookies	60	Pet food	8
Crackers	7	Prepackaged meals	8
Doughnuts	1	Snack bars	58
Fruits and vegetables	4	Snack mix	63
Ice cream	108	Toppings	4

Source: U.S. Food & Drug Administration

Moves to cut systemic risk may have wide reach

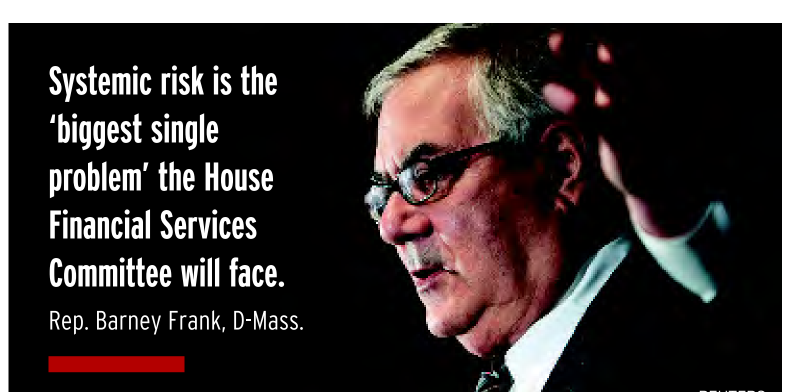
Effect on insurance regulation will depend on structure of efforts to tighten financial system

By MARK A. HOFMANN

WASHINGTON—Growing debate about how to regulate systemic risk in the financial system is certain to affect the insurance industry as well, observers say.

The implications could be positive or negative, depending on how the regulation of systemic risk—the possibility that the failure of a financial institution, market or system will harm the economy as a whole—is structured, they say. Some say it could be overlaid atop the existing state regulatory system; others say it must lead to federal insurance regulation. No matter the approach, all agree the issue will be a congressional priority.

Systemic risk is the "biggest single problem" the House Financial Services Committee will face, said Rep. Barney Frank, D-Mass., chairman of the panel, last week. A federal entity, possibly the Federal Reserve, should become the systemic risk regulator and be given greater powers, he said.



He also said the nature of regulating systemic risk will require international consultation. "Regulation in one country won't work," Rep. Frank said during a news conference. Rep. Frank added that a discussion of an optional federal charter for insurers, particularly life insurers, is likely to arise during international talks about systemic risk.

Senate Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., also said last week that systemic risk regulation would be a top priority of his panel.

That doesn't surprise insurance industry observers.

"Systemic risk is the major issue of the day," said Joel Wood, senior vp of the Washington-based Council of Insurance Agents and Brokers. "The worry within the industry—

See **SYSTEMIC** page 18

High court expands bias protection for employees

Civil Rights Act protects witnesses in workplace probes

By JUDY GREENWALD

WASHINGTON—A U.S. Supreme Court ruling that says civil rights law also protects employees who merely cooperate with an internal investigation of race or gender discrimination could increase litigation against employers, some observers say.

Title VII protection of the Civil Rights Act extends beyond employees who file complaints about discrimination to employees who cooperate in an employer's investigation, the court said in its unanimous ruling in *Vicky S. Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*

Observers say the decision means employers who take adverse actions against such employees must be sure they are well-documented to avoid charges of retaliation.

According to the ruling, the metropolitan government of Nashville and Davidson County began looking into rumors of sexual harassment by Metro School District Employee Relations Director Gene Hughes in 2002.

When asked as part of the investigation whether she had witnessed inappropriate behavior by Mr. Hughes, Ms. Crawford, a 30-year employee, described several instances of sexual harassment by him that were directed at her. Two other employees also reported being sexually harassed.

Metro took no action against Mr. Hughes, but later fired Ms. Crawford and accused her of embezzlement. The two other employees also were fired.

Title VII's opposition clause says it is unlawful to discriminate against any employee "because he has opposed" an unlawful practice and Ms. Crawford's response can be considered opposition, the court ruled in overturning lower court dismissals of the suit and remanding the case for further proceedings.

There is "no reason to doubt that a person can 'oppose' by responding to someone else's question just as surely as by provoking the discussion," the Supreme Court said. "Nothing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question," the high court said.

Observers say the ruling came as no surprise. Along with earlier cases, it "reflects the Supreme Court's concern that individuals who participate in the (Equal Employment Opportunity Commission) charge-filing process and investigation process will be protected from retaliation," said Bruce R. Alper, an employer attorney with Vedder, Price, Kaufman & Kammholz P.C. in Chicago.

The decision is ultimately to employers' benefit, said Robin E. Shea, an employer attorney with Constangy, Brooks & Smith L.L.P. in Winston-Salem, N.C. "When we conduct an investigation, we want to know the truth" regardless of

See RETALIATION page 17

KEYS TO THE DECISION

CASE: *Vicky S. Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.*

RULING: Title VII protection of the Civil Rights Act extends to employees who cooperate in an employer's discrimination investigation.

EFFECTS: Provides guidance for employers on how investigations should be conducted; may increase litigation, some observers say.

NYT PHOTOS

President Obama signs a bill on Feb. 4. The Children's Health Insurance Program is a joint federal/state program that provides coverage for children in families with income above Medicaid-eligible limits.

Child health care law adds to employer costs

More enrollees, increased expenses expected

By JERRY GEISEL

WASHINGTON—Millions of additional children in lower-income families will be eligible for health insurance coverage under legislation signed last week by President Obama. But the new law will add new administrative burdens for employers and potentially add more members to their health care plans.

Last week's action—one of the first major bills signed by President Obama since he took office, ends a multiyear stalemate that clouded the future of the Children's Health Insurance Program. CHIP is a joint federal-state program that provides health insurance coverage for children in families with income above Medicaid-eligible limits. The states establish and administer the programs and receive federal funding.

Congressional efforts to expand the program and ease eligibility requirements to enable more children to qualify for coverage failed when then-President George W. Bush vetoed several expansion measures, forcing Congress to approve legislation that only reauthorized the program, which now provides coverage to about 7 million lower-income children.

The legislation signed by President Obama is intended, through a big increase in federal funding, to provide coverage for an additional 4 million uninsured children, making a dent in the number of people—about 45 million—who lack health insurance coverage.

For millions of children who otherwise would be uninsured, "CHIP has provided care when they're sick and preventative services to help them stay well. This legislation will allow us to continue and build on these successes," President Obama said at a White House bill-signing ceremony.

For employers, the new law could result in more enrollees in their

See CHIP page 6

Former RenaissanceRe chief Stanard fined $100K over Inter-Ocean deal

By JUDY GREENWALD

NEW YORK—A judge has imposed a $100,000 civil fine on former RenaissanceRe Holdings Ltd. Chairman and Chief Executive Officer James N. Stanard for his role in orchestrating a two-part sham reinsurance deal with another reinsurer in 2001, according to the U.S. Securities and Exchange Commission.

In 2006, Mr. Stanard and two other former RenaissanceRe officials—former Controller Martin Merritt and former Senior Vp Michael Cash—were charged by the SEC with orchestrating the deal with Inter-Ocean Reinsurance Co. Ltd., a finite-risk reinsurer now in runoff. Messrs. Merritt and Cash, as well as the company itself, earlier settled with the SEC.

The SEC charged that the effect of that transaction was to smooth and defer $26.2 million of Pembroke, Bermuda-based RenaissanceRe's income from 2001 to 2002 and 2003.

In his bench-trial ruling in favor of the SEC, Judge Gerald E. Lynch said: "Even if Stanard did not decide, in so many words, 'I want to do something fraudulent,' the SEC has demonstrated that Stanard was, at the least, highly reckless with respect to the Inter-Ocean transaction." The SEC showed "by a substantial preponderance of the evidence," that Mr. Stanard wanted to engage in a transaction that was "without economic reality," Judge Lynch ruled.

The court, in finding that Mr. Stanard violated federal securities laws, issued the fine and permanently enjoined him from violating or aiding or abetting violations of their provisions. But the court denied the SEC's request that Mr. Stanard, who resigned from RenaissanceRe in 2005, be barred from serving as an officer or director of a publicly held company, stating the SEC has not shown that he "obtained any ill-gotten gains or unjust enrichment as a result of the fraudulent accounting."

Asked about the possibility of an appeal, Mr. Stanard's attorney, James D. Mathias of DLA Piper US L.L.P. in Baltimore, said, "At this point, we're still considering all our alternatives."

Frequency, number of securities class action suits rises sharply

2008 saw highest number of suits filed in five years: Study

By JEFF CASALE

WESTON, Fla.—If investors, insurers and banks were capable of predicting events like the Bernard Madoff scandal, toxic assets and a crumbling economy, they wouldn't need directors and officers coverage.

But because crystal balls aren't available, D&O liability coverage will have to do.

Of the 210 total securities class action lawsuits filed in 2008—the highest number since 2004—103 of them were against the financial services industry, according to Cornerstone Research of Boston. That is up from 52 securities class action cases in 2007 and dwarfs the 1996-2007 yearly average of 26 cases.

AP

The Bernard Madoff investment scandal alone led to 18 securities class action case filings in January.

The frequency and number of filings aren't all that surprising when looking at 2008, but a closer examination of the numbers revealed that a bulk of the cases were filed in the first half of the year, before the credit crisis became as widespread as it is today, according to Cornerstone.

"Normally, what you see is the stock market will go down and D&O claims will go up," Carol Zacharias, senior vp and general counsel for ACE USA, said during a D&O session at the American Bankers Assn. Insurance Risk Management Annual Conference & Meetings held late last month in Weston, Fla. "But…in this last quarter, there were actually fewer cases filed. It got better, not worse at the

See ABA page 6

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ABA: Class action suits surged in 2008

CONTINUED FROM PAGE 4

end of the year."

Part of the reason, Ms. Zacharias said, was that most of the major financial firms involved in the credit crisis were sued in the early part of the year. According to Boston-based Cornerstone, which partnered with the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in its 2008 securities class action report, nine of the 10 largest financial services companies ranked by market capitalization were sued before December last year. Then the Madoff investment scandal broke, which led to 18 cases being filed in January, according to Cornerstone.

Ms. Zacharias said it appears that at least half of the Madoff losses were to non-U.S. investors, which could lead to a global exposure for the scheme. But more will need to be investigated before it can be determined how much of an effect the scandal will have on banks or insurers.

Overall in 2008, the average securities class action settlement was $7.5 million, down from $9.4 million in 2007, according to National Economic Research Associates Inc.'s report on 2008 trends. But the proportion of those settlements exceeding $100 million has gone up from 6% in 2005 to 8% in 2008.

Banks are not only struggling with a record number of class action lawsuits, they also are struggling to stay afloat. In 2008, 25 banks failed, compared with three in 2007, according to Cornerstone. Of those that failed last year, five have been sued.

"Every sector has its bubbles in D&O cases," Ms. Zacharias said. "This year, it was the financial services sector."

There are about three dozen insurers that offer D&O coverage and a large percentage of those will offer coverage to the financial service sector, but many on an excess basis only, said Jennifer Fahey, New York-based managing director and national D&O product leader for Aon Risk Services.

"In all cases, it is highly dependent upon the perceived risk of the individual organization and the program pricing," Ms. Fahey said.

There is about $850 million in capacity for the market, Ms. Fahey said, and new capacity could return once the credit market stabilizes.

"Insurers are very cautious of the financial services industry right now," Ms. Fahey said.

In 2009, on a "best-case basis," Ms. Fahey said financial services clients who faced significant increases in their D&O premiums in 2008 will experience flat to 10% increases, but that those with deteriorating risks could face greater increases. She also said it's possible that "Madoff exclusions" may start to creep into D&O as well as errors and omission quotes.

325 attend Florida conference; 2010 heads to Naples

The American Bankers Assn. Insurance Risk Management Conference was held Jan. 25-28 at the Hyatt Regency Bonaventure in Weston, Fla. Approximately 325 attended the conference, including bank risk managers, brokers and insurers. Sessions included the regulatory and legislative outlook for the banking and insurance industries, environmental risks, errors and omissions solutions, and round-table discussions with insurers and brokers. Next year's event will be held Feb. 7-10, 2010, at the Naples Grande Beach Resort in Naples, Fla.

Willis: Global strategy backs placements

CONTINUED FROM PAGE 3

Each hub will be based on individual risk practices, be controlled by a practice leader and provide customers with a consistent placement team, Marsh said.

"Placements will absolutely be done client-by-client on an individual basis, but because we'll see much more significant deal flow, we'll have a deeper understanding of the terms and conditions, market changes and creation of capacity for our clients," Mr. Mahoney said. "This model, we think, is much better for clients in terms of getting them better deals in the marketplace."

In addition to its U.S. placement strategy, Marsh last year formed Bowring Marsh, a specialty international placement brokerage for property/casualty risks with teams in Bermuda; Dublin, Ireland; London; Miami; Singapore; and Zurich, Switzerland.

During the past four years, Aon has had a globalized placement model in place that is coordinated by a global executive placement committee and leverages technology, data and 18 placement hubs around the world, according Michael Moran, executive vp-Aon Risk Services in Chicago.

Aon's placement strategy is "really around people who are closest to the client connecting with global experts. This isn't an organizational approach, it's a team approach, and it's getting the right facts on the table to get the right answer for the client," Mr. Moran said.

"We place $54 billion of premiums into the market every year. Clients tell us that they like our approach," Mr. Moran said.

All three brokers are looking "for new ways to maximize their revenues and get paid more," said one brokerage observer who was not at liberty to speak on the record. Insurance placement "is one of the many things they are working on to make sure that happens."

It's not only about efficiencies in the placement process, it's also about "more efficiencies in the way they collect revenue from customers," the observer said. "It sounds crazy, but they were getting different negotiated rates at the local level with global trading partners." With a more disciplined approach, they can now negotiate one rate on a global level.

CHIP: Law adds administrative burdens

CONTINUED FROM PAGE 4

health care plans and in new reporting requirements.

The new law will expand programs now in place in a handful of states in which those states can pay a portion of health insurance premiums of employer-sponsored plans, if that is more cost-effective than covering the children in a state CHIP plan.

Under the new law, a state can set up such plans in which the state would pay the difference in the portion of the premium paid by the employee for single coverage and the premium for family coverage.

The new law will require employers to notify employees in states that offer such premium assistance programs. In addition, states will have the right to ask employers about the design and cost of their health insurance plans to enable states to decide if it is more cost-effective for them to provide premium assistance. Eventually, federal regulators are to develop model notices for employers to provide to employees, as well as model notices that states could use to seek health plan information from employers.

"There will be an added administrative burden on employers," said Sharon Cohen, an attorney with Watson Wyatt Worldwide in Arlington, Va.

Until the model notices are developed, employers could face varying reporting requests from the states with premium assistance programs, said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

In addition, employers will have to set up special enrollment programs in which CHIP enrollees who lose CHIP coverage would be given 60 days to enroll in the employer plan offered to their parents, and 60 days to enroll in the employer plan when they become eligible for state premium assistance.

Commentary

Book on D&O, E&O insightful, humorous

REGIS **COCCIA**

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

Anyone who has spent time in or knows people working in the commercial insurance industry is aware that the industry employs many talented and interesting souls.

Chronicling their achievements and adventures would be a massive undertaking, but its results would make for good reading. Fortunately, Larry Goanos took on that project for the industry segment where he has spent his career: professional lines. "Claims Made and Reported: A Journey Through D&O, E&O and Other Professional Lines of Insurance" is a humorous, insightful book about those who built that part of the industry.

Mr. Goanos, the president of Professional Indemnity Agency Inc. in Mount Kisco, N.Y., a unit of HCC Insurance Holdings Inc., has spent more than 20 years in the professional lines industry. He has seen D&O, E&O and fiduciary liability from virtually all the vantage points the industry offers—attorney, underwriter and broker—and has worked at many of the leading firms in professional lines, so he knows of what he writes.

Like many others in commercial insurance, Mr. Goanos (pronounced *joe-AHN-ohs*) is an alumnus of American International Group Inc., which is credited with popularizing D&O liability coverage in the United States—even though D&O risks were first underwritten at Lloyd's of London.

The book is a who's who of professional lines, and two chapters are devoted to Professional Lines Insurance All-Stars and a Hall of Fame for the legendary practitioners and contributors to the development of those lines. Mr. Goanos is generous in giving credit to the more than 400 people who supplied stories and information for the book, many of them funny and some tragic. His chapter on the Sept. 11, 2001, terrorist attacks is emotional—hundreds of insurance industry workers, many of them colleagues or friends of Mr. Goanos, were among the victims.

Much like life itself, the stories in the 378-page "Claims Made and Reported" are built on laughter and tears. Readers will find interesting, if obscure, facts about professional lines and those working in the industry.

For example, readers will learn why brokerage Fred. S. James & Co., now part of Marsh Inc., really had a period after "Fred." Or, which Fortune 500 account AIG considered critical to selling a lot of D&O coverage. And what contributions to professional lines have been made by leading risk managers, several of whom are former *Business Insurance* Risk Managers of the Year.

Mr. Goanos' penchant for self-deprecation, name-dropping, parenthetical phrases and footnotes is a trifle annoying (especially in the early chapters), but on the whole, the book is worth reading and sharing.

Why write such a book? I get the impression that memorializing experiences and friendships in professional lines was the author's main motivation, but Mr. Goanos also mirrors the generosity of so many in the industry by devoting all proceeds to four charities.

Much like life itself, the stories are built on laughter and tears.

Organizations the book sales will support are:

- Aniridia Foundation International, *www.aniridia.net*, a Memphis, Tenn.-based organization that helps children and adults with the genetic eye disorder aniridia, which causes blindness.
- National September 11 Memorial & Museum, *www.national911memorial.org*, which honors the nearly 3,000 people who lost their lives in the Sept. 11, 2001, terrorist attacks.
- National Transplant Assistance Fund, *www.transplant-fund.org*, a Radnor, Pa.-based organization that helps transplant patients and those with catastrophic injuries.
- PLUS Foundation, *www.plus-foundation.org*, formed by the Minneapolis-based Professional Liability Underwriting Society to support various charitable causes nationwide.

Copies of "Claims Made and Reported" can be ordered for $29.99 each through SoHo Publishing, 233 Spring St., 3rd Floor, New York, N.Y. 10013; phone: 212-933-2555; *www.sixthand-springbooks.com.*

Open Up to New Markets:

How Technology Can Help Insurers Capture New Markets More Rapidly and Profitably

A Business Insurance Custom Webinar presented by

FIRSTBEST

March 3, 2009
at 2:00 p.m. Eastern

The P&C insurance industry is under ever-increasing pressures to produce return-on-investment and improve their underwriting profitability. Insurers that want to improve their competitive position, as well as maintain their book's quality and breadth must process significantly larger volumes of business. Insurers need to balance these conflicting goals while budgets and investments are being curtailed.

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Join our panel of experts and learn how underwriting technology can enable insurers to achieve more rapid entry into new markets in order to meet changing market demands.

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  Senior Analyst, Forrester Research
- Richard Kerr
  Chairman and CEO, MarketScout
- John Belizaire
  CEO and Founder, FirstBest Systems, Inc.
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Business Insurance OPINIONS

Raising eyebrows over Daschle speaking fees

WILL TOM DASCHLE'S WITHDRAWAL last week as President Obama's nominee for Health and Human Services secretary and head of a new White House health care reform office have much impact on the drive to develop and pass comprehensive reform legislation?

Contrary to the view of some Washington pundits, we don't think Mr. Daschle's withdrawal amid a scandal over his failure to pay taxes will make much of a difference.

For starters, Mr. Daschle, who enjoyed a reputation during his many years in Congress as a savvy politician, was not exactly a leader on health care issues. In fact, except for his role in trying to win passage of so-called patients' bill of rights legislation, he was not much involved in the major health care measures that passed during his nearly 25 years in Congress.

Why were health care organizations so eager to pay five-figure speaking fees to Mr. Daschle?

There is a more important issue than Mr. Daschle's rapid fall from what would have been a top position in the Obama administration.

We were struck by the huge speaking fees, much of it from health care organizations, Mr. Daschle pocketed since leaving the Senate after his unsuccessful bid for re-election in 2004.

Why were health care organizations so eager to pay five-figure speaking fees to Mr. Daschle? Were his insights so keen as to command such fees? We doubt it.

Those fees are a prime example of how money has corrupted politics. Those paying out those large sums no doubt were looking to a future when Mr. Daschle would be back in power and reasoned that what they were forking over in fees would give them future access.

There is nothing legally wrong in that and, from a lobbying organization's point of view, it makes a lot of sense. But in a political climate where money buys access and influence, we wonder how those with good ideas but lacking financial resources get that same kind of access.

That is something legislators urgently need to address.

N.Y. transparency rule a start, not endgame

WE ARE ENCOURAGED but also somewhat disappointed by proposals from the New York Insurance Department that, if implemented, would require brokers in the state to disclose all compensation they receive for placing coverage with insurers.

On the upside, rules that would compel brokers to disclose the full amount of the compensation they receive have to be welcomed.

Regardless of how few people in the industry were caught up in the compensation scandal that blew up in 2004, the amount of money that was skimmed by brokers from their clients through bid-rigging and client-steering was sufficient to warrant compulsory disclosure of fees by everybody in the industry. Frankly, given where the problems arose, it's a wonder that it has taken a New York regulator so long take action on the issue.

On the downside, it is disappointing that New York is not fully addressing the issue of contingent commissions. The department is expected to make changes to the draft rules as it gets feedback, but the payment of contingent commissions was such a fundamental issue in the whole saga that it should, we feel, have been the first item on any reform agenda.

Disclosure is all well and good, but if a compensation system is constructed in such a way that it contains inherent conflicts of interest for middlemen that are supposed to be acting only in their clients' best interests, then all the transparency in the world is not going to cure the problem.

We hope the New York department acts quickly on the issue.

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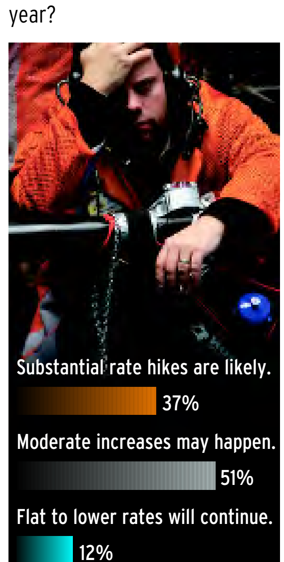
THIS WEEK'S RESULTS

Q Will insurers' and reinsurers' investment losses lead to higher rates this year?



NEXT WEEK'S QUESTION

Q: What's your view on New York's plan to mandate broker pay transparency?

READ

Perspectives and expert analysis online at *www.businessinsurance.com/knowledgecenter*

Workers comp success depends on quality analysis

Your workers compensation program requires a thorough and systematic assessment to avoid trying to implement solutions that are as misguided as the old joke of looking for a nickel where you didn't drop it, says Rebecca A. Shafer, a Storrs, Conn.-based consultant and attorney, who developed the Workers' Comp Kit online for Amaxx Risk Solutions Inc. Such reviews are essential to return employees to the job quickly, reduce costs and weigh effectiveness, she says.

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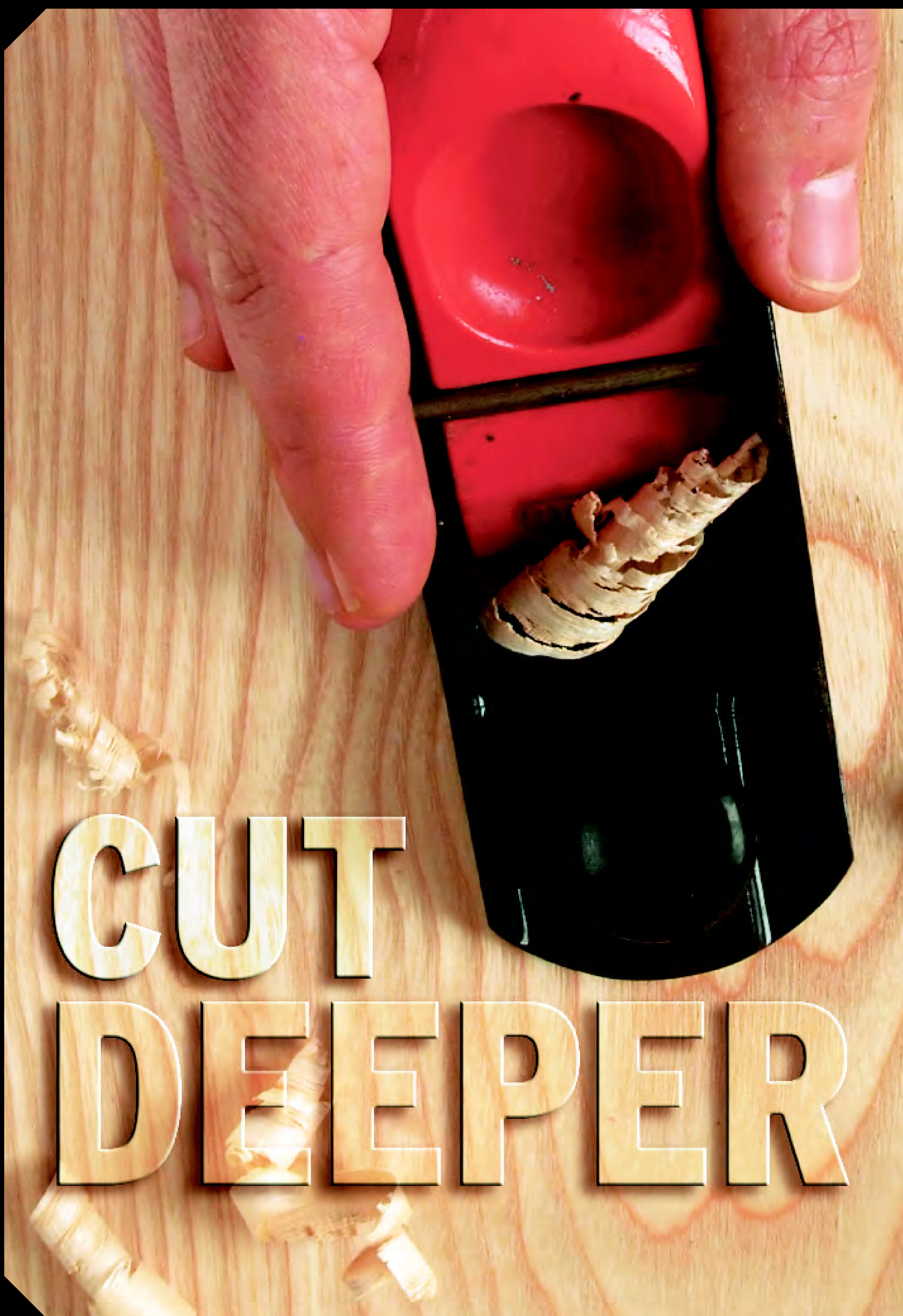
BENEFITS MANAGEMENT



Employers eyeing voluntary benefits in tough economy

By LOUISE ESOLA

While laying off workers and freezing salaries is a common way that businesses facing a tough economy are trying to control costs, they also are critically evaluating the voluntary benefits they offer, experts say.

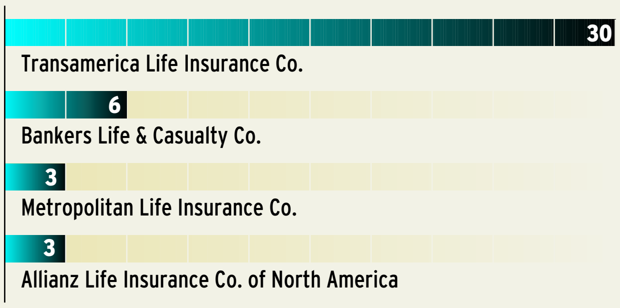
Experts say employers are spending more time examining voluntary benefits, such as retirement health care and long-term disability, to possibly shift some company-paid benefits to voluntary status or trim voluntary benefits overall. Meanwhile, some employees are abandoning voluntary offerings in order to keep more money in their paychecks, they say.

"This is one topic our clients have in the air right now," said Lale Iskarpatyoti, a Philadelphia-based group health care practice leader for Watson Wyatt Worldwide. "Everyone—employers and employees—is focused on keeping costs low."

See **VOLUNTARY** page 12

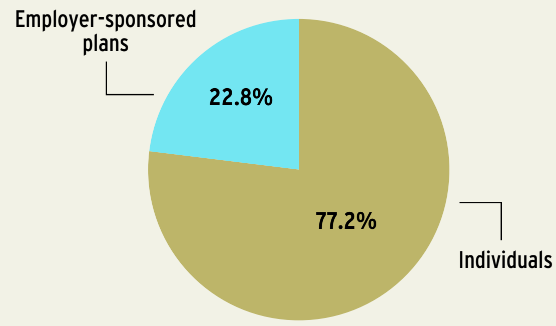
LTC PRODUCT VARIETY

Ranked by number of long-term care policy offerings



Source: BI survey

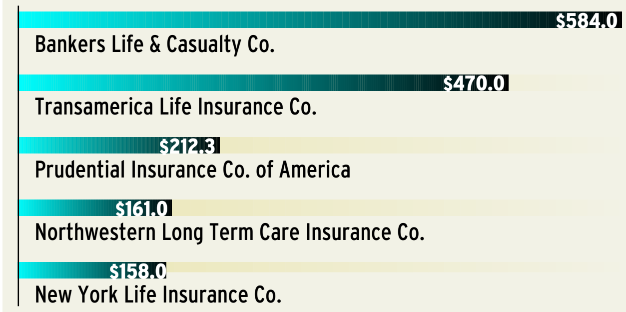
EMPLOYER-SPONSORED VS. INDIVIDUAL POLICYHOLDERS



Source: BI survey

LTC INSURANCE PREMIUMS

Ranked by 2008 total gross premiums from LTC policies, in millions



Source: BI survey

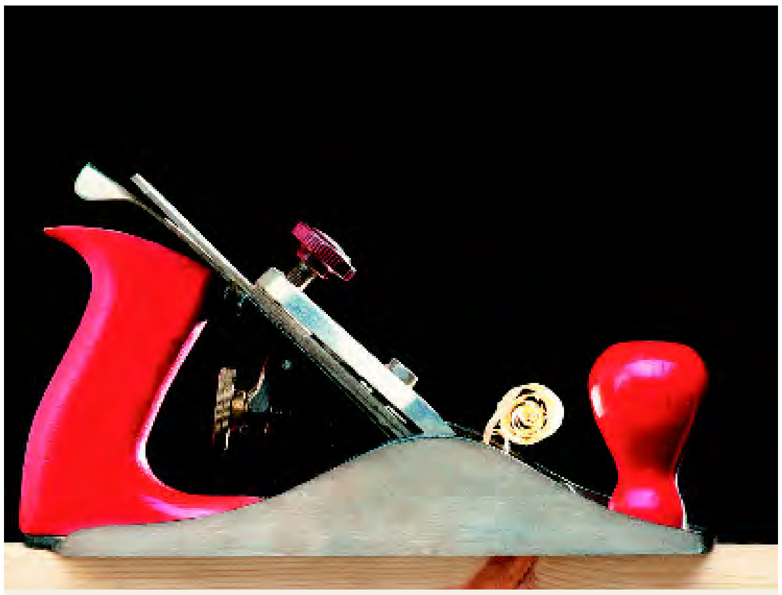
Largest long-term care insurance providers

Ranked by number of total LTC policyholders in 2008

Rank	Company/Address	Phone/Web site	Total policyholders	Number of policies	Total gross premiums	Policy issue age range	Daily benefit range	Principal officer
1	**John Hancock Life Insurance Co.** 200 Berkeley St., B-6 Boston, Mass. 02117	800-321-4582 *www.johnhancockltc.com*	1,090,788	N/A	N/A	18 to 59	$100 to $350	Marianne Harrison, president-long-term care
2	**Metropolitan Life Insurance Co.** 200 Park Ave. New York, N.Y. 10166	888-776-3882 *www.metlife.com*	602,691	3	$98,000,000	18 to 84 for individual policyholders; no age limit for employer-sponsored groups	Group, $50 to $500 per day (in $50 increments); LifeStage Advantage, $3,000 to $15,000 per month (in $3,000 increments); VIP2 Policy Series, $50 to $400 per day (state variations may apply)	David Acselrod, vp/business lead-long-term care and critical illness
3	**Bankers Life & Casualty Co.** 600 W. Chicago Ave. Chicago, Ill. 60654-2800	312-396-6000 *www.bankerslife.com*	370,000	6	$584,000,000	18 to 89	18 to 79, $40 to $400; 80 to 84, $40 to $250; 85 to 89, $40 to $200	Scott Perry, president
4	**Transamerica Life Insurance Co.** 1900 L. Don Dodson Drive, Suite 3000 Bedford, Texas 76021	866-478-1538 *www.transamericaltc.com*	267,000	30	$470,000,000	18 to 79	$50 to $400	Carroll Golden, senior vp-marketing and sales
5	**Continental Casualty Co.** 333 S. Wabash Ave. Chicago, Ill. 60604	888-799-6484 *www.cna.com*	229,000	1	$139,000,000	35 to 65	$80 to $350	Loretta Jacobs, vp/actuary
6	**Prudential Insurance Co. of America** 80 Livingston Ave. Roseland, N.J. 07080	800-732-0416 *www.prudential.com*	143,469	2	$212,300,000	18 to 88	$50 to $500	Andy Mako, senior vp
7	**Allianz Life Insurance Co. of North America** 5701 Golden Hills Drive Minneapolis, Minn. 55416	763-582-6500 *www.allianzlife.com*	136,000[1]	3	$122,000,000	18 to 84[1]	$50 to $500	Gary C. Bhojwani, president/CEO
8	**MedAmerica Cos.** 165 Court St. Rochester, N.Y. 14647	800-724-1582 *www.medamericaltc.com*	118,000	1	$137,300,000	18 to 85	$1,500 to $16,000 per month[2]	Chris Perna, president
9	**New York Life Insurance Co.** 51 Madison Ave. New York, N.Y. 10010	800-224-4582 *www.newyorklife.com*	108,000	1	$158,000,000	18 to 85	$50 to $400	Dennis O'Brien, senior vp
10	**Northwestern Long Term Care Insurance Co.** 901 Wilshire Drive, Suite 300 Troy, Mich. 48084	248-362-2220 *www.nmfn.com*	90,000	1	$161,000,000	18 to 79	$50 to $400	Edward Zore, president/CEO

1 Estimate. 2 Varies by state. N/A=Not available
Source: *BI* survey
Researched by Kevin Edison and Karen Tucker

Visit *www.businessinsurance.com/directories* for more information and to access the full searchable Directory of Long-Term Care Insurance Providers. *Business Insurance* now offers the option to purchase the entire online directory as an Excel file or as a PDF.



COST-CUTTING METHODOLOGIES

Approximately 91.8% of human resources executives say businesses have cut costs to cope with the ailing economy, using an average of 5.3 of 18 expense-reducing strategies. They have:

Reduced travel expenses	66.7%
Froze or reduced hiring	57.8%
Laid off workers permanently	55.6%
Canceled employee holiday party	32.0%
Other*	31.0%
Reduced or eliminated other perks	29.0%
Froze or reduced salaries	27.2%
Reduced year-end bonuses	26.7%
Reduced worker hours	24.4%
Eliminated year-end bonuses	22.2%
Laid off workers temporarily	15.6%
Canceled customer holiday party	11.0%
Reduced tuition reimbursement	10.8%
Reduced or cut matching 401(k) contributions	11.0%
Required vacation	8.9%
Instituted four-day workweeks	7.0%
Required furloughs	6.7%
Increased telecommuting to trim office costs	6.7%

**Other includes eliminating or reducing executive bonuses and increasing insurance premiums.*

Source: Challenger, Gray & Christmas Inc. survey of 100 HR executives

Voluntary: Troubled economy forces employers to rethink benefit offerings

CONTINUED FROM PAGE 9

"Clearly, all of our clients are saying their priorities have changed," said James Blaney, New York-based chief growth officer with Willis Group Holdings Ltd.'s North American benefits practice. "There is less disposable income for everyone; employers are carving out their core benefits programs and rolling back offerings."

Ray Brusca, vp-benefits for Towson, Md.-based Black & Decker Corp., said the word on the street is that many companies are shifting core benefits to voluntary status, a trim-the-budget trend the power tool and accessory maker is not likely to follow.

"We are being told (by experts) that as an employer in these times, we need to be supplying more (voluntary benefits)," Mr. Brusca said. "There are people proposing that as a way for employers to eliminate or scale back their ERISA-type benefits and offer them on a voluntary basis. That's just not us."

Since the economy plunged deeper into recession in the fourth quarter of 2008, research on the effects on company-paid and voluntary benefits has been limited.

In December, Watson Wyatt updated its Effect of the Economic Crisis on HR Programs survey of 117 U.S.-based companies. In addition to layoffs, hiring and salary freezes, and cuts to merit-based incentives, 10% of companies were planning eliminate or trim their retirement plan contributions.

Early last year, New York-based MetLife Inc. released its sixth annual Study of Employee Benefits Trends of 1,652 benefits decision-makers, finding that 55% of companies offered voluntary benefits and saw them as ways to retain employees and keep employer costs low.

Late last month, Chicago-based outplacement and consulting firm Challenger, Gray & Christmas Inc. found that 91.8% of 100 human resources executives said their companies had cut costs to cope with economic pressures, including some voluntary benefits (see chart).

Reducing costs appears to be the driving force for change in voluntary benefits, experts say.

Bruce Sletten, Fort Worth, Texas-based vp for Aon Consulting Worldwide Inc.'s elective benefits practice, said voluntary benefits slowly are becoming a mainstay in employers' benefit offerings, leaving employees paying more.

But particularly in the increasingly sluggish manufacturing and retail sectors, Mr. Sletten said employees are slow to embrace the voluntary plans.

'Let's face it. Workers are hearing a lot about reduction in workforce. We hear it every day. There is a general anxiety in the relationship between employers and their employees.'

James Blaney
Willis Group Holdings Ltd.

Watson Wyatt's Ms. Iskarpatyoti said enrollment in voluntary programs, such as legal plans and retirement programs, are at all-time lows as employers begin to offer scaled-back versions of core health care programs, such as consumer-driven plans, that typically take a bigger bite out of employees' paychecks.

"(Employees) have to first find the money to pay for their health care and then continue to contribute to retirement," she said. "These voluntary benefits are optional and have become less likely as a place (where) employees are spending their money."

In turn, employers are looking at little-used voluntary benefits, such as those that provide legal guidance and some forms of disability, and cutting them from their benefits portfolio, experts say.

Although employers typically do not contribute to voluntary benefits, there are some administrative costs involved, Ms. Iskarpatyoti said.

"Employers are taking a long look at their menu of offerings, and where they are not seeing participation, they are cutting (voluntary benefits)," she said.

Eventually, employers could have difficulties meeting benefit providers' minimum participation requirements, thus forcing them to halt some voluntary benefits even if an employer wishes to keep them, Mr. Sletten said.

The question remains: Are employees, many now paying more for core benefits and possibly seeing reduced company offerings, complaining? Not really, said Willis' Mr. Blaney.

"A lot of employers are preying on the fact that as long as employees have a job, nobody is going to complain as long as they still collect a paycheck," Mr. Blaney said. "Let's face it. Workers are hearing a lot about reduction in workforce. We hear it every day. There is a general anxiety in the relationship between employers and their employees."

Meanwhile, the trend could spell opportunity for insurers as talk of new wage protection products emerges, experts say.

"There's been some noise in the marketplace regarding (wage protection coverage)," said Aon's Mr. Sletten. "There is some serious research being conducted there."

Wage protection coverage, offered on a voluntary basis through the workplace or via individual plans, could mirror plans put into place by credit card companies that offer insurance that makes cardholders' minimum payments if they get laid off, he said.

STRATEGY ASSESSMENT

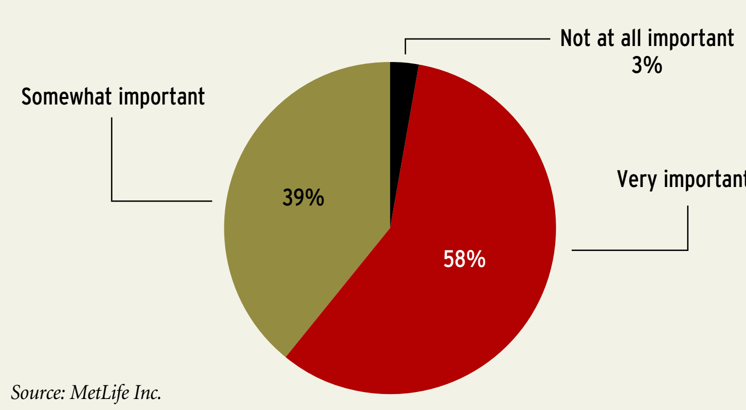
Strategies employers should consider as they optimize their employee benefits plans.

- Conduct a comprehensive strategic review of your benefits plan and its ability to meet diverse employee needs and achieve company business goals. Evaluate the best means of funding additional benefits, whether they should be paid for by employees or by the company.
- Perform a detailed audit of your workforce to determine the value of enhancing demographically targeted programs, voluntary benefits and wellness programs as a means of differentiating the plan.
- Assess whether there are any gaps among your employees with regard to their company loyalty and their own financial security, and consider how to optimally use benefits to bridge those gaps.

Source: MetLife Inc.

BENEFITS AND EMPLOYEE RETENTION

Importance of benefits among employers to retaining employees



Source: MetLife Inc.

Communication is key when it comes to benefit plans

Employers working harder to inform workers about choices

By LOUISE KERTESZ

More employers are communicating employer-paid and voluntary benefits as part of a total rewards package that meets a range of employee needs, consultants say.

Employers taking the total benefits approach are communicating voluntary benefits such as wellness programs and even homeowners insurance with traditional employer-paid benefits such as medical insurance. Typically, employers do so as part of the annual enrollment process while some do so at various times of year based on timeliness or on the employer's overall benefits communication strategy, experts say.

Consultants advise using multichannel approaches—including mailings to the home with messages to the employee and family, Web-based information, small group meetings and health fairs. Mixed approaches are needed to reach "the four different generational groups"—mature, baby boomers, Generation X and Generation Y—in today's diverse workforce, said Suzanne Johnson, director of communications at Buck Consultants L.L.C. in Secaucus, N.J.

"Employers are looking for any way possible that doesn't cost them a lot of money to attract, retain and motivate employees," Ms. Johnson said. "Employees are looking for any cost savings and well-being enhancements they can find."

Voluntary benefits serve both purposes, she said.

Timken Co., a friction management and power transmission provider, views voluntary benefits as part of "a whole package (of benefits), not as a separate offering but as opportunities for choice and, hopefully, affordability, leveraging the buying power of our organization to help manage employees' needs outside of work," said Matt Evans, communication manager-global organizational advancement and human resources, Total Rewards Group at Canton, Ohio-based Timken.

John Finney, senior communications consultant at Watson Wyatt Worldwide in Detroit and Timken's benefit consultant, said he sees increased interest among employers in communicating "the big picture" in benefits. That's conveyed by presenting all the benefits segmented into categories such as health and welfare, vacation, work/life and personal needs, the last being where voluntary benefits can be included.

"Employers have different ways of...segmenting the benefits," Ms. Johnson said, "but the most progressive employers...have some total approach" to communicating them.

"Quite a few" Hewitt Associates Inc. clients use Your Total Rewards, a Web site designed by Hewitt, said Joann Hall Swenson, a principal in Hewitt's communications practice in Minneapolis. "We would recommend that as the best approach, having one place for all the benefits and showing visually how they work together," she said.

"Organizations in the past have tended to bury (voluntary benefits), but as employers are trying to pull out anything they can to show employees it's a good place to work and to motivate them to become engaged, more of these voluntary benefits will come out of the cobwebs," Ms. Swenson said.

As one indicator of the growth in the total rewards approach that includes voluntary benefits, a 2008 survey by Buck Consultants found that 67% of respondents had or were planning to implement an online total rewards program, up from 42% five years earlier.

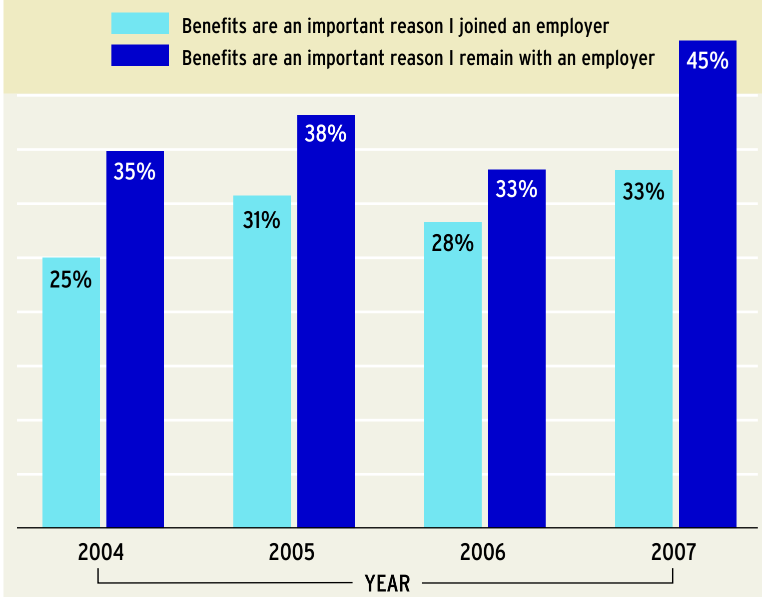
Watson Wyatt's Mr. Finney said it's especially important to communicate the value of voluntary benefits when organizations are making changes, because "most of (the changes) are take-aways, such as higher premiums and deductibles."

"If the employer is increasing deductibles and copays on medical, the (company's) broker may...position a voluntary program as covering out-of-pocket expenses for the employer-paid benefit," said Bonnie Brazzell, vp at Avon, Conn.-based Eastbridge Consulting Group Inc., which has clients including insurers that offer primarily voluntary benefits.

Ms. Brazzell, who is based in Columbia, S.C., said an employer moving to a high-deductible health care plan with a health savings account might have its broker communicate that voluntary hospital indemnity, personal injury and critical illness insurance are compatible with the high-deductible plan.

RECRUITING AND RETENTION

Percentage of employees agreeing that benefits are an important reason to join or remain with an employer



Source: MetLife Inc.

Picking the right time and targets are key tactics in communicating voluntary benefits, Ms. Swenson said. For example, one Hewitt client included communication about cancer insurance in a wellness campaign that highlighted cancer awareness, she said.

While employees understand why they need employer-paid health insurance, voluntary benefits "have to be explained, so there's a lot more focus (in the communications) on what are the needs that the employee might have and solutions to those needs," Ms. Brazzell said. Telling a story about how a voluntary benefit met an employee's need, while maintaining the employee's privacy, often is the best way to educate the workforce about the benefit's value, Mr. Finney said.

It's important to coordinate vendor information so it doesn't overwhelm employees, Mr. Finney said.

"We leverage the resources that providers offer," Timken's Mr. Evans said. New York-based MetLife Inc., which provides Timken's voluntary home, auto and long-term care insurance and legal services, "does generate home mailings, but we work to co-brand those in an appropriate manner so our employees understand that this is part of the Timken Co."

Employers offering ID theft protection as voluntary benefit

Legal service plans also becoming more common choices

By KAREN PALLARITO

Reacting to national crime statistics and marketplace demand, many group life insurers and legal service plans are offering identity theft protection as a voluntary employee benefit, experts say.

ID theft protection began turning up in voluntary benefits plans about five years ago. It's typically bundled with other types of coverage or offered as a rider, but it also may be sold as a stand-alone product.

The Society for Human Resource Management's 2008 Employee Benefits Survey showed that 24% of employers offered legal assistance among other voluntary benefits, down from 33% in 2007 and 27% in 2006. However, some legal plan providers say a rise in inquiries and sales seems to indicate renewed employer interest.

"Anecdotally, marketing each year, we get more and more requests from sponsors who are looking at an overall legal plan and want to make sure we include identity theft," said Marcia Bowers, marketing director in the Cleveland office of Hyatt Legal Plans, a MetLife Inc. company. "That seems to have a lot of curb appeal these days in addition to all the traditional things that are included in a legal plan."

Stephanie Ward, vp-account management at Corporate Synergies Group Inc., a Mount Laurel, N.J.-based health insurance broker and consulting firm, said she may have had just one or two clients with ID theft protection coverage three years ago. "Now it's something we are including in all of our proposal information," she said.

While identity theft protection is a service to workers, employers also benefit from helping workers reduce time spent trying to restore their credit, Ms. Ward said.

While all types of employers are offering it, financial, medical and security firms "have a heightened awareness" of the risk because the industries are popular targets for identity theft-related crimes, said Rob McGinnis, president and chief executive officer of Marsh Inc.'s U.S. consumer business.

Some 8.3 million U.S. residents—or 3.7% of all adults—were victims of identity theft in 2005, according to the latest Federal Trade Commission data. At least half of the incidents involved the theft of $500 or less of goods and services; however, thieves perpetrated crimes costing at least $6,000 in 10% of the cases.

In more than half of the cases, the victims incurred no out-of-pocket expense. Others weren't so lucky, with 10% reporting expenses of $1,200 or more.

Identity theft cannot be prevented, so it's best to work quickly to minimize the damage, experts say. While some service providers check an employee's credit status and monitor it over time for suspicious activity, others begin providing assistance when the employee suspects trouble.

Victims of ID theft sometimes spend hundreds of hours trying to resolve problems that arise when their name, Social Security number, credit card numbers and other financial information are used to commit fraud. ID theft protection services can provide counselors to walk victims through the process. But the breadth of so-called "restoration" services varies widely. Some services provide access to network attorneys, but few reimburse for losses incurred, providers said.

In a soon-to-be-released national consumer survey, 34% of employees cited identity theft as a top personal finance event in which they were personally concerned from a legal standpoint, according to ARAG North America Inc., a Des Moines, Iowa-based legal insurance provider. Such worries, compounded by the nation's fragile economic health, are bound to fuel continued interest in ID theft protection, experts say.

"When the economy goes bad, typically we see crime go up," said Michael McCoy, a consultant to Pre-Paid Legal Services Inc. in Des Moines, Iowa, and co-author of "The Silent Crime: What You Need to Know About Identity Theft." The thieves are getting smarter, too, he said. Instead of robbing banks, they're hacking into computers and they're grabbing purses for more than the cash.

"You might have a hundred bucks in there, but I just made several thousand from stealing your identity," Mr. McCoy said.

Providers cited prices for employees ranging from lows of $8 to $16 per employee per month to highs of $23 to $26, depending on the employer's size, demographics and range of services in the policy. The higher-priced products often include other legal services, such as will preparation. While most of the business is employee-pay only, some employers share the cost.

Libertyville Savings Bank in Fairfield, Iowa, for example, provides full coverage of legal services, including identity theft, to its 32 employees at an annual cost of roughly $5,000, said CEO Jill Burnett.

ARAG President and CEO Cameron Sutton said he would advise employers to take a thorough look at what's covered.

"It might be for a few extra dollars extra you'll be able to get a lot more coverage, including legal insurance, as opposed to just one element—identity theft," Mr. Sutton said.

8.3 million

NUMBER OF U.S. residents—or 3.7% of all adults—who were victims of identity theft in 2005, according to the latest Federal Trade Commission data.

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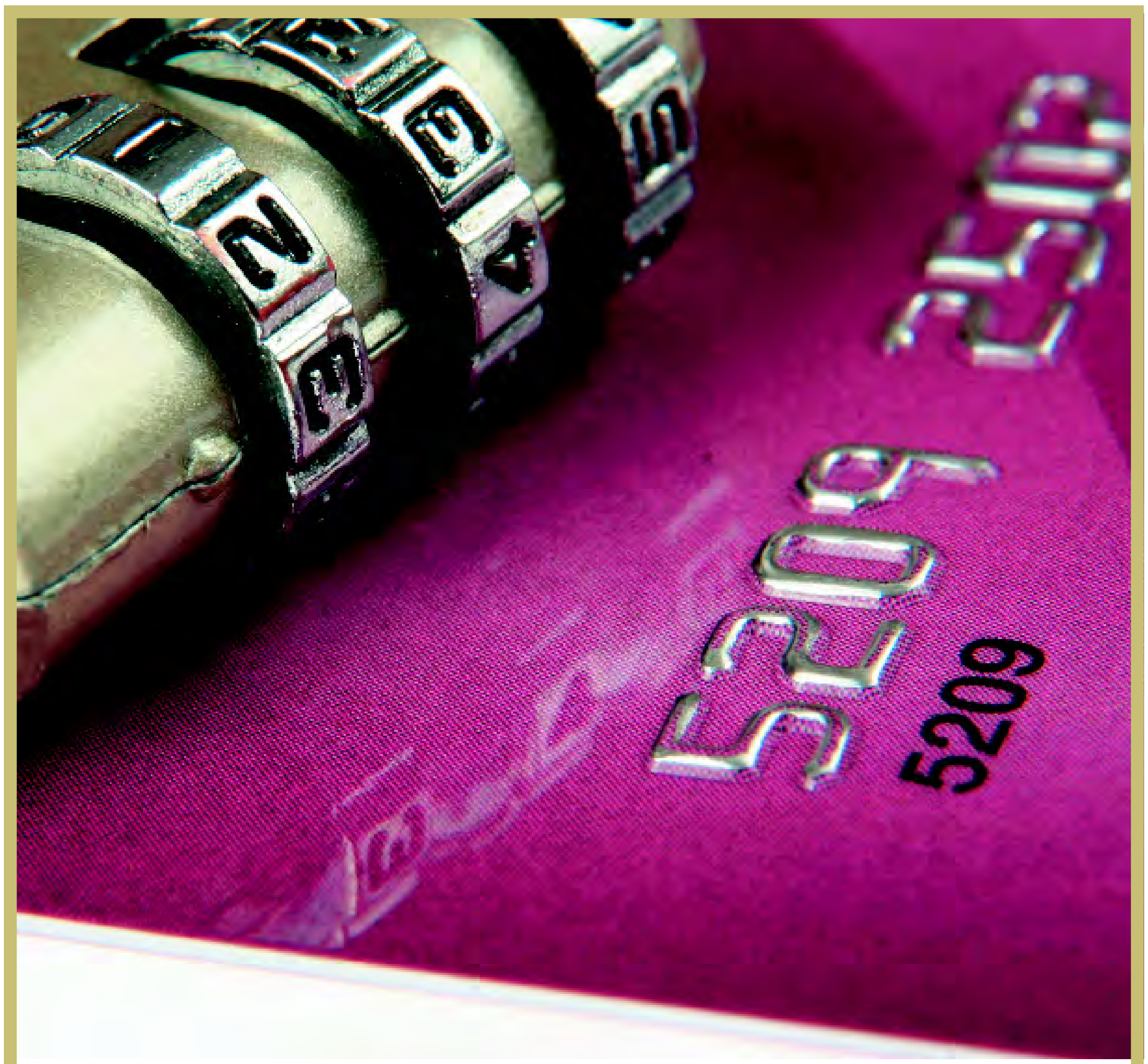
'We get more and more requests from sponsors who are looking at an overall legal plan and want to make sure we include identity theft.'

Marcia Bowers, Hyatt Legal Plans



Woman's struggle with ID theft aided by plan

Vicki Long's struggle to clear her blemished credit record began shortly after a box of checks went missing from her mailbox in September 2004. Later that year, the bank informed her that someone was using the stolen checks. By December, she began receiving statements from credit cards for which she never applied and phone calls from collection agencies seeking payment.

At the time, the quality assurance analyst at KPMG L.L.P. in Dallas didn't have identity theft protection. But when the fall benefits enrollment period rolled around, the legal services plan offered to KPMG employees through Hyatt Legal Plans caught her eye. Because it included help resolving ID theft issues, Ms. Long signed up and began using the coverage in January 2005—with no restrictions for a pre-existing situation.

With a list of attorneys provided by Hyatt Legal, Ms. Long found someone to take her case. The attorney helped her navigate the web of fraudulent activity in which she had become entangled.

"Any time I would get information from a collection agency, I would have to complete an affidavit stating that I was not the one who wrote the bad checks or made the bad charges, and I would send that to the attorney," Ms. Long said. "And she would turn around and send a letter to the company stating that this person is not responsible for the charges, she's hired me as her counsel and we need to have this matter terminated because it was a case of identity theft."

Aside from handling a flurry of paperwork, the attorney represented her in a criminal case brought by a community college bookstore that received bad checks in her name.

In all, the crime by the perpetrator or perpetrators resulted in about $3,200 in credit card charges and more than $10,000 in bad checks. But Ms. Long didn't pay a penny, even though the case took six months to fully resolve.

While quite an ordeal, "if I hadn't had the attorney helping me deal with all that, I don't think I could have got it cleared up myself," Ms. Long said, "because it was such a wide scope of checks and credit cards that had been used in my name."

Since then, Ms. Long has kept the legal services plan at a cost of about $16 a month and said she may even have convinced some of her colleagues to sign up for the voluntary benefit offered by their employer.

"I talked it up a lot because I thought it was definitely worth it," she said.

—By Karen Pallarito

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Market Moves

Citadel acquires runoff from Arthur J. Gallagher

STAMFORD, Conn.—Citadel Risk Management Inc. said it has acquired substantially all of the reinsurance runoff processes from Itasca, Ill.-based broker Arthur J. Gallagher & Co.

Citadel, an active and runoff insurance and reinsurance provider headquartered in Stamford, Conn., sees the acquisition as an opportunity to create a runoff sector for the reinsurance intermediary market.

The new entity providing runoff services to cedents and reinsurers formerly in Gallagher's reinsurance portfolio is Citadel Risk Services Inc. and operates at Citadel's offices in Bridgewater and Wayne, N.J.

Terms of the runoff deal were not disclosed.

Allied World opens 2 California offices

LOS ANGELES—Allied World Assurance Co. Holdings Ltd. has opened two additional California offices to help distribute its specialty products.

The Pembroke, Bermuda-based firm said the new offices in Costa Mesa and Los Angeles have joined its existing office in San Francisco.

Bobby Bowden, Allied World's western regional manager and executive vp-marketing and business, will oversee all three West Coast offices. Mr. Bowden joined the firm in October.

The Costa Mesa office will distribute for Allied World Specialty, which trades with wholesale brokers. It is located at 600 Anton Blvd., Suite 1100, Costa Mesa, Calif. 92626. The temporary phone number until April 1 is 714-371-4345.

The Los Angeles office will distribute for Allied World Brokerage, which trades with retail brokers. It is located at 550 S. Hope St., Suite 1825, Los Angeles, Calif. 90071. The phone number is 213-416-1400.

The San Francisco office will continue as a brokerage distribution point, the firm said.

American Pinnacle buys workers comp business

FRESNO, Calif.—American Pinnacle Partners Inc. said it has acquired the workers compensation business of Commodore Insurance Services Inc.

Western Pinnacle Insurance Services Inc., Commodore's Fresno, Calif.-based workers comp operation, will help APP strengthen its status as a specialty managing general underwriter, it said in a statement.

The Seal Beach, Calif.-based APP, a holding company of specialty insurance intermediaries, formed in 2008.

ProAssurance merges casualty, medical arms

BIRMINGHAM, Ala.—Medical and legal liability insurer ProAssurance Corp. has merged and renamed two of its units.

The Birmingham, Ala.-based company said Woodbrook Casualty Insurance Inc. and Medical Assurance Co. Inc. have merged and named the combined operation ProAssurance Indemnity Co. Inc.

The ratings of the insurer formerly known as Medical Assurance were unaffected, Oldwick, N.J.-based rating agency A.M. Best Co. Inc. said in a statement.

Industry veterans form Mainstay Insurance Group

BELLEVUE, Wash.—Two insurance industry veterans have formed Mainstay Insurance Group Inc., a Bellevue, Wash.-based program administrator and specialty wholesale brokerage.

Aside from umbrella and excess solutions for retail brokers, Mainstay will focus on the commercial real estate industry and risk management needs of the green movement, it said in a statement.

President and Chief Executive Officer Dusty Rowland and Executive Vp Eric Arthur co-founded the firm at Plaza East, 11100 NE 8th St., Suite 835, Bellevue, Wash. 98004. The phone number is 425-453-5157.

Navigators Group sets up new division

PARSIPPANY, N.J.—New York-based Navigators Group Inc. has established a division to serve U.S.-based freight forwarders and other third-party logistics providers.

Navigators Logistics Insurance Services will be based in the firm's Parsippany, N.J., office and run by Greg Horun, who joined Navigators to lead the new division and is vp and logistics client executive.

Navigators Group offers cargo and other specialty property/casualty insurance products.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Zack Phillips, 711 Third Ave., New York, N.Y. 10017 or e-mail *zphillips@businessinsurance.com.*

Retaliation: Increased litigation foreseen

CONTINUED FROM PAGE 4

whether it is what "we were hoping to hear." This avoids "unpleasant surprises later on," she said.

It will "absolutely" lead to increased litigation, though, said Mark Batten, an employer attorney with Proskauer Rose L.L.P. in Boston. "Retaliation claims are already fairly rampant because they are so easy to assert, and they're so difficult for employers to deflect under current standards," he said.

"It certainly has the potential to lead to increased litigation," said Ron Chapman Jr., an employer attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas. "I feel confident plaintiffs lawyers are going to be aggressive" in trying to extend the rationale behind this ruling into other actual scenarios, "making it even harder for employers to walk the fine line" of conducting a fair, thorough investigation "without inciting more litigation."

Others, though, disagree. Even before the ruling, "most employers would have assumed that an employee who provided this type of information during an investigation is engaged in protected activity," Mr. Alper said.

"This decision highlights the need for employers to be skilled when they conduct internal investigations so they don't create greater problems by the way in which they handle their investigation," Mr. Chapman said. "In this case, the basis for plaintiff's claim did not exist until the company conducted their investigation," he said. "More and more, you're seeing claims arise

READ documents from this case online at BI's Knowledge Center **www.BusinessInsurance.com**

not out of the complaint that led to the investigation, but the investigation itself."

Mr. Chapman recommended separating investigators and employment decisionmakers as much as possible to avoid decisionmakers from gaining knowledge that could be used inappropriately as the basis of an employment decision.

Employers now must consider that anyone who participates in a harassment investigation at all will be "cloaked in anti-retaliation protection," even if the employer takes action later for an unrelated reason, Mr. Batten said.

As a result, employers might consider not interviewing employees who are only peripheral to the investigation rather than speaking to everyone "just for the sake of completeness," Mr. Batten said.

While employers have "to be more sensitive to potential retaliation claims," they also must conduct thorough investigations, said A. Kevin Troutman, an employer attorney with Fisher & Phillips L.L.P. in Houston.

However, "I think you can go to extremes either way," said Christopher W. Olmsted, an employer attorney with Barker Olmsted & Barnier A.P.L.C. in San Diego. "You can interview too many witnesses and you also put yourself at risk by interviewing too few."

If employers consider adverse action against someone who cooperated in an investigation, their reasons must be "clear and well-documented," said Terrence H. Murphy, an employer attorney with Buchanan Ingersoll & Rooney P.C. in Pittsburgh.

Vicky S. Crawford vs. Metropolitan Government of Nashville and Davidson County, Tenn.; U.S. Supreme Court, No. 06-1595; Jan. 26, 2009.

UP CLOSE
Comings & Goings

BRITTON GLISSON

NEW JOB TITLE: Chief administrative officer with Richmond, Va.-based specialty insurer Markel Corp.

PREVIOUS POSITION: President and chief operating officer of Markel Insurance Co.

VITAL STATISTICS: I was a CPA before coming to Markel (19 years ago).

GOALS FOR NEW POSITION: Markel is going through an extensive reorganization. My position is going to be responsible for the centralized functions of claims, policy administrative services, reinsurance, billing and collections, and marketing services. Prior to this, those functions were decentralized. I am going to be responsible for providing cost-effective services to our business units. And the idea is that people who run the business units going forward be freed up from the distractions of these administrative support services, and they can focus their attention on sales and marketing and growing the business.

CHALLENGES FACING THE INDUSTRY: Capital adequacy is one of them, which is the challenge on the investment side of the market. There are also challenges of the pricing environment. It's sort of a perfect storm of a lousy investment environment and a challenging underwriting environment at the same time. Maintaining your capital adequacy is a challenge.

FIRST EXPERIENCE IN THE INDUSTRY JOB MARKET: When I was a CPA, Markel was one of my clients. I used to audit insurance companies. So I first got involved in insurance on the financial side of operations.

ADVICE: I think insurance is a wonderful place for young people to get into the business world. I think in the past it has not been considered attractive, but the changes on Wall Street with the financial sector and jobs, insurance fared well in the recent downturn.

OUTSIDE THE INDUSTRY, A DREAM JOB: I love to snow ski, so having the ability to work in a place like Vail (Colo.)...something in the ski industry or something in the nonprofit world, being able to live in the Rocky Mountains.

Comings & Goings ONLINE

VISIT ***www.businessinsurance.com/ComingsandGoings*** for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly e-mail.

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- Buck Consultants L.L.C.
- Towers Perrin
- Total Medical Solutions

Layoffs: Comp claims could increase

CONTINUED FROM PAGE 1

tice lead for Sedgwick Claims Management Services Inc. in Long Beach, Calif. "If someone knows that their job is going away, or has been eliminated, the motivation to return to work is much less."

Other laid-off employees may reopen old claims or file new ones for soft-tissue injuries, back pain and other ailments as an alternative income source, depending on state statutes of limitation for bringing claims, said Pam Ferrandino, executive vp and casualty practice leader for Willis HRH in New York.

New and reopened claims could be a particular issue as unemployment benefits expire in regions where several employers have shut down factories and alternate employment opportunities no longer exist, Ms. Ferrandino and others said.

Severe downturn

Data complied by the New York-based Insurance Information Institute and released last week shows that during the past four recessions, workplace injury incidence rates actually have declined.

But today's recession is the longest since 1981 and risk managers, brokers and TPAs say a more severe downturn is likely to include more workers comp claimants among the employees losing their jobs.

A risk manager in the construction industry said that for the first time in two decades, her company has terminated workers comp claimants. They were among a substantial portion of her company's nationwide workforce let go, said the risk manager, who asked not to be identified.

The Labor Department on Friday announced that 598,000 jobs were lost in January, raising the unemployement rate to 7.6%, the highest level in more than 16 years.

Initial applications for unemployment benefits reached 626,000 for the week ending Jan. 31, up from 591,000 the previous week, a 26-year high, the U.S. Department of Labor reported last week.

So far, workers comp claims have not spiked at Fleetwood Enterprises Inc. although the recreational vehicle and manufactured home builder has closed several plants, said Bill McMahon, the Riverside, Calif.-based company's risk manager.

'You don't want to surprise your CFO with, "Oh, by the way, we need to book another $20 million for potential comp claims."'

Mark J. Noonan, Marsh Inc.

Fleetwood's programs for reducing claims severity and frequency are paying off. But if the recession continues, Mr. McMahon said he expect costs for open claims will climb, especially in regions where Fleetwood and other employers have closed plants and few jobs are available.

"I do expect to see it," Mr. McMahon said.

The potential for new claims and workers comp cost increases when jobs disappear from an entire community can be substantial enough that risk managers will need to collaborate with the corporation's chief financial officer to include those expenses into the overall charge for shuttering operations, said Mark J. Noonan, managing director and workers compensation practice leader at Marsh Inc. in New York.

"You have to put all that into the pot," along with other expenses such as severance benefits, Mr. Noonan said. "You don't want to surprise your CFO with, 'Oh, by the way, we need to book another $20 million for potential comp claims.'"

Greater investigation

Meanwhile, risk managers—even as some of their own staff may be facing termination under corporate budget cuts—are being more vigilant than usual for claims that are not legitimate or can be terminated if medically appropriate, several sources said.

"There is definitely an 'on-alert' kind of behavior (along with) the application of greater investigation" into claims, said Betsy Robinson, vp-product management and market analysis for Intracorp, a unit of Philadelphia-based unit of CIGNA Corp.

Employers are undertaking more descriptive documentation of job functions, said Kimberly George, vp and managed care practice lead for Sedgwick in Chicago. The documentation can help show injured worker physicians that an employee is physically capable of returning to his or her job, even if that job now may have to be with another employer.

"It's probably a more important practice today as we work on those claims that are impacted by not having a job to return to and making sure the physician has a good understanding of what that job is," Ms. George said.

Getting employees fit to work essential

Return-to-work efforts are vital even when layoffs mean employers don't have jobs for workers compensation claimants to return to, several observers said.

Failure to help comp claimants get healthy enough to work may result in claims remaining open longer than they would in more prosperous times, as some employees cling to workers comp benefits that can be larger than weekly unemployment benefits.

"The goal is always to return them to full functionality so they can be employable elsewhere if not with their previous employer," said Darrell Brown, workers comp practice lead for Sedgwick Claims Management Services Inc. in Long Beach, Calif.

Similarly, employer efforts to obtain a medical release from doctors are essential when a job may be eliminated shortly after an employee returns to the workplace, several sources agreed.

But in such cases, employers should be honest with workers about the economy's impact on their job and explain to them, their doctors, and possibly their attorneys, that they are not being treated differently from other laid-off employees.

Returning employees to work before a layoff may be necessary, said Mark J. Noonan, managing director and workers compensation practice leader at Marsh Inc. in New York. But employers should seek legal counsel to ensure compliance with all laws, such as those dictating the amount of notice employers must provide employees before a layoff, he added.

Worker cooperation with return-to-work efforts can be gained by making severance and vocational training benefits available, said Robert Bennett, chief executive officer of claims manager Alternative Service Concepts L.L.C. in Nashville.

And employers should inform employees' doctors about such severance packages, Mr. Noonan said.

"The doctor shouldn't look at whether the (injured employee's) job is there or not, but some of them do," before they sign a release form, said a risk manager who asked not to be named.

To help reduce new claims from laid-off employees, employers should ask them before they leave to sign waivers stating they have not been injured, said Rebecca Shafer, a risk consultant and president of Amaxx Risk Solutions Inc. in Hartford, Conn. Most states won't honor the waivers, but they can discourage illegitimate claims, she said. Employers, however, should not assume that all claims from laid-off workers are illegitimate, Ms. Shafer warned.

—By Roberto Ceniceros

REUTERS

Sen. Christopher Dodd, D-Conn., chairman of the Senate Banking, Housing and Urban Affairs Committee, said systemic risk regulation will be the top priority of the committee.

Systemic: Debate on risk likely to affect insurance

CONTINUED FROM PAGE 3

and I think Chairmen Frank and Dodd are sensitive to this—is that if the feds are ultimately in charge of solvency and the states are in charge of rates."

But "I don't think we're necessarily going there," Mr. Wood added.

Congress always responds to major financial crises with legislation, he said. "The challenge within the industry after systemic risk is addressed is to keep the momentum going for a more rational regulatory regime."

"The call for systemic risk regulation really highlights one of the problems here in the regulatory structure in the U.S. and that is you have a number of different functional regulators. And for insurance, we have 56 different regulators," said J. Stephen Zielezienski, senior vp and general counsel of the Washington-based American Insurance Assn. "We see this as a way for there to be unity under a federal insurance regulator to better afford coordination among the financial services regulatory agencies."

"We don't have an issue with the job the state regulators have been doing, but there are inherent limitations in what they can do and there's no way to overcome that," Mr. Zielezienski said. "Failure to address that will just perpetuate the lack of uniformity and the inconsistency that comes with a fragmented insurance regulatory structure."

But Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office, said systemic risk regulation could coexist with state regulation. He said debate about federal insurance regulation "is going to lead to the same food fight we've been having for 10 years. That ends up with everybody being dirty and nobody getting anywhere."

He said the industry could "possibly build a consensus" about systemic risk. "We need to be able to see these types of crises coming before they get here, preferably with the Hubble telescope rather than the naked eye."

Mr. McKay said a systemic risk regulator could be set up within the Federal Reserve. He said there are two ways to look at systemic risk: Too big to fail and too interconnected to fail.

"We think that the better way to view it is too interconnected to fail. You can be a large auto writer and create virtually no systemic risk because there is no counterparty risk and the auto insurance market isn't affected disproportionately by economic downturns," Mr. McKay said said. But for financial products, "you can be a small company and still create systemic risk."

"You need information-sharing and transparency, so you need to create an office to figure out what else you need," Mr. McKay said. The systemic risk regulator would not interact with individual insurers but with state regulators overseeing them, he said.

"By having the Fed do systemic risk regulation, they could also be looking globally. This would be the U.S. office of the global effort," Mr. McKay said.

The National Assn. of Mutual Insurance Cos. was more skeptical.

"We have more concerns than we do comfort," said Jimi Grande, vp in NAMIC's Washington office. "However, until we start to see what they mean by systemic risk regulation and get a look at all the details, it's hard to have too much of a reaction. Our concerns center on the unintended consequences of well-meaning legislation."

ADVERTISER INDEX

Issue of February 18

Disclosure: Proposed N.Y. rules require transparency on compensation

CONTINUED FROM PAGE 1

insurance products the broker considered and the compensation associated with them.

The proposed rule does not apply to reinsurance placements, coverages placed with captives or those in which the purchaser has no contact with a producer, such as a wholesale transaction.

While the new rule addresses disclosure, it does not address any ban on contingent commissions, a contentious issue that was addressed at length during the hearings.

Matthew J. Gaul, special counsel with the New York Insurance Department, said that while the department did not specifically address contingents, any perceived conflicts of interest associated with the incentive payments will be addressed through required disclosure.

"This is going to arm consumers and small-business owners that go to an agent or broker for insurance with more information about the role that the broker or agent is playing in the transaction. And any conflicts of interest that may be present are at least going to be aired," he said.

Mr. Gaul, noted, however, that the proposed rule is only the first step. "We're going to see how this goes; see what the reception is in the industry and how this works for consumers."

The department's goal is to promulgate a new regulation by year end "that will bring transparency to this marketplace and then we'll see where we go from there," he said.

RIMS' reaction

The Risk & Insurance Management Society Inc., for one, said in a statement issued Friday that the proposed rule is "a step forward in ensuring complete transparency," despite falling short of banning contingent commissions and maintaining a two-tier compensation system whereby some producers do not accept contingents but many others do.

RIMS' immediate past president, Janice Ochenkowski, testified at last summer's hearings that contingent commissions and supplemental commissions create an inherent conflict of interest and should be prohibited for all brokers and independent agents that represent buyers.

At a minimum, RIMS believes that all compensation should be disclosed in writing, but noted it is not "the perfect solution," said Ms. Ochenkowski, who is managing director at Jones Lang LaSalle Inc. in Chicago.

Deborah Luthi, RIMS' director of external affairs, last week said the society "offers high praise" to the New York Insurance Department for issuing the proposed regulation.

"The relationship of trust and truth and honesty between the broker and the insurance purchaser is critical, and this regulation will help ensure those elements will be maintained," she said.

While the "proposal does fall short of just a flat-out prohibition of contingency fees…we view this as a step forward in ensuring complete transparency," said Ms. Luthi, who is director of enterprise risk management services at Matheson Inc. in Elk Grove, Calif.

Big Three in favor

The world's three largest brokers support the proposed rule.

Amid investigations that they steered business to insurers that paid the highest contingent commissions, Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd. agreed in 2005 to give up millions of dollars a year in contingents and to fully disclose their compensation practices to clients.

The brokerages have since criticized the system, saying they are at a competitive disadvantage because the vast majority of the industry continues to collect contingents and are not held to the same rigorous disclosure standards.

"We fully support Superintendent Dinallo's efforts to create a level playing field," Brian Duperreault, president and CEO of New York-based MMC, said in a statement. "We look forward to continuing to work closely with the New York authorities to establish an equitable regulatory landscape that serves the interests of all clients."

In a statement, Chicago-based Aon said it also "strongly supports" the efforts, calling the draft rules "a step in the right direction."

Joe Plumeri, chairman and CEO of London-based Willis—one of the more vocal advocates for transparency and the abolishment of contingent commissions—also applauded the insurance department.

The proposed regulation "is a validation of our firmly held position, and we hope it leads to an industry-wide standard that would apply to all brokers, no matter where they do business," Mr. Plumeri said in a statement.

But not everyone fully supports the regulation.

The Independent Insurance Agents & Brokers of New York Inc., for one, said it has "some major concerns" with the proposal.

"IIABNY has always maintained that agents and brokers should voluntarily disclose compensation upon client request, but is opposed to any additional burdensome requirements on agents and brokers."

The association will continue to negotiate with the New York Insurance Department and will be represented on a working group set up specifically to deal with this issue, it said.

Swiss Re: With Buffett's stake about 25%, some see takeover ahead

CONTINUED FROM PAGE 1

underwriting performance.

It attributed the shareholders' equity decline to unrealized losses on investments and the impact of exchange rate fluctuations.

Swiss Re also announced that Berkshire Hathaway would invest 3 billion Swiss francs ($2.6 billion) in Swiss Re in the form of convertible notes with a 12% interest rate. At Berkshire Hathaway's option, that is convertible after three years into Swiss Re shares, with a price of 25 Swiss francs ($21.71). This could leave him with an approximately 25% stake in the reinsurer, which may give him a solid base for an eventual full takeover, some observers say.

25%

THE STAKE Berkshire took in Swiss Re, which may give Warren Buffett a solid base for a later takeover, some observers say.

Swiss Re also will purchase from Berkshire loss reserve reinsurance coverage for the group's property/casualty reserves that will provide total coverage of 5 billion Swiss francs ($4.34 billion).

This is Berkshire Hathaway's second major investment in Swiss Re. Last year, it took a 3% stake in Swiss Re and assumed a 20% share of its property/casualty business under a proportional reinsurance treaty.

Swiss Re's battered stock closed Friday at 18.6 Swiss francs ($16.15). It has a 52-week high of 93.95 Swiss Francs ($81.57).

Rating agencies react

In response to the news, New York-based Moody's Investors Service downgraded Swiss Re's financial strength and debt ratings to Aa3 to Aa2, respectively, and placed it under review for further possible downgrade.

In addition, Oldwick, N.J.-based A.M. Best Co. Inc. placed Swiss Re's A+ financial strength rating under review with negative implications, and New York-based Standard & Poor's Corp. also placed its AA-financial strength and counterparty credit ratings of Swiss Re under review with negative implications.

The announcement by Swiss Re was "very alarming," said Best analyst Neal Enriquez. "The positive element to it is the trust that another insurance company, a reputable investor, is putting in them, which we are not ignoring. We just want to see the terms of that financial commitment." The plan to raise $2 billion in equity capital and the loss reserve cover are positive elements as well, he said.

Analysts contend Swiss Re's problems appear to be related to investments, and its reinsurance business remains healthy. While the size of the reinsurers' loss was not completely unexpected, there were other surprises, observers said.

"A surprise to me was how much shareholder equity declined in the fourth quarter," said Tim Dawson, an analyst with Helvea S.A. in Geneva.

Swiss Re's capital position also fell surprisingly quickly, he said. The reinsurer appeared to have plenty of excess capital in September, he said, but its capital was below the level required to maintain an AA financial-strength rating by the end of the year. "That was a big shock," he said.

Georg Marti, an equity analyst with Zürcher Kantonalbank in Zurich, said the loss was not in line with many analysts' expectations, but could have been even higher. "One possible scenario happened," he said.

"It seems the reinsurance business is doing well and the problems are only from the investment side," Mr. Marti said. But the full picture will become clearer later this month, he said.

"We only know the combined ratio and we do not know how it is composed," Mr. Marti said. "We have to look at it in a more detailed way. We will know in two weeks when they present their results."

"Their core, nonlife business is in pretty good shape," said Mr. Dawson.

Discussing the Buffett investment, John L. Ward, chief executive officer of Cincinnatus Partners L.L.P. in Cincinnati, said, "As usual, he structured the investment to give Berkshire Hathaway excellent downside protection but also big upside potential."

His investment "is locked into a very high interest rate," at 12%, "so if Swiss Re's stock continues to go down, the worst that will happen for Berkshire is a 12% return on investment, which is a terrific rate in this environment," Mr. Ward said.

On the other hand, if "things turn around" and Swiss Re's stock starts to go up again, Mr. Buffett will be able to buy the stock at the very low price of 25 Swiss francs ($21.71), he said.

"For Swiss Re, it is an expensive way to raise capital," Mr. Marti said. "I do not think they had much choice. They were lucky to have an investor like Buffett who was willing to contribute capital."

Observers point out that Swiss Re is a competitor of General Re Corp., which is controlled by Mr. Buffett. Steven K. Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc., said, "You kind of think that it would be an advantage to Gen Re to have one of their main competitors have some level of financial difficulty. But obviously, he takes a wider view. If he can get a good deal, he'll take a good deal."

Steve McElhiney, president of Dallas-based reinsurance intermediary EWI Inc., said, "I think the play for him is Swiss Re is very active in the cat bond and the (industry loss warranty) space," while Gen Re is not.

"I always viewed that their investment in Swiss Re is a way to participate in the capital markets' reinsurance products indirectly through partial ownership of Swiss Re," he said. "It really complements what Gen Re does in the traditional reinsurance sense," said Mr. McElhiney.

Some question Mr. Buffett's ultimate strategy in the deal.

"If this lets him get one step closer to a significant stake in a competitor, that might lead to a full combination of the two firms at some point down the road, which would give him an incredible market position," Mr. Ward said.

For now, though, "I believe Buffett looked at this as a great investment opportunity," said Mr. Ward.

Richard DiClemente, president and CEO of New York-based THB Intermediaries Inc., said, "We are concerned about the interconnectivity that's taking place because we feel...as much competition as possible'" is "always a positive thing."

If this move is part of a longer-term strategy of merging the two companies together, that obviously raises "some questions about the monopolistic nature of this," as well as regulatory issues, said Mr. DiClemente.

Client comfort

However, Bryon G. Ehrhart, chairman of Investment Banking Group and CEO of Aon Benfield Analytics at Aon Benfield in Chicago, said, "The potential for that occurring would probably be viewed favorably by our clients. I would imagine there are some clients that would even hope for that," he said.

"Any kind of growing shareholdings by Berkshire could lead to a stepped acquisition and that may provide additional comfort to clients over the capital adequacy and liquidity of Swiss Re were that to occur," he said.

A spokesman for Berkshire Hathaway could not be reached.

General plan gets cautiously optimistic reaction; details of the transaction awaited

ZURICH, Switzerland—Market observers generally are cautiously optimistic about Swiss Reinsurance Co.'s prospects after Warren Buffett's decision to make a major investment in the reinsurer.

The cash infusion was announced last week as Swiss Re reported it expects to record a 1 billion Swiss franc ($867.5 million) loss for 2008 and see a 4 billion Swiss franc to 5 billion Swiss franc ($3.47 billion to $4.34 billion) erosion in its shareholder's equity in the fourth quarter.

Swiss Re said Mr. Buffett's Berkshire Hathaway Inc. would invest 3 billion Swiss francs ($2.60 billion) in the Zurich-based reinsurer in the form of convertible notes with a 12% interest rate.

Bryon G. Ehrhart, chairman of Investment Banking Group and chief executive officer of Aon Benfield Analytics at Aon Benfield in Chicago, said although he has not yet seen all the details of the transaction, "I think the reaction is positive on behalf of our clients for anything that increases their liquidity and capital."

He noted that in light of Swiss Re's third-quarter results, "clients have been monitoring Swiss Re developments closely," and had been "expecting some capital management moves—and, frankly, hoping for it—and so I think this answers some of those expectations."

"I don't think there's any impact at all in terms of our client base," said Steve McElhiney, president of Dallas-based reinsurance intermediary EWI Inc.

> **'For people who might have some concerns about financial viability, then obviously' the cash infusion is 'a very good thing from the perspective of the buyers.'**
>
> Richard DiClemente, THB Intermediaries Inc.

"Swiss Re's viewed as being very much above-average credit quality security," he said. "We have heard nothing from our clients in reaction to the announcement that's negative," Mr. McElhiney said.

"For people who might have some concerns about financial viability, then obviously" the cash infusion is "a very good thing from the perspective of the buyers," said Richard DiClemente, president and CEO of New York-based THB Intermediaries Inc.

In a presentation to analysts and media last week, James Schiro, Zurich Financial Services Group's CEO, would not comment directly on Swiss Re's performance.

"But we are encouraged," Mr. Schiro said of the reinsurer's plans to add capital. "Our reinsurance receivables are in a much better position with a capital infusion at Swiss Re," he said.

However, John L. Ward, CEO of Cincinnatus Partners L.L.P. in Cincinnati, said, "There appears to be a lot of uncertainty about their future, so I think it would be logical for someone to be more cautious in placing business with Swiss Re in the future" until its path "is a little more certain."

Collins Stewart Europe Ltd., a London-based investment banking group, also said in an analysis that Swiss Re clients are likely to be wary.

"Whether Swiss Re is downgraded or not, we believe clients will approach its balance sheet with a degree of caution," Collins Stewart wrote. "These events will encourage the diversification of reinsurance risks, we believe."

—By Judy Greenwald and Michael Bradford

Swiss exchange examines possible rules violation

ZURICH, Switzerland—SIX Swiss Exchange Ltd., a Zurich-based securities exchange, is investigating a possible violation of its rules by Swiss Reinsurance Co.

The stock market said in a statement that the investigation is in connection with information it provided to investors, analysts and the media in July 2008 regarding the reinsurer's exposure to U.S. mortgage lenders Freddie Mac and Fannie Mae.

Zurich-based Swiss Re issued a statement at that time that said it had a $5.2 billion exposure to Freddie Mac debt and a $4.4 billion exposure to Fannie Mae debt.

SIX Swiss Exchange said it was unclear how long the investigation would last and that no further details would be released during the probe.

The investigation appears to be a procedural process that should not be a significant problem for Swiss Re, said Tim Dawson, an analyst with Hevea S.A. in Geneva. "It's quite a small point," he said.

A Swiss Re spokesman could not be immediately reached for comment on the investigation.

—By Michael Bradford

News In Brief

CONTINUED FROM PAGE 1

concern. Best analysts said they believe the change in Ironshore's business plan will "ultimately enhance" the franchise, but current market conditions will make it difficult for the insurer to execute key elements of the plan. Best added that the negative implications for Ironshore are that the current ratings could be affirmed, but should the insurer's revised business and capital plans fail, a rating downgrade could occur.

Lawmakers seek study of AIG bailout

Key congressional leaders have asked the Government Accountability Office to study the federal government's rescue of American International Group Inc. and the rescue's effect on the U.S. insurance market. In a letter, the lawmakers wrote that "there have been troubling reports that market distortions may be occurring in the commercial property/casualty market as a result of the actions by the U.S. Treasury and the Federal Reserve Bank to provide loans and other financial support to shore up AIG's capital position."

Delphi seeks to drop retiree health cover

Financially troubled auto parts manufacturer Delphi Corp. has asked a U.S. bankruptcy court for permission to terminate health and life insurance coverage for current and future salaried retirees. The Troy, Mich.-based company estimates that the termination of the programs would save Delphi $200 million through 2011 and eliminate balance sheet liabilities of just over $1 billion. If approved by the court, the termination would begin April 1. Delphi said elimination of the programs is necessary to enable it to emerge from Chapter 11 bankruptcy reorganization.

Aon freezes pension plan

Aon Corp. is freezing its defined benefit pension plan, ending contributions to a defined contribution plan it set up in 2004 and enhancing its 401(k) plan. As of April 1, employees enrolled in Aon's pension plan will stop earning benefits. That action completes a process Aon started in January 2004 when it closed the plan to new employees. And as of Jan. 1, Aon stopped making contributions to a defined contribution plan that it set up in 2004 to cover U.S. employees hired since Jan. 1, 2004. Under that plan, Aon's contributions were based on an employee's length of service. Also effective Jan. 1, Aon enhanced its 401(k) plan, now matching 100% of employees' salary deferrals up to the first 6% of pay. It had been matching 50% of employee contributions on the first 6% of pay.

AIG plans sale of two Thai units

American International Group Inc. plans to sell two Bangkok, Thailand-based companies—AIG Retail Bank Public Co. Ltd. and AIG Card (Thailand) Co.—to a Thailand bank in a $58.7 million deal. AIG and the Bangkok-based bank, Bank of Ayudhya Public Co. Ltd., said under terms of the deal, BAY will acquire 99.5% of AIG Retail Bank's shares and 100% of AIG Card (Thailand). The deal is expected to be completed in April. In addition to the $58.7 million sale price, $477 million in intercompany loans will be repaid at closing, according to the companies.

Cuomo settles with MVP over Ingenix

New York Attorney General Andrew Cuomo has reached an agreement with one upstate New York insurer to stop using the Ingenix Inc. database. Schenectady, N.Y.-based MVP Health Care Inc., a nonprofit that covers more than 700,000 members across upstate New York and the East Coast, will cease using the Ingenix database to calculate out-of-network reimbursement rates and will contribute $535,000 over a five-year period to help fund creation of an independent database. Earlier, Mr. Cuomo reached similar agreements with several other insurers, including UnitedHealth Group Inc., the parent company of Ingenix, which agreed to pay $50 million to finance development of the replacement database. The attorney general launched his investigation into the databases after receiving complaints from provider and consumer groups, which said the systems result in underpayment to physicians and additional cost-shifting to consumers.

Salmonella: GL insurer seeks ruling to nullify coverage

CONTINUED FROM PAGE 3

mine the extent of our obligation to the Peanut Corp. of America under our policies of insurance," a spokesman from Hartford said in an e-mail. "We believe this will help clarify the claims process."

The Hartford, Conn.-based insurer, a subsidiary of Hartford Financial Service Group Inc., issued a primary general liability policy and an umbrella policy to PCA.

The general liability policy provides limits of $1 million per occurrence and $2 million in aggregate for bodily injury or property damage included within the "products-completed operations hazard," according to court documents. The umbrella liability policy provides liability limits of $10 million per occurrence and $10 million in aggregate in excess of the underlying insurance for bodily injury or property damage included within the products-completed operations hazard, which relates to liability for products after they have left a policyholder's premises.

The insurer cited two lawsuits filed by individuals that allege they fell ill after consuming peanut butter manufactured by PCA.

PCA said it would not comment on the ongoing investigation, but said in a statement that the company "is second to nobody in its desire to know all the facts."

For the 180 major companies that recalled potentially contaminated products, insurance is available in the market to cover most of the costs associated with the recall and the anticipated decline in the consumption of peanut products generally. But it is not known how many all affected food processors or suppliers actually have comprehensive coverage, experts say.

Major brand name companies likely have comprehensive coverage for the products they recalled, experts say. But smaller food processors or suppliers may not have bought the comparatively expensive coverage.

A few brand name companies may have used an emerging coverage option known as a sponsored global insurance program, which provides broad and uniform protection throughout the supply chain.

> **'It's not the industry standard to purchase product recall and product contamination coverage, but it is becoming much more popular.'**
>
> Bill Harrison, Aon Corp.

It was unclear, though, whether such programs would receive claims as a result of the recall.

The number of companies buying recall-related coverage is increasing, though some mistakenly rely on other coverages to respond to recall claims, say brokers and an insurer. General liability policies typically exclude recall-related coverages, they say. Other manufacturers forgo coverage and trust their quality control systems.

The latest recall of peanut products "certainly seems to have gone far into the food chain," said Bernie Steves, senior vp at Colemont Insurance Brokers of Illinois L.L.C., a wholesale broker in Chicago.

The "increased globalization of the food industry" extends or lengthens the breadth of a food product recall, Ann Butterworth, an underwriter for Liberty Mutual Property in Weston, Mass., said in an e-mail.

Arrangements in which major companies use contract manufacturers to produce their products can increase the complexity of managing quality control. "It doesn't create a risk if it's managed well," said Bill Harrison, managing director of Aon Crisis Management Practice, a Somerset, N.J., unit of Aon Corp.

Typically, only product recall and product contamination coverages will respond, experts say. For either to respond, there has to be the potential for third-party property damage claims or bodily injury claims, which usually manifest themselves within 120 days, Mr. Steves said.

Product recall coverage is triggered by a recall and can cover just removal of the product, or its removal and destruction. A more comprehensive policy also would include repair, replacement or refunding of the product. It also may cover some third-party liability coverage. The coverage can vary significantly.

Product contamination coverage is triggered by contamination that is either accidental or malicious, Mr. Steves said. It tends to be broader than product recall for the first party and includes recall expenses, but also can include loss of profits for 12 months after the contamination incident, brand rehabilitation expenses, and crisis consulting expenses.

"It's not the industry standard to purchase product recall and product contamination coverage, but it is becoming much more popular," Mr. Harrison said. Pricing has declined during the past three years and rates are flat.

For both coverages, "it is pretty much a limited marketplace" with a handful of domestic carriers and Lloyd's of London syndicates selling the coverages, Mr. Steves said.

"It's generally seen as a catastrophe-type coverage," so retentions start at $25,000 and premiums start at $15,000; both can rise into seven figures for larger risks, Mr. Steves said.

In recent years, increased publicity about recalls—such as those involving Chinese toys—has encouraged companies of all sizes to purchase these coverages, insurance experts say.

Some brand name companies are sponsoring global insurance programs that allow them to offer uniform recall-related coverages with a large aggregate limit to all of their respective suppliers, Mr. Harrison said. A participating supplier receives a certificate of insurance

"It's more efficient and cost-effective" for both, Mr. Harrison said.

He declined to identify any companies using such policies, which contain confidentiality provisions.

Kraft Foods Inc. began implementing such a program last year, (*BI*, May 12, 2008), but the Northfield, Ill.-based company said it was not affected by the recent salmonella outbreak.

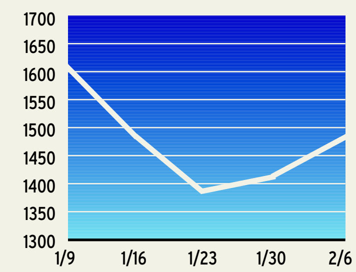
Regardless of their insurance situation, risk managers can adopt recall programs as well as adopt or review their own quality assurance programs and those of their vendors, Ms. Butterworth said.

Stock Index

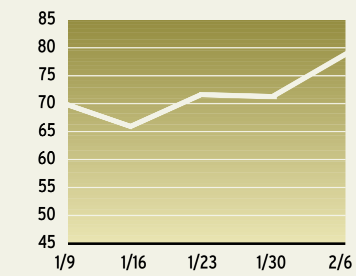
[2/2-2/6]

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

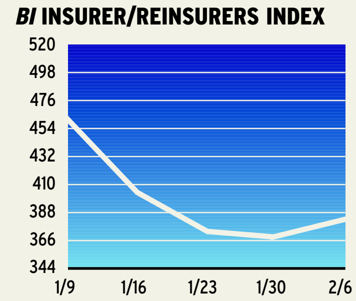
BI STOCK INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



BI INSURER/REINSURERS INDEX



Percentage change of BI Stock Index vs. key indicators

***BI* STOCK INDEX** 1467.00	3.66%
DOW JONES 8280.59	3.50%
S&P 500 868.60	5.17%

LARGEST GAINS

CIGNA Corp.	25.17%
MBIA Inc.	21.76%
Ambac Financial Group	19.30%
Health Net Inc.	17.77%
Humana Inc.	17.45%

LARGEST LOSSES

Arthur J. Gallagher	-23.84%
AIG	-18.75%
Willis Group Holdings	-6.87%
AFLAC Inc.	-6.07%
Argo Group International	-3.89%

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

Business Insurance
END PAGE

Contributing:
Jeff Casale,
Louise Esola,
Mark A. Hofmann

'Midas well go to jail,' says anti-fraud group

"Knuckleheaded swindlers" are the latest inductees to the Insurance Fraud Hall of Shame, the Washington-based Coalition Against Insurance Fraud says.

Among those the coalition says it "dishonored" in 2008 was Houston physician Ira Klein, who's serving an 11-year sentence for swindling health insurers of at least $10 million by charging for services he did not perform.

In addition, he was sentenced to three years in prison in a foiled plot to get revenge on those he thought helped put him in prison. While in jail, Dr. Klein was accused of paying an undercover FBI agent $250,000 to have his wife shot, a federal prosecutor run over by a truck and another FBI agent burned with acid.

In a Florida case, the coalition said three men were sentenced to more than a dozen years in prison each for selling about $70 million in fake workers compensation policies to "tens of thousands" of employees. Some injured individuals lost their homes and one man was left, literally, without a leg to stand on, as the fake policy did not cover the prosthesis he needed.

And in a Pennsylvania case, former Superior Court Judge Michael Joyce is to be sentenced later this year for his conviction on charges of lying to collect $440,000 from insurers. While he said a minor fender bender nearly crippled him, he was tripped up when he subsequently went golfing, roller blading, scuba diving and earned his pilot's license, the coalition said.

Saying "we aren't one nation under fraud," the coalition said fraudulent insurance claims total about $80 billion a year in the United States.

HALL OF SHAME INDUCTEES

KENNETH ALLEN
"Arson con burns out of control."

AARON BRABSON
"Triathlete takes insurer for wheelchair ride."

MICHAEL JOYCE
"High-flying judge crashes to earth."

OLGA RUTTERSCHMIDT AND HELEN GOLAY
"Sinister seniors murder for money."

LETITIA BALANCE AND MICHAEL DEROSE
"Dodgy dentists get case of truth decay."

DR. IRA KLEIN
"Sweet revenge turns sour for diabolical doc."

MICHAEL PAUL SCHOOK
"Blabbing bilker talks himself into jail."

DONALD TOUCHET, RICHARD STANDRIDGE, ROBERT JENNINGS
"Trusting employees fall hard in comp con."

DR. ROBERT STOKES
"Skin doc's con more than skin deep."

Coalition Against Insurance Fraud

Musician Manu Dibango, at top right, has sued pop stars Rihanna and Michael Jackson over rights to use a hook from his 1972 song "Soul Makossa."

REUTERS

Riff puts pop stars at odds with pioneer

A French court is to decide later this month whether to allow Cameroonian singer and saxophone player Manu Dibango to be "Startin' Something."

Mr. Dibango sued pop singers Michael Jackson and Rihanna in a Paris court, claiming they stole the hook from one of his songs, according to news reports.

Mr. Dibango, who is in his 70s and is considered a 1970s disco music pioneer, reportedly is seeking more than $600,000 in damages.

According to news reports, Mr. Dibango and Mr. Jackson had reached an agreement to allow Mr. Jackson to use parts of Mr. Dibango's 1972 "Soul Makossa" on the track "Wanna be Startin' Something" that was part of the 1983 "Thriller" album.

Then in 2007, Rihanna reportedly approached Mr. Jackson and sought permission to use the same section for her single "Don't Stop the Music."

However, she apparently neglected to contact Mr. Dibango for his permission, resulting in the lawsuit earlier this month.

In a separate suit, Mr. Dibango's lawyers reportedly asked the French courts to block four record labels from receiving any income from the recording until the matter is settled.

Buffett cancels biographer's dinner Q&A

Guess who's not coming to dinner?

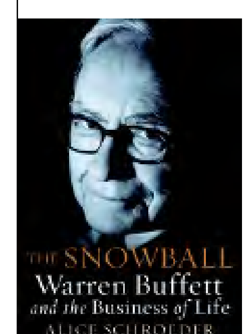
Warren Buffett and Alice Schroeder, author of the Buffett biography "The Snowball: Warren Buffett and the Business of Life," is who.

For years, Ms. Schroeder has hosted a dinner at Berkshire Hathaway Inc.'s annual meeting in Omaha, Neb., during which she would ask questions of Mr. Buffett, its chairman and chief executive officer. But Mr. Buffett has canceled this year's dinner, said a report in the New York Times.

According to the report that cited anonymous sources, Mr. Buffett was not entirely happy with the way the book depicted some parts of his personal life, notably concerning his first wife, Susan. The story said while Mr. Buffett has praised Ms. Schroeder in public, their relationship has cooled since the book hit store shelves.

For her part, Ms. Schroeder told the Times that the dinner was Mr. Buffett's "prerogative, and he decided he didn't want to do it."

When asked about her relationship with Mr. Buffett, Ms. Schroeder said, "I'm trying to think of a good description. We're still in touch with each other. But now that the book is finished, it is not as frequent as before. You can conjecture what you want from that. I will not stop the conjecture."



So conjecture away. But for the hundreds who planned to attend this year's dinner, time is short to make alternative dining arrangements. Without a reservation, it's hard to get a good table in Omaha during the Berkshire Hathaway annual meeting under the best of conditions.

'Terminator Salvation' tirade sparked filming disruption worries

In the upcoming movie "Terminator Salvation," actor Christian Bale is trying to save the world, but it appears producer Warner Bros. at one point was concerned about saving the film itself.

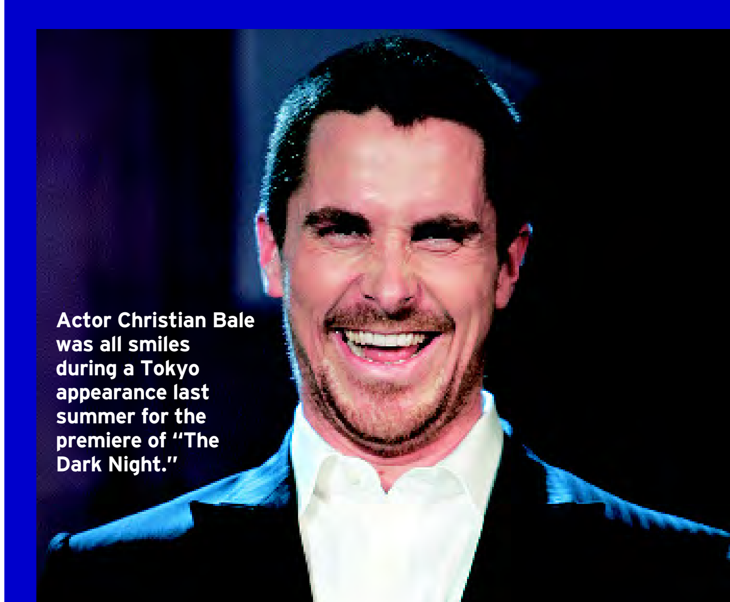
Reports of Mr. Bale's blowup at Photography Director Shane Hurlbut made big news last week as his expletive-laden rant circulated on the Internet. Though the incident actually took place in July 2008, entertainment Web site TMZ.com posted audio online.

TMZ also reported that film executives sent audio of Mr. Bale's tirade to the film's insurance company should Mr. Bale walk out on the production, as he threatened to do. Mr. Bale also threatened to kick Mr. Hurlbut's posterior for being "unprofessional" by walking into a scene being filmed in New Mexico last summer.

"If you do it one more time, I ain't walking on this set if you're still hired," Mr. Bale reportedly said in the nearly four-minute rant. "I want you off the set, you (expletive)!"

Mr. Bale, who played Batman in the franchise's latest installment "The Dark Knight," is known to have a temper. During promotion of "Dark Knight," also last July, Mr. Bale was arrested on charges that he verbally assaulted his mother and sister. Those charges later were dismissed for lack of evidence.

However, Bruce Franklin, "Terminator Salvation" director and associate producer, told TMZ that the blowup was a "nonevent" and the actor's "reaction was from the heat of the moment."



Actor Christian Bale was all smiles during a Tokyo appearance last summer for the premiere of "The Dark Night."

REUTERS

ARCTIC OCEAN
If climate change could affect your business tomorrow, we want to know about it today.
CATLIN
arctic survey
THE ENDEAVOUR BEGINS
80°N 140°W
In February 2009, a team of polar explorers will embark on the Catlin Arctic Survey, a 1,200 km journey on foot to the North Pole. Along the way, they will take millions of measurements of the Arctic's permanent ice in the most ambitious effort ever to evaluate the status of the polar ice cap. Scientists believe the findings will prove vital to those planning for the potential effects of climate change.
As a leading global insurer, we at Catlin have a responsibility to consider the impacts of climate change when assessing risk. And we take that same approach to your insurance and reinsurance needs – using hard facts and expert insight to underwrite your ambition.
Follow the journey at catlinarcticsurvey.com.
ENDEAVOUR TEAM PROGRESS
ENDEAVOUR TEAM PATH
INSURANCE I REINSURANCE
www.catlin.com
CATLIN
Underwriting Ambition