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February 25, 2008

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UNIVERSITY RISK MANAGERS CONTINUE EFFORTS TO IMPROVE CAMPUS SAFETY / PAGE 3

SUPREME COURT 401(K) RULING OPENS DOOR FOR INCREASE IN EMPLOYER LIABILITY / PAGE 3

AIG, GREENBERG FIGHT OVER ACCESS TO FILES / PAGE 3

In Brief

Aon buys Gallagher Re operations in U.S., U.K.

Aon Corp. is acquiring substantially all of Arthur J. Gallagher & Co.'s reinsurance brokerage operations in the United States and the United Kingdom. Aon will make an initial $30 million cash payment and an additional payment for revenues generated in the 12 months following the close of the transaction, Aon said. In a statement, Gallagher said that additional sum could be as much as $15 million.

High court limits suits over medical devices

The U.S. Supreme Court ruled last week in *Riegel vs. Medtronic Inc.* that the pre-emption clause in the Medical Device Amendments of 1976 bars common law claims challenging the safety and effectiveness of a

See **IN BRIEF** page 22

SPOTLIGHT

DIVERSITY WINNING ☆ THE FIGHT ☆ FOR TALENT

Diversity officers discuss efforts to increase diversity and attract more talent to the insurance industry; chief executive officers at AIG, Aon and Chubb outline their goals and achievements in their attempts to promote inclusiveness. **Page 10**

LANDOV

Former Marsh executives William Gilman, left, and Edward J. McNenney last week were found guilty of bid rigging. The case stemmed from former New York Attorney General Eliot Spitzer's investigation into broker practices.

Brokers convicted in bid-rigging trial

Ex-Marsh execs guilty of breaking antitrust law

By SALLY ROBERTS and COLLEEN McCARTHY

NEW YORK—In the first convictions to come out of New York's bid-rigging investigation of Marsh Inc., a judge found two former executives of the brokerage guilty of violating the state's antitrust law but acquitted them of all other charges, including fraud and grand larceny.

New York Supreme Court Judge James A. Yates on Friday found the executives—William Gilman, a former managing director and executive marketing director in Marsh's Global Broking unit, and Edward J. McNenney, a former managing director and global placement director—guilty of restraint of trade under New York's Donnelly Act in rigging bids for excess casualty coverage.

Judge Yates, however, acquitted Messrs. Gilman and McNenney—whom prosecutors described as the "architect" and "enforcer," respectively, of Marsh's alleged bid-rigging scheme—of 20 of the 21 charges against them, including one count of fraud and 19 counts of grand larceny in the second and third degrees. Each faced up to 15 years in prison if convicted of second-degree grand larceny.

The antitrust conviction does not require jail time, though Judge Yates could impose a sentence up to four years. A sentencing hearing has been scheduled for April.

Both prosecutors and defense attorneys welcomed the judge's decision last week.

"We are gratified that the court found the defendants guilty of felony bid rigging," said a

See **GUILTY** page 21

Captive industry hails IRS tax plan reversal

Scrapped proposal would have ended key break

By JERRY GEISEL

WASHINGTON—The captive insurance industry is savoring a huge victory in last week's Internal Revenue Service decision to withdraw a proposed rule that would have stripped hundreds of captives of a key tax advantage.

However, other regulatory threats remain.

In a notice published in today's Federal Register, the IRS said it has withdrawn the rule proposed last September that would have removed favorable tax treatment for sponsors that use their captives to fund risks of various corporate affiliates and that file a consolidated tax return covering the affiliates and the captive.

Under the now-withdrawn plan, captives no longer would have been allowed to take an immediate tax deduction at the time reserves are established. Instead, tax deductions would have been allowed only at the time claims are paid.

For captives writing long-tail business, experts said the change would have been extraordinary costly, making captive programs much less attractive financially and perhaps leading sponsors to move their insurance subsidiaries offshore.

"This would have changed the direction of the industry," said Richard Goff, president of the Self Insurance Institute of America and a managing member of captive manager Taft Cos. in Baltimore.

The IRS proposal triggered an unprecedented and expensive educational and lobbying campaign by the captive industry, which spent hundreds of thousands of dollars on legal fees to convince the IRS to

See **CAPTIVES** page 22

Costly wrinkle seen in S.F. health mandate

Rule could hit employers already offering cover

By JERRY GEISEL

SAN FRANCISCO—San Francisco's controversial attempt to reduce the number of people who lack health insurance may result in employers spending thousands of dollars for employees who already have coverage.

Employers that thought they would be unaffected by the city's ordinance because their health care spending exceeds the $1.76 per hour per employee minimum dictated by the statute still could be on the hook for employees who opt to enroll in their spouse's health care plan, benefit experts say.

"Employers are going to scream about this," said Susan Relland, of counsel with the law firm Miller & Chevalier Chartered in Washington.

That outrage involves the interplay of the ordinance and situations where spouses have different employers and one forgoes employer-provided health insurance for coverage provided by the other spouse's employer.

San Francisco regulators enforcing the measure, which went into effect last month while it is being challenged in the courts, say an employer in that situation still would be required to make a health care spending contribution. Regulators say that is because what an employer spends for an employee's coverage is unaffected by the fact that the worker has coverage elsewhere.

The only way the employer would be exempt from the spend-

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On the Web

BI VIDEO

Spotlight on diversity issues

AIG's Terri Austin, Aon's Corbette Doyle and Chubb's Kathy Marvel discuss diversity efforts in the insurance industry in videos available online at *www.BusinessInsurance.com/video*

THIS WEEK IN *BI*

Podcast takes listeners behind the *BI* headlines

"This Week in *Business Insurance*" is a new weekly podcast that reviews the headlines in each new issue of *Business Insurance* and interviews reporters for in-depth insights on the top stories of the week. Listen to these reports at *www.BusinessInsurance.com/thisweek* or subscribe to this free podcast on iTunes.

BI DIRECTORIES

BI's digital 2008 Market Sourcebook online

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

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Shootings heighten college safety concerns

After NIU tragedy, schools continue efforts to step up security

By DAVE LENCKUS

DeKALB, Ill.—Even before the deadly Valentine's Day shooting at an Illinois university, colleges and universities nationwide were beefing up their security and emergency response procedures, risk managers and security consultants say.

But as higher education institutions and consultants investigate and debate the effectiveness and appropriateness of measures such as high tech emergency response systems and threat assessment teams, they acknowledge that they can't make campuses risk-free.

Short of turning open campuses into exorbitantly expensive, high-security fortresses, "you're only going to reduce the risk so much," said Hank Chase, a senior vp with Frederick, Md.-based Integrity Consulting.

"It is the most complex issue confronting universities," which amount to towns of 5,000 to 50,000 residents trying to enforce security, said Rick Vohden, a Morristown, N.J.-based senior risk consultant in the education practice at Marsh Risk Consulting, a unit of Marsh Inc.

One security consultant, however, criticized schools for not doing more to inform students about how to recognize and respond to threats.

The latest deadly campus shooting occurred Feb. 14 at Northern Illinois University in DeKalb, Ill., about 60 miles west of Chicago. A heavily armed 27-year-old former student, Steven Kazmierczak, entered an auditorium and began firing, killing five and injuring 18 before committing suicide.

The tragedy occurred nearly 10 months after 32 students and instructors were killed and nearly two dozen more were injured at Virginia Polytechnic Institute and State University in Blacks-

See **SHOOTING** page 20

TIM BOYLE/BLOOMBERG NEWS /LANDOV

Police taped off the crime scene at Northern Illinois University after a gunman killed five students during a shooting rampage earlier this month.

Supreme Court allows suit over 401(k) account

More fiduciary liability disputes expected

By SALLY ROBERTS

WASHINGTON—Employers with defined contribution plans will likely face increased fiduciary liability exposures after the U.S. Supreme Court ruled last week that plan participants can sue to recover individual account losses as a result of a fiduciary breach, attorneys say.

Federal courts have ruled differently whether provisions of the Employee Retirement Income Security Act allow individual participants only to sue fiduciaries for damages on behalf of the entire plan or whether they can sue for damages involving a single account.

The case, *James LaRue vs. DeWolff, Boberg & Associates Inc.,* involves James LaRue a participant in Dewolff, Boberg & Associates' 401(k) plan since 1993. He alleged that his retirement plan account was short $150,000 because Dewolff, which administers the plan, failed to carry out his directions to make certain investment changes to his account in 2001 and 2002. He sued the management firm in 2004.

The 4th U.S. Circuit Court of Appeals in Richmond, Va., ruled in June 2006 that participants may sue a fiduciary to make good on losses due to a fiduciary breach, but only on behalf on an entire plan, not an individual account. The Supreme Court on Feb. 20 unanimously overturned that decision.

The 4th Circuit relied on the Supreme Court's earlier decision in *Massachusetts Mutual Life Insurance Co. vs. Russell*, in which the high court held that a participant in a disability plan that paid a fixed level of benefits could not bring suit under ERISA to recover consequential damages arising from delay in the processing of her claim.

While the Supreme Court said that the *Russell* decision accurately reflects ERISA's operation in the defined benefit context, it is "beside the point in the defined contribution context."

"Misconduct by such a plan's administrators will not affect an individual's entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan. For defined contribu-

See **RULING** page 20

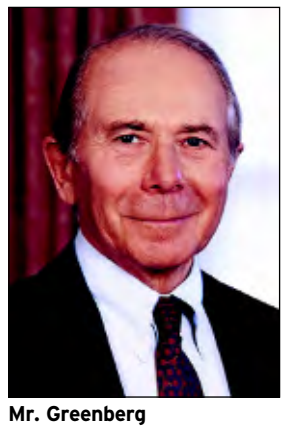
AIG, Greenberg tussle over legal documents

Former chief seeks access to company files

By DOUGLAS McLEOD

NEW YORK—American International Group Inc. and former Chief Executive Officer Maurice R. Greenberg traded more legal blows last week over his access to AIG's legal documents.

The former leader of the New York-based insurer said he needs the documents to defend himself against fraud charges filed by the New York attorney general.



Mr. Greenberg

An intermediate New York appeals court panel ruled unanimously last Tuesday that AIG must provide Mr. Greenberg and former AIG Chief Financial Officer Howard I. Smith with legal memoranda prepared before they left the insurer in 2005. The ruling overturned a lower court finding that the documents were protected by AIG's attorney-client privilege.

The two men argue they need the documents to support their defense that they relied on the advice of counsel in carrying out transactions that the attorney general's 2005 civil complaint charges were fraudulent. Those transactions included a 2000 loss portfolio reinsurance deal with General Re Corp. that is at the center of a pending criminal case in Hartford, Conn., against four former Gen Re officials and a former AIG reinsurance vp.

On Friday, though, AIG asked a New York judge to stay the appellate panel's decision pending further appeal, contending there would be no prejudice to the men if the stay is granted but irreparable harm to AIG if it is not.

After turning over more than 1 million pages of documents demanded by the two men, AIG has withheld 36 documents as privileged, including 15 prepared while Messrs. Greenberg and Smith were still at AIG that are subject to disclosure under the appellate ruling, according to an AIG court filing.

None of the 15 documents relates directly to any of the allegedly fraudulent transactions cited in the attorney general's complaint, including the Gen Re loss portfolio deal, AIG contends.

The insurer argues that disclosing the documents would harm AIG because the two men likely would have to turn the documents over to the attorney general's office, an action that could be considered a waiver by AIG of its attorney-client privilege in other cases, including pending shareholder derivative actions against the insurer.

Even if AIG ultimately wins the disclosure fight on appeal, it would be "at best a pyrrhic victory" if the memoranda have already been turned over, the insurer contends in arguing for a stay.

Nicholas Gravante, a lawyer representing Mr. Greenberg, called AIG's planned appeal of the documents ruling "frivolous" and said that Mr. Greenberg will ask the court to deny AIG's motion to stay.

Mr. Gravante, who is with Boies, Schiller & Flexner in New York, also said that AIG will be required to produce "thousands" of documents under the ruling, not just the 15 the insurer cites in its filing.

Texas Supreme Court opens door to coverage of punitive damages

Public policy does not bar liability coverage in cases of gross negligence

By ROBERTO CENICEROS

AUSTIN, Texas—A Texas Supreme Court ruling that insurance can cover punitive damages awarded for gross negligence could influence a variety of liability coverage cases, attorneys say.

The Feb. 15 ruling in *Fairfield Insurance Co. vs. Stephens Martin Paving L.P.* favors policyholders, said Macey Reasoner Stokes, a partner at Baker Botts L.L.P. in Houston.

Had the insurer prevailed, policyholders would have lost their ability to rely on their policy language to manage their punitive damages risk, she said. Ms. Stokes filed an amicus brief on behalf of numerous Texas employers, including Union Carbide Corp., Alcoa Inc. and Administaff Inc.

Fairfield, a Stamford, Conn.-based unit of Berkshire Hathaway Inc., argued in court filings that insuring punitive damages for gross negligence, regardless of policy language, is against public policy. Such damages are meant to punish gross negligence, the insurer argued.

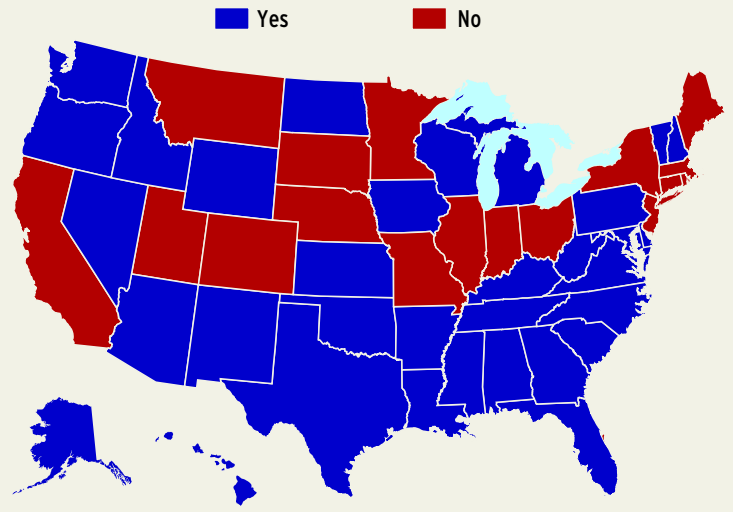
"We based our argument on the notion that no matter what our policy says, it can be interpreted as covered or not, we think public policy in the state of Texas just shouldn't let corporations get insurance for (gross negligence) because you wouldn't allow a corporation to get insurance for fraud or theft," said Jes Alexander, an attorney at the Law Offices of David M. Pruessner who represented Fairfield.

The case involved Abilene, Texas-based Stephens Martin Paving, which purchased a workers compensation policy with employers

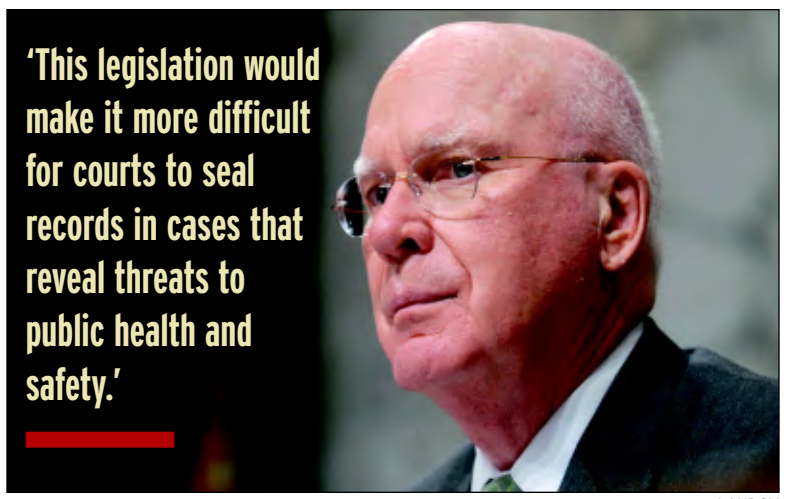
See **PUNITIVE RULING** page 20

INSURABILITY OF PUNITIVE DAMAGES

Most states, including the District of Columbia, generally permit insurance of punitive damages. Some states distinguish between insurability of punitive awards for direct or vicarious liability, while nine jurisdictions bar coverage in cases of intentional conduct. Massachusetts has not yet decided on insurability of punitive damages.



Source: Hinshaw & Culbertson L.L.P. 2004 survey



LANDOV

Senate Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., co-sponsored of the Sunshine in Litigation Act.

Panel mulls plan to limit sealed court documents

Proposal would fuel litigation, say opponents

By MARK A. HOFMANN

WASHINGTON—Legislation that would limit federal judges' authority to seal court records, including documentation provided during discovery and some details of settlements, is unnecessary and could actually harm those it is meant to protect, according to tort reform advocates.

The Senate Judiciary Committee had scheduled a vote on the Sunshine in Litigation Act for Feb. 14, but delayed it. A committee vote is expected as early as this week.

Supporters of the bill, which Sen. Herb Kohl, D-Wis., introduced last year, hold that its enactment would promote safety, health and corporate accountability.

"This legislation would make it more difficult for courts to seal records in cases that reveal threats to public health and safety," said Judiciary Committee Chairman Patrick Leahy, D-Vt., a co-sponsor of the bipartisan bill, as he urged his colleagues to support the measure during a hearing late last year. "It would prohibit judges from sealing court records, information obtained through discovery and certain details of a settlement unless the

See **JUDICIARY** page 6

Errors and Omissions

● A Feb. 18 story on the General Re Corp. finite risk trial reported that Robert Graham, former Gen Re senior vp and legal counsel, sent an e-mail warning about potential regulatory consequences of a reinsurance deal with American International Group Inc. to Gen Re's general counsel. The December 2000 e-mail was sent to then-General Counsel Timothy McCaffrey, not to Gen Re's current general counsel.

● A chart in the Feb. 18 issue mischaracterized the companies listed. The chart listed the largest publicly listed insurance brokers, not the largest brokers overall.

Plan options meet diverse needs

Employers can offer several choices for health, retirement planning

By GLORIA GONZALEZ

NEW YORK—Employers can create innovative health care plans that meet the diverse needs of their employees, according to two benefits managers who have recently implemented major plan changes.

The variety of options available to companies in structuring health plans enables them to offer different choices to satisfy the economic, health and retirement planning needs of their employees, they say.

Alcoa Inc. created multiple medical plan options for 2008 that are intended to manage health care costs for the company while providing meaningful, easier to understand options for its employees, said Scott Kovaloski, manager of health and welfare benefits consulting for the Pittsburgh-based aluminum producer.

For employees with low to moderate health risks, the company offers a consumer-driven health plan with a health reimbursement arrangement that combines first-dollar coverage for preventive care and routine medical expenses with the opportunity to save for future health costs.

For employees with low health risks and/or the desire to save for retiree medical costs, the company offers a CDHP with a health savings account that permits catch-up contributions for older workers, he said during the 2008 Employee Healthcare Conference held earlier this month in New York, presented by the Conference Board and sponsored by Towers Perrin HR Services.

EMPLOYEE ENGAGEMENT: Involvement makes tough benefit choices easier to accept at SC Johnson & Son Inc. **Page 19**

Employees concerned about costs can use a basic preferred provider organization plan that offers first-dollar coverage for preventive and routine care. Expensive services are covered at a lower coinsurance after a deductible. The

See **OPTIONS** page 19

Communicating CDHPs to unions

Emphasizing benefits key to winning over organized labor

By GLORIA GONZALEZ

NEW YORK—Companies with union workforces can successfully introduce consumer-driven health plans into their benefit programs, but having good relationships with workers and effective communication strategies is critical, benefit managers say.

Emphasizing the financial benefits and tools available for employees in health reimbursement arrangements or health savings account plans can help overcome traditional union resistance to the plans, according to employers who have introduced the plans.

Kohler Co. replaced its traditional preferred provider organization plans with HRA and HSA options for its administrative employees and those in nonunion locations on Jan. 1, a "pretty stark change," said Laura Kohler, senior vp-human resources, for the Kohler, Wis.-based company.

Kohler for years had offered a generous benefit package and employees made no contributions toward health care coverage, but the company decided that it needed to develop a contemporary health plan that featured more of an incentive for people to take charge of their health, she said.

"We realized our role as the employer had to change," Ms. Kohler said during the 2008 Employee Healthcare Conference, presented by the Conference Board and sponsored by Towers Perrin HR Services.

The company successfully implemented the plans at several union sites on Jan. 1, with the consumer-driven health plan options to be launched at another manufacturing operation in 2009, she said. Implementing the plans at its union sites is critical because about 6,000 employees, 40% of its U.S. workforce, is unionized, she said.

Sharing economic and industry results was crucial to the successful implementation of the plans, because the unions have to understand the business environment in which the company operates, she said. Since the company had such generous benefits, union offi-

See **UNION** page 19

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Taking Stock

Customer service: Is there a commitment?

By Myron M. Picoult

Myron M. Picoult is an independent insurance consultant. An archive of Mr. Picoult's columns is available online at www.businessinsurance.com.

On Oct. 8, 2007, *Business Insurance* published an article that I wrote on customer service problems, which I believe persist in American industry. These problems have clearly infiltrated some insurers. Subsequent to the publication of the piece, I was forwarded a letter from a gentleman who is affiliated with the insurance business. The gentleman did not disagree with my criticisms and even placed me in the company of some very elite folks from Harvard. While this gentleman applauded my critique, he asked for some proposed solutions. While this is a fair request, it must be recognized that since consulting is my livelihood, I am not about to give away the family jewels.

When it comes to poor service in the insurance business, the shortfalls are clearly evident to policyholders. Agents, too, are keenly aware of the service miscues. And company customer service representatives know when they have not satisfied a policyholder and are very aware of where their function stands in the corporate pecking order. The key question is whether management recognizes the problem and whether they care.

If you are a customer service representative, an agent or an executive reading this article, ask yourself when was the last time that the chief executive officer of the company where you are employed or the entity that you represent visited the customer service area *unannounced*, spent several hours listening to incoming calls and queried the folks on the front line as to what was needed to improve customer service. If you happen to be in the hierarchy of an insurance company, when was the last time the customer service function was broached at a board meeting?

The aforementioned comments apply to any corporate customer service entity. It also should be recognized that it is difficult to get a management team to acknowledge shortcomings and it is virtually impossible to get an entrenched team to concede and act on customer service problems.

So what are some of the solutions to rectify this contagion? Recognize that if reforms or adjustments to customer service are not fully backed by the person at the top of the food chain, nothing but lip service will result. Assuming that the operatives in the executive suite really want to improve the customer service function, there are some markers that should be seen and acted upon.

First, the standards used by many executive management teams have to be reversed. While the residents of the executive suite might profess to embrace quality customer service standards, the executive suite is basically inaccessible to customers or employees. In many instances, these are the very people who have their phone calls screened and rarely return calls. Hence, top management has to recognize that customer service issues exist within the corporate corpus and must be willing to do something about it. The best sign of top managers' allegiance to a new policy would be how they respond and implement changes within their own cocoon.

Second, do the standards or policies used as guidelines for customer service exist in a document readily available to all company employees that interface with customers? All too often it is not recognized or emphasized that customers interface with more than just customer service representatives. The interface runs the gamut from sales to billing and everything between. A client's impression of a company comes from many sources and levels. As I noted in the October column, "what is clearly missing in the equation for most corporate enterprises is the simple fact that the competitive edge that a company has (and all are looking for this) is how you treat your customers!"

Third is the question of a cohesive customer service training program. Is it an ongoing program where representatives can exchange ideas and constantly be apprised of what adjustments to make in the company's approach? The dynamic of customer service is constantly changing. I have seen many instances, in the case of recalls, when a customer service department has been completely overwhelmed because the department was not prepared for the deluge of calls. In fact, in two instances, the service representatives and their supervisors did not have direct access to the corporate suite to alert management about the problem (which ensued for several weeks).What is the relationship between the money allocated for the customer service function relative to the funds spent on advertising? To be blunt, does the rubber really meet the road or is the customer service function basically a fantasy?

Fourth, part and parcel to a cohesive customer service training program are standards that embody how a customer should be treated. I have seen and experienced instances when customer service representatives have not looked at situations logically and became very difficult to deal with. Let's call this an ability to think outside of the box. In a few instances, I have seen this capability performed very well. A call to a customer service facility provides an opportunity to either solidify a relationship or erode it. There is a wide chasm between customer satisfaction and customer loyalty. Does the training program clarify the distinction between the two? Who created the company's mission statement? Does it relate to the customer and does it really mirror corporate policy that is followed on a daily basis?

So to my interested reader who posed the question and to all of you who thought about it, each of the aforementioned really is under the nose of the CEO and corporate staff. The problem lies in commitment—real commitment.

Business Insurance adds to reporting staff

Ms. McCarthy

Business Insurance has added to its editorial staff in New York.

Colleen McCarthy has joined the magazine as an associate editor.

She was previously a general assignment reporter and news anchor for News 12 Networks in New York, New Jersey and Connecticut.

Prior to that she was an anchor and producer for New York based WRNN-TV. In addition, she has reported for newspapers and magazines in New England.

For *BI*, Ms. McCarthy will report on a variety of risk and benefits management topics.

She can be reached at 212-850-7615 or at *cmccarthy@businessinsurance.com*.

Judiciary: Panel mulls plan to cut sealed court records

CONTINUED FROM PAGE 4

public health or safety interest is outweighed by a specific and substantial interest in maintaining confidentiality. And it would require that when issued, protective orders could be no broader than necessary to protect the privacy interest asserted."

But a prominent tort reform advocate says the bill is unnecessary.

"It really is not needed because existing law allows judges to consider the adverse effects on public health and safety for sealing settlements or for issuing protective orders," said Victor Schwartz, general counsel for the American Tort Reform Assn. in Washington. Under the Federal Rules Advisory Act, Mr. Schwartz said judges already have primary responsibility for considering changes in federal court rules, and "they have looked at this several times, and they have determined that no change is needed."

A change like that sought by the Sunshine in Litigation Act would "raise the cost of discovery because defendants are going to battle discovery requests if they think everything they hand over is going to be made public, including the release of their trade secrets," Mr. Schwartz said.

"While the focus is on what defendants may do, the way the bill is worded, personal facts about plaintiffs can be made public, too," he said. "The exposure that the bill would create in a blanket way can affect the privacy of plaintiffs as much as it might the trade secrets or private facts of defendants."

"Obviously, we're all for transparency," said Matt Webb, senior vp-legal reform policy for the U.S. Chamber Institute for Legal Reform in Washington.

But given the amount of litigation that occurs, "anything that encourages settlement without going to trial and to get cases resolved is a good thing," he said. The Sunshine in Litigation Act could "result in a huge increase" in the number of cases that go to trial because "there's no real reason for the parties to agree to a settlement."

Supporters of the measure disagree that the bill would hamper judicial efficiency.

"The American Assn. for Justice strongly supports this legislation," said an AAJ spokeswoman in an e-mail. According to AAJ, which represents the plaintiffs' bar, the bill "would facilitate access to vital, life-saving information; curb product-related injuries and litigation; and promote court efficiency while protecting the public."

"The American public has a right to know about hazardous and defective consumer products—especially when irresponsible businesses continue to profit from products sales at the expense of consumer safety," according to the e-mail. "Allowing the sealing of all litigation records, even when they involve matters of public health and safety, endangers consumers and encourages corporate wrongdoing."

Podcast takes you behind the headlines

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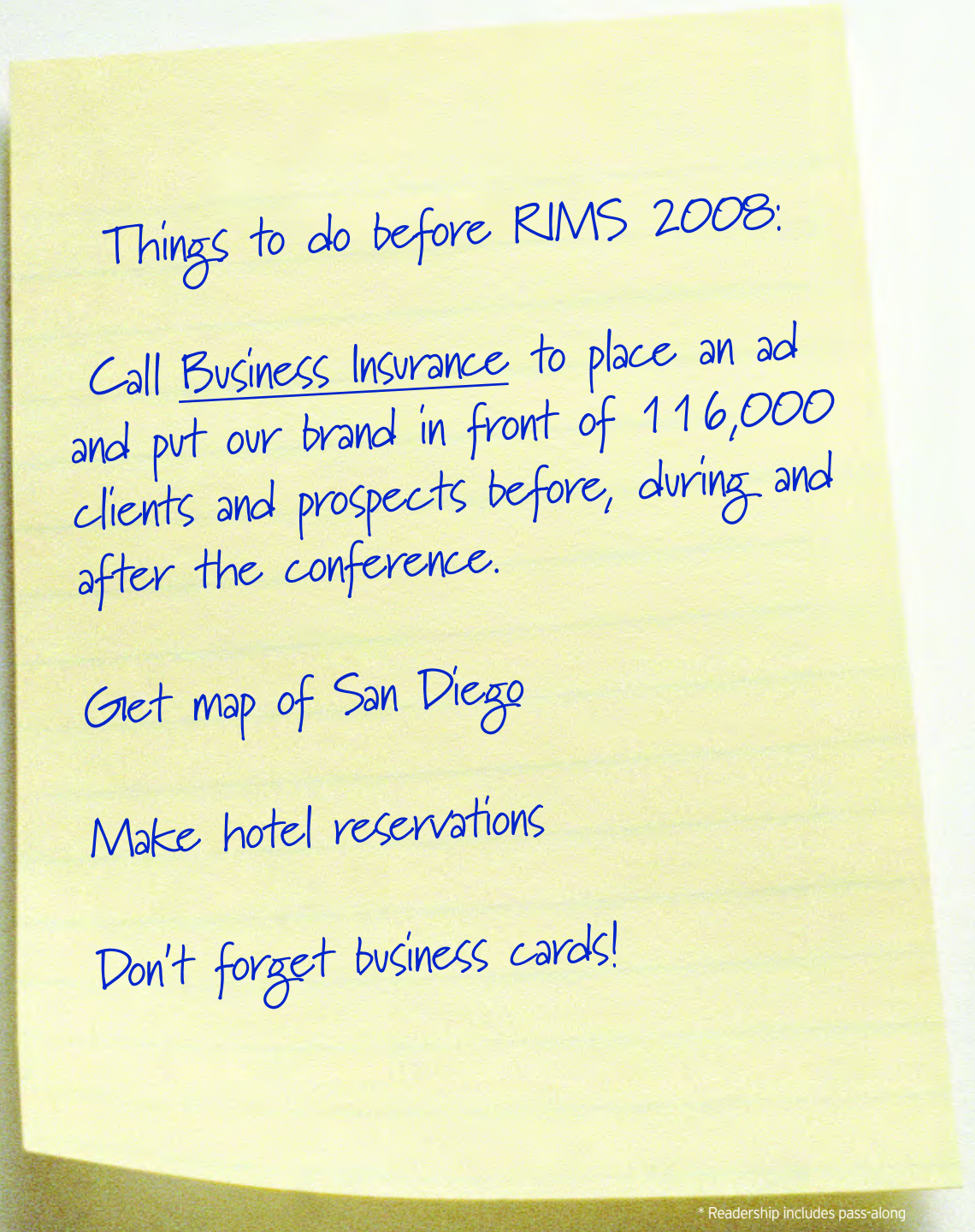

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Business Insurance OPINIONS

Captives case shows benefit of lobbying

IF THERE EVER were an example of how an educational and lobbying effort can make a difference, it would be the battle that the captive insurance industry's waged against a proposed rule that would have prevented hundreds of captives from taking immediate tax deductions on the reserves they establish.

When the Internal Revenue Service proposed the rule last year, it initially stunned the industry.

Just as stunning, the IRS really offered no defense of the rule or how, legally, it was justifiable.

But the captive industry's disbelief didn't last long. As we report on page 1, it quickly swung into action, mounting a multipronged offensive, utilizing top legal talent to show why the IRS was wrong, as well as bringing in federal and state legislators to mount political pressure on the IRS.

Proposed rules are just that and should be a catalyst for action, not paralysis.

Obviously, the not inexpensive campaign worked, with the IRS withdrawing the rule last week, even before a hearing it had scheduled on the issue.

One lesson here is that proposed rules are just that and should be a catalyst for action, not paralysis. And the second lesson is the domestic captive insurance industry, by virtue of the dollars it generates and jobs it has created, has an importance that legislators recognize.

Put another way, it has clout, which it wisely used.

Transparency welcome, if it doesn't invite harm

IT'S EASY TO UNDERSTAND the attractiveness of the Sunshine in Litigation Act.

As we report on page 4, the Senate Judiciary Committee could give its approval to the measure as early as this week. The bill would limit the ability of federal judges to seal settlements and information obtained during the discovery process in civil cases.

The bill's supporters say that the measure would promote public health and safety by displaying evidence of corporate malfeasance for all to see.

No one can deny the appeal of transparency in the courts. But even proponents of the measure should give some thought to the possibility that the law of unintended consequences could apply here, as it has in other reform attempts of various kinds.

For example, knowing that certain documents—whether gathered during discovery or signed as final settlements—will remain sealed can encourage defendants and plaintiffs to reach agreement before a case goes to court.

If there's no guarantee of confidentiality, there will be less reason for some defendants to settle outside of court.

That could mean more cases go to litigation, further burdening the courts.

Lawmakers should proceed with caution before making such a significant change in the way courts operate.

Transparency is a noble goal, but there are some instances where the cause of justice may be better served by at least a little secrecy.

BI beats list

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

Agents/brokers: Sally Roberts.

Benefits—health care and ancillary benefits: Joanne Wojcik.

Benefits—retirement savings/pensions: Jerry Geisel.

Canada—risk management and benefits: Gloria Gonzalez.

Commercial auto: Jeff Casale

Employment practices: Judy Greenwald.

Environmental risk management: Sally Roberts.

Federal regulation/ legislation—benefits: Jerry Geisel.

Federal regulation/ legislation—risk management: Mark A. Hofmann.

Health care industry operations: Gloria Gonzalez.

Industry Focus: Rodd Zolkos, Meg Fletcher.

Insurance coverage litigation: Douglas McLeod.

Insurance fraud: Douglas McLeod.

Latin American markets: Roberto Ceniceros.

Marine: Gloria Gonzalez

Property/casualty industry operations: Judy Greenwald.

Professional liability: Dave Lenckus.

Property loss control/ cat risks: Mark A. Hofmann.

Regulation of insurance: Meg Fletcher.

Reinsurance: Judy Greenwald.

Risk management profession: Dave Lenckus.

Runoffs/receiverships: Douglas McLeod.

Safety/ergonomics: Meg Fletcher.

Surplus lines/wholesalers: Roberto Ceniceros.

Tort reform: Mark A. Hofmann.

Work/life benefits and EAPs: Sally Roberts.

Workers compensation: Roberto Ceniceros.

Online Poll at www.businessinsurance.com

How concerned are you that New York Attorney General Andrew Cuomo's investigation into health insurers' out-of-network reimbursement rates will raise costs for employers?

NEXT WEEK'S POLL: *In the current soft market, how much premium do you plan to fund through a captive?*

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

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DIVERSITY WINNING ★ THE FIGHT ★ FOR TALENT

SPOTLIGHT

LEADING THE CHARGE: From top, AIG's Terri Austin, Aon's Corbette Doyle and Chubb's Kathy Marvel discuss diversity efforts. **See story, page 10, and videos online at www.BusinessInsurance.com/video**

Chief diversity officers focus on innovation

Business Insurance's special report on diversity in this issue represents a first for us.

We have not examined diversity in the commercial insurance industry in detail previously. So why produce this report now? There are several reasons.

For one, the world is changing and so are the businesses that strive to serve the needs of a wide variety of customers. Demographic shifts mean that markets are becoming more diverse and, consequently, new approaches are needed to serve them. More companies in the insurance industry are embracing diversity, and we thought this would be an opportune time to find out why.

Recently, we assembled a panel of three chief diversity officers—the only ones we could find among companies in the commercial insurance market—and *BI* Managing Editor Gavin Souter asked them for their insights. Videos of this discussion can be viewed at *www.BusinessInsurance.com/video*, and transcripts of their remarks appear in the pages of this issue, along with essays by their companies' chief executive officers.

Kathy Marvel, chief diversity officer of Chubb Corp., characterized diversity efforts as initiatives that ultimately seek diversity of thought. That is exactly right. Diversity is not about giving preferential treatment to a select few over others; it is about opening the doors of opportunity to all and recognizing that everyone can contribute in a meaningful way to achieving an organization's goals. Diversity of thought is the surest way to promote innovation and identify new talent, and that is how companies—whether they're in insurance or other industries—thrive.

We hope you'll find this feature and the videos online to be informative and offer ideas to help promote discussion of diversity within your own organization.

Diversity efforts blend social goals with corporate needs

Multifaceted approaches at AIG, Aon and Chubb seek talent and innovation to reach new and existing customers

Q: How would you define diversity?

TERRI D. AUSTIN: At AIG, we define diversity as inclusiveness. It is not just diversity of race and gender but the primary, secondary and organizational ideas of diversity as well, so that where you're from makes a difference. Generally, that's how we define it, but it's very important to make sure inclusiveness is part of the diversity effort.

BILLY NEUMANN

Terri D. Austin
American International Group Inc.

KATHY MARVEL: The intention of diversity is to get diversity of thought. The ultimate intent is to get diversity of thought. By broadening the description of what diversity means, to be more than race and gender, you bring in all those different aspects that allow the diversity of thought to bubble up, so that ultimately you get innovative, creative thinking from the diversity that you've brought into the company.

CORBETTE DOYLE: I would agree with everything that's been said. I find that certain sectors of (Aon's) workforce sometimes feel slighted when their specific demographics aren't mentioned. If you go on our Web site and look at our definition of diversity, it includes every category that we could think of. In addition to race and gender, which are the easiest to quantify, we include things like sexual orientation, sexual identity, religion, culture, people with disabilities. We include a very broad-based definition because inclusiveness is a critical part of the reason for diversity, as are the talent issues and the diversity of thought. The one thing that I would add from a definitional standpoint is the focus on diversity as a strategy to ensure that your entire workforce is enabled to reach their full potential and that no one is prevented from that opportunity because of any specifics that they bring to the table.

Q: Why is diversity especially important within the insurance industry?

MS. AUSTIN: It's crucial. Without diversity, we don't have innovation. Kathy mentioned that before. You look at companies who have people from different backgrounds and you come up with different solutions. Whether you are increasing diversity of your employees, your products or your services or your clients or your suppliers, making sure that you have new and creative ideas is what's important. There's a huge business case. Of course, and I know we all agree, diversity is the right thing to do, but there is a huge business case for diversity at the corporation.

MS. MARVEL: I wouldn't have anything to add to what Terri said. She said it perfectly.

MS. DOYLE: When I look at the

Corbette Doyle, Aon Corp.

business case for diversity, I truly believe it is the critical driver. It is one of the main differences between diversity issues today and diversity issues in the '70s, '80s or '90s. Prior to the last six, seven years, diversity efforts were driven either by affirmative action, which drove the first round, or possibly driven by a right-minded CEO who wanted to focus on diversity because he—generally he—believed it was the right thing to do or because it was compliance-driven fear of litigation or actual litigation. Many of the companies that have invested the most in diversity in our industry were forced to because they lost major class action litigation or had settlements and were under court-ordered compliance. Those initiatives had a very different flavor and tended to create a lot of animosity and, aside from court-driven mandates to get results, generally were not very successful.

The efforts now that Terri was describing that are focused on a business case have a much greater opportunity for success and far greater momentum because, like many other strategies, they are linked to critical imperatives for the organization, so that you have a momentum and a business case and a business strategy that are critical components for success in anything you try to do from an organizational standpoint.

For our three firms, we all agree the talent imperative is what's driving our firms. We are primarily—not exclusively—business-to-business (organizations), and talent is the best business case....When you look at the business-to-consumer companies, one of their best opportunities is the diversity of their customers and creating new products that meet the needs of their customer base. How do you grow? You grow by selling new products to your old customers or selling the same products to new customers. A lot of the new customers, in the U.S. and on a global basis, have different beliefs, patterns, comfort level from the traditionally Caucasian customers that a lot of our industry has relied upon.

Q: How far do you have to reach back to find diverse candidates?

MS. AUSTIN: You have to make sure you have slates of candidates who are diverse. There are qualified candidates out there. It's just a question of getting them to the door. We have tasked our recruiters with only coming in with candidates who are diverse. One of the things we're looking at is how do you combat people who say you have to lower the standards to achieve diversity? None of us believes that you need to lower the standards to achieve diversity. But what we do think is that you have to widen the parameters. You have to sometimes look at other considerations. Those considerations might be, for historically disadvantaged groups, how many jobs have you held, what type of classes are you taking, how many community services organizations have you volunteered to work in? We don't ever look at lowering standards. You can find extremely qualified candidates if you put forth the effort. From a talent acquisition and

Kathy Marvel, Chubb Corp.

retention standpoint, we just have to work harder.

MS. MARVEL: There are efforts all of us are doing with regard to reaching into universities and making sure that we're getting into risk management programs, to make the students understand all the different careers they could have in the insurance industry, which many of them don't understand. We also have some programs that reach back into high schools, which allow us to get into developing that incoming, entry-level individual. That's not the only place we want to focus, though. Certainly we can bring in a lot of trainees and new hires. But there are people within the industry and other industries that are qualified to transition over into some of our jobs. Being very explicit about what the skills are and what the competencies are that we're looking for in our positions, how much experience do you really need for these different jobs? Some of them, absolutely you need someone from the insurance industry. For others, you might have a little bit more flexibility and can really look for a diverse slate to be presented in those cases.

MS. DOYLE: I find that it's easiest for us to achieve diversity at the most senior and the most junior levels. We've had tremendous success with our college recruiting program, and the minority of people coming into our college program are white males, which reflects the composition of the college student (body). And we've had great success at the senior level. At that 85%, 90% of the organization where we are dealing with business units that are running fast and furious and when they have a job opening, they've got customer needs and they've got to fill that space quickly, that's where we struggle to get diversity because our industry in those core, critical client-facing roles are not as diverse as we would like. Gender diversity we have, but ethnic diversity is a real struggle, and outside the U.S., gender diversity can be a struggle in many countries.

Q: What response have you had from employees in your organizations?

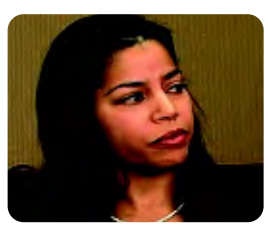
MS. AUSTIN: With every company, if your CEO is engaged, you're going to pick up more momentum within the organization. Like at Aon, this role was new (at AIG) when I began the position. Our CEO, Martin Sullivan, rolled it out. The announcement came from him. When you begin the imperative that way, it makes a big difference. The tone at the top exists. The senior managers have goals and objectives, which include diversity initiatives. When you have that, you will have the rest of the organization follow. I do think it's a little more difficult as you filter within the organization and it becomes less connected to the compensation at the end of the day, but I must say the overall reaction has been really good. One of the things that we've done is training. There are pros and cons to training, but we thought it would be good to train our population for sensitivity to diversity issues and to explain why there is a business case. We had over a 93% completion rate on the online training, which I think is good. The employee base really has picked up on diversity and accepted it, and they understand that it is not an initiative that is going to be here today and gone tomorrow.

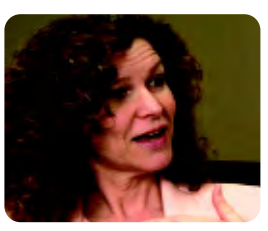
MS. MARVEL: At Chubb, we've had a diversity officer since 1996. When we first implemented the role of diversity, there was much more significant pushback. It was well-accepted by women and people of color, gay/lesbian/bisexual and transgender employees, but the white males were somewhat threatened by it. Since that time, we've had a number of initiatives that have illustrated that we really aren't a threat to the white males; everybody is still competing. Since that time, we've seen white males getting those jobs, and women and some people of color getting those jobs. It's natural for people who have always been in control to feel threatened when they are now not

CONTINUED ON NEXT PAGE

Insights online at *www.BusinessInsurance.com*

See in-depth video interviews of the discussion on diversity issues with the chief diversity officers, Ms. Austin, Ms. Doyle and Ms. Marvel, at www.businessinsurance.com/video.





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the only ones at the top of the heap. Everybody was very sensitive to it. We were very careful that we were looking for the right person for the job and we're trying to give everybody the opportunity to compete for that job. So, yes, the competition is tougher, but so be it.

MS. DOYLE: I find the issue to be less that white males are threatened and more that it is easiest to engage the people at the top and the people at the bottom. The people at the bottom are looking for career opportunities and looking for ways to differentiate themselves within the organization. Diversity strategies are frequently a way to do that, including for white males. One of our networking groups is for our Gen X/Gen Y population. It's a very active, involved group. If your CEO is really passionate about the topic, the people who report directly to the CEO get it. They understand the business imperative. It becomes much more difficult to engage middle managers, not because there is antipathy or anger or resentment, but because their plates are full. These are not the easiest times in our industry. Premiums are falling. Everyone is struggling to get to the revenues that they would like. Our industry doesn't have the multiples that we would like. All of our managers have more on their plate than they can get to. The real challenge is, how do I get them to understand, how do I get offices that are really far from our corporate headquarters to understand why this is an issue that's worth their while to invest their time. That's the hard part.

MS. AUSTIN: You can convince them it's worth their while with statistics like Catalyst showed that show when you have more women on your board of directors, you outperform other companies. Then it's not so hard to sell diversity because you have this innovation, this diversity of thought and your companies do better. When you have factual data to prove that companies that are diverse are outperforming financially companies whose boards at any rate are not as diverse, it's a little easier to convince people at any level.

Q: What response do clients and customers have about your diversity efforts?

MS. MARVEL: When we won the Catalyst award in 2006—the award recognizes companies that have made outstanding progress with regard to advancement of women in their organization—following that, we had several customers who actually asked us to speak about that initiative when our vice chairs and our senior business leaders were going out to visit our clients. That was part of the agenda on request of the client. Additionally, we had clients calling to talk about, "Help us figure out what we're doing." There was a lot of collaboration and consulting that went on, because our customers were just as interested as we are.

MS. DOYLE: We've found similar things. Greg Case, our CEO, and I have been invited by several clients to speak to their executive management about what we're doing, how well it's working and what the challenges are. The volume of (requests for proposals) that we receive with a diversity component has jumped dramatically. It used to be only government entities asked what your diversity strategy is, do you have a diversity strategy, what does it look like, what's your diversity supply strategy, and for government entities, would you use a minority-owned brokerage firm as a sub-broker on our account? That has now expanded dramatically.

I'm amazed at some of the data that clients are asking us for, confidential data, in RFP responses. I'm amazed at the scope of Fortune 500 clients now asking very specific diversity questions. It's much like a six sigma strategy. If you're a six sigma organization, you want all your suppliers to be six sigma, because you can't be six sigma unless you have it throughout the supply chain. I see diversity taking on a very similar dimension, fueled largely by the individual who is the chief counsel at Sara Lee, who started a corporate challenge. He challenged all of his counterparts in the Fortune 500 to sign on and push for diversity of all the law firms they were doing business with. Not just using more minority law firms but making sure they were not just bringing a pretty face or a person of color and not giving them billable hours. We are one of the companies that has signed on to that initiative. A lot of risk managers either report to the chief counsel or have a close alignment with the chief counsel, so that initiative is starting to spread out to our clients and there is a dramatically enhanced interest.

MS. AUSTIN: The only thing I would add is that, clearly, the clients are asking us about our diversity initiatives and our diversity programs, and we're doing the same thing. We're looking for clients who either are minority-owned or woman-owned, but we're also looking for those majority-owned businesses that have robust programs. The other thing is, from a shareholder perspective, our shareholders are very interested in what we're doing in terms of diversity. Ultimately, I suppose, shareholders can be clients, but they are the ultimate client and they want to know what we're doing on a regular basis. In addition to reporting to the board, we're now reporting to shareholders exactly what difference we're making in the diversity space.

Shareholders today, post-Enron, Worldcom, are very interested in what corporations are doing, not just from a financial standpoint, but from a corporate social responsibility standpoint. They want to make sure that the company is doing the right thing. Shareholders today are more informed, they're more demanding and they're requiring us to look at these issues that we didn't look at in the past....Clearly, they don't want to invest in companies that aren't responsible.

Commitment to diversity fosters excellence

Greg Case is president and chief executive officer of Chicago-based Aon Corp.

By Greg Case

"Hire the Best, Build the Best, Be the Best." This statement captures both Aon's promise and our potential with respect to creating an inclusive environment that nurtures the unique background, skills and creativity that each of our global colleagues brings to our firm.

Our strategy to ensure diversity, directed by Corbette Doyle, Aon's global diversity officer, focuses on four key objectives: talent supply and development, cultural competence, strengthening the business and connecting with the community. This message is spread from our boardroom to all levels of Aon. Our Diversity and Inclusion Group works with our leadership team to ensure that awareness filters throughout the organization and that strategy, programs and processes are successfully implemented.

When we launched this initiative, we said it is our appetite for hiring and retaining the best and brightest around the world that drives our diversity strategy. A looming talent shortage, made worse by impending baby boomer retirements, has put pressure on us as managers to look beyond traditional recruiting sources. It has caused us to focus on innovative efforts to groom employees for more challenging roles, often in another country, and to encourage our colleagues to "own" their individual career development.

We are constantly educating our colleagues on the importance of knowledge, awareness and development. We want to ensure that they value the principles and values of diversity and inclusion in our workforce and further enhance the development opportunities available for our talent. In turn, we train our managers on how Aon's business objectives can support, and be supported by, our diversity initiative while targeted developmental programs prepare individuals to be the future leaders of our firm.

Aon has launched an emerging leaders development program focused on accelerating the careers of an ethnically diverse employee group. We have an online mentoring tool that matches protégés and mentors according to development needs and strengths. Aon's Diversity Council and Business Networking Groups now boast nearly 50 chapters globally, allowing more colleagues to take part in career development. Aon's leadership model incorporates diversity and ties compensation to results against this model. We have launched an aggressive apprentice strategy to enable us to recruit the best talent from other industries. We also have taken our diversity initiative to our suppliers: Our aggregate expenditure with diverse suppliers increased nearly 10% for the most recent year available.

We want to create a world-class magnet that nurtures the unique background, skills and creativity of our colleagues. To achieve this goal, we established a global advisory board consisting of colleagues in each of our four geographies: the United States, the United Kingdom, Europe and the Middle East, and Asia Pacific. They have two goals in mind: putting more women in the senior ranks of our company and enhancing cultural competence, as measured by the number of colleagues we rotate to other countries. Each of our geographic teams in turn formulates a diversity strategy that responds to the talent issues specific to the region.

A recent example of our success in this area is the appointment of Christa Davies, a former top executive with Microsoft, as executive vp of global finance. Christa will be formally named chief financial officer in March.

As a client-focused organization, we understand that when you deliver the best to a client, the client realizes and appreciates your value. The same holds true for our talent. By providing clients with the best opportunities, we create an environment where they value Aon and, in turn, we provide the best service possible to our clients.

Our commitment to a diverse and productive work environment was recognized last September when Aon was among 195 major U.S. businesses to receive a 100% rating in the Human Rights Campaign Foundation's Corporate Equality Index.

I am proud that Aon's diversity initiatives are leading the way not only in the insurance and human consulting industries, but in the global business community. By embracing the needs of our clients and the talent imperatives of the community we serve, and by cascading our diversity strategy throughout our global organization, Aon's diversity and inclusion goals can continue to focus on hiring the best, building the best and being the best.

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We want to create a world-class magnet that nurtures the unique background, skills and creativity of our colleagues. To achieve this goal, we established a global advisory board consisting of colleagues in each of our four geographies: the United States, the United Kingdom, Europe and the Middle East, and Asia Pacific. They have two goals in mind: putting more women in the senior ranks of our company and enhancing cultural competence, as measured by the number of colleagues we rotate to other countries. Each of our geographic teams in turn formulates a diversity strategy that responds to the talent issues specific to the region.

A recent example of our success in this area is the appointment of Christa Davies, a former top executive with Microsoft, as executive vp of global finance. Christa will be formally named chief financial officer in March.

As a client-focused organization, we understand that when you deliver the best to a client, the client realizes and appreciates your value. The same holds true for our talent. By providing clients with the best opportunities, we create an environment where they value Aon and, in turn, we provide the best service possible to our clients.

Our commitment to a diverse and productive work environment was recognized last September when Aon was among 195 major U.S. businesses to receive a 100% rating in the Human Rights Campaign Foundation's Corporate Equality Index.

I am proud that Aon's diversity initiatives are leading the way not only in the insurance and human consulting industries, but in the global business community. By embracing the needs of our clients and the talent imperatives of the community we serve, and by cascading our diversity strategy throughout our global organization, Aon's diversity and inclusion goals can continue to focus on hiring the best, building the best and being the best.

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Cultivating diversity makes good business sense

By John D. Finnegan

Last year as Chubb celebrated its 125th anniversary, we reaffirmed our longstanding commitment to being "an employer of choice." We recognized that Chubb's continued success in a changing business environment truly depends upon its employees and our ability to create an inclusive environment that motivates all employees to reach their full potential.

As Chubb continues to expand its global reach, it is essential that we attract and retain the most talented and diverse group of employees to respond to the evolving needs of our customers. A company whose employees bring different perspectives to their jobs is one that will always find efficient ways to operate and new ways to grow. A diverse and inclusive workforce leads to the generation of new ideas and products, enhanced productivity and improved engagement. Demonstrating a commitment to supporting a culture of inclusion—as we call it at Chubb—is not just a question of justice or equal rights, it just makes good business sense. Companies that do not support and develop diverse candidates for leadership roles lose out on the talent of those that could be used to further support corporate business objectives.

Chubb began tackling the diversity challenge in 1973 with the appointment of our first female branch manager. In 1996, we established the role of chief diversity officer and took a more focused approach to fostering a diverse corporate culture.

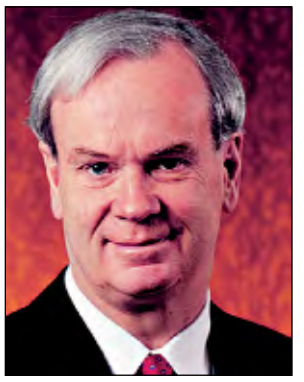
To help attract and retain the best talent available, Chubb implemented new policies and procedures. For instance, in 1996, Chubb was one of the first insurance companies to adopt domestic partner benefits. More recently, we have joined some of the nation's top employers in supporting legislation that would give gay and lesbian partners the same tax consideration that heterosexual married couples enjoy when purchasing health insurance. We have also developed a strong partnership between Chubb's talent management office and the diversity office to build awareness of the importance of considering diversity in succession planning.

Chubb also stresses networking and education as a means to make a large impact on effecting change in the organization. Every two years since 2000, the company holds two leadership conferences—one for women and another for minorities. These conferences focus on identifying and overcoming barriers and offering skill-building sessions and panel discussions on topics such as becoming politically savvy and navigating corporate culture.

Much of our success in developing and promoting a culture of inclusion can be attributed to grassroots networking and mentoring groups that were initiated by one of several Chubb Employee Resource Groups. Rather than simply wait for the world to catch up and improve leadership opportunities, Chubb's employees have taken steps to make it happen. Each ERG represents a diverse population of employees, such as women, people of color, and gay, lesbian, bisexual and transgender employees. Chubb's senior executives demonstrate support for the ERGs by each taking on an advisory role for one of the groups. The groups provide networking, training, mentoring and leadership opportunities to help employees take their careers to the next level.

Chubb has been recognized for its diversity efforts by several organizations. In 2006, Chubb received the Catalyst Award for the recruitment, development and advancement of women in business and it was recognized by LATINA Style Magazine as One of the 50 Best Employers for Latinas. In 2007, the National Assn. for Female Executives named Chubb one of the Top Companies for Executive Women, while the company received a perfect score (100%) for the fourth consecutive year on the Corporate Equality Index published by the Human Rights Campaign. These awards acknowledge the work we have done, but there is more we can do to further strengthen Chubb's culture of inclusion.

We believe that a company can only be as strong as its foundation—our employees provide Chubb with a strong foundation. We are pleased that Chubb has reported outstanding business results over the past few years when other insurance industry companies have struggled in a cyclical market. We could not have done this without our employees and their diversity of thought and approach to the challenges we faced. Chubb's commitment to diversity and a culture of inclusion will provide us with a competitive advantage as we respond to the challenges in today's global business environment.



John D. Finnegan is chairman, president and chief executive officer of Chubb Corp. in Warren, N.J.

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Diversity: A guiding principle to success

Martin J. Sullivan is president and chief executive officer of American International Group Inc. in New York.

By Martin J. Sullivan

Diversity is now an important consideration in almost every facet of business. From the composition of the workforce to the types of products offered to clients, companies increasingly understand the value of embracing difference. Diversity isn't just an exercise in political correctness, it is essential for business success.

If an organization is going to be a true ambassador of diversity, however, then acting on the idea must involve more than mandatory training exercises and corporate declarations of inclusiveness. Diversity must be a principle—woven within the core of an organization—that both guides business goals and allows employees to achieve their highest potential.

From the moment of American International Group Inc.'s birth in Shanghai, China, more than 85 years ago, assimilating the diverse cultures where we operate has been an integral part of our success. Still, when I assumed the role of president and chief executive officer in 2005, I felt AIG needed to do more to deeply and deliberately ingrain diversity throughout our corporate culture.

Not long into my tenure, we established a three-tier comprehensive structure for the advancement of diversity. An Executive Steering Committee now meets regularly to establish companywide diversity goals and objectives.

From there, AIG's Corporate Diversity Council, composed of representatives from each of our major business segments, focuses on developing initiatives to support those efforts. Each business unit has an organized council that completes the process of establishing clearly defined, multifaceted goals and facilitating the achievement of those goals.

Another example of AIG's commitment to diversity was the January 2007 appointment of Terri D. Austin as global chief diversity officer. Under Terri's leadership, AIG now has formal diversity initiatives focused on four major areas: employees, clients, products and services, and suppliers.

Employees: Investing in a diverse talent base and cultivating an inclusive environment for all people—regardless of race, gender, sexual orientation or physical ability—is the best way to recruit and retain a premier global workforce. Some of the notable efforts AIG has supported to attract and retain talent include:

- INROADS Inc., a nonprofit organization that trains and develops talented minority youth for professional careers in business.
- Executive Leadership Council, an independent nonprofit organization dedicated to providing African-American executives of Fortune 500 companies with a network and leadership forum.
- National Business & Disability Council, a corporate resource for hiring, working with and marketing to people with disabilities.
- AIG Scholarship for Success Program, a program that offers education and internship opportunities to college students with diverse backgrounds who are interested in the insurance and financial services industries.

Clients: As we've done since our inception in 1919, AIG continues to understand, value and respect the cultures and customs of diverse customer bases that stretch across more than 130 countries and jurisdictions.

Products and Services: Through an AIG Product Development architecture that encourages ideas through broker interaction, employee incentive and an entire month—February—dedicated specifically to product diversity, we remain an industry leader by offering innovative products to our diverse customers.

Two such products we're poised to bring to the marketplace include: Personal identity coverage for African-American and Hispanic women—two groups that more commonly fall victim to identity theft; and travel insurance for people with disabilities that replaces mobile devices—wheelchairs or scooters—damaged en route to their destination.

Suppliers: We believe that our supplier base should be as diverse as our product mix, client base and the communities in which we operate. We seek to cultivate relationships with those companies that can provide the highest quality products and services at reasonable costs.

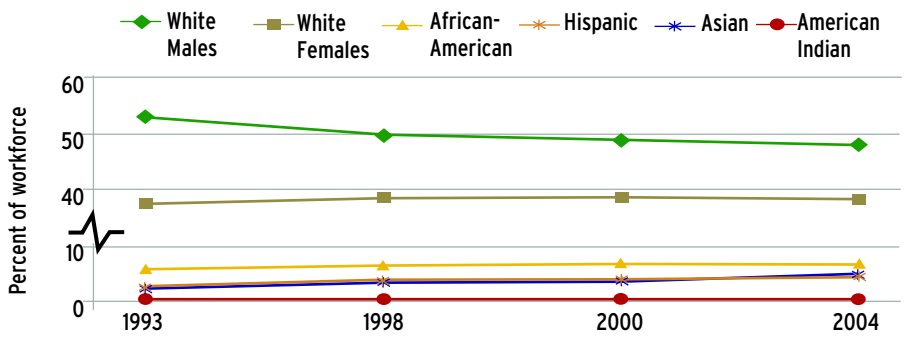
We also recognize the value of expanding opportunities and establishing business relationships with high-quality minority- and women-owned firms. For example, AIG recently invited 20 minority brokerage firms from across the United States to participate in an inaugural Diversity Producer Advisory Board. The mission of the board is to gain a better understanding of the unique perspectives of minority brokers and their clients.

Although more diverse today than ever before, AIG still has work to do. The company recognizes that it takes time to build and lead a truly diverse organization. Despite that recognition, we should be impatient. Customer needs are constantly changing, as are employee expectations. Incorporating diversity considerations must have the same priority as allocating capital, controlling expenses or any other critical management function. These efforts will pay valuable dividends for all our stakeholders—shareholders, employees, customers, business partners and communities—far into the future.

Diversity snapshot

Diversity at the management level of the U.S. financial services industry, which includes insurance, "did not change substantially" from 1993-2004, according to a Government Accountability Office analysis of Equal Employment Opportunity Commission data. In 2004, white males fell to 47.2%, white females rose slightly to 37.4% and minorities increased to 15.5% of the industry's management ranks. "Without a sustained commitment...diversity at the management level may continue to remain generally unchanged over time," the GAO said. To address concerns that diversity gains at the highest corporate levels may be overstated, the EEOC in 2007 split the category into "executive/senior-level officers and managers" and "first/ midlevel officials" to better track trends.

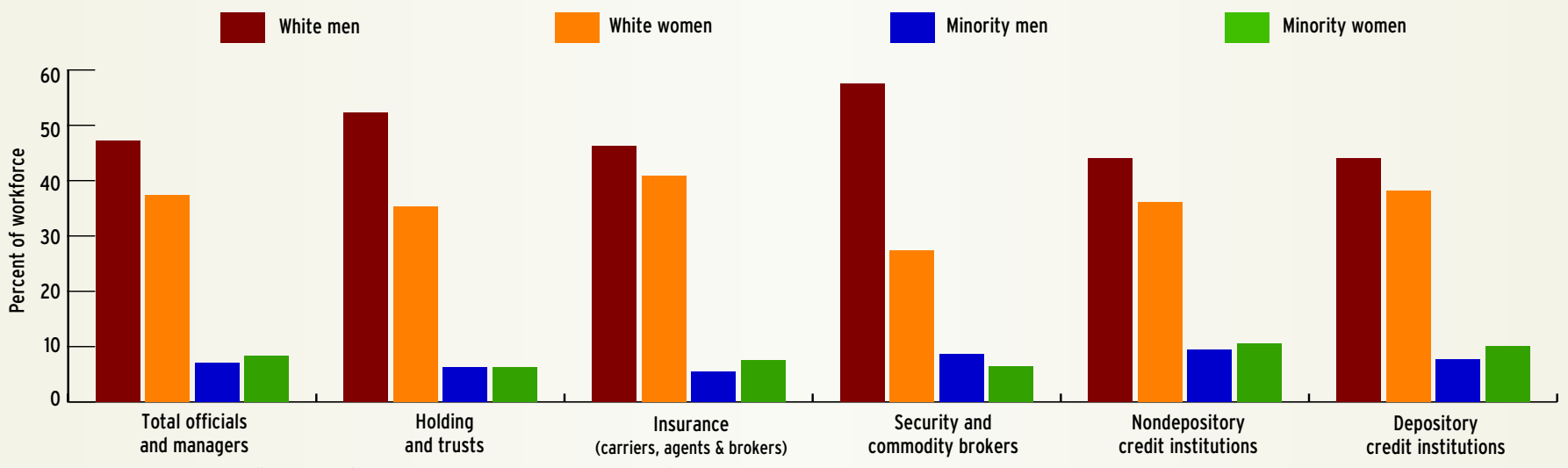
DIVERSITY TRENDS IN THE FINANCIAL SERVICES INDUSTRY



Source: Government Accountability Office analysis of Equal Employment Opportunity Commission data

WORKFORCE DIVERSITY IN THE FINANCIAL SERVICES INDUSTRY

At management level, by sector



Source: Government Accountability Office analysis of Equal Employment Opportunity Commission data

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Caremark settles allegations of deceptive practices

By GLORIA GONZALEZ

WOONSOCKET, R.I.—CVS Caremark Corp. has agreed to pay $41 million to settle allegations that its pharmacy benefit management units engaged in deceptive business practices that violated state consumer protection laws.

Units of Woonsocket, R.I.-based Caremark allegedly encouraged doctors to switch patient prescriptions and claimed that patients or their health insurance plans would save money, but did not adequately inform doctors of the costs. In addition, the PBMs did not clearly disclose to health plans that Caremark would retain money resulting from the drug-switching process, the complaint stated.

Caremark also allegedly restocked and reshipped previously dispensed drugs that had been returned to its mail-order pharmacies as undeliverable, according to the complaint led by the attorneys general of Illinois and Maryland.

The complaint was filed against three Caremark units: Caremark Rx L.L.C.; Caremark L.L.C.; and CaremarkPCS L.L.C, formerly known as AdvancePCS, which Caremark acquired in 2003.

"The company has agreed to enter into the settlement to confirm its continued commitment to compliance with state consumer protection laws…and to avoid the uncertainty and expense of the investigation," the company said in a statement.

Twenty-eight states and the District of Columbia will participate in the settlement announced last week. Caremark said the proceeds were accounted for in previous financial statements.

The settlement generally prohibits Caremark from soliciting drug switches when the net cost of the proposed drug exceeds that of the originally prescribed drug, when the cost to the patient will be greater, when the original drug has a generic equivalent and the proposed drug does not, when the original drug's patent is expected to expire within six months or if the patient was switched from a similar drug within the past two years.

The company also agreed to implement various changes in its business practices and reimburse some out-of-pocket expenses for patients.

CVS Caremark Corp. agreed to pay $41 million to 28 states and the District of Columbia to settle a lawsuit alleging its PBM units engaged in deceptive business practices.

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Policy administration services include, but are not limited to, the issuance of policies and appropriate endorsements; premium billing and collection; auditing; claims management including managed care services; loss control and safety engineering; fraud investigation and prevention; financial and statistical data reporting; and customer satisfaction services. Managed care services include, but are not limited to, medical management and disability management. Claims administration services, which have historically been provided to the FWCJUA by the policy administration services vendors, may be provided by either vendor or a combination of both.

The complete official notice of this RFP will be contained in the Florida Administrative Weekly published on March 7, 2008. Interested parties may obtain the RFP on or after March 28, 2008 by written request to Laura Torrence, Executive Director, FWCJUA, P.O. Box 48957, Sarasota, FL 34230. Written requests will also be accepted by fax at 941-487-2525. Responses to the RFP will be due at 4:00 p.m., ET, May 9, 2008.

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION (WINDING UP)

2004: No. 301

IN THE MATTER OF SENATE INSURANCE COMPANY LIMITED, IN LIQUIDATION

By order of the Supreme Court dated 7th February 2008, a final deadline for the filing of proofs of claim has been set, That date is 7 March 2008. Any claims filed after that date will not be entitled to participate in the final dividend. If you have already filed a claim you are not required to submit any further documentation unless requested to do so by the Official Receiver/Liquidator.

Claim forms can be obtained from the Registrar of Companies, 30 Parliament Street, Hamilton HM 12 Bermuda or by email to **lebasden@gov.bm**.

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("CER")

Notice of termination of CER's Scheme of Arrangement

NOTICE IS HEREBY GIVEN that CER's Scheme of Arrangement will terminate on 17 March 2008 in accordance with the Scheme part 9.1 (a).

Under CER's Scheme of Arrangement, the Scheme Administrators, Paul Evans and Nigel Rackham of PricewaterhouseCoopers LLP, were able to declare a first and final Scheme Dividend of 0.52% of Scheme Creditors' Established Liabilities.

Any further queries should be directed to the French liquidator, at the address below:

Jean-Claude Pierrel, Mandataires Judiciaires Associés,
169 bis, rue du Chevaleret, 75648 Paris, Cedex 13, France

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Dated this 18th day of February 2008.

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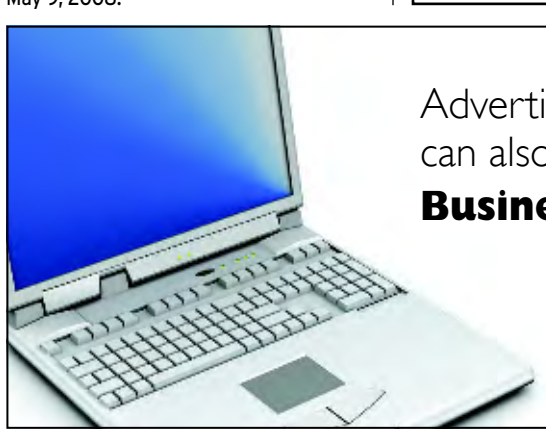

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International NEWS

Canada mulls changes to securities regulation

Attempt to unify approach across provinces

By GLORIA GONZALEZ

OTTAWA—Canada's finance minister has set up a task force to review securities regulation across the nation, but experts question whether the review will lead to concrete securities reform or if it will have any effect on the directors and officers liability insurance market.

The task force is charged with recommending how Canada can develop a system that streamlines regulation across various jurisdictions, possibly through creation of a uniform securities law and a single securities regulator. Currently, securities regulation varies by province and territory.

A single regulator may improve enforcement of securities laws, potentially increasing the exposure of directors and officers, but companies would welcome the ability to deal with a uniform code rather than the current patchwork system, said Murn Meyrick, senior vp, corporate counsel for Toronto-based Executive Risk Services Ltd.

"For companies, it would certainly make it more convenient and expeditious in dealing with one entity," Ms. Meyrick said.

LANDOV

Jim Flaherty, Canada's finance minister, has formed of a task force to consider securities regulation reform.

Whether a uniform securities law or regulator becomes a reality is questionable as provinces such as Ontario and Quebec have resisted such efforts in the past, D&O experts say. For example, Ontario did not sign a memorandum of understanding in 2004 that aimed to harmonize and modernize the securities regulatory system.

The task force will deliver a final report and a draft model securities act to Finance Minister Jim Flaherty as well as provincial and territorial governments by the end of the year.

E.U. states take different stances on pollution liability directive

By SARAH VEYSEY

BRUSSELS, Belgium—Differences in the way the European Union's Environmental Liability Directive has been implemented across member states could pose problems for insurance buyers with potential cross-border liabilities, experts say.

And half of E.U. members have yet to enact the directive at all, many months after the final deadline for implementation passed.

Because the Environmental Liability Directive—2004/35/EC—is a framework directive, its adoption has not been uniform across the European Union, and some countries have adopted far stricter liability rules for environmental damage than others, noted experts gathered at a Comité Européen des Assurances' workshop in Brussels, Belgium, this month.

Progress in implementation of the directive has been slow, said Phil Bell, group casualty director at Royal & SunAlliance Insurance Group P.L.C. in London and chairman of the CEA's general liability directive.

And the way states have implemented the directive varies. In some cases, regulations could even differ across federal state lines within countries, he told delegates.

In addition, many insurers, he said, have been waiting to see how the directive is adopted—and what liabilities companies face—before developing products.

For example, states can chose whether to make liability under the directive joint and several or proportional, he explained. "There is no common position among member states," he said.

While it is common for companies with multiterritory exposures to seek a single policy for all of their operations, this could be difficult for environmental liability coverage given the mixture of liability systems—strict or fault-based—for exposures under the directive across member states, Mr. Bell noted.

Regional differences

In some countries, legal frameworks may even mean that the directive is implemented in different ways within member states.

In states with federal systems, such as Austria and Germany, the directive may be implemented slightly differently across regions, explained Hans Lopatta, a member of the European Commission's Environment Directorate-General.

For example, the directive has not yet been fully implemented in Belgium, and there are differences in the way legislation is due to be enacted in the Flanders and the Walloon regions of the country, according to experts at the seminar.

The Flanders region, for instance, is expected to implement two articles of the directive. One would exempt polluters from liability in the case of an emission or event authorized by national law. The other provision would exempt companies from liability if they can "demonstrate that the activity was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time of the event."

The Walloon region, however, is not expected to enshrine either of those defenses in its environmental liability law.

There is also potential in the United Kingdom—where the directive is yet to be implemented—for the Scottish Parliament to adopt an environmental liability regulation that is different from that adopted in England and Wales, experts said.

While some insurers have developed products to cover companies' liabilities under the Environmental Liability Directive, there remains nothing that could be described as a "market" for products aimed at meeting the directive's scope, Mr. Bell said.

And while some other coverages—such as product liability, general third-party liability, property, professional indemnity or nuclear insurance—may cover some liabilities under the directive, there is not likely to be full convergence between insurability and the way the directive is implemented in different areas, noted Jürg Busenhart, vp of casualty products for Swiss Reinsurance Co. in Zurich.

Marine liability rates increase as P&I clubs post higher losses

By GLORIA GONZALEZ

LONDON—The International Group of Protection and Indemnity Clubs has very strong competitive and financial position, but the clubs need to address higher-than-expected losses in the marine sector, according to a report by Standard & Poor's Corp.

Even so, the P&I clubs have been able to recoup these marine losses via higher premiums, which increased by between 7.5% and 23.8% during renewals earlier this month. S&P, though, said last week that the clubs need to adequately address the erosion of capital that has stemmed from the deterioration in both underwriting and investment returns, particularly due to an aggressive investment strategy historically geared toward equities.

"The last two years have witnessed a pronounced downturn in underwriting performance, more recently accompanied by turmoil in global financial markets," the S&P report stated.

The International Group comprises 14 clubs that operate as independent nonprofit mutuals that provide liability insurance coverage for about 90% of the tonnage shipped worldwide.

The organization has an excess-of-loss reinsurance program that allows members to offer coverage up to $5 billion—$1 billion for oil pollution risks—at a relatively low cost.

The direct causes of the increased claims costs are a greater number of vessels at sea, a shortage of adequately trained crew leading to a rise in human error claims, shipyards giving priority to new vessels rather than maintenance of existing ships, and the increasing cost of steel and other raw materials, among other things, according to the report.

Although it is understandable that shipowners are taking advantage of trading opportunities in booming economies such as India and China, the profits come at the expense of a higher loss experience, the report said.

S&P is concerned that shipowners may not be willing to pay upfront for the potential consequences of their higher levels of activity.

"It is positive that clubs are more widely embracing enterprise risk management and using increasingly sophisticated underwriting models," the S&P report said. "That said, from a ratings perspective, these changes will count for little if both club management and club members fail to address the wider issues, some of which are of their own making."

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Commentary

Striding toward health in The Old Line State

JOANNE WOJCIK

Senior Editor Joanne Wojcik can be reached at: jwojcik@businessinsurance.com

Surely you've heard of state birds, state flowers and state songs, but what about an official state exercise?

A state lawmaker has decided it's time for Maryland to make such a declaration and introduced legislation designating "walking" as Maryland's official state exercise.

While some may think it sounds a little silly, Delegate Bill Bronrott, D-Bethesda, is serious. He said he decided to introduce the Walking State Exercise bill to address Maryland's leading public health problem: heart disease.

"This is a great opportunity to get people moving for their own health and well-being," he asserted, and supports the U.S. Surgeon General's recommendation to take 10,000 steps a day.

During testimony last week before a House committee, Mr. Bronrott told lawmakers that the health improvements that walking can yield could put a dent in the $2.25 billion spent each year in Maryland to treat cardiovascular disease.

"Heart disease is the No. 1 killer of men and women in Maryland, and a lot of it is preventable with diet, exercise and not smoking. Walking is the most inclusive and universal way to encourage people to exercise and become more active," he said in an interview.

"We're looking at lives that we can save, the quality of life that we can improve and dollars that also can be spared—whether it's straight out of our state's budget or our health care system, or our taxpayers' pocketbooks," Mr. Bronrott added.

The Maryland House passed a similar measure in 2003, but then-Gov. Robert L. Ehrlich Jr. called the measure "silly" and vetoed it. If the bill is enacted this time, Maryland would be the first state in the nation to designate an official exercise. And Mr. Bronrott hopes his idea will catch on and other states will begin designating their own exercises.

"We're not talking about a new program that would require additional state dollars. You can establish walking as a state exercise and weave it into existing programs. It's a great way to market your state," Mr. Bronrott said.

By becoming The Walking State, Maryland can use the designation to promote its trails and state parks, he said.

But if Maryland claims walking, what options would that leave for other states?

Here in Colorado, for example, most people think skiing would be an appropriate state exercise, but given its high cost and skill requirements, it's hardly an activity accessible to everyone. There's always hiking, I guess. But isn't that just another form of walking? And even that requires a certain amount of stamina given our mile-high elevation.

Looking to the east, we all know that Nebraskans husk corn, but what about Montana? Snow shoveling?

Since I've been told the unofficial state bird in Minnesota is the mosquito, perhaps Minnesotans could choose mosquito swatting as their official exercise. But, like corn husking and snow shoveling, that's a seasonal activity and wouldn't apply in spring or fall. Maybe seed sowing or leaf raking?

We all know that Nebraskans husk corn, but what about Montana? Snow shoveling?

A logical choice for California would be yoga, but given its new government figurehead, perhaps it should be weight lifting. But even that isn't really universal enough to be deemed an official state exercise.

Fortunately, Mr. Bronrott said Maryland doesn't plan to copyright or trademark the use of walking as an official state exercise. That means other states can choose it, too. But Maryland can certainly lay claim to being the first official Walking State.

"If we're in the forefront of this, great. It would be wonderful for every state to consider something like this as an attention-getter," he said.

He also hopes that businesses in Maryland would use the new designation to incorporate walking into their health promotion programs. "This is a perfect opportunity for HR managers to create some sort of walking campaign internally to get people to walk before or after work or during the lunch break. It's a good, free excuse to get the word out."

Comings & Goings

INSURERS:

Zurich Financial Services Group has named **Kevin McCracken** executive vp-casualty in New York. Before his promotion, he was senior vp-casualty, northeast region, and leader of the company's excess workers compensation business.

Also at Zurich, **Joseph Tocco** has been promoted to executive vp-property, for the insurer's Global Corporate in North America unit in New York. He most recently was senior vp-northeast region property manager.

Farmers Group Inc. in Los Angeles, a subsidiary of Zurich, has appointed **Scott Lindquist** executive vp and chief financial officer. He replaces Pierre Wauthier, who now is treasurer and head of financial operations at Zurich Corporate Center. Previously, Mr. Lindquist was controller of Genworth Financial.

Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, has made several senior-level promotions:

Mr. Hall

● **Jonathan W. Hall** is the new senior vp of underwriting and reinsurance, replacing Robert E. Bean, who has retired. Previously, Mr. Hall was senior vp and manager of the company's eastern U.S. division.

● **Michael R. Turner** replaces Mr. Hall, as senior vp and manager of the eastern division in the United States. Previously, he was vp and operations manager for the company's Boston operations.

● **Ray K. Phillips** has been named operations manager and vp of FM Global's Boston operations in Norwood, Mass. Previously, he was operations vp and area manager for the Atlanta office of Affiliated FM.

Mr. Phillips

BROKERS:

Mr. Fitzgerald

Melville, N.Y.-based Cook, Hall & Hyde Inc. has named **Mark Fitzgerald**, former assistant vp, as director of sales in the commercial insurance division. He also has been named to the company's executive committee, with the title of senior vp.

Aon Corp. has named **Mary Ann Krautheim** national client strategy officer for Aon Construction Services Group in Minneapolis. Previously, she was a senior vp for Willis Construction.

Atlanta-based Beecher Carlson has appointed **Steve Denton** as president. Previously he was chief operating officer.

Mr. Denton

OTHER PROVIDERS:

Mr. Kilbane

Schaumburg, Ill.-based Captive Resources L.L.C. has named **Michael J. Kilbane** president. Before his promotion, Mr. Kilbane was chief financial officer.

Also at Captive Resources, **Jennifer T. Beard** has been named chief operating officer. Previously, Ms. Beard was executive vp of operations.

Ms. Beard

And **Ernest Achtien** has been promoted to replace Mr. Kilbane as CFO of Captive Resources.

Segal Co. in New York has named **Margery Sinder Friedman** senior vp. Previously, she was a member of the labor and employment practice group at Morgan, Lewis & Bockius L.L.P.

Towers Perrin has named **Ali Samad-Khan** head of operational risk management consulting for its enterprise risk management practice in New York. Previously, he was president of OpRisk Advisory.

Mr. Samad-Khan

Hartford, Conn.-based Specialty Risk Services has named **James P. Ryan** senior vp of field operations. Previously, he was a regional vp.

UP CLOSE

Jill Madison

NEW JOB TITLE: Managing director, consulting services, Craford Benefit Consultants, in San Rafael, Calif.

START DATE: Nov. 12, 2007

PREVIOUS POSITION: Worldwide partner, Mercer L.L.C.

REASON FOR THE SWITCH: After 22 years, I retired from Mercer to pursue a consulting role in a smaller employee benefits organization that wanted to embrace change.

VITAL STATISTICS: I have a bachelor of fine arts from Ohio University and attended the master of health plan administration program at Golden Gate University in San Francisco. I spent 22 years at Mercer in San Francisco, working from a group benefits consultant to a client manager responsible for a number of megaclients. Prior to that, I spent four years at Johnson & Higgins as a technical analyst supporting their consulting practice. Upon arriving in San Francisco, I worked for 12 years at Aetna Life & Casualty Insurance Co. in claims and then the Group Division, responsible for a number of very large multistate clients.

GOALS FOR NEW POSITION: My primary focus will be to address staffing in all three of our offices (San Rafael, Calif.; Portland, Ore.; and Charlotte, N.C.) where our services are in great demand and business opportunities are increasing rapidly. I will also focus on process and strategy. As a strong midmarket player, we are always looking for ways to work smarter and more effectively so we can best meet our clients' changing needs. Finally, I will enhance our outstanding tools that allow us to meet the markets' demands.

FIRST TIME IN THE JOB MARKET: Initially I worked with CIGNA in Bloomfield, Conn., where I learned the insurance business as a claims auditor in the health claims division. The job allowed me to learn the business and travel extensively around the United States. As a recent college graduate, I thought I had "died and gone to heaven."

TOP ADVICE: Listen with your eyes and ears before you offer any advice.

OUTSIDE THE INDUSTRY, A DREAM JOB: When I leave employee benefits consulting, I'd love to work for the J. Paul Getty Museum in Los Angeles. Being in such a visually satisfying environment right in the middle of L.A.'s hustle and bustle would be my dream experience.

TO SUBMIT ITEMS

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

Union: Emphasizing benefits critical

CONTINUED FROM PAGE 4

cials knew something would have to change, Ms. Kohler said. "We couldn't afford to continue with the plan they had," she said.

Paying retiree medical costs would be a "huge challenge" for its employees, so the company also emphasized the ability to accumulate savings for retirement in the HRAs and HSAs, she said. Employees have been saving for retiree medical expenses at a "fairly good rate," she said.

The company, which does not provide funding for its HSAs, is projecting annual savings of approximately 5%, she said.

For the Tennessee Valley Authority, 75% of its 12,000 active employees are in unions, which was "somewhat of a challenge" when the organization began talking about implementing a consumer-driven health plan, said Gary Watson, program manager, employee benefits, for the Knoxville, Tenn.-based organization.

Mr. Watson said that, during an initial conversation about implementing a consumer-driven health plan, one union representative initially reacted angrily, but explored the plan's tools and realized the tools would benefit union members. For example, a hospital comparison tool showed that St. Thomas Hospital in Nashville had better success rates in coronary bypass surgery than the better-known Vanderbilt University Hospital, where the costs of the procedure was several thousand dollars more. This tool benefited the union members because they would seek higher quality care at the lower-cost facility. "The tool opened their eyes," he said.

Another key was partnering with BlueCross BlueShield of Tennessee, which acted as TVA's third party administrator. TVA is the second largest customer of the insurer, which at the time was not administering a self-insured consumer-driven health plan, he said. "...It was important for us to use them because of their network," Mr. Watson said. "We never would have been able to sell this to our unions without" them.

The insurer was also concerned about TVA's decision to use Medco Health Solutions Inc. as its pharmacy benefit manager because of the need to integrate the two programs, he said. "Stick to your guns if you get that pushback, because it's going to work," Mr. Watson said.

In 2005, TVA introduced an HRA-linked plan, achieving first-year enrollment of 9%. That number has since more than doubled to 19% this year, higher than the 7% national median enrollment seen in a 2007 Towers Perrin study.

The HRA-linked plan has a biweekly premium of $26 vs. an $80 biweekly premium for the PPO plan. "The carrot ended up being, in our experience, the less expensive premium," he said.

The organization plans to replace its HRA with an HSA on Jan. 1, 2009, he said. TVA was uncomfortable with some of the regulatory issues involved with HSAs when it first introduced a CDHP, but has seen those issues resolved recently. The organization had already carved out its prescription drug plan, which will make the transition to a HSA plan easier, he said. "It's a logical move for us now," he said.

About 12%—or 3,500—of the organization's blue-collar employees are in the HRA plan, but Mr. Watson said he cannot envision the blue-collar workforce supporting total replacement.

"They were OK with it because it was a choice," he said. "I don't see us getting to a point of full replacement. I can see us moving toward more than one account-based plan."

Both benefit managers say the key to a union buy-in for consumer-driven health plans is communication. "If you're thinking about starting an account-based plan and you're not willing to commit to the communication, you're going to be very disappointed," Mr. Watson said.

Options: Plans available for diverse needs

CONTINUED FROM PAGE 4

includes a relatively low out-of-pocket maximum in case of catastrophic claims.

Employees with significant health risks can join a traditional PPO plan that offers lower costs at the point of service, but requires higher employee contributions. The plan has the lowest out-of-pocket maximum of the four plans, Mr. Kovaloski said.

All the plans cover preventive care costs without dollar limits or restrictions on the type of preventive care that is covered, he said. "We don't have any limitations," he said.

Alcoa also revamped its prescription drug plan to take advantage of generic drugs that will soon be available and to "encourage use of generics and mail order," Mr. Kovaloski said. Generic drugs are covered at 100% for mail-order prescriptions and 90% for retail.

Brand-name drugs with no generic alternative are covered at 80% for both retail and mail order, and all brand-name drugs that treat asthma and diabetes are also covered at 80% because of a high prevalence of those conditions within the employee population, he said. Brand-name drugs with one or more generic alternatives are covered at 50% for both retail and mail-order prescriptions.

There were several pros and cons for employees in the new benefit plan, Mr. Kovaloski said. For example, more expenses are not subject to the up-front deductible, generic and selected brand-name drug coverage is cheaper and the plans offer a reduction in medical out-of-pocket maximums. Employees also can save for retiree medical costs and the company makes contributions to the accounts. And if employees are not comfortable with the new options, they can remain in traditional PPO plans.

A few negatives emerged from the revamped plan, though. The new PPO covers 80% of hospital and specialty care costs after the deductible is met. Under the previous plans, 90% of that cost was covered. Also, co-insurance on some brand-name drugs has been increased and the company has raised out-of-pocket maximums per prescription, which typically affects brand-name drugs only, he said.

Alcoa would like to improve its enrollment in the two CDHP plans, which have only 18% total enrollment. The company has about 157,000 covered lives, including employees, retirees and dependents. "Over-insurance is still an issue with us," he said. "We need to deal with that going forward."

When making its changes to its health plan, Towers Perrin faced an interesting challenge with its employees, many of whom specialize in and have experience in revamping employee benefit plans, said Susan Crown, director of global HR programs in Stamford, Conn. The consulting firm's employees saw themselves as sophisticated health care consumers, but were not reading benefits materials and did not always understand how the programs worked, she said.

The company kept its health care costs at "fairly reasonable rates" from 2002 to 2006, partly by raising employee contributions and deductibles, but its lower-paid employees were concerned by the increased costs and higher-paid employees paid little attention to the rising costs, Ms. Crown said. "No matter what we did, we weren't really reaching those price insensitive folks."

Towers Perrin replaced its PPO with a health plan linked to an HSA in 2007. The monthly contributions were much lower than the PPO plan it replaced and substantially lower than the alternative, which was a health maintenance organization plan, she said.

The new plan featured the same deductible—$2,850—for both single and family coverage with 100% coverage after the deductible for both in and out of network care. The plan also featured a $500 per person preventive care limitation because of high utilization, she said.

Towers Perrin then tied its contributions to the HSA accounts to employee base salary levels. Employees earning less than $50,000 receive a $720 contribution from the company, a figure that gradually decreases with employees earning more than $150,000 not receiving company money. The company also provided a $120 per person credit for employees and spouses who completed a health risk assessment and engaged in voluntary health coaching, she said.

Towers Perrin achieved 62% enrollment in the new plan, she said.

The company considered going full replacement, but wanted to take into account its culture and how much change could be absorbed, Ms. Crown said. "A lot of our debate was about how bold to be," she said.

Employee involvement eases benefits transition

By GLORIA GONZALEZ

NEW YORK—Engaging employees in the process of designing benefit plans makes it easier for them to accept, and even support, hard benefit choices, a benefits manager says.

SC Johnson & Son Inc. has made several substantial changes to its health care and other benefit programs in the past few years and the company has found employee input to be a key component, said Daniel DeBaker, director, worldwide employee plans and services. The main way to gather employee input has been through focus groups, he told attendees of the 2008 Employee Healthcare Conference, presented by the Conference Board and sponsored by Towers Perrin HR Services, which was held in New York earlier this month.

In 2007, the Racine, Wis.-based cleaning supplies manufacturer revamped its active and retiree health plans. Although other companies were eliminating retiree health care, SC Johnson still wanted to provide the benefit, but had to increase the premium substantially in order to do so. The company discussed the issue with a focus group of its employees who said they understood the business reason for the rising premiums, but wanted a tool to save for the higher costs. Out of that discussion came a retiree health savings account built around a voluntary employees' beneficiary association, which Mr. DeBaker called a "key part of our retiree health care strategy today."

When SC Johnson decided to convert its final average pay pension plan to a cash balance plan, the company had about 30 employees meet with actuaries over two days, which gave them an opportunity to understand how the current plan worked and how it compared with the new plan. The employees unanimously voted to support the change, he said.

When the company conducts meetings on benefit issues, those meetings are conducted by rank-and-file employees who have been informed in detail about the latest benefit issues and changes, he said. "We keep it very personal," Mr. DeBaker said.

'We've made some hard choices, but our employees know we're not going to just shift responsibility.'

Daniel DeBaker, SC Johnson & Son Inc.

Meanwhile, the company sends all written benefits communications directly to employees' homes, even though this is an added expense, because many of the decision makers on health care issues are in the home, he said. In addition, the company allows spouses to attend benefit meetings, he said.

Expecting employees to be part of the solution to the health care problem is an appropriate position for a company that is paying most of the bills, Mr. DeBaker said. The company wants to hold employees accountable and it expects results from the investments it makes in health management programs, he said.

SC Johnson designed its medical plans to provide incentives for employees and dependents to participate in health management programs, he said. The company offers a plan that requires employees and their spouses to complete a health risk assessment, he said. To obtain the highest level of benefits—85% coverage—they have to talk to a health coach if they have any high risk factors, or participate in a disease management program if they have a condition such as diabetes. If they do not enroll in the programs, their benefits are covered at 70%.

"We've made some hard choices, but our employees know we're not going to just shift responsibility," he said. "We're in this together and sharing responsibility."

Although employees were generally supportive of most of the changes, the benefits team encountered a roadblock when they pushed to create a tobacco-free organization. Only 14% of the company's employees are smokers, but they actively lobbied Chief Executive Officer Fisk Johnson behind the scenes to resist such a change, which he ultimately did.

In response, the benefits staff is planning to roll out a significant smoking cessation program this year. "We keep persisting," Mr. DeBaker said.

In 2007, the company's health care cost trend was 2.9% while its 2008 trend is expected to be near zero, he said.

330 attend conference

NEW YORK—About 330 people attended the 2008 Employee Healthcare Conference, presented by the Conference Board and sponsored by Towers Perrin HR Services.

The theme of the conference, held Feb. 13-14 in New York, was "People, Health and Results: Making Connections for Business Success."

The event featured discussions on consumer-driven health plans, return on investment of health management programs, innovations in benefit designs and retiree medical coverage.

Plans for next year's conference have not been finalized.

—By Gloria Gonzalez

Shooting: Schools continue to step up security efforts

CONTINUED FROM PAGE 3

burg, Va., during the nation's worst campus shooting.

NIU representatives did not respond to questions about the school's security, but consultants say that universities and colleges nationwide have reassessed their security and emergency response plans since the Virginia Tech shooting.

For example, a small survey of schools in early February showed that 17 of 20 respondents planned to add a total of 20.5 emergency management positions, with those personnel also being in charge of identifying threats, said Ellen M. Shew Holland, director of risk management at the University of Denver and current president of the University Risk Management & Insurance Assn.

'Protecting some is better than protecting none. You can't protect everybody, but you can do what you can.'

Hank Chase, Integrity Consulting

At the relatively small Wheaton College, which has about 100 buildings at its Wheaton, Ill., campus, the school installed a reverse 911 system before the Virginia Tech shooting, said Vincent Morris, director of risk management and president-elect of the Bloomington, Ind.-based URMIA.

And since last fall, the college has nearly completed installing a $250,000 emergency communications system, which includes an electronic message board in every classroom and office as well as a wireless internal speaker system. The school also is investigating an external speaker system, he said.

In Ohio, Kent State University is participating in a three-month pilot program of a new Internet-based technology designed to give school officials and commanders of emergency response teams archived satellite images of an emergency scene, building blueprints and real-time information on where emergency responders are deployed.

A campus drill last September showed that commanders are not always clear on responders' location even when in radio contact, said Dean Tondiglia, assistant chief of police and associate dean of public safety at Kent State.

The pilot program with Terra Image USA L.L.C. of Santa Barbara, Calif., is scheduled to begin in late March, Mr. Tondiglia said.

Preventing threats, though, is more challenging than responding to them.

Mr. Morris of Wheaton College, for example, is examining installing special locks and shatterproof glass on classroom doors. While the locks have to be tough enough to stop intruders, they also have to be easy to operate to comply with fire codes and disability laws, he noted.

Security consultants generally consider locking classroom doors helpful but emphasize that it is not a panacea.

But Marsh's Mr. Vohden noted that locked classrooms would not protect students in open courtyards.

While recognizing shortcomings of the measure—including the possibility that an assailant could enter a classroom before the door is locked—many consultants characterized it as a best practice that could save lives.

"Protecting some is better than protecting none," Integrity's Mr. Chase said. "You can't protect everybody, but you can do what you can."

The flaw in many schools' approach to security is that "they don't look at the issue holistically" by combining human and technological security and emergency response resources with aggressive threat assessment measures, said Gregory Boles, the Irvine, Calif.-based director of threat management and security services for Aon Consulting, a unit of Aon Corp.

A valuable lesson from the Virginia Tech shooting is that faculty and staff have to be trained to recognize and report aberrant behavior by peers and students; another is that a threat assessment team of school officials, including the risk manager and a mental health services representative, must maintain contact with the individual and his or her family to gauge and minimize the threat to the school, Mr. Boles and Kent State's Mr. Tondiglia said.

This kind of intervention would not necessarily violate the individual's legal privacy rights even if information about that individual was obtained from mental health services and shared among some school officials responsible for safeguarding the facility, the experts said.

At the same time, campus security has to be alerted to watch for potential threats among those who have been barred from campus but may engage in "boundary probing" before mounting their assault, Mr. Boles said.

Schools also should be doing more to inform students about the risks they face, said Gary Salmans, a Troy, Mich.-based executive vp-risk management services for Arthur J. Gallagher & Co.

"We need to make everyone responsible for themselves and not count on security guards and all the hardware" to keep them safe, he said.

Even after the Virginia Tech shootings, many school administrators still think a deadly attack "couldn't happen here," he said.

URMIA's Ms. Shew Holland said many institutions have made great efforts to implement policies and procedures based on lessons learned from past school shootings.

But, she added, "every incident is unique" in some aspect. As a result, "we'll always learn something new" after each incident.

Texas: Court rules on covering punitives

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liability coverage from Fairfield.

Workers comp policies, which cover statutorily mandated benefits, typically contain a second section that addresses alleged employer negligence exceeding the liability compensable under state comp law.

When Stephens Martin employee Roy Edward Bennett died in a 2002 accident on the job, Fairfield provided benefits to his family under the workers comp part of the policy, court records show. But Mr. Bennett's survivors sued Stephens Martin in 2003 for gross negligence, arguing it failed to maintain a safe workplace and enforce Occupational Safety and Health Administration standards.

That suit gave rise to a dispute over the employers liability portion of Fairfield's policy. Stephens Martin requested a defense, which the insurer provided under a reservation of rights, court records reveal. Fairfield later sued the contractor and Mr. Bennett's survivors in U.S. District Court, seeking a declaratory judgment. The trial court ruled against the insurer, finding Fairfield had a duty to defend and indemnify Stephens Martin.

The 5th U.S. Circuit Court of Appeals, hearing Fairfield's appeal, asked the Texas Supreme Court to certify whether state public policy prohibits a liability insurer from paying punitive damages for a policyholder's gross negligence.

In its decision, the state high court noted Texas law permits insurance policies that provide coverage for exemplary damages in workers comp cases.

"Thus we decline to invalidate the parties' workers compensation contract to enforce a public policy urged by Fairfield," the court said.

Public policy issues

The ruling is the first time the Texas Supreme Court has addressed whether insuring punitive or exemplary damages is counter to public policy. Among the issues the court considered is the "inherent tension" between policyholders' freedom to contract for coverage and the public interest in discouraging gross negligence, court documents state.

'Strong public policies may compel a serious analysis into whether a court may legitimately bar contracts of insurance for extreme and avoidable conduct that causes injury.'

Texas Supreme Court

Texas joined 45 other state high courts or legislatures that have weighed the insurability of punitive damages. The majority of states that have considered the issue do not prohibit coverage for punitive damages arising from gross negligence, Texas' high court stated. Some states, though, have made exceptions.

Insurers, policyholders and employer organizations submitted amicus briefs.

Stakes in the Texas case were high because punitive damages often are "big ticket items," said Michele Gallagher, a partner in the Washington office of Anderson Kill & Olick P.C., which filed an amicus brief on behalf of policyholders.

Guidance from court

Lacking clear legislative intent to prohibit or allow insuring damages arising from gross negligence, the Texas high court declined to make a broad public policy proclamation beyond the workers comp context.

The court did, however, offer guidance for analysis from other cases. "The touchstone is freedom of contract, but strong public policies may compel a serious analysis into whether a court may legitimately bar contracts of insurance for extreme and avoidable conduct that causes injury," the court ruled.

The court chose to carefully apply its decision only to workers comp cases, said Laura A. Foggan, a partner in the Washington office Wiley Rein L.L.P., which filed an amicus brief on behalf of insurers.

Attorneys representing policyholders, however, say the court's decision does provide points to consider in future disputes encompassing coverage for gross negligence under other policies, such as commercial general liability contracts.

The court's decision could apply to commercial general liability policies depending on their language, said Mr. Alexander. While that remains an open question, it will be "less of a hammer for insurance companies to use" in cases involving CGL policies, he added.

The Texas Supreme Court, meanwhile, remanded the case to the 5th Circuit to determine how to apply its ruling.

Ruling: Court allows 401(k) lawsuit

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tions plans, however, fiduciary misconduct need not threaten the entire plan's solvency to reduce benefits below the amount that participants would otherwise receive," states the opinion written by Associate Justice John Paul Stevens.

The alleged misconduct in the *LaRue* case "falls squarely within" provisions under ERISA that allow plan participants to bring actions on behalf of a plan to recover for violations of the plan administrator's obligations, he said.

Although ERISA "does not provide a remedy for individual injuries distinct from plan injuries, that provision does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account," Justice Stevens wrote.

ERISA attorneys say the decision opens the door to broader claims and remedies for alleged breaches of fiduciary duty, and as a result, it will lead to more litigation.

"I think it's a very big deal" for plan sponsors, said Stephen Rosenberg, head of the ERISA practice for the McCormack Firm L.L.C. in Boston. The decision means that sponsors are "no longer at risk for big ticket litigation over their pension and 401(k) plans. What they're really facing now is the risk of death by a 1,000 cuts of the types of cases like in *LaRue*, which was just one person with a $150,000 mistake."

'What they're really facing now is the risk of death by a 1,000 cuts of the types of cases like in *LaRue*, which was just one person with a $150,000 mistake.'

Stephen Rosenberg, McCormack Firm L.L.C.

Combined with the fact that plaintiffs prevailing in ERISA suits can collect attorneys' fees, "I think you'll see a lot more lawyers willing to bring these suits," he said.

"I believe firmly that this will lead in the next year or two, to a spate of new lawsuits," said Ed Harold, a partner with Fisher & Phillips L.L.P. in New Orleans.

"People see their account values go down and they look for someone to blame," he said. "And if they can come up with some sort of 'You didn't do what I asked you to do' or 'You shouldn't have this investment option within the plan,'" they're likely to bring suit. "The individualization of the claim creates more opportunity for people to become plaintiffs," he said.

"I think it potentially opens a whole new avenue of claims for plan participants and provides a form of remedy for defined contribution plan participants, which previously there was very much an open question whether this remedy existed or not," said Martha N. Steinman, a partner in the executive compensation and ERISA practice of Dewey & LeBoeuf L.L.P. in New York.

Attorneys say that the ruling means plan sponsors should look at their defined contribution plans to make sure there is sufficient oversight and everything is documented.

LaRue vs. DeWolff, Boberg & Associates Inc. et al., No. 06-856; decided Feb. 20, 2008

Guilty: Former Marsh executives convicted of violating antitrust law

CONTINUED FROM PAGE 1

spokesman for New York Attorney General Andrew Cuomo. "Bid rigging is a serious offense, which deprives customers of the benefits of a competitive marketplace, and this office will continue to prosecute it vigorously."

"We are very pleased with the verdict for my client," said Robert Cleary of Proskauer Rose L.L.P. in New York, who represents Mr. Gilman. "The judge saw the undeniable truth from the evidence that was presented. Witness after witness testified that (Mr. Gilman) was relentless in trying to get the best possible deal for his clients, so it is little wonder why the judge acquitted him on fraud."

Noting that he plans to appeal the antitrust conviction, Mr. Cleary said: "We're puzzled about the conviction on the antitrust charges. It's difficult to say how he could have reached the conclusion that (Mr. Gilman) engaged in antitrust conduct. The evidence is inconsistent with the verdict."

Mr. McNenney's lawyer, Stephen Neal of Cooley Godward Kronish L.L.P. in Palo Alto, Calif., could not be reached for comment.

Messrs. Gilman and McNenney, along with six other former Marsh Inc. executives, were indicted in 2005 on various counts of bid rigging, fraud and grand larceny by then-New York Attorney General Eliot Spitzer and former State Insurance Superintendent Howard Mills (*BI*, Sept. 19, 2005).

That indictment accused the executives of colluding with employees at various insurers—including American International Group Inc., ACE USA, Liberty International Insurance Co. and Zurich American Insurance Co.—to rig the market for excess casualty insurance between November 1998 and September 2004.

Prosecutors charged that the defendants and others would predetermine which carriers won business, set "targets" for the predetermined winner to submit as a bid and obtain "losing bids" from employees at the accomplice companies.

At least 18 individuals have pleaded guilty to criminal charges stemming from the bid-rigging investigation, including nine former Marsh employees, four employees from AIG's American Home Assurance Co. unit, three employees from Zurich, and one employee each from ACE and Liberty Mutual.

AIG, ACE and Zurich settled bid-rigging and other charges brought by Mr. Spitzer in 2006. Liberty Mutual, which Mr. Spitzer sued in May 2006, is fighting the charges.

Marsh itself has not faced any criminal sanctions over the scandal and in January 2005 paid $850 million in restitution to policyholders to end regulators' broker compensation probes.

In a statement issued after the verdict, Marsh said: "The proceedings and today's verdict are about the past. The main civil litigation brought by Marsh clients against Marsh was dismissed by a federal court last year. Today, Marsh and its new leadership are focused on the future. We are committed to operational excellence and the highest standards of professionalism and client service."

In two separate rulings last year, a New Jersey district court judge threw out racketeering and antitrust claims against several dozen insurers and brokers, including Marsh, citing lack of factual evidence (*BI*, Oct. 2, 2007; Sept. 10, 2007). Brought on behalf of commercial property/casualty insurance policyholders, the consolidated civil litigation alleged that insurers and brokers engaged in a conspiracy to stifle competition by steering clients and fixing prices in violation of the Racketeer Influenced and Corrupt Organizations Act and the Sherman Act.

In the New York criminal case, several former Marsh executives indicted at the same time as Messrs. Gilman and McNenney still are awaiting trial (see box). A status conference for those individuals is set for Feb. 27.

Reaction to the judge's acquittal of Messrs. Gilman and McNenny on all but one charge was mixed.

"In my personal opinion it waters (Mr. Spitzer's investigation) down," said Fran Semaya, who chairs the insurance, corporate and regulatory practice group of Cozen O'Connor P.C. in New York. "Antitrust…is not a great charge to be guilty of, but it does water down the whole broker compensation issue."

The verdict "really provides something for both sides at this point," said James M. Burns, a partner and chair of the antitrust practice group of Williams Mullen in Washington.

"If you believe that this is an action that should not have been brought, then the fact that Judge Yates rejected 20 of the 21 charges, together with the dismissal of the related civil case in New Jersey, is strong support for that view," he said. "However, if you believe what occurred was a violation of the antitrust laws, you have to be encouraged that the judge wasn't dissuaded by the ruling in New Jersey and still found a violation under the Donnelly Act."

Mr. Burns noted, however, that no one can claim victory until after sentencing and completion of appeals in both matters.

"Certainly it must make the five people who are awaiting trial feel a lot better about their chances, especially if they have asked for a bench trial, but it really depends on what the evidence is against these individuals," said Elaine Metlin, a partner with Dickstein Shapiro L.L.P. in Washington.

"Don't forget that the judge didn't throw out everything. There was a conviction for bid rigging and about 20 guilty pleas for the same type of conduct. They may want to wait until after the sentencing to decide what this really means for them," she said.

"One of the things the verdict tells us is that the incidents that were the subject of the investigation and the charges were isolated and limited to particular matters that did not project across the industry," said James W. Carbin, a partner with Duane Morris L.L.P. in New York, who represented some insurers in the New Jersey consolidated litigation.

"It indicates that it doesn't represent any sort of broad industry antitrust conspiracy as has been suggested," he said.

WAITING FOR TRIAL

The former Marsh executives still awaiting trial on antitrust, fraud and various larceny charges are:

- **Joseph Peiser, former managing director and head of Global Broking excess casualty**
- **Greg J. Doherty, former senior vp and ACE local broking coordinator team leader**
- **Thomas T. Green Jr., former senior vp**
- **Kathleen M. Drake, former managing director and local broking coordinator team leader**
- **William L. McBurnie, former senor vp and coverage and carrier specialist**

Edward J. Keane Jr., former assistant vp, pleaded guilty to criminal charges shortly after the indictment and no longer faces trial.

San Francisco: Costly wrinkle seen in health mandate

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ing requirement is if the employee voluntarily signs a city-prepared waiver.

The waiver advises employees that even if they receive coverage from another source, they are entitled to receive health care services from their employer. The waiver further warns that employees should not sign it if they want their employer to provide them with access to health care services.

Even without such warning, financially savvy employees may decide it is in their best interest not to sign the waiver to maximize their health coverage. By refusing to sign, and under the San Francisco ordinance employers cannot compel employees to do so, employees could have coverage as a dependent in their spouse's health insurance plan, but their employer still would have to spend up to an annual maximum of about $3,600.

That expenditure could be made in one of several ways, San Francisco regulators say. It could, for example, be made to a medical reimbursement account that the city would administer for the employee. Alternatively, an employer could establish and contribute to a health reimbursement arrangement, which the employee could tap to pay uncovered health-related expenses.

While employees would have lavish coverage, employers would foot the bill.

Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J., said all of his clients with employees in San Francisco face potential assessments, including one that could have a tab of nearly $400,000 if all affected employees refuse to sign the waiver.

"This is truly absurd. This is a law that is supposed to be about providing coverage to the uninsured," and not about giving extra coverage to those who already have it, Mr. Stover said.

'It is hard for me to see how the law would not be pre-empted by ERISA.'

J.D. Piro, Hewitt Associates Inc.

"This is a cost employers truly never considered," said Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

Ultimately, though, Ms. Relland said, it is a cost that will hurt employees as employers would likely cut benefits to offset the new spending requirement.

Whether that scenario develops depends on whether San Francisco's health care spending measure survives a legal challenge.

In December, a federal judge said the ordinance ran afoul of the Employee Retirement Income Security Act, which pre-empts state and local laws and rules that relate to employee benefit plans. Last month, though, a three-judge panel of the 9th U.S. Circuit Court of Appeals said the measure could go into effect pending a decision by the court on the ERISA pre-emption issue.

Last week, U.S. Supreme Court Associate Justice Anthony Kennedy denied a request by the Golden Gate Restaurant Assn., the trade group that challenged the San Francisco measure on ERISA pre-emption grounds, to halt enforcement until the pre-emption issue is decided.

While legal experts said there was little likelihood of Supreme Court intervention at this stage of the litigation, some were confident that ultimately the ordinance will be found to violate ERISA pre-emption provisions.

"There is hope for an ERISA pre-emption," said Neil Toyota, a consultant with Watson Wyatt Worldwide in Universal City, Calif.

"It is hard for me to see how the law would not be pre-empted by ERISA," said J.D. Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

If cities and states were allowed to have laws like the San Francisco health care spending ordinance, multistate employers would face dozens of different requirements, making it impossible for them to offer a uniform benefit package and significantly increasing their administrative costs, which ERISA pre-emption was intended to prevent, Ms. Relland said.

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Issue of February 25

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News In Brief

CONTINUED FROM PAGE 1

medical device that has received premarket approval by the Food and Drug Administration. The case involved a heart catheter that ruptured during a 1996 operation. The patient and his wife sued Medtronic, claiming that the device was designed, labeled and manufactured in a manner that violated New York common law. But both a U.S. district court and the 2nd U.S. Circuit Court of Appeals upheld the pre-emption of common law by the Medical Device Amendments.

N.Y. county to appeal same-sex marriage ruling

Monroe County, N.Y., plans to appeal to the state's highest court an appellate court ruling that same-sex marriages outside New York must be recognized in the state. County Executive Maggie Brooks said in a statement that the appellate court's decision in *Martinez vs. County of Monroe* is a "clear misinterpretation of the law" and must be appealed. The case was filed by Patricia Martinez, an employee of Monroe Community College, after she married her same-sex partner in Ontario, Canada, in 2004 and then applied for spousal health care benefits, which the county rejected. The state appellate court ruled in her favor on Feb. 1.

Michigan House passes bill to permit captives

The Michigan House of Representatives has passed and sent back to the Senate legislation that would make the state a captive insurance domicile. The House action came after the Senate earlier this month passed a captive measure with some differences, such as lower annual fees. The Senate can accept the House bill or request a conference committee to try to resolve the differences.

U.S. life insurers may see $8 billion subprime loss

U.S. life insurers' unrealized investment losses related to subprime and other mortgage investments are in the $7 billion to $8 billion range, but the exposure is manageable, Fitch Ratings Ltd. said in a report. Fitch said that the expected loss range for subprime and so-called Alt-A residential mortgage collateral represents about 13% of the insurers' holdings and 3% of aggregate industry statutory capital. Alt-A mortgages are those that fall between prime and subprime.

Meadowbrook to buy P/C specialty insurer

Meadowbrook Insurance Group Inc. has agreed to buy ProCentury Corp. for $272.6 million in stock and cash. Westerville, Ohio-based ProCentury is a specialty property/casualty insurance holding company with units writing primary, excess and surplus lines coverage. Its gross written premiums for 2007 were $283.3 million. Southfield, Mich.-based Meadowbrook is a specialty program insurer and provides alternative risk services. Its gross written premiums for 2007 totaled $346.5 million, the company said.

Noted

Ken Ross was appointed last week as commissioner of Michigan's **Office of Financial and Insurance Services**, effective immediately. Mr. Ross most recently served as acting commissioner. He replaces Linda Watters, who resigned in last October....The U.S. Supreme Court refused to hear a case in which a federal appeals court ruled that property insurance policies did not cover flood damage in New Orleans caused by the failure of levees during **Hurricane Katrina** in 2005.....Robert M. Schrayer, the longtime president of insurance brokerage **Associated Agencies Inc.**, died last week. He was 75....Maine's state Senate has confirmed Gov. John E. Baldacci's appointment of Mila Kofman as superintendent of the **Bureau of Insurance**....**Willis Group Holdings Ltd.** named Vic Krauze as chief operating officer of Willis North America. He previously served as regional executive officer and national partner for the Central region of Willis North America....Groups of U.S. military veterans and Vietnamese citizens failed last week to convince a federal appeals court to reinstate their **product liability claims** against the manufacturers of defoliants—including Agent Orange—and herbicides that the military used during the Vietnam War. Upholding a federal court's rulings, a 2nd U.S. Circuit Court of Appeals panel issued three separate decisions that bar the plaintiffs from recovering damages from numerous chemical manufacturers.

Captives: IRS drops controversial captive tax proposal

CONTINUED FROM PAGE 1

withdraw the rule.

For example, the nation's two largest captive trade associations—the Vermont Captive Insurance Assn. and the Captive Insurance Cos. of America—banded together to form the Coalition for Fairness to Captive Insurers to battle the IRS. The coalition retained the law firms of Dewey & LeBouef L.L.P. in New York and McDermott, Will & Emery L.L.P. in Chicago to prepare a nearly 40-page technical rebuttal of the IRS' position.

Those who battled with the IRS say it was those technical arguments, an educational effort on how captives operate and political pressure that led the IRS to drop the idea.

"It really was a three-pronged approach," said Tom Jones, a McDermott, Will & Emery partner in Chicago.

On the political side, lawmakers and governors got involved, sending letters to Treasury Secretary Henry Paulson that warned of the economic consequences to their state captive industries if the rule were finalized.

For example, Utah Gov. Jon Huntsman Jr. wrote that the proposed rule effectively would be an "unprecedented change in federal tax policy" that would "have an immediate adverse impact on Utah's emerging position as a domicile favorable for captive insurance companies."

The IRS proposal to revamp tax rules for captive insurers 'would have changed the direction of the industry.'

Richard Goff,
Self Insurance Institute of America

Sen. Patrick Leahy, D-Vt., also played the economic card in his letter to Secretary Paulson, saying the rule would cause "significant economic damage" to Vermont, which is the largest domestic domicile.

How much influence those letters had with the IRS isn't known. But as VCIA President Molly Lambert in Burlington, Vt., noted, "The executive branch does pay attention to what the legislative branch thinks."

The IRS said it will continue to study the issue, but captive experts don't see the IRS jumping back in, at least not anytime soon.

"It's over for awhile," said Chaz Lavelle, a member of the tax and finance group at law firm Greenebaum, Doll & McDonald P.L.L.C. in Louisville, Ky.

The IRS reserving the right to study the issue is just "boilerplate language," said CICA President Dennis Harwick in St. Petersburg, Fla.

While the reserving issue may be over, plenty of other regulatory threats remain.

For example, the IRS has been studying what relevance "homogeneity" has in determining whether risks are adequately distributed for an arrangement to qualify as insurance. In general, homogeneity refers to insurers providing lines of coverage to many insureds in the same or similar industries or having many policyholders in single lines of coverage.

The way captives are typically structured, it would be difficult for them to meet such a test if the IRS moved in that direction.

Threats also remain at the state level.

For example, a Montana-chartered auto dealer risk retention group is battling the California Department of Insurance, which says it has the right to decide whether the coverage it provides is allowed under federal law.

If California's view prevails, it would defeat the intent of Congress in passing the Risk Retention Act, which was to allow RRGs to operate nationwide—with minimal interference from state regulators—after meeting the licensing requirements of one state, RRG advocates say.

"It is legal battle after legal battle," said Robert "Skip" Myers, Washington counsel for the National Risk Retention Assn. and a partner with Morris, Manning & Martin L.L.P.

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Stock Index

[2/18 - 2/22]

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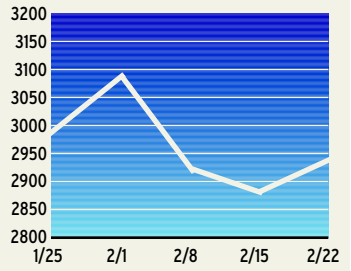

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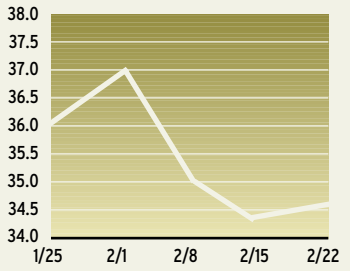

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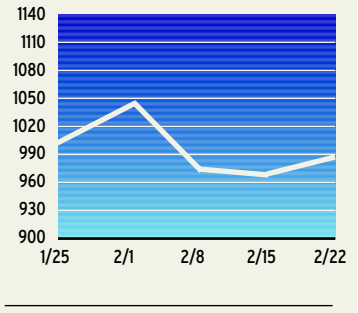

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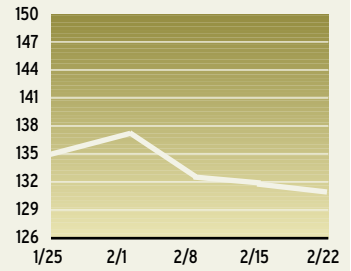

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DOW JONES	12381.02	▲ 0.27%
S&P 500	1353.11	▲ 0.23%

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SCOR S.A.	8.91%
AXA	7.60%
AIG	6.01%
AEGON N.V.	5.84%

LARGEST LOSSES

Meadowbrook Insurance	-11.86%
HCC Insurance Holdings	-11.73%
Navigators Group Inc.	-7.21%
XL Capital Ltd.	-4.63%
Allmerica Financial Corp.	-3.72%

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Business Insurance END PAGE

Contributing: Jeff Casale, Jerry Geisel, Gloria Gonzalez, Joanne Wojcik

Pension agency ups its bet on equities

Is this the time to invest billions of dollars in equities?

The Pension Benefit Guaranty Corp. evidently thinks so.

The PBGC, the federal agency that guarantees workers and retirees' pension benefits, has adopted a new investment policy in which it will invest about 45% of its $55 billion in available assets in equities, with 45% in fixed-income investments and 10% in alternative investment classes.

Under the agency's prior policy, it set a target of 15% to 25% of available assets in equities, though at the end of fiscal 2007, the percentage was at 28%—a hair over the upper end.

The new investment strategy, says PBGC Director Charles E.F. Millard, should result in greater investment returns, greatly increasing the agency's chances of wiping out its $14 billion deficit within 10 years.

The change in investment strategy comes after the PBGC lost—because its assets were so heavily concentrated in fixed-income investments—the opportunity to reap billions of dollars in investment gains during the bull equities market that roared during the last five years.

But the new strategy also comes as the stock market has slumped since the start of the year due to investors' fears that the economy is slowing down.

Denzel Washington portrays Frank Lucas in "American Gangster," which made the false but not defamatory assertion about arrests in a nonexistent New York City drug-fighting agency.

UNIVERSAL PICTURES

'American Gangster' legend false but not defamatory

Just because it's based on a "true story" doesn't mean the movie is telling the whole truth.

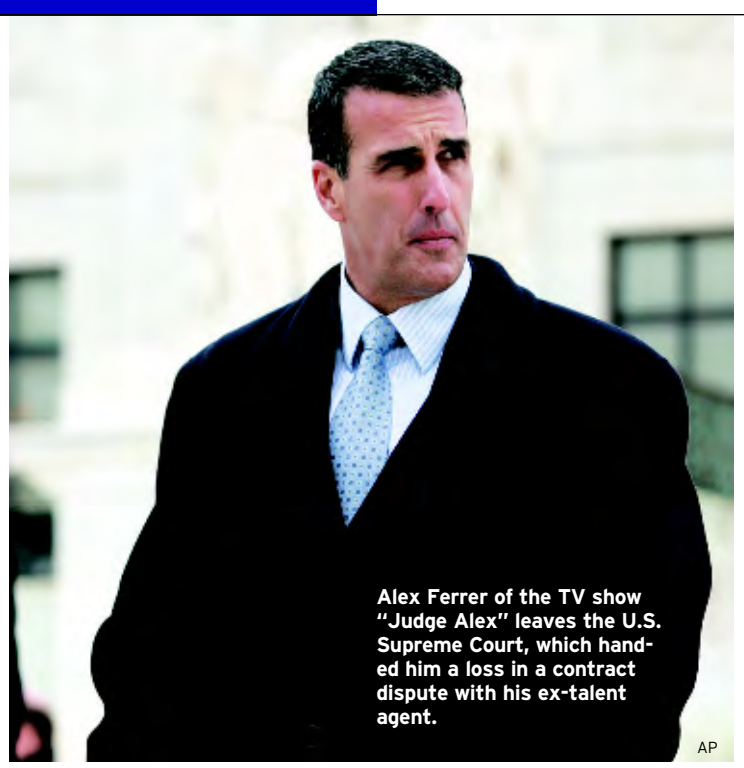
A U.S. District Court judge in New York dismissed a $55 million lawsuit last week that had some present and former federal Drug Enforcement Agency agents crying foul over the last line in the movie "American Gangster."

The suit, filed last month against the movie's producer, NBC Universal Inc., claimed that several New York City-based DEA agents were "defamed by an allegedly false legend" that the arrest of notorious drug dealer Frank Lucas "led to the conviction of three-quarters of New York City's Drug Enforcement Agency."

In reality, the arrest of Mr. Lucas, portrayed by actor Denzel Washington, led to the arrest of several high-level drug dealers in New York. Judge Colleen J. McMahon said in her decision that the legend did not defame the "entire (nonexistent) 'New York City DEA.'"

"To put it bluntly…the 'legend' that appears onscreen at the end of the film is wholly inaccurate," Judge McMahon wrote.

She concluded that "it would behoove a major cooperation like Universal not to put inaccurate statements at the end of popular films. However, nothing in this particular untrue statement is actionable."



Alex Ferrer of the TV show "Judge Alex" leaves the U.S. Supreme Court, which handed him a loss in a contract dispute with his ex-talent agent.

AP

'Judge Alex' takes turn on other side of bench

Fox television's "Judge Alex" has finally made it all the way to the U.S. Supreme Court.

But this time, rather than presiding over the case, Judge Alex was a defendant in a case brought by his former talent agent.

The agent, Arnold Preston, had tried to arbitrate his claim for a portion of the earnings of Alex Ferrer, a former Florida Circuit Court judge, citing the arbitration clause in their contract.

In turn, Judge Alex filed a complaint against Mr. Preston with the California Labor Commission, charging that Mr. Preston, an attorney, wasn't entitled to a 12% commission because he had acted as a talent agent without the required license. However, the Labor Commission said it did not have jurisdiction because the dispute was covered by the Federal Arbitration Act.

Lower courts found in favor of Judge Alex, but the U.S. Supreme Court, in an 8-1 decision, ruled in Mr. Preston's favor. According to the court, when parties agree to arbitrate all questions arising under a contract, the Federal Arbitration Act supersedes state laws.

Now the two parties must resolve their dispute in arbitration rather than in the courtroom, where Judge Alex has made a name for himself serving as the presiding judge in minor civil disputes.

Chocolate fans sue to melt away price increases

Not everyone thinks chocolate is sweet.

In a lawsuit that seeks class action certification, the major chocolate manufacturers in Canada—Hershey Canada Inc., Mars Inc., Nestle Canada Inc. and Cadbury Beverages Canada Inc.—were accused of colluding to fix the prices of their chocolate products.

The lawsuit, filed in the Ontario Superior Court of Justice last week, claims the companies conspired to inflate the price of their products by 5% or more at least three times in the last four years in violation of several federal and provincial statutes.

The complaint seeks at least $58 million Canadian ($59.1 million) in total damages and costs for the class, which currently includes all Canadian residents that consumed chocolate products since

Chocolate fans in Canada say they've been paying too many hard-earned "loonies" to confection makers for the sweet treat.

February 2004.

Chocolate sales in Canada in 2007 were more than $1.30 billion Canadian ($1.32 billion), according to the complaint, filed by Toronto-based Jurowiesky & Ricci L.L.P. Currently, the four companies produce, market and distribute more than 65% of all chocolate products in Canada, but have had a market share as high as 97% in recent years, the lawsuit said.

Last year, Canada's Competition Bureau searched the premises of several major chocolate manufacturers as part of a "cartel probe," examining criminal practices such as price fixing and bid rigging.

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