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**May 23,  
2005  
\$5**

# Business Insurance

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## AIG UNDER PRESSURE

### AIG investigation could be headed to criminal stage

*More civil suits filed*

By JUDY GREENWALD

**NEW YORK**—As American International Group Inc. continues to grapple with civil litigation and other fallout from its accounting problems, criminal charges reportedly are being considered in connection with New York Attorney General Eliot Spitzer's investigation of the insurer.

Mr. Spitzer is presenting evidence to a New York grand jury, which will decide whether to issue indictments, according to a Friday report by Bloomberg.

AIG Senior Vp Joseph Umansky testified in exchange for immunity from charges that may stem from the proceedings, the report stated.

An AIG spokesman declined to comment, and representatives for Mr. Spitzer could not immediately be reached.

Mr. Spitzer in April indicated that he would not pursue criminal charges against AIG itself, noting that, based on the cooperation of the insurer's board and senior management and on investigators' knowledge at that point, "we believe that a civil resolution with the corporation will ultimately be achievable." (BI, April 11)

AIG said in May that it would restate its financials for several periods because of improper accounting for certain transactions, including a \$500 million loss-portfolio transfer with General Re Corp. that is a focus of the investigation by Mr. Spitzer and the U.S. Securities and Exchange Commission (BI, May 9).

Meanwhile, two pension plans filed lawsuits against AIG last week.

The Baton Rouge-based Teachers' Retirement System of Louisiana charged in its suit that two AIG-affiliated companies—C.V. Starr & Co. Inc. and Starr International Co. Inc.—received "hundreds of millions of dollars" in payments from unnecessary or undisclosed transactions with AIG, which ultimately wound up in the pockets of AIG directors and executives.

The lawsuit, which was filed in Chancery Court in Delaware, charges current and former

See AIG / page 30

### Gallagher settles with Illinois for \$27 million

By SALLY ROBERTS

**ITASCA, Ill.**—Following in the footsteps of the world's three largest brokerages, Arthur J. Gallagher & Co. reached a settlement with state officials last week to end probes into its compensation practices.

J. Patrick Gallagher Jr., president and chief executive officer of the world's fourth-largest brokerage, said he hopes the \$27 million agreement reached with Illinois Attorney General Lisa Madigan and Illinois Insurance Director Michael McRaith will serve as a nationwide settlement with other state investigators.

Under the agreement, Gallagher will pay resti-

tution to policyholders nationwide and reform its business practices (see box, page 30). The settlement was made to address concerns by Illinois officials that the brokerage steered business to insurers in return for "huge payments" that were not fully and clearly disclosed to clients.

The agreement follows similar settlements made by the world's three largest brokerages: Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd.

While no lawsuit was filed against Gallagher, the Illinois investigation revealed that Gallagher accepted millions of dollars of contingent com-

See GALLAGHER / page 30

### FSA rule change expected to boost use of accounts by employees

*Government relaxes "use-it-or-lose-it"*

By JERRY GEISEL

**WASHINGTON**—The Treasury Department's easing of its "use-it-or-lose-it" rule for flexible spending accounts is likely to boost participation, benefiting both employers and their workers.

#### FSA's by the numbers

Health care flexible spending accounts

- Participation rate: 16%
- Average contribution: \$1,188

Source: Hewitt Associates Inc.

The Treasury Department, responding to congressional pressure, last week agreed to modify the 21-year-old rule, which requires FSA participants to forfeit unused account balances at the end of a plan year.

Under the revision, announced in Notice 2005-42, plan participants can apply unused account balances to pay for health care and dependent care expenses incurred in the first two-and-

one-half months of the next plan year.

While the optional grace period is available immediately, employers will have until the end of the plan year to amend their plan documents to reflect the change.

Treasury Department officials, who have been considering the issue for about six months, said the relaxing of the use-it-or-lose-it rule will ease end-of-year spending binges when employees rush to spend unused FSA balances to prevent their forfeiture.

"The new rule will give workers with FSAs more time to pay for medical and dependent care expenses and will ease the year-end spending rush prompted by the prior rule," Secretary of Treasury John Snow said in a statement.

On Capitol Hill, where legislators had been pressing Treasury to ease or drop the use-it-or-lose-it rule, the change in policy was welcomed as a common-sense move.

"An artificial deadline doesn't make sense. I appreciate the Treasury Department's response to my request to take a fresh look at this decades-old

See FSA / page 31

## Late News

### United workers appeal pension takeover

The union representing United Airlines flight attendants is asking a federal district court to overturn a bankruptcy court ruling earlier this month allowing the airline to turn over its massively underfunded pension plans to the Pension Benefit Guaranty Corp., which will terminate them. The AFA, which represents 21,000 United flight attendants, filed the appeal in the U.S. District Court for the Northern District of Illinois. The PBGC estimates it would have to pay out about \$6.6 billion in guaranteed benefits in the terminations, by far its biggest loss.

### Allstate drops Florida commercial coverage

Battered by last year's hurricanes, Allstate Corp. will no longer write commercial property insurance in Florida and is increasing personal lines property rates to pay for a new reinsurance program. Allstate filed a plan with regulators to gradually discontinue its commercial lines business written for around 16,000 policyholders. Allstate will continue to write commercial automobile business in the state. In addition, the insurer is buying a two-year reinsurance contract that will provide coverage if the insurer's losses reach \$800 million in a single year or \$1.6 billion over two years. The coverage will respond after payments by the Florida Hurricane Catastrophe Fund.

### Texas enacts asbestos criteria

Texas Gov. Rick Perry has signed into law a measure that requires people alleging asbestos- or silica-related injuries to meet specific medical criteria before their cases can proceed in court. Texas is the fourth state in a year to implement

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## SPOTLIGHT

**RISK MANAGEMENT:  
NEW TECHNOLOGY  
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### Employer's COLI program violates state law

Court rules employer can't benefit from corporate-owned life insurance policies covering the rank-and-file. **Page 4**

### 8th Circuit sets boundaries for employment covenants

An appeals court addresses issues of age discrimination and covenants against suing employers. **Page 4**

### States taking lead on enacting tort reform

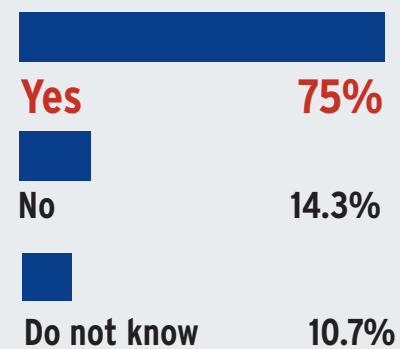
Unlike Congress, Texas and other states are moving ahead on tort reform, an editorial says. **Page 8**

### Agreement outlines rights in broker insolvencies

London market groups are considering proposals to address creditor claims in broker bankruptcies. **Page 25**

### Online poll - [ 5/16 - 5/20 ]

Do you think the termination of United Airlines' massively underfunded pension plans will lead Congress to tighten pension funding rules?



Participate in BI's online polls at [www.businessinsurance.com](http://www.businessinsurance.com).

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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# Several tort reform measures mired in congressional debates

By MARK A. HOFMANN

**WASHINGTON**—The U.S. House Judiciary Committee could approve legislation that would subject attorneys who bring frivolous lawsuits to mandatory sanction as early as this week.

The committee had been slated to consider the Lawsuit Abuse Reduction Act on May 18 as it worked its way through a series of tort-related bills. But the committee had to adjourn before it could do so, owing to continuing debate over a measure that would protect firearms sellers and manufacturers against liability arising from the criminal or unlawful misuse of a firearm by a third party.

Meanwhile, the Senate Judiciary Committee continued to grapple with a bill that would create a new no-fault trust fund to replace the current litigation-based system for

## LARA highlights

Among the highlights of the Lawsuit Abuse Reduction Act, H.R. 420, are provisions that would:

- Require federal judges to sanction attorneys who bring frivolous lawsuits.
- Prevent so-called "forum shopping" by requiring that personal injury lawsuit be brought only:
  - Where the plaintiff resides.
  - Where the alleged injury occurred.
  - Where the defendant's principal place of business is located.

compensating victims of asbestos-related diseases. Backers of the Fairness in Asbestos Injury Resolution Act failed to complete markup of the bill last week, casting further doubt on whether they would be able to complete their work on the bill before Congress' Memorial Day recess.

LARA backers remain optimistic that the measure will be sent to the full House soon. The bill would require federal judges to impose sanctions on attorneys who bring frivolous lawsuits in federal court. Rule 11 of the Federal Rules of Civil Procedure currently allows judges to sanction lawyers who bring frivolous suits but does not require them to do so. The measure would also apply to lawsuits deemed frivolous that were filed in state court if a state judge were to find that the case

See TORT REFORM / page 30

# States hit public employees with smoking surcharge

By RUPAL PAREKH

As private- and public-sector employers increasingly target smoking as a key contributor to rising health care costs, some states are telling their workers to kick the habit or pay the price.

Beginning July 1, Georgia will impose a surcharge of \$40 per month—or \$480 a year—on the insurance premiums of state workers, public school teachers and other school personnel, if they or covered family members use tobacco.

"As a self-funded plan, we collectively bear the burden of everyone's health status," said a spokeswoman for the Georgia Department of Community Health in Atlanta.

Last fall, the state's health plan, with the help of outside consultant Deloitte Development L.L.C., projected a \$446.1 million shortfall for the insurance fund in the 2006 fiscal year, due to mounting health care costs.

Georgia's plan covers nearly 646,000 members and dependents.

Among the proposals presented to lawmakers to address the deficit was the employee tobacco-use surcharge, which won approval with expectations of generating about \$16 million a year.

## Smoker screening

Under Georgia's program, state workers during open enrollment will be asked, "Have you or any of your dependents used tobacco products in the previous 12 months?" Tobacco products include cigarettes, cigars and pipes as well as "smokeless" products, such as chewing tobacco.

Individuals who report tobacco use will incur a flat surcharge of \$40 a month during the upcoming plan year, regardless of frequency

See SMOKERS / page 28



# Cleanup liability verdict could help California, others tap more coverage

By ROBERTO CENICEROS

**SACRAMENTO, Calif.**—California is hopeful that a recent trial court victory in a pollution cleanup case will help the state challenge another ruling that bars policyholders from "stacking" coverage under excess general liability policies.

If the state succeeds in overturning that ruling, the case could benefit taxpayers and policyholders, including the state of California, said Darryl L. Doke, lead supervising deputy attorney general. Gov. Arnold Schwarzenegger supports the effort.

In last week's trial court victory for the state, a Riverside County Superior Court jury found against five insurers in California's ongoing battle to force them to pay for the cleanup of the notorious Stringfellow Haz-

ardous Waste Site.

The Superfund site in Glen Avon, Calif., was an industrial waste dump between 1956 and 1972. The state took control of it in 1975, after its original owner abandoned it. California has sought coverage to pay for Stringfellow's cleanup under commercial general liability policies that the state purchased between 1963 and 1976.

While last week's jury verdict is significant, interest in using it to overturn a 1998 appeals court ruling in *FMC Corp. vs. Plaisted & Cos.* transcends the Stringfellow victory, said Mr. Doke, who reports directly to the governor's office on the case. The FMC case also involved pollution cleanup liability.

In the FMC case, California's 6th District Court of Appeal ruled against the "stacking" of policy limits when an occurrence takes

place over multiple policy years with successive policies. At the time, the court ruled that a policyholder's largest potential recovery is restricted to the highest occurrence limit for any one policy period.

The court also said that the policyholder could choose the policy period for which it is to be indemnified. But the appeals court ruled that allowing a policyholder to stack limits for consecutive policy periods would afford more coverage than the policyholder bargained for.

Attorneys say the antistacking decision applies only to environmental damage covered by excess general liability policies and does not apply to primary policies.

The FMC ruling is problematic for policy-

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# Court curbs COLI for rank-and-file employees

By JERRY GEISEL

**DENVER**—Employers cannot reap the proceeds of corporate-owned life insurance policies written on rank-and-file employees, a federal court has ruled.

In order to be a beneficiary of a COLI policy, an employer must have an "insurable interest" in the life of the insured individual, the 10th U.S. Circuit Court of Appeals

in Denver said in interpreting an Oklahoma statute. While corporations have such an interest in key employees to protect against economic losses if those individuals die, that same interest does not extend to rank-and-file employees, the court said.

Camelot Music Inc. had argued that providing one of its workers with a complete benefits package was evidence of its special interest

in the life of a rank-and-file employee. But the appellate court on May 11 ruled that the expenditure of funds for benefits by Camelot—which filed for bankruptcy in 1996—was "a general cost of doing business and is not sufficient alone to support a finding of a substantial interest in a specific employee's continued life."

The ruling, which reversed a 2003 Oklahoma federal district

court decision, is at least the second in which a federal appeals court has said that an employer's COLI program covering rank-and-file employees violated state law. Last year, the 5th U.S. Circuit Court of Appeals upheld a lower court ruling that Wal-Mart Stores Inc.'s COLI program violated Texas law because the giant retailer lacked a sufficient financial interest in the lives of its rank-and-file employees. Wal-Mart

later settled the suit but did not disclose terms.

The litigation surrounding COLI policies stems from corporations' efforts in the late 1980s and early 1990s, following changes in tax law, to broaden their COLI programs to cover more employees and thereby increase the tax breaks associated with the programs. Before

See COLI / page 28

## Managed care organizations' first-quarter results

Ranked by net income. Dollar figures in millions.

Company	Net income Q1 2005	% Increase (Decrease)	Revenues Q1 2005	% Increase (Decrease)
UnitedHealth Group <sup>1</sup>	\$779.0	41.0%	\$10,900.0	34.0%
WellPoint Inc.	611.7	3.4	10,960.0	8.1
Kaiser Permanente	552.0	21.2	7,700.0	10.4
CIGNA Corp.	436.0	NM <sup>2</sup>	4,300.0	(8.0)
Aetna Inc.	424.0	16.0	5,400.0	13.0
Coventry Health Care Inc. <sup>3</sup>	112.7	34.0	1,570.0	17.6
Humana Inc.	109.8	62.0	3,390.0	2.9
PacificCare Health Systems Inc.	85.7	21.8	3,400.0	13.7
WellChoice Inc.	70.9	16.5	1,540.0	10.4
Health Net Inc.	21.3	30.0	2,900.0	(0.5)

<sup>1</sup> Includes net income and revenues for Oxford Health Plans Inc., which merged with UnitedHealth on July 29, 2004. <sup>2</sup> Comparison to 2004 earnings not meaningful because of net income losses. <sup>3</sup> First quarter 2005 figures include results from Coventry's First Health Inc. acquisition as of Jan. 28, the date the transaction closed.

## Health premium growth expected to stabilize

By GLORIA GONZALEZ

Commercial health care premium increases are expected to remain mostly stable through 2005 as managed care companies continue to price their product offerings at or near medical cost trends.

The major managed care companies reported medical cost increases mostly in the range of 7.5% to 9.5%, consistent with trend levels reported in recent quarters and down from the double-digit increases seen in previous years.

The stability of cost increases means employer premium levels will remain relatively steady for the year, analysts say.

"Pricing is still relatively firm," said Joseph Marinucci, credit analyst with New York-based Standard & Poor's Corp. "It's keeping up with trend or slightly surpassing it. From a pricing perspective, employers can expect to face rate increases commensurate with trend."

Modest future declines in premium rate increases are also possible as managed care companies continue efforts to control cost trends, analysts say.

"I think employers might see a little lower increases than they have," said Bradley Ellis, director at Fitch Ratings in Chicago. "In 2005, I would expect premium trends to maybe be a little flat to subdued."

For the first quarter of 2005, all the major managed care companies reported higher net income, which they attributed to several factors, including strong financial performances from acquired businesses, moderating cost trends and disci-

plined pricing (see chart).

"We saw a very positive quarter, really, across the board," Mr. Ellis said. "There weren't a lot of disappointments."

Philadelphia-based CIGNA Corp. was considered the only disappointment in the sector. The company reported an 8% drop in first-quarter revenues due to its ongoing difficulty in retaining members.

By contrast, analysts were encouraged by the progress of Health Net Inc., which reported sharply lower profits in 2004 due to the impact of higher-than-expected health care costs, declining membership and settlement of outstanding provider claims. The Los Angeles-based managed care company reported a slight dip in first-quarter revenues, but resolved a key issue when it agreed to settle a lawsuit brought against the company by physicians regarding its claim payment practices.

"It was nice that (the settlement) wasn't a significant amount of money," said Isabelle Roman-Barrio, senior financial analyst at Oldwick, N.J.-based A.M. Best. Health Net's "first quarter earnings were fine. It seems like they're on track to perform as they indicated to the market."

Despite the strong quarterly earnings, employers should not expect managed care companies to use these increased profits to lower premiums because the public companies have shareholders and an obligation to remain profitable, said Stephen Zaharuk, vp and senior an-

See RESULTS / page 24

## Termination-severance pay deals must be precise to avoid litigation

By JUDY GREENWALD

**ST. LOUIS**—Employers that ask terminated employees to sign claims release forms in return for severance pay should ensure that those forms are written in easily understood language, in light of a recent appeals court decision, say employment attorneys.

The 8th U.S. Circuit Court of Appeals' May 3 decision in *Dale J. Thomforde vs. International Business Machines Corp.* held that IBM's release form was "not written in a manner calculated to be understood by the intended participants" and is invalid.

The decision by a unanimous three-judge panel, which permits the plaintiff to pursue an age discrimination lawsuit against Armonk, N.Y.-based IBM, will be closely studied by employers, say observers. IBM is appealing

the decision.

A focus of the decision is the 1990 Older Workers Benefits Protection Act, which amended the Age Discrimination in Employment Act by providing that a waiver agreeing not to sue must be written in an understandable form.

According to court papers, after Mr. Thomforde, then 50, was selected for employment termination in 2001, he was presented with a "general release and covenant not to sue" agreement.

Attorneys said the agreement Mr. Thomforde was asked to sign reflected two related concepts: a release and a "covenant not to sue." A release does not stop an employee from filing a lawsuit but acts as an employer's defense if the employee does sue. A "covenant not to sue" establishes that if the employee does sue anyway, he or she must pay defense costs in addition to the

employee's own attorneys' fees.

The agreement Mr. Thomforde was asked to sign stated that, in exchange for severance pay, IBM would be released from all claims of any kind. It also said that, under a covenant not to sue, the employee would pay IBM's attorneys' fees if he were to sue. The agreement also says, though, that the covenant not to sue "does not apply to actions based solely" under the ADEA.

Mr. Thomforde asked the company whether this language meant that he could sue IBM if his suit were limited to claims under the ADEA. In response, IBM referred him to his own attorney. After consulting with his attorney, Mr. Thomforde, who had signed the agreement, decided to pursue an age-discrimination claim against IBM.

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## HSA adoption expected to skyrocket

By MICHAEL BRADFORD

Health savings accounts are growing in popularity, with nearly one-third of employers in a recent survey saying they plan to offer HSAs next year.

A survey released Thursday by Mellon Financial Corp.'s Human Resources & Investor Solutions unit revealed that while only 7% of the 360 employer respondents now offer HSAs, 32% expect to add them in 2006.

The survey, "Health Reimbursement Arrangements/Health Savings Accounts: National Trends," was completed in the second quarter of this year. It studied employers with an average of 9,000 workers.

HSAs, authorized by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, are portable accounts that employees can use to pay for qualified medical expenses. HSAs are linked to high-deductible health insurance plans to cover catastrophic medical costs. Both employers and employees can make tax-free contributions to the accounts.

The survey found that an average of 16% of eligible employees are en-

Health savings accounts	
7%	of employer respondents currently offer HSAs
32%	of respondents plan to offer HSAs in 2006
16%	of eligible employees currently enrolled
24%	of eligible employees targeted by employers in 2006
Health reimbursement arrangements	
16%	of employer respondents currently offer HRAs
20%	of respondents plan to offer HRAs in 2006
28%	of eligible employees currently enrolled
36%	of eligible employees targeted by employers in 2006

Source: Mellon Financial survey

rolled in HSAs among organizations responding to the study. Survey respondents said they are aiming at an enrollment goal of 24% of eligible employees.

While small employers and individuals are the main consumers of

HSAs, Mellon expects in 2006 "an explosion of HSAs, with many more large employers adding them to their benefits package," said Brad Engel, national health and welfare product leader in HR&IS' Chicago office.

The survey also found that HSA growth will significantly exceed that of health reimbursement arrangements, another vehicle that can be linked to high-deductible plans.

Sixteen percent of responding employers said they now offer HRAs, and 20% said they plan to add them next year.

In fact, among employers that have not yet implemented HRAs, just over half said they are likely to skip over them and instead adopt HSAs.

"Plan sponsors are going directly to health savings accounts because employees and other plan members view them positively, seeing them as their own money. It's hard for a book entry account to compete with real movable cash," Mr. Engel said, comparing HRAs to HSAs.

Free copies of the survey are available from Adabelle Cohen at 203-352-1684.

## BP admits worker mistakes caused explosion

**TEXAS CITY, Texas**—In a move it hopes will help the company avoid litigation, BP Products North America Inc. is admitting that mistakes by its workers led to a deadly refinery explosion earlier this year.

The cause of the explosion in March at the Texas City, Texas, unit of London-based BP P.L.C. was “a series of failures” by BP personnel before and during the startup of the isomerization process unit at the plant. The explosion and fire killed 15 workers and injured more than 170 people.

Ross Pillari, president of BP Products, said in a statement issued

Tuesday that the company can “assure that those who were injured and the families of those who died receive financial support and compensation. Our goal is to provide fair compensation without the need for lawsuits or lengthy court proceedings.”

In an interim report released Tuesday, BP said the explosion occurred because managers and operators overfilled a tower with combustible fluids at the isomerization unit that produces components of unleaded regular gasoline. The fluid level was 20 times higher than it should have been, according to the

report.

A vapor cloud at the tower was ignited by “an unknown source,” BP said.

“The mistakes made during the startup of this unit were surprising and deeply disturbing,” said Mr. Pillari.

The company said it plans to terminate some employees responsible for operation of the isomerization unit.

BP confirmed that it is self-insured for losses related to the refinery explosion.

—By Michael Bradford and Sarah Veysey

## Magazine adds staff in London

**LONDON**—*Business Insurance* has added to its editorial staff in London, with Barbara Cockburn joining the magazine as associate editor.

Ms. Cockburn’s responsibilities include reporting and writing news and feature stories on risk management, insurance and employee benefit topics in the United Kingdom and Europe. She will work closely with London Bureau Chief Sarah Veysey in covering news for the weekly magazine and for the Daily News section of the magazine’s Web site, [www.businessinsurance.com](http://www.businessinsurance.com).

Ms. Cockburn succeeds former Associate Editor Peta Miller, who left the magazine to pursue personal interests.



Ms. Cockburn

PHOTO: DAVE PERRIS  
Before joining *Business Insurance*, Mr. Cockburn was features editor at Care and Health Magazine and deputy editor at Health Insurance Magazine in London. Prior to that, she was editor at Planned Savings Magazine, writing on financial services topics.

Ms. Cockburn has an academic degree in journalism from Teesside University and Darlington College of Technology as well as a Financial Planning Certificate from the U.K. Chartered Insurance Institute.

She can be reached at 44-207-457-1425 and at [bcockburn@businessinsurance.com](mailto:bcockburn@businessinsurance.com).



**PAUL WINSTON**

Editorial Director

## Pointing the finger at the real culprit

There are a lot of risks that capable risk management professionals can reasonably foresee and make plans to address. There are also risks that cannot be predicted but for which contingency plans can be put in place should they arise. And then there are those risks that are so unexpected that only those with psychic abilities and an overactive imagination could anticipate and prepare for them.

That a questionable claim of finding a human finger in a bowl of chili would severely damage a company’s reputation and dampen sales is such a risk. But that is what happened to Wendy’s International Inc., the fast-food chain, when a Las Vegas woman claimed that she bit into a human finger in her meal while dining in a San Jose, Calif., restaurant in late March and sued the franchise’s owner.

No matter how implausible that an uncooked finger would mysteriously find its way into a bowl of steaming hot chili, Anna Ayala’s claim appears to have captured the imagination of the public. Wendy’s estimates it lost as much as \$2.5 million in sales.

Wendy’s did everything it could to try to preserve its reputation. Within days of Ms. Ayala’s claim that her chili had been digitally enhanced, information that she and/or her children had a history of suing more than a dozen other companies came to light, raising questions about her credibility. Wendy’s diligently counted the fingers of its employees, as well as those of its food suppliers, and reported that all were present and accounted for. Employees were given voice stress analysis tests to determine if they had a hand, so to speak, in the incident, and all passed. Wendy’s offered a \$100,000 reward leading to information on where the finger came from. The chain also offered free desserts to try to lure back customers (PR counsel advised against offering free chili, I suppose).

With the link to Wendy’s growing ever more unlikely, baffled authorities finally began to turn their attention to Ms. Ayala, who tearfully decried that she was being cast as the culprit rather than the victim.

“Lies, lies, lies, that’s all I am hearing. They should look at Wendy’s. What are they hiding? Why are we being victimized again and again?” she said before dropping her lawsuit, claiming the entire affair had become too stressful.

Unfortunately, corporations are

victimized again and again by outlandish lawsuits such as this claim. Wendy’s could hardly have foreseen that its reputation would be under assault because of a hoax. The damage was done, and its losses cannot be made whole.

In late April, Ms. Ayala was charged with grand theft and attempted grand theft by the San Jose Police Department and arrested in Las Vegas. In early May, she was extradited from Las Vegas to San Jose. Last week, the source of the finger was identified—a co-worker of Ms. Ayala’s husband, Jaime Plascencia. The co-worker, whose finger was severed by the tailgate of a truck last December, gave the husband the finger to settle a \$50 debt, according to authorities. The finger was severed two days before Mr. Plascencia and Ms. Ayala were wed. He was extradited last week to San Jose and is likely to also be charged in the scam.

When one considers the extreme lengths Ms. Ayala allegedly went through to defraud Wendy’s, it boggles the mind:

• **Obtaining someone’s severed finger in the first place.** Husband: *Hey, can I have that? I’m getting married in a few days and need a gift for my bride.* Co-worker: *Sure, but it will cost you the \$50 I owe you.* Husband: *It’s a deal!*

• **Keeping the finger for five months until the right opportunity arose.** Ironically, authorities were initially convinced it was a woman’s finger because of the manicured nail, which begs the question of whether the manicure occurred before or after the accident.

• **Biting the five-month-old finger in order to spit it out for verisimilitude.** Ms. Ayala later told ABC’s “Good Morning America” that knowing a human body part was in her mouth was “disgusting.” It’s even more disgusting if one considers it was not accidental.

Faced with this kind of behavior in pursuit of courthouse riches, it’s hard for companies to know how to adopt effective loss prevention strategies. Advertising that your company has adopted measures to ensure your food product remains free of severed body parts and other unsavory items doesn’t seem like a winning marketing strategy. Counting on the public to be more skeptical and give you the benefit of the doubt doesn’t seem reliable. Instead, reach for the Pepto-Bismol and hope that the truth will prevail, as is finally starting to occur.

Editorial Director Paul Winston’s commentary appears fortnightly. He can be reached at [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com)

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## Editorial

## States lead in tort reform

AS THE U.S. SENATE Judiciary Committee continues to wrestle with legislation that would create a national trust fund to compensate the victims of asbestos-related disease, yet another state has dealt with the asbestos litigation crisis in a different fashion.

The state is Texas, where Gov. Rick Perry signed a bill that would require plaintiffs who allege injury from asbestos or silica dust to meet specific medical criteria before their claims could proceed. Texas thus becomes the fourth state in less than a year to adopt this approach. And, as we have said before, we think such a simple approach is preferable to the trust fund approach.

That said, the two chief advocates of the trust fund approach—Sens. Arlen Specter, R-Pa., and Patrick Leahy, D-Vt.—deserve praise for their efforts to fashion a more equitable way to compensate victims of asbestos-related disease than the current anything-goes litigation-based system. Anything would be an improvement over the existing system, which can perversely reward individuals with no asbestos-related impairment at the expense of the truly ill.

But the contentious debates—and the dozens of proposed amendments—that have marked the trust fund bill's consideration underscore just how difficult a task its

backers face in making the trust fund a reality. Debate on the full Senate floor could prove to be even more contentious, because the measure has its detractors on both sides.

Even if the trust fund were to win Senate approval, getting the fund up and running could make the legislative process that led to its creation look like a walk in the park. One of the stickiest aspects of the trust fund—allocating financial responsibility among the individual defendant companies and their individual insurers—has not yet begun. Imagine a new version of the decades-long fights over the responsibility for cleaning up Superfund sites—and then multiply it.

The trust fund's potential problems lead us to favor the medical criteria approach, an approach that has some support in the House of Representatives. We realize that medical criteria aren't the perfect solution to the asbestos mess and that this approach does continue to rely on litigation to determine compensation. Still, requiring that claimants meet reasonable medical criteria before their cases could go to court is a reasonable way to control that litigation.

The asbestos mess presents policymakers with a case in which the worst thing to do is to do nothing at all. While a trust fund would be better than the current situation, we believe that using a system of medical criteria to determine the eligibility for asbestos injury awards would be even better.

## Safety net needs fixing

IF ANY GOOD COMES out of the nation's biggest-ever pension plan failure, it may be that the debacle finally gets federal legislators to fix loophole-ridden funding rules that are shredding the safety net protecting pension benefits.

As we have reported, United Airlines has received permission to transfer its four massively underfunded pension plans to the Pension Benefit Guaranty Corp., which will take over the plans and pay guaranteed benefits to the plans' more than 120,000 participants. That will cost the PBGC about \$6.6 billion, while participants will lose more than \$3 billion in promised benefits that the PBGC does not guarantee.

While the size of the failure is staggering its occurrence is not surprising.

For years, pension experts have warned legislators that weak funding rules expose the PBGC to huge losses. Indeed, the rules are so inadequate that sponsors can legally for years not put a dime into their plans, even if the plans are significantly underfunded.

Fortunately, several congressional leaders, most notably House Education and the Workforce Committee Chairman John Boehner, R-Ohio, are well along in drafting funding reform measures that we believe will have some real teeth in them.

If they have the will, legislators can craft funding rules that are tough enough to reduce the likelihood of future mammoth pension failures and prevent the collapse of the PBGC, without making the rules so onerous as to drive employers out of the defined benefit plan system.

## Schillerstrom



## Letters

## D&amp;O policies can cover court awards

To the editor: In describing the Safety-Kleen settlement and judgment, the May 2 article by Dave Lenckus makes a statement that "most D&O policies do not cover court awards."

That is bizarre and incorrect. Other than a handful of rare exceptions, every directors and officers liability policy I have seen in 25 years of representing D&O insurers has covered court awards, usually stated as "judgments," along with settlements and costs of defense. Although such policies typically impose an exclusion for fraud or dishonesty, the exclusion narrows the overall grant of coverage but by no means eliminates it.

Court awards can, of course, be based upon many different grounds, including negligence, strict liability, breach of fiduciary duty and fraud. Accordingly, the statement that "most" D&O policies do not cover court awards is flat wrong.

Arthur J. Washington  
New York

■ *Editor's note: The Safety-Kleen Corp. case was a rare example of litigation involving securities fraud that went to trial. The story should have noted that D&O liability insurance policies usually do not respond to judgments in such cases.*

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Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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By Roger W. Anderson

## Perspectives

# Electronic medical records could save lives

Recalls such as Merck & Co. Inc.'s removal of one of the world's most commercially successful prescription drugs from the marketplace due to safety concerns revealed a gaping hole in our health care delivery system, a hole that health plan sponsors can and should help to close.

With countless prescriptions written for Vioxx since the product's introduction, chances are that the one-time blockbuster pain reliever still holds a place in millions of medicine cabinets nationwide. But how best to identify and warn users of the potential dangers?

Pharmaceutical manufacturers have no direct relationship with the patients who take their medicines and, as a result, no direct means of notifying users of any apparent dangers that may be identified after the fact.

Likewise, physicians who prescribe medications for their patients

largely run their offices amid a sea of paper. Short of marshaling an army of assistants to filter through thousands of patient files individually, the majority of physician practices are unable to identify quickly and easily patients for whom they have prescribed a drug that now could harbor a toxic side effect.

Further complicating the situation is the growth of the multiple prescriber phenomenon, which may make it difficult to track patient information. According to a 2003 patient analysis by Medco Health Solutions Inc., one in four seniors received prescriptions from four or more doctors. That created a medication matrix that can present a significant challenge when trying to retrospectively identify patients who may be using a medication that has been found to cause potentially harmful adverse events.

In short, pharmaceutical manufacturers and physicians are adept at delivering drugs to patients but are much less so when it comes to reversing the process.

Health plan sponsors can play a key role in improving the nation's

patient safety system by encouraging the shift to electronic medical records and by integrating their patient data across medical, pharmacy and diagnostic channels.

Many plan sponsors through their pharmacy benefit manager likely employ a robust drug utilization review system, which can identify potential patient medication safety concerns at the point of pharmacy claims adjudication. Yet what of the countless other ways in which dangerous and potentially deadly medication events can manifest? Drug interactions between medication and condition? Dangers that are identified in follow-up studies such as with Vioxx? The responsibility for patient safety falls on the shoulders of all stakeholders in the health care delivery chain—clinicians, plan sponsors, pharmacies and PBMs.

Electronic patient records allow for physicians to access the patient's complete record at the point of prescribing a drug—regardless of where the drug was dispensed or by whom it was prescribed—which can help to prevent

dangerous and costly errors before the patient even fills the prescription. Furthermore, by moving to an electronic format, physicians can quickly and easily access records for the dangerous situations that arise after the fact, as in the case of Vioxx—a simple patient database search among electronic records in a physician practice could likely have turned up anyone that needed to be notified.

In addition to establishing electronic medical records, integrating medical, laboratory and pharmacy records would provide further safeguards for patients. In cases where specific medications pose health risks to patients with certain diagnostic profiles, an integrated view of the patient's full record could save a life.

Unfortunately, the adoption of electronic medical records and the use of integrated patient safety systems have been slow. A study conducted by Manhattan Research L.L.C. shows in 2004 only 140,000 practicing physicians in the United States used electronic medical records to document clinical

data. Physicians claim the cost to purchase hardware and software is too great. Health plan sponsors may see the initial steps in integrated their patient records as too formidable. But plan sponsors can and must take action to bring about the paradigm shift to a safer health care system. Plan sponsors hold the keys to all patient data; they can be influential in encouraging physicians to take up the cause by offering incentives for their network doctors to use electronic medical records and can themselves take the necessary steps to integrate their patient data and advance the technological revolution in patient safety.

While technology is viewed by many as a means to reduce costs—and the record reflects that it does just that—it is much more. Because without a means of ensuring patient safety, a medicine at any price is no bargain.

Roger W. Anderson is senior vp and chief pharmacist of Medco Health Solutions Inc. in Franklin Lakes, N.J.

# Death in precursor operation covered by workers comp

An employee's death during an operation to replace a pacemaker before undergoing an operation for a work-related back injury entitled his surviving spouse to death benefits under the Workers Compensation Act, according to the Supreme Court of Oklahoma.

Joe Gray injured his back in a work-related accident. After therapeutic treatment failed, surgery was recommended to correct a bulging disc. Because Mr. Gray had a 20-year-old pacemaker, the neurosurgeon recommended removal and replacement of the pacemaker in order to perform the back surgery. Mr. Gray died while undergoing the procedure to replace the pulse generator of his pacemaker. Mr. Gray's surviving spouse filed a claim for death benefits. Her claim was denied. She appealed but lost again in the

Court of Civil Appeals. She then filed an appeal to the state supreme court.

The appellate court said that the question here was whether Mr. Gray's death was casually connected to the back injury. The court said that the uncontroverted evidence and undisputed facts reflected that, before the back injury, Mr. Gray had never suffered any significant problems with his pacemaker; the need to check the pacemaker and remove and replace it appeared only after the disabling back injury and because of the back injury; and the replacement of the pacemaker was a necessary precursor to the operation for the back injury and would not have occurred but for the injury. Thus, the court said that Mr. Gray's surviving spouse was entitled to death benefits. The

## Legal Briefs

lower court decision was reversed.

*In Re Death of Gray, Supreme Court of Oklahoma, July 6, 2004 (BI/03/A.-\$10)*

### ERISA doesn't cover compensatory damages

In an action by an Employee Retirement Income Security Act plan beneficiary against a fiduciary, a beneficiary may not be awarded compensatory damages as "appropriate equitable relief" under ERISA, according to the 10th U.S. Court of Appeals.

In 1994, Sandy Callery applied for group life insurance with The U.S. Life Insurance Co. Her employer sponsored the policy. In addition to her own coverage and coverage for her children, Ms. Callery selected life insurance for her spouse in the amount of \$100,000. In 1997, the Callerys divorced, but she continued to pay life insurance premiums for Mr. Callery's coverage until his death in 2000. Ms. Callery applied for the benefits. The insurer denied coverage based upon a policy exclusion providing for termination of a spouse's eligibility for life insurance upon divorce. The insurer refunded the premiums Ms. Callery had paid. Ms. Callery sued the insurer and her employer claiming a violation of ERISA, seeking recovery of \$100,000 plus interest, attorney's fees and costs, referred to as "equitable relief." The trial court ruled against her. She appealed.

The appellate court said that the

U.S. Supreme Court has unequivocally rejected attempts to impose personal liability for contractual obligations to pay money under ERISA, holding that the term "equitable relief" in ERISA refers to those categories of relief that were typically available in equity, such as injunctions and restitution, but not compensatory damages. Thus, the court agreed with the trial court that in a suit by a beneficiary against a fiduciary, the beneficiary may not be awarded compensatory damages as "appropriate equitable relief" under ERISA. The trial court decision was affirmed.

*Callery vs. U.S. Life Insurance Co., 10th U.S. Court of Appeals, Dec. 10, 2004 (BI/04/A.-\$10)*

### Divorced spouse denied benefits

A judgment of divorce and a qualified domestic relations order awarding an interest in the husband's pension did not automatically include preretirement death benefits available under the plan, according to the Court of Appeals of New York.

After 28 years of marriage, Robert and Sandra Kazel were divorced in 1991 and Mr. Kazel later remarried. The matrimonial court entered a QDRO directing that Ms. Kazel begin to receive a fixed percentage of her former husband's monthly allowance either at such time as he "has retired from and is actually receiving a monthly allowance from his...pension plan," or at Ms. Kazel's option "after the earlier to occur of the first date for payments

allowed under the plan or after (he) reaches the earliest retirement age under the plan." Mr. Kazel died in 2001 before reaching retirement age and never received any payments under the plan. Following his death, Ms. Kazel sought to share with Mr. Kazel's widow in preretirement death benefits under his pension plan. The plan administrator denied her any share of those benefits. The first Ms. Kazel sued but lost in the lower courts. She appealed.

The appellate court said that, pursuant to the Employee Retirement Income Security Act, a former spouse could overcome the right of a surviving spouse to receive a survivor annuity only if specifically awarded such benefits by the matrimonial court. The court rejected the first Ms. Kazel's argument that death benefits are meant to be included within a distribution of pension benefits in the absence of an express provision excluding them. The court concluded that she could not recover, as the QDRO here made no designation of her as a surviving spouse and did not mention a survivor or death benefit. The lower court decision was affirmed.

*Kazel vs. Kazel, Court of Appeals of New York, Nov. 18, 2004 (BI/05/A.-\$10)*

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion

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# Spotlight

## RISK MANAGEMENT: New Technology & Online Solutions

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to speed access to data / page 19

Camera phones in workplace  
prompt security dilemma / page 20

Nation's biggest guaranty fund  
updates its claims system / page 21



## Electronic security threats come from outside and within

By JUDY GREENWALD

Besieged companies are facing both internal and external threats to their Internet security, and the danger is growing, say observers.

Most attacks are inspired by a wide variety of nonpecuniary motives that range from the desire to learn a colleague's salary to the possibility of earning bragging rights over fellow hackers. But a growing number of attacks, both internal and external, are launched to make money, and these can cause companies serious financial and reputational harm, as well as expose them to potential liability.

But enhanced Internet security measures can make it harder to use the Internet, forcing companies into a delicate balancing act between online security and ease of use.

Companies should also conduct cost/benefit analyses to determine whether the benefits of particular security measures, such as encryption, justify their cost and trouble

(see story, page 18).

Because there is no limit to criminal creativity—or nefariousness—there will never be a 100% guarantee of Internet security.

But vigilance can help address the problem, according to Jim Bollman, corporate risk officer for Omaha, Neb.-based Ameritrade Inc., an online stock brokerage. "You've got to recognize the problem exists," then examine your system and see what policies, procedures and tests are in place "to continuously make sure the bad guys can't get to you, whether inside or outside your system," Mr. Bollman said. "And if you're doing that, then you don't have headaches."

"It's just like any other threat," said Pushpendu Pal, vp and chief technology officer for Indianapolis-based WellPoint Inc. "You have to constantly scan the market...to see that we are ahead of them."

Internet security has attracted increasing attention in recent weeks due to several well-publicized security breaches. Alpharetta, Ga.-based

ChoicePoint Inc., a national provider of identification and credential verification services, was recently forced to tell 145,000 consumers that their personal data may be accessed.

Dayton, Ohio-based legal information provider LexisNexis USA sent similar letters to 280,000 individuals. And in March, DSW Shoe Warehouse, a subsidiary of Columbus, Ohio-based Retail Ventures, Inc., reported that data on transaction information involving 1.4 million credit cards had been stolen.

According to Deloitte Touche Tohmatsu's 2004 Global Security Survey, 83% of respondents acknowledged that their systems had been compromised in some way in the previous year.

The problem is "huge," said Earle S. Humphreys, senior marketing officer at Omaha, Neb.-based Solutionary Inc., an Internet security company. "It went from being hackers to, now, organized crimi-

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## Adoption of XML standard could ensure data quality and control

By JOANNE WOJCIK

Spurred by the need for better financial reporting, the insurance industry's global standards organization is exploring ways to make it easier for companies to transfer insurance-related data—such as claims reserves—onto their corporate balance sheets.

While such a link ultimately may be desirable, it may not be of much use immediately, though, because few commercial insurers and third-party administrators currently transmit data to corporate risk management departments using ACORD XML, the electronic data language standard for the insurance

industry that the Pearl River, N.Y.-based Assn. for Cooperative Operations Research & Development has been trying to promulgate since 1999.

But the passage of the Sarbanes-Oxley Act, which requires greater controls on electronic information systems to ensure better data quality, should speed up the adoption of ACORD XML, thereby making such a bridge more useful, insurance data experts hope.

ACORD XML is one member of a family of languages based on XML, short for "extensible markup language," a universal general-purpose format for the communication of electronic data introduced in 1998

by the World Wide Web Consortium (see related story). ACORD XML and many other such "metalanguages" based on XML—including XBRL, or "extensible business reporting language," which was developed for use by accountants and auditors—use "tags" to code and define virtually any electronic data elements on Web pages and documents. The tags can be defined by the developer of the page or document, allowing them to function as database records.

"XML is an artifact, a manufactured thing that came out of document management systems in the

See STANDARDS / page 12

## Language lessons

**XML:** Short for "extensible markup language," XML is a universal format that allows electronic data to be stored, exchanged and processed by computer applications. It was created and implemented and is maintained by the World Wide Web Consortium, or W3C. W3C is an international body in which member organizations, a full-time staff and the public work together to develop Internet standards; its Web site is [www.w3c.org](http://www.w3c.org).

**XBRL:** Short for "extensible business reporting language," XBRL is one member of the family of XML-based languages that is becoming a standard means of communicating electronic data between businesses and on the Internet. It is being developed by XBRL International, a New York-based nonprofit

consortium of about 250 major companies, organizations and government agencies worldwide working together to build the XBRL language and promote and support its adoption; its Web site is [www.xbrl.org](http://www.xbrl.org).

**ACORD XML:** A member of the family of XML-based language, ACORD XML is becoming a standard for communicating electronic data for the insurance industry. It was developed and is maintained by the Assn. for Cooperative Operations Research & Development, a Pearl River, N.Y.-based global nonprofit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance and related financial services industries; its Web site is [www.acord.org](http://www.acord.org).

## Standards: Adoption of XML would aid financial reporting, improve quality

Continued from previous page

first attempts to automate word processing," explained Kevin S. Kelly, managing director, U.S. insurance industry, at Microsoft Corp. in Redmond, Wash. "They had to find a way to store the data about the documents that could then be presented up on a screen," he said.

"So ACORD manages all of this vocabulary by having industry people come in and vote on it in meetings. And they actually do a maintenance process of adding and replacing tags, adding new forms, etc.," he said.

But while ACORD XML and XBRL—which was developed by a

New York-based nonprofit consortium called XBRL International—may both use a tag structure, they are not similar enough to permit the data from one to be transferred directly to the other. Instead, the data usually has to be translated and manually reinputted, which can lead to errors.

"A lot of the elements in ACORD wouldn't fit in XBRL, such as a policy number or a vehicle identification number. But XBRL has a place for accounts receivable or billing information or account status, which might include reserves that have been established or funds received from an insurance claim having

been filed," Mr. Kelly said.

It is because of the potential overlaps that ACORD and XBRL are beginning discussions about creating a bridge to share data.

"Any technology standard that enables developers to exchange more data more rapidly and more easily and enables applications to be built faster and with very rich interactions with real-time data or real-world data is a good thing for the business community," Mr. Kelly said.

For risk managers, connecting the two XML languages may offer benefits, but only once their insurers and other business partners sup-

port the existing ACORD XML standards, according to Elizabeth M. Morrell, senior risk analyst at Southern Co., a utility company based in Atlanta. Ms. Morrell recently stepped down as chair of the technical advisory council of the Risk & Insurance Management Society Inc.

"Once risk managers are receiving claims data in the ACORD XML loss run format, then I could see having a conduit to translate detailed loss data—particularly reserves—into a summary number that could flow to your financial reports," Ms. Morrell said. "But we have to put first things first."

"Claims reserves are getting a lot

more attention from auditors these days because of the potential for manipulation or misstatement," she said. "If you don't get your claim reserves right, you're potentially impacting both your balance sheet liability and earnings for the period. Under Sarbanes-Oxley, the consequences of a problem with reserves that results in a restatement of earnings are much more serious."

RIMS has pushed for greater use of ACORD XML, but for the most part, "every carrier still sends data to the risk manager, or their RMIS (risk management information system) vendor, in their own proprietary format," Ms. Morrell said.

"For risk managers, calling on our industry partners to implement existing ACORD standards, especially where they can support more-consistent, accurate, real-time claims reporting, has to come first" before any bridge with XBRL is built, she said.

The use of the ACORD XML data standard has been more common in personal and small commercial lines than in large commercial lines, acknowledged Beth Grossman, assistant vp, industry relations, at ACORD in Pearl River, N.Y.

"The ACORD XML standards for policy administration are fighting years of traditional other methods," said Mr. Kelly. "By contrast, there hasn't been another competing technology standard in financial statement reporting before XBRL."

But the U.S. Securities & Exchange Commission's announcement in early February that it would begin accepting financial reports in XBRL, along with Sarbanes-Oxley and pressure from RIMS, should accelerate the adoption of ACORD XML by the insurance industry, making a link to XBRL even more desirable, Ms. Grossman said.

"Across the board, the importance of data quality and translation and being able to follow the flow of information is continuously growing, especially with Sarbanes-Oxley," Ms. Grossman said.

Under Sarbanes-Oxley, a company must document all of the controls it has in place to ensure the quality of its financial data, as well as any information coming from outside sources that is material to a company's operations, she explained. For example, both insurers and self-insurers must certify the accuracy and completeness of systems feeding loss information into their general ledgers. They also must closely follow any data transmitted to them by TPAs and insurers, Ms. Grossman said.

Once ACORD XML becomes more commonly used by the commercial insurance industry, it shouldn't be difficult to link it to XBRL, because both are based on XML, according to Mr. Kelly.

"Building the bridge should be easy, because the group that developed XBRL at Microsoft is the same group that works with ACORD. So there's already a connection between the Microsoft people who participated on the steering committee and the group that deals with ACORD. It's the same group of people," he said. "Microsoft also helped ACORD get into XML."

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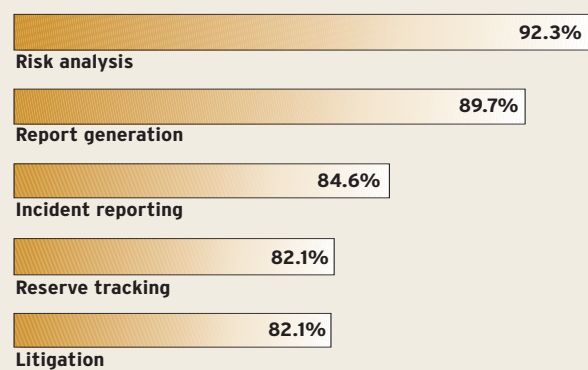
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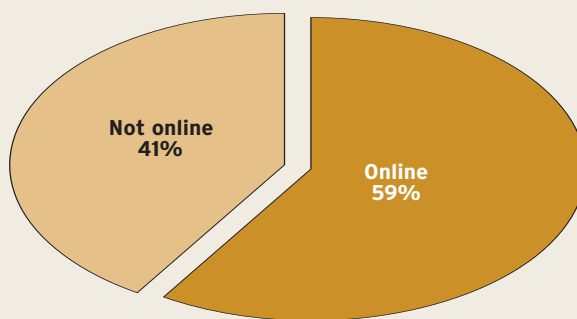
Percentage of all RMIS offering these features



Source: BI Survey

## Online systems

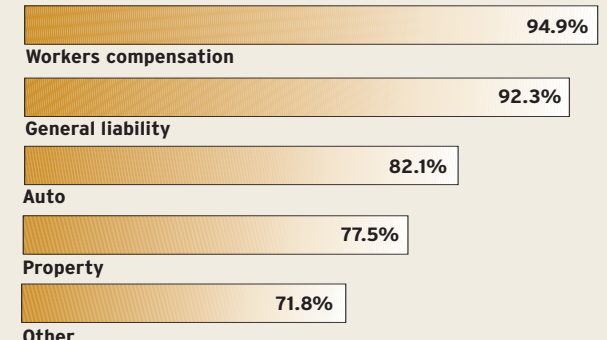
Risk management information systems based online



Source: BI Survey

## Types of claims managed

Most common claims handled by RMIS



Source: BI Survey

# Risk management information systems\*

Ranked by the number of installations in corporate risk management departments\*\*

Rank	Company/System name/Address	Phone/Fax/Web site	2004 number of installations	Price	First installation	Principal officer
1	CS STARS CS STARS 500 W. Monroe St., Chicago, Ill. 60661-3630	312-627-6000 Fax: 312-627-6590 <a href="http://www.csstars.com">www.csstars.com</a>	18,400	N/A	1967	Robert G. Petrie III, Jeffrey R. Markowitz, Patrick J. O'Neill, Johnny Mize, managing directors
2	Computer Sciences Corp. RISKMASTER 200 W. Cesar Chavez, Austin, Texas 78701	800-345-7672 Fax: 248-372-3050 <a href="http://www.csc-fs.com">www.csc-fs.com</a>	7,800	N/A	1982	Van B. Honeycutt, chairman/CEO
3	Risk Sciences Group Inc. Sigma Encore Suite 1900 E. Golf Road, Suite 700, Schaumburg, Ill. 60173	800-619-0224 Fax: 847-619-3079 <a href="http://www.risksciencesgroup.com">www.risksciencesgroup.com</a>	4,562	\$35,000 set-up fee and \$45,230 annual support fee.	1978	Kenneth C. Ancona, vp/managing director
4	INFORM Applications Inc. INFORM 888 Veterans Memorial Highway, Hauppauge, N.Y. 11788	631-851-0222 Fax: 631-851-1769 <a href="http://www.informapplications.com">www.informapplications.com</a>	1,880	\$20,000 to \$500,000	1985	Alan R. Josefsek, president
5	Aon-Global eSolutions Group RiskConsole 200 E. Randolph St., Chicago, Ill. 60601	877-755-7475 Fax: 847-953-2633 <a href="http://www.aonriskconsole.com">www.aonriskconsole.com</a>	1,500	\$75,000	1995	Mark Stephens, managing director-Americas; Ed Monchen, managing director-international
6	Valley Oak Systems Inc. IVOS Claims Management Software 5000 Executive Parkway, Suite 340, San Ramon, Calif. 94583	925-242-4600 Fax: 925-901-1020 <a href="http://www.valleyoak.com">www.valleyoak.com</a>	1,350	N/A	1994	Randy Wheeler, CEO
7	Insurity Inc. claimsDecisions 170 Huyshope Ave., Hartford, Conn. 06106	860-616-7721 Fax: 860-616-7474 <a href="http://www.insurity.com">www.insurity.com</a>	700	N/A	1988	Tony Reisz, president
8	Risk Technologies Inc. RiskVision 2363 Highway 287 N., Suite 100, Mansfield, Texas 76063	817-477-2197 Fax: 817-478-2044 <a href="http://www.riskvision.com">www.riskvision.com</a>	520	\$25,000 to \$250,000	1998	Chuck Allen, president
9	Effisoft USA Webrisk 266 Beacon St., Boston, Mass. 02116	617-437-9600 Fax: 617-437-9601 <a href="http://www.effisoft.com">www.effisoft.com</a>	350	\$50,000 to \$100,000	1989	Will Warren, president
10	Blackburn Group Inc. RiskPro P.O. Box 52, Penfield, N.Y. 14526	585-586-4530 Fax: 585-586-7479 <a href="http://www.blackburngroup.com">www.blackburngroup.com</a>	300	\$995 to \$24,995	1985	Robert J. Blackburn, managing principal

\* Systems offered on an unbundled basis. \*\*Licensed users. NA=Not available

Visit [www.businessinsurance.com](http://www.businessinsurance.com) for more information and access to the full searchable directory of risk management information systems.

## Security: Companies juggle security, accessibility in attempts to guard systems

Continued from page 11

nals," with the criminal element "growing and becoming more sophisticated," he said.

Furthermore, all the publicity surrounding the release of confidential information is beginning to erode consumer confidence in using the Internet, said Mr. Humphreys.

Also spurring companies' responses are federal and state laws. The Sarbanes Oxley Act, for instance, mandates that public organizations demonstrate due diligence in the disclosure of financial information. Because of Sarbanes-Oxley, "suddenly, executives are

asking questions security persons never heard before, like 'Are we monitoring applications?'" noted Mr. Humphreys.

And privacy provisions in the Health Insurance Portability and Accountability Act and the Gramm-Leach-Bliley law, which affect the health care and financial services industries, respectively, also call for companies to turn their attention to this issue.

To date, California is the only state that requires consumer notification of identity theft, but proposed legislation modeled on the California law has been introduced in Congress.

The most vulnerable firms are high-profile organizations such as financial companies that capture identity-related information that includes Social Security numbers, salary and credit card information, said Peter Foster, Boston-based senior vp and information risk adviser for Marsh Inc. "Anyone that is a collector of information in the aggregate" is a target, he said.

Charlotte, N.C.-based Wachovia Corp., for instance, is focusing more attention on "phishing," in which consumers are lead to false Web sites that are designed to mimic legitimate sites and lure them into revealing personal financial in-

formation.

Julie Hoffman, the bank's senior vp and director of implementation and transition management for e-commerce, said that although these sites have not lead to any significant losses to date, their volume has increased since Wachovia's acquisition last year of Birmingham, Ala.-based SouthTrust Corp., as criminals try to take advantage of any confusion caused by the deal to gain financial information.

Wachovia is addressing this issue through measures including consumer and employee education, as well as with external tools that are used to detect the use of its name or

trademark in order to pre-empt any attacks that may occur, Ms. Hoffman said. She added, though, that "these attempts are getting more sophisticated, and now we're having to look at a broader range of technical, educational and other tools" to address the issue.

But while external attacks can have a devastating impact from both a public relations and a reputational perspective, many believe companies are particularly vulnerable to internal attack. The commonly cited analogy is that of an M&M candy—a hard shell, but a soft inside. These observers contend that while companies have made major strides in protecting their perimeters through tools that include firewalls and anti-virus software, they may have left their internal systems relatively unprotected.

Companies "don't take nearly as much time or caution about defending the inside from the inside," noted Marty Lindner, team leader for incident handling at Carnegie Mellon University Software Engineering Institute's CERT Coordination Center in Pittsburgh.

"Outside attacks probably far outweigh the number of insider attacks," he said. "The insider attack,

**"We all wanted functionality, but it doesn't come free. It comes at a security risk."**

**Earle S. Humphreys**  
Solutionary Inc.

though, can be much more devastating." Mr. Lindner noted that an insider does not need to find a system's weaknesses. "I don't need to break into a machine that I already have access to," he said.

There are also cases in which employees with malicious intent link up with outsiders to work together, said Rick Fleming, chief technology officer for San Antonio-based Digital Defense Inc. "Those types of internally based attacks definitely are becoming more prevalent, because the monies are getting huge," he said.

One issue companies face is that security and ease of use are not necessarily compatible. The use of smart cards—cards that contain an embedded microprocessor for the storage and processing of information—and similar approaches are appealing in terms of making sure the environment is secure, but "few consumers are going to deal with that level of intrusion" of having to carry another card around, said Ted DeZabala, a principal with Deloitte & Touche L.L.P. in New York.

Systems have been "designed for ease of use and functionality, not security," said Mr. Humphreys. "We all wanted functionality," but "it doesn't come free. It comes at a security risk. Now we're starting to compromise" in an effort to balance the two factors, he said.

### Defining Success



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Property & Casualty  
The Hartford*

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# Cost/benefit analysis, access crucial to data security

By JUDY GREENWALD

Companies seeking to protect their information systems from both internal and external attacks should engage in a careful cost/benefit analysis, say experts.

"Anything is possible. It's a question of time and money," said Marty Lindner, team leader for incident handling at Carnegie Mellon University Software Engineering Institute's CERT Coordination Center in Pittsburgh.

Encryption, for instance, is "extremely expensive to implement" and may not be necessary for every

piece of information that courses through a network, noted Ted DeZabala, a principal with Deloitte & Touche L.L.P. in New York. You do not want to fix every potential problem," Mr. DeZabala said, just those that could potentially cause "real loss or reputational damage."

"We have a very comprehensive cost/benefit analysis for any implementation that we look at," explained Pushpendu Pal, vp and chief technology officer at Indianapolis-based WellPoint Inc. The information technology unit works with WellPoint's compliance unit and audit and financial committees for ev-

ery project it embarks upon, he said.

While larger companies "are doing everything they possibly can," this is a particularly difficult issue for small to medium-sized enterprises, which are, "just like always, struggling to allocate resources and still get the product out the door," acknowledged Bill Barr, Pleasanton, Calif.-based senior loss control officer for the Chubb Group of Insurance Cos.

"Understand what is core to your business and then guard that for all it's worth," suggested Patrick Gray, Atlanta-based a director of operations at Internet Security Systems

Inc. But do not spend resources on what is not core, warned Mr. Gray.

Many companies comply with established security standards, including the Geneva, Switzerland-based International Organization of Standardization's ISO 17799 and CobiT, which was developed by the Rolling Meadows, Ill.-based IT Governance Institute.

For internal security issues, in particular, one step experts urge companies to take is to allow internal access to employees only on a "need-to-know" basis. "If I work in the payroll department, I shouldn't necessarily have access in any con-

venient manner to accounts payable," said Mr. Lindner. And really sensitive data should require two or three people to access, so that if one of them becomes disgruntled, "they can't steal the company's jewels, basically," he said.

This approach, though, is "only as good as the people who are maintaining the access roles that are in place," pointed out Jon Darbyshire, president and chief executive officer of Overland Park, Kan.-based Archer Technologies L.L.C., a computer security software firm. "This needs to be updated on a daily basis," as new employees come in and others leave or change departments, he said.

WellPoint has a process of reviewing its employees' access to various segments of the company, said Mr. Pal. "Also, we constantly review the roles of the various associates who have access to the information" to insure there is a proper segregation of duties, he said.

Another factor that is sometimes overlooked by companies is insuring the security of their outside vendors and contractors, say observers. This is the "weakest point of a company's infrastructure," said Michael Flanagan, managing director at Arthur J. Gallagher & Co. in Chicago.

"It is something that you need to control very carefully," not only in terms of day-to-day business and supervision but in the vendors' contracts, "establishing from the start what they are responsible for," said Aaron Latto, St. Paul, Minn.-based marketing solutions director, global technology underwriting, for The St. Paul Travelers Cos. Inc.

Training people is also critical, said Win Schwartau, executive director of Seminole, Fla.-based InterPact, a computer security organization. Despite vendors' claims that their products can solve every problem, companies must maintain "a proper balance between technology and people," he said.

Mr. Latto agreed. "You may have very, very sophisticated data security technologies" but it could be undercut by employees who naively accept a caller's claim that he is an associate and reveal their password to the caller, he said. At that point, "whatever technology you may have to protect (the system) is not going to do you any good," he said.

Employees should also be told the computers are not their own and they "can't sit and surf the Internet for hours," which can expose the company to malicious software, said Mr. Gray.

Insurance can cover any remaining gaps that may exist, say observers. Some risks "just can't be mitigated, and for those remaining risks" companies should look into insurance products, said Patrick Donnelly, managing director, technology and professional risks, at Aon Financial Services Group in Chicago.

There will always be this battle between the "white hats" and the "black hats," Mr. Donnelly acknowledged. But doing all that can reasonably be expected, he said, "goes a long way to protect from potential liability."

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May 23, 2005

# RIMS favors speed over style in Web site redesign

By **DAVE LENCKUS**

The Risk & Insurance Management Society Inc.'s Web site was not redesigned to add content or flashy graphics.

Indeed, visitors to [www.rims.org](http://www.rims.org) saw an increasingly text-intensive offering and not much difference in content when they first visited the redesigned site in January 2004.

But by removing a lot of eye-pleasing graphics, resisting suggestions to add others—such as a galloping RIMS unicorn—and reorganizing some content, the site is providing improved member service, according to RIMS officials. The Web site is speedier, more navigable and gives RIMS the opportunity to offer some new services, RIMS officials say.

"The biggest goal that we had was just to create a more streamlined, less graphic-intense design," said RIMS President Ellen Vinck.

All of that has drawn more visitors to the site, said Ms. Vinck, vp, risk management and benefits at United States Marine Repair Inc. in San Diego.

**"The biggest goal that we had was just to create a more streamlined, less graphic-intense design."**

**Ellen Vinck**  
United States Marine Repair Inc.

Some numbers point to the success of the redesign, according to Daniel H. Kugler Jr., a RIMS director with responsibility for the organization's technical advisory council.

Before the redesign, the site logged about 8 million hits and 800,000 page views per month, which were generated by about 40,000 unique visitors, according to RIMS. Every visit to the Web site generated 60 hits—one for each graphic, such as each site navigation button—as well as one for clicking onto the site.

That many hits per visit, though, slowed down the site, RIMS officials said. So one goal of the redesign was to cut the number of hits but boost the number of visitors, according to Mr. Kugler, assistant treasurer, corporate risk management at Snap-on Inc. of Pleasant Prairie, Wis.

Now, with text replacing many graphic elements, each visit to the home page generates 10 hits, which makes the site run far more speedily, according to RIMS.

The current level of monthly hits is down to 6 million. But page views are up 25%, to more than 1 million, and there are 53,000 unique visitors each month, a 32.5% increase from before the redesign, according to RIMS.

"I think, because the speed has been so dramatically improved,

we're seeing increased use of the site," Ms. Vinck said.

Another part of the streamlining is how content is arranged. Some content was moved to what RIMS believes are more logical locations within the site so visitors can find it quicker.

For example, Ms. Vinck said she had trouble before the redesign finding the RIMS newsletter, which was located in the site's membership section. The newsletter has been moved to the products and services section, "which makes sense," she said.

In addition, RIMS members now can find RIMS leaders or staff members more easily to e-mail them with questions or comments, said Lance Ewing, a former RIMS president. "You had to hunt and peck to find that before," noted Mr. Ewing, vp-risk management for Caesars Entertainment Inc.

"You should be able to get whatever you're looking for within three clicks," Ms. Vinck said. Before the redesign "a little more navigation was needed," she acknowledged.

The improved speed and naviga-

bility also aid maneuverability among the more than 40 e-mail interest groups at the site, according to Mr. Kugler. That is an important improvement to members, because the e-groups comprise one of the site's most popular features, he said.

While new content did not drive the site's redesign, some new features have been added, RIMS officials note.

For example, through the Web site, a vendor is offering career counseling services at a 25% discount, Mr. Kugler explained. That

feature ties in with the job bank, which is one of the most popular features on the site. The job bank attracts 10,000 visitors per month, either looking for jobs or posting notices for them, he said.

The Web site now also allows risk managers to link to many other sites, including RIMS chapter sites, Mr. Kugler said. Risk managers can also participate in the RIMS benchmark survey, produced in partnership with New York-based consultant Advisen Ltd.

See **WEB SITE** / next page

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## Web site: Speed over style

Continued from previous page

Another feature allows RIMS members to share documents, such as request for proposal templates.

In addition, "I think the ability to read our magazine articles online is helpful to our readers," said Mr. Ewing, referring to the RIMS periodical Risk Management magazine. The site allows members to e-mail articles from the magazine, which helps risk managers deliver information to their supervisors, Mr. Ewing said.

The redesigned site also has been instrumental in encouraging RIMS members to preregister online for the organization's annual conference and exhibition, according to Ms. Vinck. Eighty percent of conference attendees preregistered online this year, a 10% increase over last year, she said.

Ms. Vinck attributes those high numbers to the more user-friendly Web site.

And, at this year's conference in Philadelphia, the Web site allowed RIMS to make the registration process "phenomenally more efficient," Ms. Vinck said. Rather

than wait in line to give clerks their registration information for their conference materials, attendees used kiosks to sign in online through the RIMS Web site. The registration clerks received the sign-in information and had the conference materials prepared shortly afterward.

In the future, Mr. Kugler said, the Web site will offer more enterprise risk management content.

"Our goal is to use the Web site in our quest for becoming the premier resource in support of enterprise risk management globally," Mr. Kugler said.

"It's a natural next step for us in which we explore ways to promote enterprise risk management," Mr. Kugler said. "Right now, that is a strategy, and we have to work on how we're going to deploy the strategy."

Mr. Kugler said he envisions the site offering visitors more articles on enterprise risk management, links to related services and the opportunity for risk managers to share their success stories, best practices and lessons learned.

# Proliferation of camera phones calls up a wide range of risks relating to the workplace

By RUPAL PAREKH

Cellular camera phones—while popular with consumers—should ring concern among employers, according to some experts.

As the market for camera phones continues to see explosive growth, and camera phone technology advances—new models are equipped with manual focus, shutter speed and aperture controls, high-resolution color displays, and can even shoot and store video clips—some lawyers and consultants say allowing the handsets in the workplace exposes companies to possible breaches of data security and employee privacy.

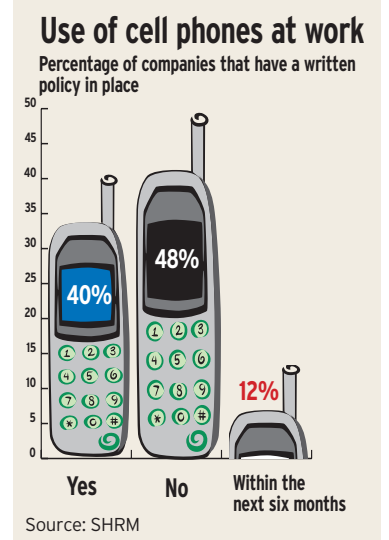
By 2006, four of every five cellular phones shipped annually in the United States and Western Europe

will feature a built-in camera, according to estimates published last year by Stamford, Conn.-based technology consultant Gartner Inc.

"Camera phones present a number of different risks to employers," said Brian P. Paul, an attorney in Chicago at the law firm of Michael Best & Friedrich L.L.P. While businesses that rely on trade secrets are most exposed, the threat of camera phones is not limited, he said. Whether it be client lists, product formulas or marketing strategies, most companies house some sort of proprietary information that runs the risk of being photographed. Furthermore, employee privacy may be compromised due to camera phone abuse, and could potentially lead to harassment claims, Mr. Paul said.

Of nearly 400 human resource managers that participated in an April 2004 survey about camera phones by the Alexandria, Va.-based Society for Human Resource Management, nearly 77% of companies lacked a written policy addressing the use of camera phones at work. Only about 7% reported already having such a policy in place, while about 15% said they were planning to implement such a policy within the next six months.

Yet, acts of industrial espionage are a very real problem, costing companies globally up to \$300 billion a year, said Richard B. Isaacs,



to be aware of the technologies as they come along," the spokesman said, and update the employee manual accordingly.

Dallas-based Texas Instruments Inc. has a written company policy prohibiting all types of recording devices on the premises, including camera phones, a spokeswoman confirmed.

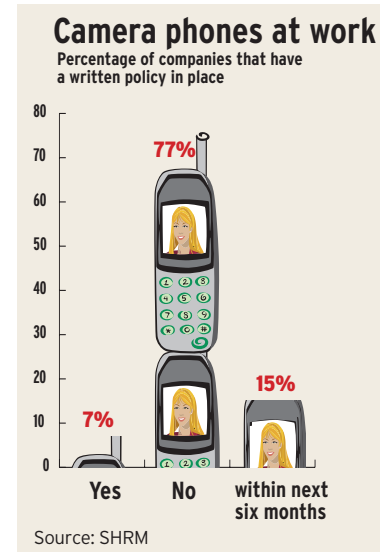
Cellular service provider Nokia, meanwhile, has no restrictions governing camera phone use in its offices, according to a spokesman in White Plains, N.Y. "We've never had a problem in this area," he said, adding, "it would be very hard to outlaw the very product we're working on making." He also noted that companies should be concerned about more than camera phones; "There are a lot of digital cameras out there that are a lot smaller than any digital camera phone," he said.

But according to Mr. Paul, the capability to send or publicize images via the Internet immediately—then delete them—makes camera phones a bigger threat to employers than regular or digital cameras.

"We haven't seen a lot of cases filed yet based upon the camera phone," Mr. Paul acknowledged. Still, "if the employer has a policy in place, that limits their liability," related to potential claims of fraud, as well as harassment, he said.

According to Kathryn Terrell, a Fort Collins, Colo.-based independent human resource consultant, the possibility of harassment caused by camera phones is even more of a risk to employers than using camera phones to steal proprietary information. "In my opinion, the bigger problem with the camera phones is use by employees to impulsively take inappropriate photos," often of coworkers, Ms. Terrell said. If such photos are taken unwillingly, or are unknowingly published, companies may find themselves in court, she said.

In a case currently being handled by Stephanie Dutchess Trudeau, an



senior vp at The Lubrinco Group Ltd. Inc., a New York-based risk management consultant. Just one such incident costs an average of \$50 million in a manufacturing setting, and \$500,000 in a nonmanufacturing environment, Mr. Isaacs noted.

Concern over proprietary leaks drove DaimlerChrysler Corp. to enact a workplace ban on cameras almost 35 years ago. "The nature of our business is proprietary, and there are trade secrets we have to protect," a spokesman for the Auburn Hills, Mich.-based carmaker said. About five years ago, DaimlerChrysler amended its security policy to ban camera phones. "We try

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Continued on next page

May 23, 2005

# Top U.S. guaranty fund updates its claims system

By MEG FLETCHER

**GLENDALE, Calif.**—While updating any claims system can be a challenging task, it's especially daunting when the claims system is for the nation's largest guaranty fund—the California Insurance Guaranty Assn.

"It's an intensive and major project," said Hal Fedora, director of information technology and audit for Glendale, Calif.-based CIGA.

But the guaranty fund has managed to lighten its burden significantly after it identified a vendor—

San Mateo, Calif.-based Guidewire Software—and began implementing Guidewire's ClaimCenter program.

Currently, CIGA and Guidewire are approximately halfway through installing and adopting the new claims program, with completion expected in September. "Things are going fine. We are pretty much on track," Mr. Fedora said.

The need for the project stemmed from the influx of claims from insolvent California insurers during the past five years, which taxed CIGA's claims-handling capa-

bilities, he said.

The association is responsible for paying the claims of most insolvent California-based property/casualty insurers in accordance with state law. CIGA has three separate funds for insurance claims: workers compensation; automotive/homeowners; and several other P/C lines, including commercial property and liability, products liability and pollution.

CIGA's previous system included an outdated mainframe, explained Alex Naddaff, vp of professional services for Guidewire Software.

Mr. Fedora said that CIGA executives found it useful, in exploring their options, to talk with similar funds from other states—if only to determine that CIGA did not want to build its own system in-house. He noted that some state funds had proprietary claims-handling systems, though no other system was as large as California's or dealt with as many claims. Mr. Fedora declined, however, to provide details about the number or the total value of the claims CIGA handled.

Ultimately, CIGA executives decided that the best approach was to

customize a vendor's product to meet its individual requirements, he said.

CIGA then hired a consultant to help assess its needs before it issued a request for proposals and subsequently narrowed the field of potential bidders to two in late 2004. CIGA executives then scrutinized the two finalists, making site visits to the vendors' respective customers before choosing Guidewire and negotiating a contract in February.

See UPDATE / next page

Continued from previous page

employment lawyer at Ulmer & Berne L.L.P. in Cleveland, a female employee is claiming, among other things, that a coworker took inappropriate photos of her in the workplace using a camera phone. The company in question had no policy in place to govern the use of camera phones, Ms. Trudeau said.

Taking appropriate steps to prevent abuse can limit an employer's legal liability, according to Mr. Paul, and ensuring that the company employee manual evolves along with technology can be a simple, cost-effective, way to minimize exposure

**A camera phone ban is "one of those simplistic things that people do in companies that never solve the problem."**

**Ken Dulaney**  
Gartner Inc.

to employee misconduct.

In developing a workplace policy surrounding the use of camera phones, Mr. Paul suggests employers take into account office culture to select an appropriate type of ban. Examples of different bans on camera phones include: a complete organization-wide ban; a ban in designated areas, such as product development facilities and restrooms; or a ban restricting camera phone use to breaks.

Employers should consult an attorney before writing a camera phone policy, and then communicate the new rules to employees through the use of e-mail, posted notices, and staff meetings, Mr. Paul said.

Ken Dulaney, vp of mobile computing at Gartner in San Jose, Calif., meanwhile, views any kind of camera phone ban as a shortsighted approach to a larger issue. "I think it's unenforceable. It's one of those simplistic things that people do in companies that never solve the problem," he said.

"What we ought to be doing is putting sensitive things in special areas that have extreme security," and providing "better training to employees to watch for behavior that shouldn't be going on."

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## Update: Top guaranty fund replaces claims system

Continued from previous page

While Guidewire previously had no other guaranty fund clients, it had provided services to some large insurers with multiple locations nationwide, said Christopher Maddox, Guidewire's regional sales director.

Mr. Maddox said that one of CIGA's biggest challenges in choosing a new system was determining how to cope with its many third-party administrators. More than 1,200 claims handlers in multiple California locations were using a variety of other claims-handling systems, Mr. Maddox said.

"The beauty of the new system is that it is Web-based, so remote TPAs can access it using the Internet," Mr. Fedora said.

The new system "provides a modern claim-handling experience to our adjusters and third-party administrators," according to a statement by Lawrence Mulryan, CIGA's executive director.

CIGA took significant steps early on to involve TPAs in its 10-person project team, including allotting

them half the positions on that team.

"From our point of view, it's very important to get buy-in by the business users from day one to make a successful project," Mr. Fe-

**"The beauty of the new system is that it is Web-based, so remote TPAs can access it using the Internet."**

**Hal Fedora**  
California Insurance Guarantee Assn.

dora said. The update is viewed as a claims department project, he said, and the goal is to deliver a system that those business users would approve of.

A key selling point for the Guidewire system was that it would give CIGA the ability to manage "business rules" itself, rather than having to go back to the vendor to make updates, Mr. Fedora said. Ex-

amples of such rules include the routing of complicated claims to specific claims specialists and the establishment of specific time periods to review claims with reserves above a set amount.

CIGA's being able to make such updates itself "saves both money and time," Mr. Fedora said. Another attractive feature is a new systemwide calendar that keeps track of litigation-related activity such as hearings, he said.

Overall, the new system is expected to have "a great impact on accelerating the claims process," Mr. Fedora said.

Guidewire representatives said they expect CIGA will reap other benefits, including more timely and more accurate payments to claimants and vendors and easier training of employees in the future.

In addition, general industry studies have found that companies that implement such software systems see a 3% to 7% reduction in loss adjustment expenses and indemnity payments, Mr. Maddox said.

## PRODUCTS & SERVICES

### Ascot offers online terrorism quoting system

**LONDON**—Ascot Underwriting Ltd. has introduced an online terrorism quoting product that provides real-time insurance quotes and terrorism coverage for firms worldwide.

The Ascot Terrorism Automatic Quoting System intends to provide users with tailored insurance solutions. It works by entering key information—such as industry sector, risk analysis and location variable. Once the information has been added, the system automatically offers terms and conditions that can be bound immediately or will remain valid for 14 days. The ATAQ program offers quotes for low- and mid-level risks.

For more information, visit the company's Web site, at [www.ascotuw.com](http://www.ascotuw.com).

### Safety tool tests floor surfaces

**SOUTHLAKE, Texas**—Universal Walkway Testing L.P. has introduced the UWT BOT-3000, a portable floor testing robot, which is designed to help businesses identify and monitor problem floors.

The floor tester robot was developed to assist companies with significant losses due to slip-and-fall problems. It is an auditing tool allowing companies to monitor problem floors in advance of accidents or lawsuits. The BOT-3000 measures wet and dry coefficients of friction, and it can record, print and output data.

For more information on the Southlake, Texas-based Universal Walkway Testing's floor tester, contact Bob Ashlin, head of marketing and sales, at 817-552-4022 or at [r.ashlin@uwtlp.com](mailto:r.ashlin@uwtlp.com).

### DMEC releases employment survey

**SAN DIEGO**—The Disability Management Employer Coalition has released its annual 2004 Salary & Demographic Survey, which provides the employment and salary trends of disability and absence managers.

The survey was conducted among DMEC private and public employer members and represents responses from 158 organizations. The survey findings reveal that the use of disability management consultants increased from .05% in 2001 to 22% in 2004. Also, 42% of the respondents indicated their company's disability management budget is less than \$50,000, while 27% reported a budget in excess of \$1 million.

To order a copy of the survey, contact the DMEC at 800-789-3632 or visit [www.dmec.org/resources/publications.cgi](http://www.dmec.org/resources/publications.cgi).

### Schinnerer launches E&O program

**CHEVY CHASE, Md.**—Victor O. Schinnerer & Co. is offering an errors and omissions program for consultants and staffing firms.

Chevy Chase, Md.-based Schinnerer's SpecialtyOne program

is targeted at a variety of consultants, such as management, human resources, marketing and public relations consultants. It is also intended for market research firms and staffing firms.

The program features a duty-to-defend clause; worldwide coverage for suits brought in the United States, its territories and Canada; and defense coverage for criminal, dishonest, fraudulent or malicious errors and omissions.

SpecialtyOne will be written through London-based Brit Insurance Holdings P.L.C. Limits are available up to \$5 million.

More information can be obtained by contacting Mark Wolf, program manager, at 301-961-9867 or by visiting [www.schinnerer.com](http://www.schinnerer.com).

### Betterley publishes report on tech E&O

**STERLING, Mass.**—Betterley Risk Consultants Inc. has published its fifth evaluation of the technology errors and omissions insurance market.

The "Technology Errors & Omissions Market Survey-2005" provides an evaluation of liability insurance coverages for technology products and service providers. The report reviews 12 of the leading carriers active in the market and also contains information on rate and retention trends and growth trends. Some of the topics include capacity and retentions, coverage terms and exclusions, risk management services and carrier contact information, among other information.

To obtain more information, an executive summary of the report can be found online at [www.betterley.com/products.html](http://www.betterley.com/products.html). To order the report, visit [www.betterley.com/ordering\\_information.html](http://www.betterley.com/ordering_information.html).

### St. Paul Travelers launches Internet liability policy

**ST. PAUL, Minn.**—St. Paul Travelers Cos. Inc. has introduced an Internet liability protection policy for small to midsize technology companies.

The Internet Basic Liability Protection Policy covers two types of risks—failure to protect private customer or client information from hackers or accidental disclosure online and failure to prevent the transmission of computer viruses. It is aimed at technology firms with between \$5 million and \$100 million in revenues that conduct business over the Internet.

Typical limits range from \$1 million to \$5 million. Additional capacity is available if needed.

For more information, visit the St. Paul, Minn.-based company's Web site at [www.stpaultravelers.com](http://www.stpaultravelers.com).

### RIMS offers online Sarbanes-Oxley course

**NEW YORK**—The Risk & Insurance Management Society Inc. has collaborated with Watchung, N.J.-based Penn Rhoads Institute to offer a new online Sarbanes-Oxley course.

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The course, "Understanding Corporate Governance in a Sarbanes Oxley Environment," is an introduction to corporate governance and it is aimed at managers and executives. Some of the course objectives include the ability to explain the goals of corporate governance in the broader corporate environment; list reasons why corporate governance approaches fail; and examine the organizational processes of the board of directors, corporate officers, auditors and others. The course takes about three to four hours to complete and a credit from it will qualify towards the RIMS Fellow designation.

Penn Rhoads focuses on assessment and learning content in the areas of risk management, insurance and financial services

For more information, visit New York-based RIMS' Web site at [www.rims.org/sarbanesoxley1](http://www.rims.org/sarbanesoxley1).

**NIF forms partnership to offer D&O program**

**MANHASSET, N.Y.**—NIF Group Inc. has formed an alliance with Scottsdale, Ariz.-based National Casualty Co. to offer a nonprofit directors and officers program.

The program provides nonprofit D&O coverage, including broad employment practices liability and spousal liability coverages. Also, fiduciary liability and publisher's liability are available by endorsement. Aggregate limits of \$3 million are available.

NIF Professional Liability Risk Solutions, Manhasset, N.Y.-based NIF Group's professional liability managing general agent facility, will

act as the program manager of the Nonprofit D&O program.

For more information, contact Karen A. Callanan, senior vp of NIF Professional Liability Risk Solutions, at 908-508-9696, ext. 11 or [kcallanan@nifgroup.com](mailto:kcallanan@nifgroup.com). More information can also be obtained by visiting the company's Web site at [www.nifgroup.com](http://www.nifgroup.com).

**A.M. Best releases reinsurance databases**

**OLDWICK, N.J.**—A.M. Best Co. has released two databases, "Best's Statement File Supplement: Schedule F and Schedule S," which feature reinsurance data on property/casualty and life/health companies.

The Schedule F and Schedule S databases feature information on more than 3,000 companies, allowing users to track insurers who are ceding or assuming risk. The databases identify where insurers are placing their reinsurance business. The reinsurance data is based on information found in companies' 2004 NAIC Annual Statements.

Both Schedule F and Schedule S are delivered on a single CD-ROM, but the customer is given access via a password to only the database purchased. To obtain more information, visit [www.ambest.com/sales/schedulef](http://www.ambest.com/sales/schedulef) or [www.ambest.com/sales/schedules](http://www.ambest.com/sales/schedules). The CD-ROM can be ordered by contacting Oldwick, N.J.-based Best

at 908-439-2200, ext. 5311.

**Consultant introduces HR Internet service**

**SAN RAFAEL, Calif.**—WEA Consulting has launched an Internet service for benefit managers and human resources professionals.

The Web-based human resources information system, sharedHR, intends to assist businesses in minimizing employment liability. The service is available on a subscription basis that is geared to companies with 50 to 3,000 employees.

Some of the site's offerings include the ability to generate reports on benefits, hiring, salary and staffing histories; produce

custom employee handbooks specific to state and company that can be automatically updated as federal and state laws change; and manage employee contact information, benefit selection, payroll information and salary history.

More information can be found by visiting [www.sharedhr.com](http://www.sharedhr.com).

*We'd like to report on new risk management and employee benefit products and services offered by your company. Send information about your new offerings to: Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: [cpeinado@businessinsurance.com](mailto:cpeinado@businessinsurance.com).*



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## COMMENTARY

Senior Editor Rodd Zolkos

# Will Sith's revenge be insurance claims?

I don't know whether employers are seeing an unusual rash of claims on their health plans this week, but I wouldn't be surprised.

Given the magnitude of excitement surrounding this past week's popular culture mega-event (I'm talking, of course, about the much-awaited release of "Star Wars: Episode III—Revenge of the Sith," duh), I'm certain the fallout has to be enormous, and not just in terms of marketing tie-ins.

I'm figuring there's got to be a whole host of Star Wars fans recovering from inadvertent eye pokes sustained in the midst of heated plastic light saber battles or backs wrenched trying to squeeze into 25-year-old Wookiee costumes.

Then there are the various illnesses contracted while sleeping on sidewalks outside theaters in hopes of seeing director George Lucas' latest offering at the first possible opportunity, or allergic reactions to the various nasties that have taken up residence in that Darth Vader helmet since the last time it was worn.

At the risk of exposing myself to the possibility of some nasty missives from stouthearted Jedi in the *BI* readership, I have to admit that I'm not caught up in the frenzy.

It's true that a long time ago, in a galaxy far, far away—actually, in 1977 in Indiana, which from today's vantage might as well have been another galaxy—I did engage in the then-obligatory multiple viewings of the first Star Wars movie. It was pretty cool stuff, unlike anything we'd seen before.

A couple years later, though, by the time "The Empire Strikes Back" came out, I'd already started to get lax in my devotion to the Jedi cause, not seeing the film until pretty late in its initial run. My memory's a little less clear on the details of seeing "Return of the Jedi," but I'm pretty sure it was in a second-run house.

As for the latest batch—the first two films of the prequel trilogy—aside from seeing a bit on TV, I've been AWOL. It's a circumstance that probably should result in seeing my plastic light saber broken over some faux Obi-Wan's knee, if I could find my plastic light saber (it was a gag gift, not a purchase, I swear).

In fact, though, I find myself strangely interested in this last piece of the Star Wars franchise. Maybe it's just the notion of the finality of it all, that there won't be any more. Maybe, after all these years, there's a bit of a nostalgic thing as well, even

for a fallen-away Jedi.

There's something else that fascinates me, though. Much has been written in recent days about the "political" implications of the film—suggestions that dialogue and events in the film bear some striking parallels to recent political developments and pronouncements in the United States. For his part, George Lucas has dismissed those parallels as coincidental.

As interesting as they might be, it's not the parallels to the U.S. political scene that intrigue me, though. I've been thinking about how it may well be possible to view the new film—with its characters embracing "the Dark Side" in their quest for power, politicians bent on empire-building and well-meaning innocents trampled along the way—as a metaphor for some of the events making headlines in the insurance industry in recent months.

I'm not entirely sure "Revenge of the Sith" will hold up to that sort of viewing, but the idea interests me. One problem, I suspect, is that which people from the industry's current troubles you'd choose to cast in the story's various roles could vary, depending on which side of the issue you find yourself.

While the over-enthusiasm of some Star Wars fans is mostly just a harmless source of amusement, there was a report of another recent event that I'm fervently hoping wasn't a display of passionate anticipation of an upcoming release.

I've read recently of plans to remake Alfred Hitchcock's 1963 classic "The Birds," the new film supposedly hewing a bit closer to Daphne du Maurier's original short story. With that in mind, I found it more than a bit disturbing to see a report out of Houston last week of large grackles swooping down on pedestrians on downtown streets. Evidently, people were forced to fight off the birds or flee into buildings to avoid their attacks, leading local officials to close off a section of sidewalk in front of a county office building for a time.

By comparison, Star Wars fans armed with plastic light sabers seem like a fairly benign lot, so I'm hoping this won't be a trend that moves around the country as the release date of the remade "The Birds" approaches. But I do wonder who'd emerge victorious in a light saber-grackle battle. Maybe George Lucas could be talked into making just one more Star Wars film.

Tips and feedback from readers are welcome. Please send information to [zolkos@businessinsurance.com](mailto:zolkos@businessinsurance.com).

## Results: Health premiums expected to be stable

Continued from page 4

analyst for Moody's Investors Service in New York. The companies are more likely to use disease management programs and similar projects to try to reduce costs and thereby reduce premiums, he said. "I don't see any companies saying they need to invest in reducing premiums, and even if they did it would be minimal," he said.

Going forward, analysts are watching several key trends in the managed care industry, including the growing interest in consumer-driven health plans. As evidence of the importance of CDHPs, analysts cited major acquisitions by the two dominant managed care players—Minneapolis-based UnitedHealth Group and Indianapolis-based WellPoint Inc.—of CDHP providers Definity Health Corp. and Lumenos Inc., respectively.

"They definitely see (CDHPs) as a very important line of business," Mr. Ellis said. "Employers need to try those types of products. It will probably start to squeeze cost trends a little bit."

With regard to future M&A activity in the sector, analysts expect the major managed care companies to set their sights on niche market players, with the intention of taking advantage of trends such as increased interest in CDHPs or new opportunities created by the Medicare Modernization Act.

Insurers are increasingly turning their attention to the government-supported segments of the health care market as a way to grow mem-

bership, analysts say. Many companies have announced or implemented plans to create regional Medicare PPO networks or enter the Medicare Part D prescription drug program, backed by government reimbursements.

"The growth prospects are in the public sector—those companies that participate in Medicare and Medicaid," Mr. Marinucci said. "The government has jumped back in and become an even larger fund-

ing source for health care."

The managed care companies are looking to expand their government-supported membership base because of mixed results in the commercial membership sector. The first-quarter membership figures showed some companies posting solid gains while others struggled to retain members. "You start to wonder whether it's a pattern or just a coincidence," Mr. Zaharuk said.

## California investigates WellPoint premium hikes

**SACRAMENTO, Calif.**—The California Department of Managed Health Care is probing whether recent premium increases for WellPoint Inc. enrollees in California are related to the company's merger last year with the former Anthem Inc.

As part of its agreement to approve the merger last year, the DMHC secured a guarantee from Indianapolis-based WellPoint that it would not raise premiums for California policyholders to finance the merger. The department, though, has received about 90 complaints from policyholders of the managed care company's Blue Cross unit in California regarding substantial increases in premiums this year, a spokeswoman said.

The department held a public

meeting May 13 to examine whether WellPoint violated its promise to the DMHC. Regulators decided to hire an outside actuary to examine documents and data provided by the company to explain the rate increases.

A WellPoint spokesman said the company raised its rates an average of 13% on individual and family policies because of a combination of factors, including increased utilization and consumption of health care services, rising cost trends and escalating doctor and hospital reimbursements.

"They were strictly driven by our cost experience in the marketplace," the spokesman said. "They had nothing to do with any merger-related costs."

—By Gloria Gonzalez

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**Business Insurance**

# Voluntary pact on broker insolvencies outlines rights of buyers, insurers

By SARAH VEYSEY

**LONDON**—Brokers may keep policyholders and insurers funds in the same account, but buyers will rank above insurers as creditors in the event of a broker insolvency, under guidelines agreed to by London market officials.

The Lloyd's Market Assn., the International Underwriting Assn., and the London Market Insurance Brokers' Assn. last week circulated to the market a model Terms of Business Agreement for underwriters and brokers to comply with regula-

tory requirements for the treatment of policyholder money, among other things.

The LMA represents underwriters at Lloyd's of London, the IUA represents underwriters in the London company market, and the LMBC represents brokers in the London market.

A task force comprising members of the three organizations said that, under the model, brokers will be able to commingle policyholder and client money in the same account, provided the underwriter has agreed to this in writing.

## If a broker goes broke

Under the London proposal:

- Brokers could commingle policyholder and insurer funds in same account, with consent.
- Buyers would rank ahead of insurers as creditors if a broker became insolvent.
- If a policyholder paid premiums to the broker, credit risk would transfer to the broker.

Policyholder money would include funds such as premiums, whereas insurer money would include, for example, payments for legal fees in claims work that is carried out by a broker on behalf of an insurer, said David Hough, executive director of the LMBC.

Under the model, underwriters and brokers may agree that premiums can be classified as "insurer money" as soon as they are paid by a policyholder to a broker.

Also, under the model insurers

See **AGREEMENT** / page 27

# U.K. raises bar on cleanup liability

Local governments face higher burden of proof on environmental remediation orders

By CAROLYN ALDRED

**LONDON**—A High Court judge's order for a retrial in one of the few court-affirmed remediation orders since changes in the United Kingdom's environmental laws took effect will make it harder for local authorities to attach environmental liability to other parties.

As a result of the decision, local authorities will have a higher burden of proof in cases in which they are seeking to force owners or occupiers of contaminated sites to clean up the sites when they were not the original polluters, legal experts say.

The decision is the first appeal of a remediation notice since a 2000 amendment to the Environmental Protection Act 1990, which had introduced retrospective liability for environment contamination.

Under the amendment, the enforcing authority must identify the most appropriate person or organization to be held liable for cleaning up a contaminated site. Under the law, the remediation should be the responsibility of the original polluter; in the absence of the original polluter, though, the liability shifts to the owner or occupier of the land.

In the case of *Circular Facilities (London) Ltd. vs. Sevenoaks District Council*, homes near Tonbridge, Kent, had been built on top of clay pits that had been filled with material that included organic waste over a 20-year period in the 1960s and 1970s. The land was sold to Circular Facilities in 1979, and planning permission was granted by the district council for eight houses to be erected on the site.

A 1978 soil investigation, which was commissioned by Circular Facilities, that indicated the presence of black organic matter and associated gases on the site, was given to

Sevenoaks District Council in March 1980 to support the planning application. The report was placed on the planning register and was available to Circular Facilities, according to the local authority.

No efforts were taken to remove or contain the organic waste when the houses were built.

Following the discovery that landfill gas was being released on the site, the local authority undertook remedial measures in the 1990s, spending 46,000 pounds (\$85,132) to correct the situation.

See **POLLUTION** / page 27

## Updates

### Rate cuts take hold in Australia

Rate reductions of 5% to 20% are being seen for property and liability insurance for large corporate risks and other commercial insurance lines in Australia, according to Standard & Poor's Corp. But despite market softening, S&P said the Australian nonlife insurance market was expected to remain profitable in 2005. In a statement, Kate Thompson, a credit analyst at S&P in Melbourne, said "many insurers show continued signs of lower claims frequency across lines of business and, in particular, liability lines."

### U.K. doctors, insurers agree on fee increases

The British Medical Assn. and the Assn. of British Insurers have agreed on "above inflation" increases in fees for doctors' reports and medical examinations for life insurance and income protection policies. The fee for a doctor's report will rise 8.5% to £70.50 (\$129.49) for 2005-06, the fee for a medical examination will increase 9.2% to £77.50 (\$142.35), and the fee for a supplementary report will increase 9.1% to £18 (\$33.06). The increases take effect in July.

### Watson Wyatt pension suit dismissed

A claim by the U.K. arm of French investment bank Crédit Lyonnais against pension consultancy Watson Wyatt Worldwide has been dismissed. In the claim, Crédit Lyonnais alleged Watson Wyatt was negligent in valuation work for the Crédit Lyonnais Group U.K. Pension Scheme from 1996 to 1999. In a statement, Watson Wyatt said the two parties had agreed to the dismissal subject to certain confidential terms.

### Zurich reports 21% increase in profits

Zurich Financial Services' profits for the first quarter rose 21%, to \$779 million. ZFS said the improvement was due to cost controls and other factors. Investment income grew 12.0% to \$2.2 billion, ZFS said. For nonlife insurance, ZFS reported gross written premiums grew 2.3%, to \$10.2 billion, for the first quarter from the year-earlier period.

### Briefly noted

**Dane Douetil**, group chief executive of London-based Brit Insurance Holdings P.L.C., has been elected chairman of the Lloyd's Market Assn. The LMA represents businesses underwriting at Lloyd's of London. Mr. Douetil succeeds Robert Childs, director of underwriting at London-based Hiscox P.L.C.

## Payouts by insolvent KWELM group increase

By SARAH VEYSEY

**LONDON**—The administrators of the KWELM group of companies have announced that creditors of the company will, on average, receive an additional 11% of the value of outstanding claims.

The average payout to creditors of the five insolvent London market insurance companies will be 64% of liabilities, the administrators said in a statement.

According to a report issued by KWELM's administrators, the average payment likely will rise to between 68% and 74% of liabilities over the next 12 months.

A spokeswoman for KWELM said better-than-expected collections from reinsurers and investment income, along with actual claims being lower than initial estimates, had contributed to the increased payout.

During 2004, KWELM paid out \$444 million to creditors, according to the report.

All claims against the five companies had to be submitted by September 2004 to be eligible for payment.

The five KWELM companies—Kingscroft Insurance Co. Ltd., Walbrook Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd., and Mutual Reinsurance Co. Ltd.—were placed into a so-called scheme of arrangement in 1993.

The companies wrote mainly U.S. casualty, professional indemnity and other liability business. The majority of creditors are based in the United States.

## Australian regulator plans to bolster rules

By SARAH VEYSEY

**SYDNEY, Australia**—The Australian insurance regulator has drafted proposals for governance standards and a discussion paper proposing stronger regulation for the supervision of groups that include insurance companies.

The Sydney-based Australian Prudential Regulation Authority last week published draft standards that would require each insurer to establish a board audit committee and a board risk committee.

Among other proposals, insurers would be required to have a majority of independent nonexecutive directors and have an independent nonexecutive director as chairperson of its board.

Interested parties have until Aug. 12 to comment on the proposed changes.

Separately, in a discussion paper on strengthening the framework of supervision for corporate groups that include authorized general insurers, APRA proposes the adoption of new standards governing intragroup dealings and a groupwide approach to risk management supported by annual reports

from the groups' auditors, among other things.

The proposed reforms "balance the need to protect policyholder interests at an individual entity level with the management and control issues associated with running commercial conglomerates," APRA said in a statement.

In a statement, the Sydney-based Insurance Council of Australia Ltd. said that it looked forward to taking part in the discussion process on the regulatory proposals.

"These proposals may add an extra layer of regulation to the industry, as the provisions are clearly designed to be in addition to existing regulation at the licensed insurer level," Alan Mason, executive director of the ICA, said in a statement.

"ICA will be seeking some flexibility in the application of this regulatory framework to recognize this additional burden," Mr. Mason added.

Interested parties have until Oct. 14 to respond to the discussion paper.

The proposals and discussion papers can be viewed at [www.apra.gov.au](http://www.apra.gov.au).

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The payment percentages have been revised as follows:

	Existing Percentage	Increase	Revised Percentage
Kingscroft	57%	8%	65%
Walbrook	51%	14%	65%
El Paso	62%	10%	72%
Lime Street	60%	8%	68%
Mutual	44%	9%	53%

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The 2004 annual review, issued today to creditors who submitted claims or have established liabilities, is available from [www.kwelms.com](http://www.kwelms.com)

19th May 2005

C J HUGHES and I D B BOND  
Scheme Administrators  
KWELM companies

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## IN THE MATTER OF AN INTENDED APPLICATION IN THE HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT IN THE MATTER OF LA MUTUELLE DU MANS ASSURANCES IARD AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that the above-named company ("Company") intends to apply to the High Court of Justice of England and Wales, Chancery Division, Companies Court, at the Royal Courts of Justice, Strand, London WC2R 2LL, for an order to convene a meeting of certain creditors of the Company ("Creditors' Meeting") in relation to the Scheme mentioned below. The purpose of the Creditors' Meeting will be to consider and, if thought fit, to approve (with or without modification) a solvent scheme of arrangement between the Company and certain of its creditors pursuant to section 425 of the Companies Act 1985 of Great Britain (the "Scheme").

Creditors affected by the Scheme (the "Scheme Creditors") are, broadly speaking, those creditors with any claim against the Company (only in respect of the Company's business written in the UK by Les Mutuelles du Mans Assurances IARD, the UK branch of the Company, and administered by The Scottish Lion Underwriting Agencies Limited ("SLUA") in respect of a debt or liability under or in relation to a contract or policy of insurance, reinsurance, coinsurance or retrocession entered into by or on behalf of the Company in its capacity as insurer (a "Claim").

The Scheme will require Scheme Creditors to submit details of Claims within 120 days of the Scheme becoming effective so that Claims can be agreed with the Company or, failing agreement, adjudicated upon by a scheme adjudicator, and the agreed or adjudicated amount paid.

The Company considers that the Scheme will offer Scheme Creditors the most effective, economical and timely method for valuing and paying their Claims, and will enable the Company to terminate run-off earlier than would otherwise be the case.

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If any creditor takes the view that there is more than one class of Scheme Creditor, and that it is necessary to have separate meetings to approve the Scheme, they should communicate their concerns to SLUA in writing by letter or e-mail to reach SLUA at the address below on or before 13 June 2005, so that their concerns can be drawn to the attention of the Court when the Company makes its application for an order to convene a single meeting of Scheme Creditors.

Further information may be obtained by contacting Steve Crawley or Vanessa Robinson of The Scottish Lion Underwriting Agencies Limited, 5th Floor, Cutlers Exchange, 123 Houndsditch, London EC3A 7PQ, United Kingdom (Tel: +44 (0)20 7626 4266, Email: [solventscheme@scottishlion.co.uk](mailto:solventscheme@scottishlion.co.uk)).

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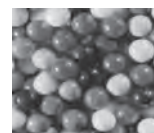
**Qualifications:** Masters degree from an accredited college in insurance, risk management or a related business field (finance) comprised of 30% property & casualty insurance and risk management course work and one year directly related professional employment. **Alternative qualifications:** Baccalaureate business degree from an accredited college and two or more years of satisfactory full time directly related professional employment within account service or claims divisions of either Commercial Property and Casualty broker, agent, consultant, insurer, or two or more years of satisfactory full time professional employment within a risk management department handling similar responsibilities affiliated with risk transfer including insurance procurement, claims determination or customer service other than relaying information. Experience must be accompanied by competence in Microsoft Office Applications (Access, Excel, Outlook, PowerPoint & Word). Particular expertise in Access for enhancing the Vendor Insurance Tracking System is needed.

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## LEGAL NOTICE

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Further information may be obtained by contacting:

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### IN THE MATTER OF AN INTENDED APPLICATION IN THE HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT IN THE MATTER OF THE SCOTTISH EAGLE INSURANCE COMPANY LIMITED AND IN THE MATTER OF THE COMPANIES ACT 1985

**NOTICE IS HEREBY GIVEN** that the above-named company ("Company") intends to apply to the High Court of Justice of England and Wales, Chancery Division, Companies Court, at the Royal Courts of Justice, Strand, London WC2R 2LL, for an order to convene a meeting of certain creditors of the Company ("Creditors' Meeting") in relation to the Scheme mentioned below. The purpose of the Creditors' Meeting will be to consider and, if thought fit, to approve (with or without modification) a solvent scheme of arrangement between the Company and certain of its creditors pursuant to section 425 of the Companies Act 1985 of Great Britain (the "Scheme").

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The Scheme will require Scheme Creditors to submit details of Claims within 120 days of the Scheme becoming effective so that Claims can be agreed with the Company or, failing agreement, adjudicated upon by a scheme adjudicator, and the agreed or adjudicated amount paid.

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## Agreement: London market issues model form

Continued from page 25

would rank behind policyholders as creditors in the event of the broker becoming insolvent while the money is still in the broker's account.

And under this "transfer of credit risk," once the premium has been paid to the broker, the underwriter accepts that "consideration is deemed to have been satisfied," said Pam Byrnes, director of financial and compliance services at the IUA. So, if a broker becomes insolvent, an insurer cannot demand another premium payment from a policyholder that has already paid the premium to its broker.

The TOBA also requires brokers to comply with any legal, fiduciary, and regulatory duties about matters

such as the disclosure of commission payments, noted David Gittings, group head of risk at London-based Wellington Underwriting P.L.C. and an LMA representative on the TOBA task force.

### Commission payments

Mr. Gittings said that the group would now work with brokers to come up with recommendations on when brokers' commissions should be paid.

He said that the so-called "pay-as-paid" principle, under which brokers do not take their commission payments until the premium has been paid to an underwriter, was originally part of the TOBA discussion, but would now be part of sep-

arate discussions. A set of recommendations on this issue should be produced by the end of June, Mr. Gittings noted.

The TOBA is not mandatory—and individuals may negotiate their own terms—but is intended as a model for the market.

The model was agreed in response to a demand from the Financial Services Authority, the U.K.'s insurance regulator, which took over regulation of insurance brokers in January. The London-based FSA had set the London market a deadline of July 14 to devise a new TOBA to replace existing arrangements, comply with FSA rules on the handling of client money and improve clarity in agreements between brokers and underwriters.

## Pollution: U.K. court limits developer's liability

Continued from page 25

The council identified the site as contaminated when the law changed and issued a remediation notice to Circular Facilities in November 2000, requiring it to take action to vent the gases.

Circular Facilities argued that the party that filled the pits should be liable under the regime and that it was not aware of the organic waste.

Sevenoaks Magistrate Court ruled in June 2004 that Circular Facilities was liable for the remediation costs because it should have known about the organic waste from the report and that, as the builder of the properties, it created the means for the residents to come into contact with the contaminants.

Circular Facilities appealed the ruling to the High Court, and on May 10 Justice Newman ordered a

retrial of the case, saying that the lower court judge had not made clear why he had concluded that the developer had knowledge of the contents of the soil investigation report. The managing director of the company said he did not have personal knowledge of the report until 2002, several years after the houses were built.

The decision will make it harder for local authorities to find other parties responsible for remediation costs, legal experts say.

"The decision shows the detailed investigations that may have to take place to establish the requisite knowledge linking companies and other persons to the contaminating substances," said Valerie Fogleman, a consultant with London law firm of Lovells who advised Sevenoaks.

"This is a relatively bleak ruling

for local authorities," said Mathew Hussey, the London-based commercial director of Enviro Consulting Group Ltd., which advises companies and local authorities.

"Local authorities were watching to see the outcome of this case. The discovery issue, and having to prove the landowner had knowledge of the contaminant, will make it very difficult and complex for local authorities to pursue such claims," Mr. Hussey said.

"It means a landowner can claim ignorance to avoid the costs of cleaning up," he said.

But the ruling does clarify one issue in favor of local authorities, said Ms. Fogleman. According to the ruling, a person need only have knowledge of a substance and need not know that it could cause harm to be found liable, she explained.

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## SEC says pension consultants can do more to spot conflicts

By JERRY GEISEL

**WASHINGTON**—Many benefit consultants that provide services to pension and savings plan sponsors also receive compensation from the brokerages and money managers they are recommending to clients, the U.S. Securities and Exchange Commission reported Monday.

In a survey of 24 unnamed pension consultants, the SEC found that 13 consultants provided a wide range of products and services, such as software, to mutual funds and money managers while helping pension plan sponsors choose such providers.

Many pension plan consultants do not adequately disclose to plan sponsors the "material conflicts of interest" that can arise from such practices, the SEC said.

"It's clear from our examinations that many pension consultants must do more to identify

conflicts of interest in their activities and to take steps to mitigate or eliminate those conflicts," said Lori Richards, director of the SEC's Office of Compliance Inspections and Examinations Director, in a statement.

The SEC, though, said due to the way information was presented to it by consultants, it was unable to determine whether pension consultants "skewed" their recommendations to favor certain money managers.

However, of the six consultants where data allowed such an analysis, the SEC found "indications" that three consultants recommended money managers who purchased products or services from the consultants more frequently than money managers that did not purchase products from the pension consultant.

Copies of "Staff Report Concerning Examinations of Select Pension Consultants" are available at [www.sec.gov](http://www.sec.gov).

# Smokers: States levy smoking surcharge on public employees

Continued from page 3

of use in the prior year. Separate surcharges will not be applied for each covered member, even if multiple dependents are tobacco users.

While the policy relies on an honor system—there are no mechanisms in place for tobacco testing—employees found to be concealing tobacco use risk losing medical coverage for one year.

Georgia employees, who were notified of the new fees through open-enrollment materials sent in April, have had a mixed response, according to the community health department spokeswoman.

The spokeswoman said the surcharge aims to “encourage healthy behavior and lifestyles” as well as to reduce the funding shortfall.

The state does not currently provide tobacco-related wellness programs, such as smoking-cessation benefits or counseling. “At this point we do not,” she said, but “it’s being discussed.”

Alabama also plans to impose a tobacco-use charge. Starting Oct. 1, a supplemental fee of \$20 per month—\$240 a year—will be applied to state workers’ health insurance if they or a spouse use tobacco, said a spokeswoman for the Alabama State Employees’ Insurance Board in Montgomery. Child dependents are exempt.

The increases will apply to all of the self-insured plan’s 100,000 active employees, retirees and dependents and waived when the individual signs a tobacco-free certification form. The insurance board is relying on a self-reporting system, with

## Employers butt in on tobacco use

*From breathalyzers and urine tests to monthly cash penalties, employers are using an array of tactics on tobacco users to curb group health insurance costs.*

### Public sector:

- Georgia state employees, public school teachers will pay an extra \$40 per month for coverage starting July 1, if they or their dependents admit to using tobacco products in the previous year.
- A \$20 monthly surcharge will be applied to Alabama state workers starting Oct. 1, if covered employees or spouses report themselves as tobacco users.
- South Dakota since 1997 has had different health premium structures for smoking and nonsmoking state employees; smokers currently pay \$30 extra per month.
- Montgomery County in Pennsylvania is attempting to change its application process to prevent the hiring of smokers. If approved, the new law will take effect Jan. 1, 2006.
- State employees and retirees in West Virginia are required to sign a “Tobacco Affidavit” certifying that

they are tobacco-free in order to obtain discounts on health and life insurance premiums.

### Private sector:

- Warrenville, Ill.-based trucking firm Navistar International in July is raising health care premium contributions by \$50 a month for employees who smoke.
- Starting Jan. 1, 2006, workers at Milwaukee-based Northwestern Mutual Life Insurance Co. will be subject to a \$25 fee on monthly health care premiums if the employee or his/her dependents is a smoker.
- Weyco Inc, an Okemos, Mich.-based health benefits administrator, earlier this year stopped employing smokers, vowing to fire workers who continue smoking in violation of the policy.
- Omaha, Neb.-based Union Pacific Corp. last fall stopped hiring smokers in several states, including Texas and Arkansas.
- Alaska Airlines for almost a decade has required applicants to pass a urine test for tobacco in order to be considered for employment.

no plans for tobacco testing, but has been “amazed” by the number of workers who have admitted to tobacco use, the spokeswoman said.

Unlike Georgia, Alabama is offering a smoking cessation program. “That is part of what we had to develop with the premium changes and the penalties,” the spokeswoman said. “You have to give people a chance.”

### Sticks and carrots

While consultants say employers

are legitimately concerned about the size of their tobacco-using worker population, as smokers’ overall medical costs generally are higher on average than nonsmokers’, most also agree that a “stick” approach to the problem is fair and effective only when “carrots,” such as smoking-cessation counseling and products, are also available.

In a December 2004 survey of 270 benefit and human resource managers conducted by the Alexandria, Va.-based Society for Human Resource Management, 5% said

they charge smokers higher premiums. In addition, 32% of surveyed companies said they offer smoking cessation programs.

“It’s unusual for an employer to establish a penalty and not provide assistance for avoiding the penalty,” noted Bruce Kelley, a senior consultant for Watson Wyatt Worldwide in Minneapolis.

Last year alone, smokers cost the United States \$157.7 billion in health-related economic costs, according to the U.S. surgeon general’s office.

“Health plans are picking up most of that cost, and I think that’s why the employer thinks it’s OK to intervene,” Mr. Kelley said.

Medical plan contribution differentials for smokers and nonsmokers are becoming increasingly common, consultants say, and are already embraced by companies such as Minneapolis-based General Mills Inc. and Milwaukee-based Northwestern Mutual.

In addition, the health care plans of states such as Kentucky, South Dakota and West Virginia have or plan to introduce different health insurance rate structures for smokers and nonsmokers.

“Employers are getting more creative with plan design, with ways to reward healthy behaviors, and to create shared responsibility for poor health decisions,” said Camille Haltom, national practice leader for managed health consulting at Lincolnshire, Ill.-based Hewitt Associates Inc.

“I think the programs that are voluntary may work the best,” said Tom Lerche, senior vp with Aon Consulting in Chicago. “Financial incentives or disincentives by themselves, we’re not optimistic that they’ll necessarily change behavior.”

Mr. Kelley said he favors positive incentives, such as a discount for completing a smoking cessation program. “Just penalizing smokers financially is probably not going to convince many people to quit,” he said. “I think that what they need is support and programs that help them to change behavior.”

## COLI: Courts curb programs

Continued from page 4

the change, the policies were largely limited to key employees.

Subsequent congressional restrictions, IRS actions and adverse publicity surrounding COLI programs, though, have prompted employers to move away from broad-based programs, experts say (see related story below).

“Many employers now wouldn’t want to touch these programs with a 10-foot pole,” said Diane Lotti, director of health and welfare research with Mellon’s Human Resources & Investor Solutions in New York.

“If anything, coverage is contracting,” said Joe Walshe, a princi-

pal with the HR services unit of PricewaterhouseCoopers L.L.P. in Washington.

Still, companies that have retained their broad-based COLI programs are likely to face litigation, experts say. The outcome of those suits will depend, among other things, on the wording of state statutes covering what is an insurable interest and the court interpretation of those statutes, said Ken Kirk, chief executive officer of Vining Management Corp., an Atlanta-based nonqualified plan consultant.

*Tillman vs. Camelot Music, 10th U.S. Circuit Court of Appeals, No. 03-5172.*

## Use and abuse of COLI policies

Under a company-owned life insurance program, the company takes out life insurance policies on its employees, naming itself as the beneficiary. As an added twist under so-called leveraged COLI policies, the company borrows against the policies, with the interest it charges itself being tax-deductible.

In 1986, concerned about a loss of tax revenue, the U.S. Congress limited to \$50,000 the maximum amount of a loan for which interest could be tax-deductible. In re-

sponse, some employers greatly expanded the number of employees they covered under the plans in order to maintain the same level of tax breaks.

In recent years, though, the IRS challenged many of these broad-based COLI programs as tax shams. Additionally, in 1996, Congress tightened the screws, phasing out over a five-year period the interest deductions on loans for policies covering all but a company’s key employees.

—By Jerry Geisel

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## Stringfellow: California to seek to use precedent

Continued from page 3

holders and taxpayers, Mr. Doke explained.

Often, companies that face massive property contamination costs file for bankruptcy protection. If recovery under their insurance policies is "artificially limited by a judicial constrict," then taxpayers end up paying for the cleanup, Mr. Doke argues.

"Clearly, the state is interested in getting the maximum amount of coverage for its liability to clean up the Stringfellow site," Mr. Doke said.

"But the governor's office also believes, very strongly by the way, that (the appeals court ruling in) FMC is bad for California policyholders and it's bad for California taxpayers," Mr. Doke said.

### Resisting challenges

The FMC decision is well reasoned, countered Paul Killion, a partner at Hancock Rothert & Bunschott in San Francisco. Policyholders that are not public entities have failed to overturn the FMC decision, he pointed out. California's Supreme Court, for example, declined to review the decision.

Mr. Killion represented Plaisted & Cos. in the FMC case and London insurers that recently settled with California over coverage for the

Stringfellow hazardous waste site (BI, Feb. 7).

In last week's Stringfellow decision, the jury found CNA Casualty Co., Yosemite Insurance Co., Employers Insurance of Wausau, Horace Mann Insurance Co. and

**"Clearly, the state is interested in getting the maximum amount of coverage for its liability to clean up the Stringfellow site."**

**Darryl L. Doke**  
State of California

Stonebridge Life Insurance Co. to be in breach of their contracts, said Robert Horkovich, a partner at Anderson Kill & Olick P.C. who represents California in the matter. The jury also rejected insurers' arguments that the policyholder willfully contaminated the site and concealed information when purchasing its CGL policies, Mr. Horkovich said.

But the judge in the case ruled that the FMC decision applies, lim-

iting the state's insurance recovery to a single three-year policy period.

How much California will collect from the jury verdict remains to be seen, Mr. Doke said.

The five insurers provided \$19 million in limits during a single policy period and \$28 million if their limits were to be stacked across policy periods.

### Additional recovery

California already has recovered \$121 million from 19 of 24 insurers, which settled liability for cleaning up Stringfellow. It will now pursue a bad-faith lawsuit against the five insurance company holdouts and will ask California's 4th District Court of Appeal to overturn the FMC decision.

The five insurers, meanwhile, have yet to decide whether to appeal last week's verdict, said Craig Hunter, a partner at Wilson Elser Moskowitz Edelman & Dicker in Los Angeles. Mr. Hunter represents Stonebridge Life Insurance Co. in the matter.

The group of insurers, though, will seek an "offset" for their losses from some of the insurers that have settled with the state, Mr. Hunter said.

Attorneys for three of the other insurance companies did not return calls.

## Releases: Rules on covenants

Continued from page 4

IBM argued, according to court papers, that the covenant not to sue did not "undo" his release of the ADEA claims but merely exempted him for liability for IBM's attorneys' fees associated with defending a suit.

The appeals court found, though, that, "despite their distinct purposes, the differences between a release and a covenant not to sue are fairly amorphous and may not be readily apparent to a lay reader."

The agreement "does not explain how the provisions relate to each other, or the limited nature of the exception to the covenant not to sue in light of the relapse of claims. Once IBM chose to use the legal terms of art in the agreement, IBM had a duty to carefully explain the provisions." The court ruled that the agreement did not meet the OWBPA's statutory waiver requirements.

Attorneys say employers should review the language in their release forms in light of this decision. The broad implications of the decision "are that people who draft releases to be in compliance with the OWBPA have to do so very carefully and follow the standards set out in the statute to the letter," said William J. Egan, a Edina, Minn.-based attorney who represented Mr. Thomforde.

In addition, employers should not "overdraft" the release forms, warned Bill C. Berger, an employer attorney with Stettner, Miller & Cohn in Denver. "You don't want to think yourself out of the box and make them too complicated. They have to be written in a way non-lawyers can understand and be kept simple."

Tom Gies, an employer attorney with Crowell & Moring in Washington, said he does not recommend to his clients that they include covenant-not-to-sue language, "because, in my judgment, the traditional standard release and waiver language is adequate to keep somebody from filing a lawsuit."

Meanwhile, plaintiff attorney Jeffrey N. Young of Topsham, Maine-based McTeague, Higbee & Case said he represents about 200 former IBM employees in similar litigation in California. A lower court dismissed the case last year, but plaintiffs are now waiting to learn whether the 9th U.S. Circuit Court of Appeals in San Francisco will hear the case.

Mr. Young said "materially identical" waiver forms have been signed by about 20,000 former IBM employees over the past four years.

*Dale J. Thomforde vs. International Business Machines Corp.; 8th U.S. Circuit Court of Appeals, No. 04-1538.*

**LORD BISSELL**  **BROOK** LLP  
ATTORNEYS AT LAW

**SCOTT J. CIPINKO**  
OF COUNSEL, ATLANTA

Mr. Cipinko has 18 years of experience in corporate and regulatory insurance, including NAIC and governmental affairs. Most recently, he was the Executive Director for Life Insurers Council (LIC), a council of LOMA.

## Gallagher: Broker reaches \$27 million settlement in Illinois

Continued from page 1

missions from insurers in return for steering business their way, according to a statement from Ms. Madigan's office.

"Gallagher sought and obtained huge payments from insurers in return for steering them enough business to meet secret threshold targets," Ms. Madigan said in the statement. "Gallagher never should have accepted these payments without fully and clearly disclosing that these targets and payments created a potential conflict of interest between Gallagher and its clients."

In addition to accepting contingent commissions, the investigation also revealed that Gallagher accepted "hiring subsidies" from certain insurers, the statement said. Under these undisclosed arrangements, which are now prohibited under the settlement, the insurers would pay for the salaries of some producers in return for the assurance that the producers would deliver insurance business to them.

American International Group Inc., Chubb Corp. and The Hartford Financial Services Group Inc. participated in such "hiring subsidies" with Gallagher, according to Chaka M. Patterson, Illinois assistant attorney general.

Mr. Patterson said that while he does not have exact figures of the

amount of subsidies paid by Chubb and Hartford, over a two-year period AIG paid \$4.5 million in "hiring subsidies" to Gallagher.

A spokesman for Chubb declined to comment. AIG and Hartford did not return calls seeking comment.

On a conference call with ana-



"I've got two jurisdictions down and 20 to go."

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

lysts discussing the settlement, Mr. Gallagher said he is hopeful the Illinois settlement will be accepted by other states as a nationwide agreement, but he noted that he cannot be certain there won't be further settlements.

"I've got two down and 20 to go," Mr. Gallagher said, referring to the number of jurisdictions that have sent Gallagher subpoenas or requests for information regarding its business practices.

He noted that while he and Illinois authorities might believe

"what we struck was a national settlement, I can't tell you whether other attorneys general and directors are going to buy that."

Like its three larger competitors, Mr. Gallagher said the brokerage will go to other states "and sell them on the concept that it should

be acceptable to them."

"You have a model out there, but you don't know if everyone will follow it or not because not all of

the states have agreed on our previous competitors' settlements," he said.

A spokeswoman for New York-based MMC, which agreed to settle fraud and bid-rigging charges with New York Attorney General Eliot Spitzer for \$850 million in January (*BI*, Feb. 7), declined to comment on whether its settlement has been accepted by other states investigating the brokerage.

"We continue to cooperate in all the ongoing investigations by regulators in many states," the

spokeswoman said. "We believe that our \$850 million no-fault fund is for policyholders across the United States."

A spokesman for Aon, which jointly settled fraud and anticompetitive charges brought by officials in New York, Connecticut and Illinois for \$190 million in March (*BI*, March 7), declined to comment on its progress in settling investigations in other states.

A spokesman for Willis said: "We look forward to resolving this matter with other states, hopefully in the same approach we were able to accomplish with the New York and Minnesota agreements."

Last month, Willis agreed to pay \$50 million in restitution to policyholders nationwide to resolve concerns about fraud and anticompetitive practices raised by the New York state insurance superintendent. Separately but simultaneously, Willis agreed to pay \$1 million to settle similar investigations by Minnesota officials (*BI*, April 11).

While Willis' New York settlement fund pertains to policyholders nationwide, Willis agreed to pay an additional \$1 million back to Minnesota policyholders in addition to the allocation Minnesota policyholders will receive from the New York settlement.

### Settlement details

Under the terms of its settlement with Illinois officials over its compensation practices, Arthur J. Gallagher & Co. agreed to:

- Create a \$27 million fund for U.S. retail clients for whom Gallagher placed insurance between 2002 and 2004 and which resulted in the payment of contingent commissions. The fund will be established in January 2006 and will begin distributing refunds shortly thereafter.
- Cease collecting contingent commissions on retail business. The brokerage ceased entering contingent commission contracts in January.
- Disclose all compensation to clients.
- Provide enhanced business ethics training for employees.
- Create a compliance committee within the board of directors, to be headed by an outside director.

Gallagher admitted no wrongdoing or liability and is not required to issue an apology.

Source: Arthur J. Gallagher & Co.

## AIG: Criminal charges possible

Continued from page 1

AIG directors with breaches of fiduciary duty and seeks to have C.V. Starr's assets placed in a trust by the court. The lawsuit amends a complaint originally filed in 2002.

According to the complaint, C.V. Starr, which is now owned by five AIG directors, including former Chairman Maurice R. Greenberg, received \$495.2 million in commission payments from AIG from 1999 to 2003. These payments "were simply a means of lining the pockets of Starr's owners," the complaint states.

San Francisco City Attorney Dennis Herrera also filed a suit in federal district court in Manhattan on behalf of the San Francisco Employees' Retirement System, charging that the pension system suffered losses because of a drop in AIG's shares related to its "egregious business malfeasance" and violations of federal securities laws, according to a statement issued by Mr. Herrera.

In other developments, Florida's Office of Insurance Regulation said it is giving AIG until July 1 to file corrected financial statements for the years 2000 through 2005 for all of AIG's 43 licensed entities operating in the state. The office said failure to comply could lead to suspension of AIG's licensed companies in Florida.

In addition, AIG said last week in an SEC filing that it has agreed to pay in advance legal expenses, including attorneys fees, incurred by its nonexecutive directors.

The Wall Street Journal also reported last week that AIG plans to force six or more senior executives

to leave the company in the coming weeks as it prepares to file its 10-K with the SEC by May 31.

In a related matter, Gen Re parent Berkshire Hathaway Inc. disclosed that the chief executive officer of the Faraday Group, the reinsurer's London-based underwriting unit—and formerly the head of Gen Re's international finite business unit—has been put on paid leave effective today, "subject to his continuing cooperation with all governmental investigations."

Berkshire's filing with the SEC does not name the executive, but Faraday's CEO is Milan Vukelic. Henry Ashton, Faraday's chief operating officer, is expected to assume Mr. Vukelic's duties while he is on leave, a person familiar with the company said.

In addition, the U.S. Justice Department has notified John Houldsworth, chief underwriter with Gen Re's Cologne Reinsurance Co. (Dublin) Ltd., that he is a target of a criminal fraud investigation, according to reports citing sources familiar with the matter.

Mr. Houldsworth helped handle the \$500 million loss portfolio retrocession and allegedly altered records of the transaction, according to reports.

Cologne Re has also received a request for information from the German federal financial supervisory authority regarding its finite risk business and transactions with AIG, Berkshire reported.

Douglas McLeod and Meg Fletcher contributed to this report.

## Tort reform: Measures remain mired in debates

Continued from page 3

had a substantial impact on interstate commerce by causing economic losses in other states.

In addition, LARA would prevent what tort reform advocates call "forum shopping," in which a plaintiff attorney seeks the most plaintiff-friendly jurisdiction possible in which to file a personal injury suit regardless of how tenuous the case's connection is with the venue. Under LARA, personal injury cases could be filed only in the jurisdiction in which the plaintiff lives, where the alleged injury occurred or where the defendant's principal place of business is located.

"LARA addresses the two major lawsuit abuse aspects of our current system—frivolous claims and litigation tourism," said Victor Schwartz, general counsel of the American Tort Reform Assn. in Washington. "Virtually every small business in America has faced a baseless claim but currently has no weaponry to stop it. LARA will provide that by making those who bring frivolous claims pay their costs. It's also indefensible that a person would bring a lawsuit where he has never even been, and LARA addresses that problem by saying that people can sue where they were hurt and where they lived or where the defendant has its principal place of business," he said.

Mr. Schwartz pointed out that LARA enjoys unusually strong support. "There is a broader coalition behind LARA than almost any other civil justice reform that I've seen. Over 100 trade diverse associations now support the measure," he noted.

"We're supporting LARA for a couple of reasons," said Lawrence Fineran, vp-competition and regulatory policy for the National Assn. of Manufacturers in Washington. According to Mr. Fineran, "The judiciary took away the teeth from the sanctions for filing frivolous lawsuits 12 years ago, and it hasn't worked. It's obvious that it's now time to put those teeth back."

"It's the individual lawsuits counterweight to the class action bill," Mr. Fineran said, referring to the recently enacted Class Action Fairness Act, which requires that certain interstate lawsuits be moved to federal courts at the request of either the defendants or plaintiffs. "This bill orders judges to take interstate commerce into account, and it further requires that lawsuits that are filed must have some relationship to the jurisdiction in which they are filed," he explained.

Melissa Shelk, vp-federal affairs for the American Insurance Assn., noted that the House had approved an earlier version of LARA in 2004. "It did pass out of the House last year. I would expect it would get through the House again this year," she said.

Ms. Shelk noted, though, that there currently exists no companion legislation in the Senate.

"Obviously, I think it has real good shot in the House," said NAM's Mr. Fineran. "The big question will be what can be accomplished in the Senate. Obviously, we're hopeful we can get something through there like we did the Class Action Fairness Act," he said.

Despite the House Judiciary Committee's failure to move on

LARA last week, its member did approve the Occupational Safety & Health Employer Access to Justice Act, which allows small businesses—defined as those with fewer than 100 employees and net worth of less than \$7 million—to recover attorneys fees when they prevail in actions brought by the U.S. Occupational Safety & Health Administration. And, in addition to LARA and the gun liability bill, the committee is slated to consider the Personal Responsibility in Food Consumption Act, which would, under most circumstances, prohibit lawsuits against food manufacturers and sellers for obesity-related damages.

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## FSA: Government relaxes 'use-it-or-lose-it' rule

Continued from page 1

rule and put the word 'flexible' back into these plans," Senate Finance Committee Chairman Charles Grassley, R-Iowa, said in a statement.

### Welcomed by employers

Employers say the liberalization of the use-it-or-lose-it rule is likely to ease employees' concerns about losing unused account balances, leading to growth in the number of employees who contribute to the plans and to an increase in the contributions made by employees already participating.

"With a reduced risk of forfeiture, I expect we will see increased participation," said Dennis Nirtaut, vp of compensation and benefits at Aon Corp. in Chicago.

"This will help FSA participation, as employees understand that they have more time to spend down their accounts," said Bonnie Whyte, president of the Employers Council on Flexible Compensation in Washington.

The publicity generated by the Treasury Department announcement by itself might lead more employees to consider making contributions to FSAs, said Deborah Sanders, senior director-human resources at Fujitsu America Inc. in Richardson, Texas.

Increased employee participation is positive for employees, Ms.

Richardson said, noting that FSAs, which are funded by employees' pretax contributions, are a tax-effective way to pay for uncovered health care expenses.

"This is a step in the right direction," said Nicki Gustin, employee benefits manager at Kansas City, Mo.-based Aquila Inc., an electricity and natural gas distributor.

The easing of the use-it-or-lose-it

**"This will help FSA participation, as employees understand that they have more time to spend down their accounts."**

**Bonnie Whyte  
Employers Council  
on Flexible Compensation**

rule—if it boosts FSA contributions—also will cut employers' payroll taxes. That is because employees' compensation—for Federal Insurance Contribution Act, or FICA, tax computations—is reduced by the amount they contribute to their FSAs.

### Adopting the change

Still, employers who amend their plans to adopt the new grace

period do face some additional—though largely one-time—costs.

Employers will have to communicate the change to employees, as well as amend benefit plan documents.

Additionally, administrative systems will have to be adjusted to reflect the additional time employees will have to use account balances.

"It does create some additional challenges," said Randy Abbott, a senior consultant in the Wellesley Hills, Mass., office of Watson Wyatt Worldwide.

"Amending plan documents is the easiest part of the process. Much harder is changing your administrative systems," said Jeff Munn, a consultant in the Falls Church, Va., office of Hewitt Associates Inc.

Still, it is almost certain that most employers with FSAs ultimately will adopt the grace period. "Employers want to provide as much flexibility as they can," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

"This is something I expect we will do," said Aon's Mr. Nirtaut.

Since the accounts first made their appearance more than two decades ago, FSAs have become an integral part of health care design, according to Mercer, with more than 80% of employers with at least 500 employees offering the arrangements.

## Late News

Continued from page 1

mandatory asbestos medical criteria legislation.

### Maryland governor vetoes cover mandate

Maryland Gov. Robert L. Ehrlich Jr. has vetoed legislation that would have required large employers to provide health insurance to their workers. H.B. 1284, the Fair Share Health Care Fund Act, calls for all companies in Maryland with more than 10,000 employees to spend at least 8% of their payroll on employee health care. Those that fail to do so would have to contribute to a state fund that provides health care coverage to low-income residents. The measure may have enough support to overturn the veto, observers say.

### IBM pension settlement gets tentative OK

A federal court has given preliminary approval of a partial settlement between IBM Corp. and tens of thousands of current and former employees over the conversion of its traditional pension plan to a hybrid arrangement. Under one part of the settlement, IBM will pay—in the form of enhanced benefits—more than \$300 million to plan participants. That part of the settlement relates mainly to claims involving IBM's 1995 conversion of a traditional final-average-pay plan to a pension hybrid known as a pension equity plan. Under the other part, IBM will appeal a ruling that its cash balance plan, which IBM set up in 1999 to succeed the PEP plan, is age discriminatory. If the court rules in favor of IBM, it will have no further liability. If IBM loses, its liability will be capped at \$1.4 billion.

### CEO of GE unit files bias suit

A top-ranking black executive of General Electric Co. is charging in a lawsuit that the company subjected him and thousands of other African-American employees to discriminatory pay and promotion policies and practices. The suit, which seeks class action status, asks for \$450 million in compensatory, punitive and equitable damages, as well as injunctive relief to change GE policies and procedures. The suit was filed by Marc T. Thomas, chairman, president and chief executive officer of GE Aviation Materials L.P. GE

"flatly denies" the allegations and said it will ask the court to dismiss the case.

### Vermont Senate OKs universal health cover

Vermont's Senate has approved universal health care legislation that is slightly different from a sweeping House version passed last month. The Senate version calls for providing primary and preventive care coverage for all Vermont residents by July 2006, rather than by 2007 as prescribed in H. 524. The Senate version, unlike the House measure, would not expand coverage unless a series of cost-containment measures begin reducing the health care inflation rate in the state and a series of economic studies show services can be provided without harming the state's economy. Both measures' plans would be financed by taxes, and cost-sharing would be applied with deductibles and co-payments based on participants' ability to pay.

### WCIRB calls for steeper rate cut

California's Workers' Compensation Insurance Rating Bureau has recommended that insurance companies reduce their pure premium rates by 13.8% for policies incepting or renewing July 1. The WCIRB in March originally proposed a 10.4% pure premium decrease beginning July 1. That recommendation, however, did not reflect projected savings from a Permanent Disability Rating Schedule recently adopted by the state. Reforms signed into law last year called for adopting a new rating schedule.

### Briefly noted

The New York State Senate has confirmed **Howard Mills** as superintendent of the New York State Insurance Department. Mr. Mills became acting superintendent earlier this year, following the departure of Gregory V. Serio....**Don Kramer** has retired from ACE Ltd. after nine years as an executive with the Bermuda-based insurer. Mr. Kramer, 67, most recently held the position of executive, office of the president and chief executive officer. He joined ACE in 1996 as vice chairman after ACE acquired Tempest Reinsurance Ltd., a company Mr. Kramer founded and for which he served as chairman and CEO.


## BI Stock Index [ 5/16 - 5/20 ]

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

**BI Stock Index**  **2349.17** **2.32**

**Dow Jones**  **10471.91** **3.27**

**S&P 500**  **1189.28** **3.05**

### Largest gains

Vesta Insurance Co.	14.41%
Fairfax Financial Holdings Ltd.	10.13%
EMC Insurance Group Inc.	9.71%
Argonaut Group	7.54%
Navigators Group	7.17%

### Largest losses

Gainsco Inc.	-5.45%
Hub International	-4.45%
NYMagic Inc.	-3.30%
Meadowbrook Insurance Group	-1.12%
American Safety Insurance	-0.48%

### Weekly change by market segment

Brokers	1.96%
Insurers/Reinsurers	3.03%
Managed Care Organizations	2.26%

Source: FinancialContent Inc. (<http://financialcontent.com>)



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