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ROUNDTABLE DISCUSSION WITH LEADING RISK MANAGERS ON GLOBAL RISKS / PAGE 6

In Brief

SCIF seeks revised comp discounts

California's State Compensation Insurance Fund said last week that a recently filed rating plan would result in a 3.5% reduction in premiums collected for California workers compensation policies incepting July 1. SCIF-based workers comp rates will remain unchanged, but the revised rating plan calls for expanding merit-rating and claims-free discounts. Since 2003, when California implemented workers comp reforms, SCIF has decreased rates by 57%, the insurer of last resort said.

Heinz can expand benefits in captive

H.J. Heinz Co. has received final authorization from the Labor Department to expand benefit

See **IN BRIEF** page 25



An increasing number of states are passing laws mandating that firefighters diagnosed with certain medical conditions automatically be granted workers compensation benefits.

More states passing firefighter comp laws

Public employers say presumptive statutes costly, unnecessary

By **SALLY ROBERTS**

Firefighters across the nation are lobbying state legislatures to expand workers compensation protections for illnesses and diseases they say they contract while in the line of duty.

Because firefighters put their lives on the line to protect their communities and are at increased risk of contracting certain diseases and illnesses, they shouldn't have to worry about what will happen to them and their families should they become ill, proponents of the so-called presumption legislation say.

However, opponents, including those representing municipalities, argue that firefighters already are covered by standard workers comp

benefits in most states and expanded protections are too costly and burdensome for public entities.

In response, some public entities have enhanced their wellness programs to reduce their workers comp costs (see story, page 23).

More than 40 states have some type of presumptive disability statutes for firefighters, according to the International Assn. of Fire Fighters. Although they vary widely, the laws essentially provide that certain conditions, from skin cancer to hepatitis C to heart attacks, are presumed to be job-related and compensable under workers comp, with some limitations.

As a result, rather than firefighters proving that their conditions are job-related, the public entity has to prove that they are not, which observers say is a tough hurdle to overcome, especially since many presumptive conditions such as

See **PRESUMPTION** page 23

Retaliation ruling may spur bias suits

Supreme Court case significantly extends period to file claims

By **JUDY GREENWALD**

Employers are likely to face more racial retaliation claims under a Civil War-era federal law as the result of a U.S. Supreme Court decision last week, observers say.

The 7-2 ruling in *CBOCS West Inc. vs. Hedrick G. Humphries* says racial retaliation claims are allowed under Section 1981, a federal law based on the Civil Rights Act of 1866, even though retaliation is not explicitly stated in the statute, based on precedent already estab-

lished by previous rulings.

Observers note that while the ruling breaks no new legal ground, it still could lead to more claims of race-based retaliation.

"It does put the stamp of the Supreme Court on it, which I think could encourage the filing of these types of lawsuits even further," said Diana L. Hoover, an attorney with Mayer Brown L.L.P. in Houston.

Meanwhile, the court issued a parallel decision the same day in *Myra Gomez-Perez vs. John E. Potter, Postmaster General*, holding that federal workers can claim retaliation for complaints of age discrimination under the Age Discrimination in Employment Act (see story, page 24).

See **RIGHTS** page 24

SPOTLIGHT

PUBLIC ENTITY RISK MANAGEMENT

Transitioning military vets back into law enforcement jobs; risk managers at public entities face up to budget cuts as economy weakens; value of pools lies in stability rather than pricing; interview with incoming PRIMA president; plus *B/I's* ranking of public entity risk pools. **Page 11**



Cat modelers eyeing climate change debate

Warming trends not yet major factor in models

By **MARK A. HOFMANN**

As the 2008 hurricane season begins amid growing attention to climate change questions, catastrophe modelers are working to determine what effect temperature trends will ultimately have on their models.

That task, modelers and others say, is proving difficult in part because of the lack of a lack of scientific consensus over what impact, if any, global warming would have on hurricanes.

Modelers, however, are not ignoring the issue.

"We are continually trying to monitor" global warming data, said Tom Larsen, senior vp at Oakland, Calif.-based EQECAT Inc. But, he said, "there are too many different interpretations that can be made, and the results are very sensi-

tive to it. There's not enough information to come out and say "This is what we expect."

"The real challenge is continually trying to make the models more complex," Mr. Larsen said.

The impact of possible climate change has not "made its way to the model at this point," said John DeMartini, a principal of Towers Perrin in Stamford, Conn. "It's a very vigorous and interesting debate in the scientific community, but it has not translated into an impact on modeled loss estimates. The bottom line is none of this thinking has impacted the model results."

"The crucial element here is 'long term,'" said Bob Ward, director-public policy in the London office of Newark, Calif.-based Risk Management Solutions Inc. He

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On the Web

BI VIDEO

RIMS leaders speak about development

The Risk & Insurance Management Society Inc. recently unveiled a professional growth tool to help members enhance their skills. Members of the RIMS board of directors discuss professional development programs in the new *Business Insurance* video RIMS 2008: Trends & Issues. Watch it at www.BusinessInsurance.com/video.

BI AUDIO

Listen to expanded Sarah Perry interview

Sarah Perry, risk manager for the city of Columbia, Mo., is the incoming president of the Public



Risk Management Assn. A podcast that is an expanded version of her page 14

interview by *BI* Senior Editor Dave Lenckus is available at www.BusinessInsurance.com/audio.

BI DIRECTORIES

Public entity risk pool directory updated

Business Insurance has updated its Directory of Public Entity Risk Pools for 2008. It is now available online, where you can buy and download the full content of *BI*'s exclusive directories. Pricing varies by listing. Review directories available for purchase at www.BusinessInsurance.com/directories.

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Coalition tests program to treat depression

Plan includes doctor rewards, aims to fight major employer cost

By JOANNE WOJCIK

MINNEAPOLIS—In an attempt to address an estimated \$44 billion that U.S. employers lose in productivity a year due to employee depression, Bridges to Excellence this week is launching a pay-for-performance program that will reward physicians for providing optimal treatment of the condition.

The Depression Management Care Link will be tested in Minnesota among providers who treat some 780,000 employees and dependents enrolled in the benefit plans of a subset of employers that belong to

Buyers Health Care Action Group, a statewide employer coalition.

"We know that at any given point in time, at least 5% of our employee population is in emotional distress," said Charles Montreuil, who is vp of human resources at Minnetonka, Minn.-based Carlson Cos., chairman of the employer coalition and president of Bridges to Excellence "Many illnesses have depression as a comorbidity."

He based his assessment on an anecdotal review of pharmacy benefit claims, which showed antidepressants among the top three drugs prescribed to Carlson's employees, and a review of the type of employee assistance program services being sought.

However, only a fraction of depressed employees are being diagnosed, he said.

"This program will help facilitate the adoption of the PHQ-9," a patient health questionnaire developed by Pfizer Inc. that testing has shown to accurately diagnose depression most of the time, Mr. Montreuil said.

Under the Minneapolis-based BTE's depression care program, patients will be required to complete the screening questionnaire to determine whether they are depressed. A reassessment will be conducted at six months, and then six months after that. The goal is for patients to have a significant reduction in scores on the PHQ-9 within 12 months.

Plan members will pay the normal copayments required by their plans.

Scoring and assessment of doctor performance will be conducted by

MN Community Measurement, a BTE performance assessment organization. High-performing doctors will receive bonus payments of \$100 for each patient beginning in 2009 if a majority of the patients they have identified as depressed using the PHQ-9 show improvement.

Initial funding for the depression care pilot program comes from a group of 11 employers called Champions of Change. Aside from Carlson, members include: 3M Co., General Electric Co., Honeywell International Inc., Medtronic Inc., Resource Training & Solutions, Minnesota Department of Employee Relations, Minnesota Department of Human Services, Target Corp., the University of Minnesota

See **DEPRESSION** page 23

PBM Express Scripts reaches multistate pact to end switching probes

Joins other PBMs in agreeing to alter business practices

By GLORIA GONZALEZ

ST. LOUIS—Express Scripts Inc. has become the third pharmacy benefit manager in the past four years to settle allegations that the PBM engaged in deceptive business practices related to prescription switching.

St. Louis-based Express Scripts last week entered into a voluntary compliance and discontinuance agreement with the attorneys general of 28 states and the District of Columbia to resolve an investigation launched in 2004.

The PBM will pay \$9.3 million to the states and reimburse up to \$200,000 to patients who incurred expenses related to certain switches between cholesterol-controlling statin drugs.

The PBM may have overstated to physicians and patients the cost benefits of switching to certain medicines, according to the multistate agreement.

In certain instances, prescription drugs were allegedly switched to a more expensive drug, based on the average wholesale price, according to the agreement.

Express Scripts denied it engaged in any wrongful or unlawful conduct and said minor adjustments

would bring the company into full compliance with the agreement.

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

Express Scripts also agreed to inform patients and health care providers of the effect a drug switch will have on a patient's copayment; inform providers of the company's financial incentives, including manufacturer payments, for certain drug switches; and provide information about material differences in side effects or the effectiveness between prescribed and proposed drugs, among other actions.

In 2004, Medco Health Solutions Inc. paid \$29 million to settle similar allegations.

In February of this year, CVS Caremark Corp. agreed to pay \$41

million.

The companies also agreed to take actions similar to those featured in the Express Scripts agreement reached with various states last week.



29

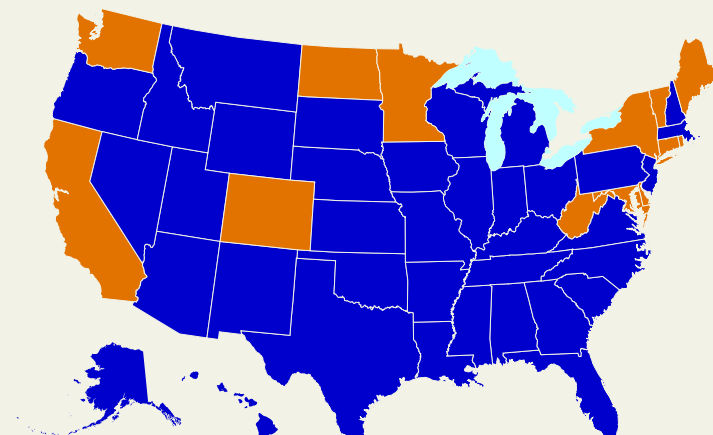
Number of jurisdictions involved in the Express Scripts settlement.

\$79m

Approximate total value of PBM settlements related to prescription switching probes.

PARITY MANDATES FOR EATING DISORDERS

Thirteen states, highlighted below, have coverage mandates for eating disorders.



Source: National Assn. for Eating Disorders

States mandate cover for eating disorders

Insurers say conditions rarely excluded

By KRISTIN GUNDERSON HUNT

SPRINGFIELD, Ill.—Illinois lawmakers were expected to give final approval last week to a bill mandating that large-group health care plans cover treatment of anorexia nervosa and bulimia nervosa. It is the latest state to require parity for eating disorder-related conditions.

Thirteen states already require insurers to cover treatment for eating disorders (see chart), typically through their mental health parity laws, said New York-based Lynn Grefe, chief executive officer of the National Eating Disorder Assn. in Seattle.

In general, such legislation mandates a minimum of 30 days' coverage of inpatient residential treatment and some outpatient treatment. Some states go beyond that, though, she said.

The Illinois law, which was scheduled for final House approval last Friday before sending it to the governor, would require health

plans covering groups of more than 50 employees to pay for 45 days of inpatient treatment and 60 outpatient visits per year for anorexia and bulimia. The House was expected to approve Senate amendments that limited the coverage to those conditions.

Illinois' mandate is identical to California in that it also applies to group plans covering more than 50 employees. California law considers eating disorders to be mental illnesses and requires coverage equal to that for other illnesses, said Christopher Athas, vp of the National Assn. of Anorexia Nervosa and Associated Disorders in Highland Park, Ill.

New York's eating disorder law requires that 20 outpatient visits and 30 days of inpatient care for eating disorders be covered by all plans covering more than 50 employees.

John Fortin, national practice leader for health care cost manage-

See **EATING** page 25

Mass. uninsured figures tumble due to health care reform

Landmark measure cuts treatment costs through prompt care

By JERRY GEISEL

WASHINGTON—Massachusetts continues to make progress in implementing its landmark health care reform law, even as other states have stumbled in their efforts to enact comprehensive reform measures.

The Massachusetts law includes an individual mandate, state-subsidized premiums for low-income uninsured individuals and penalties for employers that do not offer coverage meeting certain regulatory standards. The law's goal is to move the state closer to universal health

insurance coverage.

Two years after enactment of the legislation, Massachusetts "has made reasonably good progress" in reaching that goal, said Jon Kingsdale, executive director of the Massachusetts Health Insurance Connector Authority, the state agency in charge of implementing key parts of the law.

Mr. Kingsdale spoke last month at a Washington briefing sponsored by the Health Reform Alliance and the Kaiser Family Foundation.

Since the passage of the legislation, more than 340,000 previously uninsured Massachusetts residents have obtained health care coverage, with about half receiving that cov-

340k

FACT: The number of previously uninsured state residents that now have coverage.

erage through Commonwealth Care, a state program that subsidizes individual premiums.

Before passage of the legislation in 2006, estimates of the uninsured in the state ranged from 400,000 to 600,000, so the measure has made a huge dent in reducing the number of uninsured.

Accompanying the expansion of coverage has been a significant reduction in free or uncompensated care for those lacking insurance, which reduces provider pressure to recover those expenses by boosting charges on insured patients.

For example, at Boston-based health care system Partners HealthCare, the amount of uncompensat-

ed care it has provided in its health care facilities, which include such well-known institutions as Massachusetts General Hospital, fell to \$85.8 million in 2007, a 17.5% decline since 2005.

"We are seeing a steady increase in the number of patients with Commonwealth Care and a decrease in the number of free-care patients," said Matt Fishman, a Partners HealthCare vp who also spoke at the briefing.

Mr. Kingsdale touted one of the strongest selling points of universal coverage: Individuals who have health insurance are more likely to see providers to get medical problems treated promptly, decreasing the likelihood that those problems will require more expensive treatment at a later date.

"There are thousands of those people in the 340,000 number," Mr. Kingsdale said.

Massachusetts' success contrasts with other reform efforts that have faltered. A universal health care measure proposed California Gov. Arnold Schwarzenegger went down to defeat earlier this year, while reform proposals by Illinois Gov. Rod Blagojevich and Pennsylvania Gov. Edward Rendell failed to make much headway in those two states' legislatures.

Massachusetts' success is due to several reasons, but none is more important than legislators and regulators making decisions only after reaching broad consensus, the speakers said.

The reform legislation passed

See **MASSACHUSETTS** page 25

Insurer wrong to deny cancer treatment cover, Wis. high court rules

Judges say insurer's plan interpretations were inconsistent

By GLORIA GONZALEZ

MADISON, Wis.—A health insurer wrongfully denied coverage for a specialized chemotherapy treatment for a child with cancer, according to the Wisconsin Supreme Court.

The decision by Touchpoint Health Plan Inc. to deny benefits for high-dose chemotherapy with stem-cell rescue was "arbitrary and capricious" and failed to give the child's family an opportunity

his cancer treatment because of an exclusion for experimental and investigational procedures in Dallas-based Kimberly Clark's plan.

The insurer denied coverage a second time after the treatment was provided independent of the clinical trial. The child's parents sued to compel the insurer to provide coverage.

The state Supreme Court ruled the insurer's benefit termination decision was made despite an external review agency's finding that the requested treatment met the standard of care, was medically necessary and its recommendation that the treatment be approved.

The insurer also did not provide a sufficient and adequate explanation for the termination of benefits.

"We hold that the termination decision itself was arbitrary and capricious because Touchpoint's interpretations of the plan were inconsistent," the Supreme Court said in its ruling.

The ruling upheld an appeals court ruling that the benefits should be reinstated retroactively.

UnitedHealthcare, a subsidiary of Minnetonka, Minn.-based UnitedHealth Group Inc., acquired some of Touchpoint's operations in 2004, but a spokesman for UnitedHealthcare said the insurer did not acquire the Touchpoint unit involved in the litigation. Attempts to reach that operation were unsuccessful.

Kevin Summers vs. Touchpoint Health Plan Inc., Supreme Court of Wisconsin, 2005AP2643, May 28, 2008

for a full and fair review of the termination of benefits, the state high court ruled May 28 in *Kevin Summers vs. Touchpoint Health Plan Inc.*

Mr. Summers and his family received health benefits from his employer, Kimberly Clark Corp. In October 2002, son Parker was diagnosed with a cancerous brain tumor and had surgery to remove the tumor. The insurer approved and paid for the surgery and follow-up care.

Exclusion activated

After the surgery, Parker's pediatric oncologist sought to have him enrolled in a clinical trial that included specialized chemotherapy. Touchpoint, though, terminated coverage for

Florida asbestos medical criteria law can't be applied retroactively: Court

Ruling allows claims even if suit not filed before law took effect

By DAVE LENCKUS

WEST PALM BEACH, Fla.—A Florida appellate court ruled last week that the state's asbestos and silica medical criteria law cannot be applied retroactively to bar suits from plaintiffs who say they suffered injuries before the law's effective date.

The ruling in the case, which contradicts two other rulings by a Florida appellate court, applies to more than the asbestos liability litigation that had been filed before the 2005 medical criteria law was implemented. The ruling also shields claimants who had not filed lawsuits but had reason to believe at

the time the law was passed that their exposure to asbestos and silica had harmed them.

The May 28 ruling likely will require the Florida Supreme Court to resolve the issue, attorneys said.

The medical criteria law bars plaintiffs exposed to asbestos from

with cancer.

The 4th District Court of Appeal agreed, pointing to several earlier decisions.

In one case, a state appellate court ruled that the state's 1987 law limiting punitive damages could not be applied to a claimant whose cause of action was established before the law was implemented but who did not file suit until after the law went into effect.

The appellate court also pointed to several state Supreme Court rulings that the appellate court interpreted as rejecting the notion that asbestos plaintiffs must show a manifestation of illness to recover damages.

David N. Williams et al. vs. American Optical Corp. et al., Florida 4th District Court of Appeal, Nos. 4D07-143 et al.; May 28, 2008.



recovering any damages until they can demonstrate permanent impairment or the presence of cancer.

But plaintiffs argued that before the medical criteria law was enacted, Florida law had recognized the right of asbestos claimants to sue for damages even if they were not permanently impaired or diagnosed

Readers Choice Awards voting begins

Business Insurance invites its readers to vote for the best overall commercial insurance industry companies in our 2008 Readers Choice Awards.

Now in their fourth year, *BI's* Readers Choice Awards recognize the top-performing companies in more than a dozen categories relating to risk management, insurance and employee benefits. Readers of the news magazine along with visitors to *BusinessInsurance.com* are invited to vote and assign numeric scores for companies that they believe offer the best combination of service, value, quality and innovation.

The categories are:

- Best admitted property insurer.

- Best admitted liability insurer.
- Best workers compensation insurer.
- Best employee assistance program provider.

- Best employee benefit consulting firm.
- Best insurance wholesaler.
- Best managed care organization.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.

- Best retail brokerage, in four different revenue classes.
- Best risk management consulting firm.
- Best surplus lines insurer.
- Best third-party claims administrator.

Winners in these categories will be announced and profiled in the Aug. 18 issue of *Business Insurance* and online after publication.

To view profiles of the winning companies in the previous competitions, visit www.BusinessInsurance.com/ReadersChoice.

As in the past, all votes are completely confidential, and *BI's* electronic ballot provides lists of the largest companies in each category for convenience only; voters may write in other companies if they choose. Results will be tabulated by Erdos & Morgan Inc., an internationally respected business-to-business market research firm.

To participate in this year's Readers Choice Awards, go to <http://beta.survey.com/bi/readerschoiceballot08>. The deadline for all votes is June 27.



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WAUSAU COMMERCIAL AUTO AT WORK. While looking at the claim history of a food distributor we insure, we noticed a number of issues with its fleet safety. During the previous two years there had been several accidents, including a few sideswipes, that heightened concerns about rising costs. Part of the problem was poor visibility, especially when changing lanes. This was easily remedied by installing fender-mounted **PRICE ≠ COST.** elliptical mirrors on all of the trucks. Another problem was finding the right drivers. With our help, they established new hiring methods

(including background checks and road testing) and formalized the driver selection process. As a result, even with a significant increase in annual mileage, the number of accidents dropped 30% and dollar losses dropped 60%. And thanks to fewer collisions, the delivery schedule ran smoother as well. It's all part of Wausau TotalValueSM and our commitment to lowering your total cost of risk. And it's backed by the financial strength of the Liberty Mutual Group. To learn more, visit wausau.com or contact your Wausau representative.



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Expect the unexpected in managing risks globally

Risk managers agree networking is an asset when going abroad

Managing global risks is a tough job that requires careful consideration of local customs. *Business Insurance* and *Business Insurance Europe* recently convened a roundtable with three leading U.S.-based risk managers of multinational organizations: Paul Buckley, vp-risk management at Tyco International Ltd.; Tim East, director of risk management at The Walt Disney Co.; and Lance Ewing, vp-risk management at Harrah's Entertainment Inc.

Q. What are some of the risks you look at when your companies do business in Europe and other foreign countries?

PAUL BUCKLEY: Tyco International has been a multinational company for many years, so when we start to look into manufacturing, for example, in Eastern Europe, we're obviously cognizant of the political risk that you have to face at this point in time.

Those are obviously some of the areas that I most focused on: where are we, what are we doing? To move into areas like India and places like that, you need to sit up and take notice. The developed areas such as the U.K. and the E.U. don't give you the kind of concerns that you would see in India or Thailand, places like that.



MICHAEL MARCOTTE

Discussing global risks in a recent roundtable were, from left: Paul Buckley, vp-risk management at Tyco International; Lance Ewing, vp-risk management at Harrah's Entertainment Inc.; and Tim East, director of risk management at The Walt Disney Co.



READ MORE
The full transcript of this abridged discussion is at
www.BusinessInsurance.com

LANCE EWING: In risk management, part of the DNA is always having the foundational blocks. You're going to look at the standard stuff: property, liability, if there is some. But the stuff we tend to look at are issues

such as human rights and that is a risk. What is the human rights situation? If you're in China right now, are you getting painted with a bad brush because of political aspects? Environmental issues are another concern for us. It's not a good idea to go into an area and the construction company dumps a bunch of stuff into the water system that's there. Cultural and religious issues are something else; we're very sensi-

tive to that, even though we are in the gaming industry, but we are sensitive to that. In certain countries, you cannot gamble because of religious aspects of things, so we need to be sensitive. You don't want to put a billboard up next to a mosque that says, "Come gamble at Harrah's". That's probably not the smartest thing to do.

TIM EAST: It's very similar. We are a labor-intensive business, so we do look at (those issues), even though to a lot of risk managers, workers compensation or employee compensation may not be as big an issue in global risk management. But to Disney, we're very concerned about maintaining, sustaining and dealing with employee injury or workplace accidents; whatever the legal context or framework about that has to be. We're still going to land there and say we've got to find out how to train these people and how to develop return-to-work programs, even though it might not be traditional in that environment. How we can establish return-to-work programs? As soon as you train somebody to work in a Disney environment, you want to be able to sustain good practices. When we establish a new presence in a global market, sustainability over the long term is important. Disney cannot just open something up and try something out and see if it works. We've got to be there, and sustainability is key.

Q. Do you frequently consult with fellow risk managers on issues abroad?

MR. EAST: I think absolute best practice in global risk management is networking with other risk managers that are in the markets that your company might be considering. I develop those relationships and go that way when I've got a problem that might be new to me but somebody else has approached...before. And it carries a lot of weight when, let's say we're in Hong Kong and they're asking me, "Well, Tim, how do we solve this problem?" And I can say, "Well, I checked with the risk manager at UPS and Marriott and they both handle it this way." Just the fact that you checked with other multinationals really helps your recommended course of action carry greater credibility.

MR. BUCKLEY: All of us through our years, and we've all been around a long time, develop relationships with people that you trust whether they're in the U.S. (or) they're outside the U.S. So, if I tend to have an issue that's outside the U.S., I have four or five people that I could pick up the phone and say "Hey, I'm looking at this in Australia." But the

same thing reciprocates when they're trying to deal with a U.S. issue; I get the phone call. That's one of the things that doesn't get recognized as much in our industry, how well we all know each other and how none of us are afraid to pick up the phone and call the other and say, "Hey, I've got this mess in front of me. What do you guys do because you had to see the same thing?"

MR. EAST: I've never had anybody not help or tell me they couldn't help me.

Q. What lessons have you drawn in hindsight when operating in either Europe or Asia?

MR. EWING: In another risk management job I had where there was construction going on in South America. Unfortunately, there was an accident in which one of the workers was killed. Everybody on the job site, every worker put down their hammer and put down their tools or jackhammer and walked away from the site. We as Americans go, "Where are you going? What are you doing?" It was their custom and ways of life, that they will take the next three days off,

'I think absolute best practice in global risk management is networking with other risk managers that are in the markets that your company might be considering.'

Tim East,
The Walt Disney Co.

whether they knew the guy or not, to mourn him who had passed away on the construction site. So the job shut down for three days. So, those kinds of customs you just don't anticipate. Expecting the unexpected is part of what's going to happen when you go to a foreign country.

MR. EAST: When I toured a construction site in Hong Kong, the safety director pointed out one of the most important loss control things for a construction project

in Hong Kong is to provide an onsite canteen for the employees to eat at. And I said, "Well, they bring their little lunch pails, right?" He said, "Oh, no, a crew manager in Hong Kong is expected to provide two hot meals a day for his crew; various noodle dishes and things like that. And, if you don't provide it through a canteen, you'll have woks and little kitchen set-ups, some cooking set-ups all over your construction site." So, he said, "No. 1 loss prevention thing is to establish an onsite canteen for your construction."

MR. BUCKLEY: We think we're saying the same thing and the word just has a different meaning outside the U.S. and I stand there and go "Well, wait a minute. I understood and we talked about this." And then they say, "Oh, yeah. But that means this over here." So that becomes a huge education process. I've got to talk to somebody locally who's going to be able to do the interpretation for me.

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Business Insurance OPINIONS

Dictating comp cover a misguided effort

THE INCREASE IN PRESUMPTIVE laws mandating that certain medical conditions affecting firefighters be considered work-related unless proven otherwise is troubling.

The well-intended state laws seek to ensure that workers compensation programs cover firefighters for, in some cases, numerous medical conditions that could be contracted as a result of their work.

However, a large part of the general population not engaged in dangerous employment also suffers from some of the same conditions, such as heart attacks and certain cancers.

While some studies show a greater prevalence of the conditions among firefighters, often the evidence linking the condition to firefighters' occupation is not as clear-cut as, say, that linking black lung to coal mining.

Under the presumptive laws, employers that face the workers comp claims are put in the position of having to prove the conditions are not work-related if they think the claims are not valid, which can be a difficult hurdle to cross. And not all presumption laws are rebuttable. In some states, such presumptions are considered conclusive, so the employer has no say in the compensability.

Without the presumptive laws in place, firefighters are still covered by workers comp programs for work-related injuries and their employers should err on the side of granting workers comp benefits if the conditions appear to be linked to their employment.

But measures dictating that a certain group of workers is more likely to receive comp benefits than other workers without having to provide convincing evidence that they are eligible for the benefits are misguided.

Measures dictating that a certain group of workers is more likely to receive comp benefits are misguided.

Congress should pass insurance reform bills

WHEN CONGRESS RETURNS today from its Memorial Day recess, senators and representatives alike should begin dealing with some unfinished risk management business that could and should be resolved before this Congress becomes history later this year.

We're not talking about the optional federal charter for insurance and brokers. Even the OFC's staunchest supporters realize that it's simply too complex an issue to be dealt with in the remaining months of this session. But lawmakers should be able to resolve a pair of other insurance regulatory issues with due dispatch.

The first is Senate passage of the Nonadmitted and Reinsurance Reform Act. The measure, which streamlines regulation of the non-admitted insurance market and reinsurers, won House approval last year and enjoys broad support among all insurance industry sectors. This is a noncontroversial measure that deserves swift action in the Senate.

The other bill that ought to move quickly is the Insurance Information Act that Rep. Paul Kanjorski, D-Pa., introduced earlier this spring. The measure would establish an Office of Insurance Information within the Treasury Department to gather insurance data and advise the treasury secretary on domestic and international insurance policy issues. It would not create some sort of stealth system of federal insurance regulation. Although it stirs more controversy than the Nonadmitted and Reinsurance Reform Act, it also deserves swift and positive consideration in both houses.

These reform measures should be resolved this year and we hope Congress uses what little time remains to do just that.



BI beats list

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

Agents/brokers:
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Benefits—health care and ancillary benefits:
Joanne Wojcik.

Benefits—retirement savings/pensions:
Jerry Geisel.

Canada—risk management and benefits:
Gloria Gonzalez.

Commercial auto:
Jeff Casale

Employment practices:
Judy Greenwald.

Environmental risk management: Sally Roberts.

Federal regulation/legislation—benefits:
Jerry Geisel.

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

Health care industry operations: Gloria Gonzalez.

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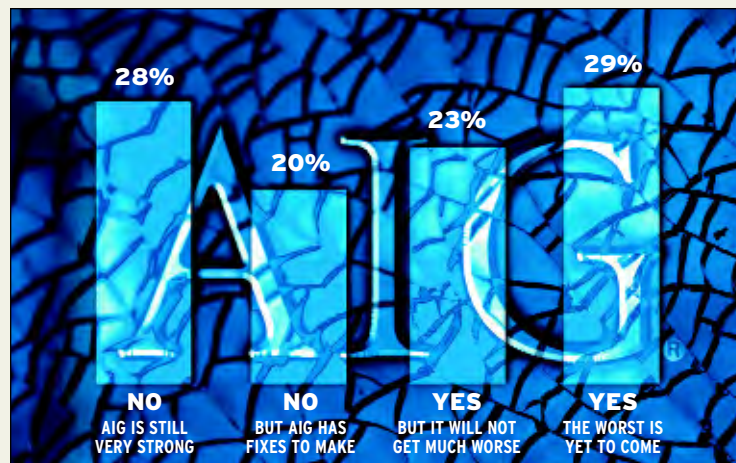
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Online Poll at www.businessinsurance.com

Are AIG's recent financial results a sign of more trouble ahead?



NEXT WEEK'S POLL: Which insurance reform measures will Congress pass this year?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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Easing military vets' return

Police officers often undergo post-combat evaluations; experts suggest treating each as unique

By ROSEANNE WHITE GEISEL

Many U.S. companies have employees returning from active military duty overseas, but law enforcement agencies have additional considerations before putting a police officer back on the job.

The prospect of potentially traumatized veterans returning to jobs where they are required to carry guns means law enforcement bodies must take particular care when phasing veterans back into civilian life.

But the law enforcement arena is used to dealing with the aftermath of dangerous and tragic situations and is well-equipped to handle the significant proportion of returning reservists, experts say.

"Law enforcement personnel participate in reserves disproportionately to the population," said Jim Pasco, executive director of the national Fraternal Order of Police in Washington. One reason, Mr. Pasco said, is that "sometimes it's the only part-time employment they are allowed." In addition, "there are similarities in the jobs."

At the Palm Beach County, Fla., sheriff's office, having deputies leave the job for a tour of duty has been "more prevalent" since the Sept. 11, 2001, terrorist attacks, said Hilda Gonzalez, risk management division manager for the agency. Though providing what a veteran needs

might generate expenses in Florida, where mental stress disorders are covered under the state's workers compensation program, "the sheriff currently in office views it as a cost of doing business," Ms. Gonzalez said. "You have to protect (law enforcement officers) and keep them whole."

Ms. Gonzalez and several others involved in risk management or loss control for law enforcement agencies said they have not seen any significant incidents caused by an employee's military experience so far.

"Every case is different," Ms. Gonzalez said. "It depends on how long they've been gone. If they've been gone six months, they won't miss a beat. If they've been gone six years, they will have to get training to maintain certification."

Law enforcement agencies also can take steps to ease a combat veteran's return to police work (see story, page 14).

Law enforcement agencies generally require retraining and continuing education hours over certain time periods to maintain certification.

"The biggest push is to identify training needs when (veterans) come back," said Dan Carlson, chaplain of the Minnesota Chiefs of Police Assn. in Excelsior and a retired police chief.

"The big thing for an agency is to do a good evaluation of the (returning employee's) personal experience—the positive aspects and some aspects they might need retraining in," Mr. Carlson said. "Identify their new skills

See **VETS** page 14

Public
Entity Risk
Management

SPOTLIGHT

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PROVIDE SOME
BREATHING ROOM**
PAGE 18

**POOLS' STABILITY
VALUED MORE
THAN PRICING**
PAGE 19

Largest property/casualty public entity risk pools

Ranked by 2007 member contributions

Rank	Pool name/Address	Phone/Web site	2007 member contributions	2007 pool members	Principal officer
1	Protected Insurance Program for Schools (PIPS) P.O. Box 4328, Torrance, Calif. 90510	310-212-0363 www.pipsjpa.org	\$180,691,133	400	Steve Hovey, president
2	Texas Municipal League Intergovernmental Risk Pool P.O. Box 149194, Austin, Texas 78714-9194	512-491-2300 www.tmlirp.org	\$145,756,191	2,619	R. Marvin Townsend, executive director
3	Municipal Excess Liability Joint Insurance Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555 www.njmel.org	\$138,000,000	18	David N. Grubb, executive director
4	Housing Authority Insurance Group ¹ 189 Commerce Court, Cheshire, Conn. 06712-0189	203-272-8220 www.housingcenter.com	\$97,927,000	923	Dan Labrie, CEO
5	Texas Assn. of School Boards Risk Management Fund P.O. Box 301, Austin, Texas 78767	512-467-3510 www.tasbrmf.org	\$92,600,000	1,118	Dubravka Romano, associate executive director, risk management services

¹ Includes Housing Authority Property Insurance and Housing Authority Risk Retention Group
Source: BI survey
Researched by Karen Tucker

Largest employee benefit public entity risk pools

Ranked by 2007 member contributions

Rank	Pool name/Address	Phone/Web site	2007 member contributions	2007 pool members	Principal officer
1	Texas Assn. of Counties Health & Employee Benefits Pool P.O. Box 2131, Austin, Texas 78701	512-478-8753 www.county.org	\$119,957,500	168	Jim Jean, director-program administration
2	Municipal Reinsurance Health Insurance Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555	\$101,138,098	4	Paul Laracy, executive director
3	Central Jersey Regional Employee Benefits Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555 www.cjhif.com	\$28,370,468	22	Paul Laracy, executive director
4	Southern New Jersey Regional Employee Benefits Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555 www.snjrebf.com	\$25,996,901	25	James J. Kickham, executive director
5	North Jersey Municipal Employee Benefits Fund Park 80 W., Plaza One, Saddle Brook, N.J. 07663	201-587-0555 www.njmebf.com	\$24,452,389	15	Paul Laracy, executive director

Source: BI survey
Researched by Karen Tucker

Largest combined (employee benefit and property/casualty) public entity risk pools on page 16.
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Questions Answers

Sarah Perry, risk manager for the city of Columbia, Mo., is the incoming president of the Alexandria, Va.-based Public Risk Management Assn. Ms. Perry spoke with Business Insurance Senior Editor Dave Lenckus about the various challenges that public entity risk managers face over the next year.



Challenge sparks creativity

Q: With the economy slumping, public entity risk managers have shrinking resources. How badly have risk managers' resources been dented?

It varies across the board, depending on where the risk manager is in the organization. And besides the city and their economic stability, I think one of the things that as risk managers—and certainly across our public entities—we've seen is a reduction in some training resources, some travel. Also certainly, then, monies that are available for other discretionary-type items.

It's necessary that we have money for insurance and to pay those things which we have to make sure are there.

Q: Has this affected at all the amount of resources that risk managers have to finance risk?

I do believe it has caused us to be more creative and to look at where our dollars are best spent. Again, there are some things that we do have to have, and we have to have certain kinds of insurance: workers compensation, general liability, property. However, it has become a case of you have to look at what is, one, available and, two, is most important.

Q: How does managing the risk of terrorism play into all of this?

The amount of involvement we have with terrorism risk varies within cities and counties in particular. I think a great deal of that is handled through our public safety departments—police, fire, joint communications, things like that. Where there are some

resources that are available to them—some grant resources and some federal resources—that actually makes it a little easier for public entities.

I do know that for some of the other entities—and I think the education side in particular—that's sometimes a little more of a challenge, because they don't always have that law enforcement link or that fire services link that allows them to quickly and easily access federal funds. I know terrorism, handling that risk, is kind of an entitywide process for most of us.



Q: What areas of enterprise risk management can PRIMA members get into, and are they embracing this challenge?

I think a lot of us as risk managers have been doing pieces of enterprise risk management for some time. Many of us have participated in some strategic management with our entities and have worked with other departments or areas within our entities in looking at risks outside of those that are strictly insurable risk. I think that is an area that risk managers can get more involved. But there are pieces of that that many of us either are doing or can get into without somebody from above—somebody in our entities' management—saying we're going to institute an ERM program.

Vets: Easing police officers' return to work

CONTINUED FROM PAGE 11

and maturity and leadership (ability). That life experience is a huge benefit to cops making decisions on the street."

Be "cautious of categorizing every soldier," Mr. Carlson said. A returning soldier's needs as a law enforcement officer will depend on the responsibilities and experiences the person had during active military duty, he said. For example, a police officer just back from combat may need retraining on the use of force, he said. The person also needs to be apprised of any changes in local laws or in the community itself during his or her absence. Mr. Carlson favors a reintegration period when a veteran is supervised more closely than typical to ensure that any potential problems stemming from the active service are addressed.

Ann Gergen, associate administrator of the League of Minnesota Cities Insurance Trust in St. Paul, said, "Keeping officers current is certainly a benefit from a risk management standpoint." Ensuring that law enforcement personnel maintain their accreditation and training certification lowers the risk of allegations of negligence in hiring, supervision or training and reduces the workers comp risk, she added.

Toward that end, the Minnesota Chiefs of Police Assn., Minnesota Sheriffs' Assn. and the Minnesota Counties Insurance Trust in 2006 launched PATROL, or police accreditation and training online. PATROL now enables 1,200 officers in approximately 70 law enforcement agencies in Minnesota to take classes and maintain their accreditation and training if they are on active duty in Afghanistan or Iraq or on leave from the law enforcement agency for any reason.

In Maine, there are reservists among the ranks of state troopers, municipal police and sheriff's deputies. The situation prompted the Maine Chiefs of Police Assn., the Maine National Guard and representatives of the U.S. Attorneys office to jointly conduct day long programs last year to prepare police chiefs, sheriffs and commanding officers to help troops to successfully reenter the workplace, said Robert Schwartz, executive director of the Maine Chiefs of Police Assn. in South Portland, Maine and a retired chief of South Portland Police Department.

The program emphasized

Ways to support employees during, after military service

Law enforcement agencies can ease the transition for returning military combat veterans.

The following steps are recommended by Greg Langan, loss control director, public entity and scholastic division, and managing director of the loss control practice group for Arthur J. Gallagher Risk Management Services Inc. in Mendota Heights, Minn.

- Keep in contact with the employee during his or her deployment.
- Host a party to celebrate the veteran's return to the job.
- Require the returning employee to have the full physical exam from the Veterans Administration to which he or she is entitled. Make sure testing also includes a general assessment of emotional stability, but remember that signs of distress may take months to surface.
- Offer some measure of



reorientation to the job and reassessment of fitness for duty.

- Give returning veterans extra support, because from their perspective, there always are significant changes on the job.

—By Roseanne White Geisel

'Law enforcement officials face far greater scrutiny in terms of carrying weapons than the average citizen.'

Jim Pasco
Fraternal Order of Police

resources available to meet the needs of returning employees and ways of supporting them such as partnering them with the a reservist who has already reintegrated.

When a police officer returns from active military duty, "it's more about phasing the officer back into the community than scrutinizing some deficiency," said the FOP's Mr. Pasco. Veterans returning to law enforcement, unlike those in other jobs, are issued a weapon, but Mr. Pasco does not see that as a high-risk situation.

"Law enforcement officials face

far greater scrutiny in terms of carrying weapons than the average citizen," Ms. Pasco said.

"Police departments are always well aware of any emotional problems," Mr. Carlson said.

Detective Crystal Nosal of Arlington County, Va., said the police department would address on an individual basis an officer who appeared troubled for any reason. Alternatives, such as a light-duty position, would be made available to anyone who temporarily did not seem fit to fully execute his or her regular job.

Greg Langan, loss control director, public entity and scholastic division, and managing director of the loss control practice group for Arthur J. Gallagher Risk Management Services Inc. in Mendota Heights, Minn., cites Minnesota National Guard research that shows 30% of post-traumatic stress disorder cases among returning veterans may not manifest itself for between four and eight months after return.

"You need to be paying attention to how the person is adapting," Mr. Langan said.

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Economic woes squeeze local governments' risk budgets

Amid cost-cutting, some entities consider buying less insurance

By JUDY GREENWALD

Public entity risk management departments face layoffs and budget cuts as the economic downturn that has hit much of the U.S. economy extends to the public sector.

In addition to cuts, some public entity risk managers also are preparing for increased workers compensation and liability claims as financial hardships grow.

So far, public entities are facing only belt-tightening, said John Nielsen, chief executive officer of Fairlawn, Ohio-based Ohio Transit Risk Pool. But depending on what happens in the economy, "it could get much worse," he said.

One ameliorating factor, though, has been the soft property/casualty market, which has enabled risk managers to retain adequate coverage. Meanwhile, some risk managers say they have not felt any significant effects so far from the sluggish economy (see stories, page 18).

Public entities have seen a decrease in sales tax revenues as consumers have reduced their spending. In addition, the subprime mortgage crisis has adversely affected property taxes and local governments in Florida may be affected by Amendment One, a measure that took effect in January that reduces property taxes.

Everyday issue

The economic downturn is "the 800-pound gorilla in the room" among public entity risk managers, said John Chino, senior vp for Arthur J. Gallagher & Co. in Aliso Viejo, Calif. "They can't not talk about it because it's something they're dealing with every day."

Because of personnel cutbacks at many public entities, "risk managers just aren't able" to achieve the results they would like, said Paul Dawson, Daytona Beach, Fla.-based executive vp for brokerage Brown & Brown Inc.

Debra Carson, risk manager for the city of Longmont, Colo., said her department is facing a hiring freeze.

"I had a half-time position that was an interesting blend of claims adjuster and my wellness coordinator, and that half-time position is now frozen. So I've had to redistribute the work and take on a lot of it myself, which is challenging," Ms. Carson said.

Among 10 transit agencies that are members of the Ohio pool, Mr. Nielsen said there are several full-time risk managers or safety positions "that are either being eliminated altogether when someone leaves or they are, in other instances, being combined with other responsibilities."

"What we have seen over the past several years is they're cutting back in terms of the positions" as well as time and dollars allocated for training," said Ken Horner, operations director for Brookfield, Wis.-based

Cities & Villages Mutual Insurance Co., a pool that provides services to 44 members. As a result, members have come to rely more on the pool, Mr. Horner said of the organization in which most members have only part-time risk managers.

Paula Tanguay, CEO of Cerritos, Calif.-based Alliance of Schools for Cooperative Insurance Programs, a

pool that will have about 180 members as of July, said "risk management and safety people are targeted for layoffs" due to budgetary constraints.

Public entity risk managers also are watching other costs more closely.

As they come under pressure to help their organizations achieve a

balanced budget, some risk managers are considering reducing their insurance coverage to save money, said Susan Blankenburg, vp, public entity practice, for Marsh Inc. in San Francisco.

A \$60,000 premium savings could allow a risk management department to retain or hire an additional employee, she said.

In some cases, risk managers are increasing self-insured retentions and "taking on far more exposure than I think would be justified by way of the premiums that they're getting back," Ms. Blankenburg said.

John Thomson, a Hartford,

See **ECONOMY** page 17

$$E(X) = \int_0^{\infty} X \frac{1}{\Gamma(\alpha)\beta^\alpha} X^{\alpha-1} e^{-\frac{X}{\beta}} dx$$

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Largest employee benefit & property/casualty public entity risk pools

Ranked by 2007 member contributions

Rank	Pool name/Address	Phone/Web site	Member contributions	Pool members	Principal officer
1	California State Assn. of Counties Excess Insurance Authority (CSAC EIA) 3017 Gold Canal Drive, Rancho Cordova, Calif. 95670	916-631-7363 www.csac-eia.org	\$316,138,799	210	Michael Fleming, CEO
2	Alliance of Schools for Cooperative Insurance Programs (ASCIP) 12750 Center Court Drive, Suite 205, Cerritos, Calif. 90703	562-403-4640 www.ascip.org	\$181,142,000	151	Angela Jones, president
3	Tri-County Schools Insurance Group 1445 Butte House Road, Suite A, Yuba City, Calif. 95993	530-822-5299 www.tcsig.com	\$50,000,000	56	Ryan Robison, president
4	Minnesota School Boards Assn. Insurance Trust 1900 W. Jefferson Ave., St. Peter, Minn. 56082	507-934-2450 www.mnmsba.org	\$39,145,650	485	John Sylvester, deputy executive director
5	MARCIT 600 Broadway, Kansas City, Mo. 64105	816-474-4240 www.marcit.org	\$34,279,000	88	Terry W. Norwood, president/CEO

Source: BI survey
Researched by Karen Tucker

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Economy: Local governments watch increased comp, liability claims

CONTINUED FROM PAGE 15

Conn.-based principal with Towers Perrin, said he's seen a "significant increase" in requests from municipalities and nonprofits for actuarial services, which he views as risk managers "getting their arms around what these costs are, and helping them be better managers of these costs."

"Budgets are restricted, so we're not looking for computer upgrades or replacements or anything of that sort. So far, so good," said Ms. Carson of Longmont, Colo. "We still have our training budget, but I could see where, as things get

place, like safety programs or training, professional development, travel" and similar expenditures, Ms. Peeling said. "We're not going to be able to move forward with any new programs this coming year."

Ms. Carson said she is seeing an increase in workers comp claims, "just because everybody's moving so quickly." Park department workers, for instance, have more territory to cover, she said.

But Mark Goode, Charlotte, N.C.-based senior vp with Willis North America, said, "I'm not seeing a huge influx in the number of workers comp claims like you might see

in the private sector, when people know that their jobs are in jeopardy." One reason is that "layoffs are not as quick to happen in the public entity arena as they might be in the private sector," he said.

But public entity risk managers are on the lookout for an increase in lawsuits.

"There's probably been a slight increase" in liability claims to date, said Steve Cooperrider, risk manager for the city of Troy, Mich. "It usually tends to be that way when the economy starts to turn a little bit."

As the economy worsens and people lose their jobs, "you do tend to see more liability claims" for inci-

dents such as slips and falls, vehicle accidents and transit operation incidents, said William Kostner, risk manager for Lincoln, Neb. "Overall, I'm not seeing that yet, but as the economy gets worse, that is an area in which there may be an increase."

Mr. Chino said a related issue of concern is that while over the past five or six years most public agencies have built up their reserve funds, especially in workers comp, "the management of the agencies are coming back and saying, 'We need some of that money back.'"

Among Ohio Transit Risk Pool members, "There's a tendency for members to draw down on their

reserve funds that they have with the pool, and this is a sign that there are some economic difficulties that they're facing," Mr. Nielsen said.

In Florida, "we're all tightening our budgets" in anticipation of Amendment One's impact, said Bill Bryan, Lecanto, Fla.-based risk manager for Citrus County.

"For right now, we're planning on keeping the same coverages," although Mr. Bryan said he may be asked to reduce them in the future. With hurricane season approaching, though, he said he believes "the county wouldn't want to take that risk."

'I'm not seeing a huge influx in the number of workers comp claims like you might see in the private sector, when people know their jobs are in jeopardy.'

Mark Goode, Willis North America

tighter, those are the kinds of things that start to go."

California school districts are "turning over every rock for every dollar," Ms. Tanguay said.

Kathy Peeling, risk management specialist with the Annapolis, Md.-based Anne Arundel County Public Schools, said the economic downturn has not had an immediate impact on her department because she is still working off of last year's budget.

"But it is cutting into some of our programs that weren't already in



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Soft P/C prices provide breathing room for now

By JUDY GREENWALD

The soft property/casualty market has been a welcome development for U.S. public entity risk managers affected by the nation's economic downturn.

Increased P/C rates "would only double the pain," said Kathy Peeling, risk management specialist with the Annapolis, Md.-based Anne Arundel County Public Schools.

It is the "one silver lining" in this situation, said John Nielsen, chief executive officer of the Fairlawn, Ohio-based Ohio Transit Risk Pool.

The public transit pool has been

"able to come back with generally a better picture each of the last several years in terms of the cost of transferring risk, so in that way, our timing is good," Mr. Nielsen said. "The soft market is helping ameliorate some of the problems that would otherwise be manifested."

However, public entity risk managers should not be "lulled into complacency" by the soft market, said Páree Roper, industry specialist with the Alexandria, Va.-based Public Risk Management Assn. "Prices are better, coverages are better" for now, but that will not always be true, he said.

"Always look at the long-term,

and govern yourselves accordingly in terms of what it is you need in coverage and how much you're willing to pay for it," Mr. Roper said.

Public entity risk managers say they already are well aware of the soft market's potentially transient nature.

Greg Hardy, administrator of the Mississippi Tort Claims Board, who acts as the state's risk manager, said the state over the past three years has halved the premium it pays for its \$700 million of property coverage.

But should a hurricane hit any part of the U.S. mainland, "It would

be right back up, if not higher than it was in '06. We always watch what's happening out there in the water," Mr. Hardy said.

The soft market is "certainly helpful to us," said William C. Kostner, risk manager for the city of Lincoln, Neb.

But if the economy worsens or if there were any weather- or terrorism-related catastrophes, "that would certainly be a difficult thing to deal with," Mr. Kostner said. Prices "would go higher and, of course, it would be difficult for us to show those efficiencies that we're striving for in this kind of an economy."

Why some budgets escape cuts

While many public entity risk managers say they're feeling the pinch of the economic downturn, others say it's not materially affected them, at least so far.

For instance, the city's management department remains fully staffed in Anaheim, Calif., said Risk Manager Tom Vance.

"That's because we have always made it clear for years and years that the main reason that we have a comprehensive risk management program" is it saves the city \$9 to \$10 for every \$1 of operating expenses, Mr. Vance said.

"You can't wait until the budget starts getting cut to start telling people, because nobody will believe you. That's been my message for the 25 years I've been here: Our primary purpose is to save money," Mr. Vance said.

The tough economy has not yet had a drastic effect on Santa Monica, Calif. "As far as risk management's concerned, the insurance marketplace is in a soft-market cycle," which is expected to continue for the foreseeable future, said Tom Phillips, the city's risk manager.

"I really haven't seen any effects," said Phillip Van Dyke, Grand Rapids, Mich.-based risk coordinator for Kent County. "If there are any effects, it'll be somewhat buffered. We have a small operation and we're getting by with a small department here in risk management."

"I have not seen any direct effect where they're feeling a real pinch," said Thomas O'Connell, Chicago-based senior vp with Aon Corp. "I think if we see something, maybe we'll see it in the fourth quarter."

In Lake Charles, La., "We seem to have been insulated from major effects of the recession. There is a lot of post-hurricane construction that is still going on here," said Ron Hayes, risk manager for the Calcasieu Parish School Board.

However, he said of the area affected by Hurricane Rita in 2005, "I'm sure there will come a time when the post-hurricane funding evaporates and we'll get back to a more consistent pattern" and feel the effects of the economic slowdown.

—By Judy Greenwald



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Pools retain unique pull despite soft commercial market

Knowledge of public entity risks, stability uphold retention rates

By MARK A. HOFMANN

Public entity insurance pools have demonstrated membership stability despite the soft property/casualty market, observers say.

Reasons for the pools' staying power include municipal risk managers' search for stability regardless of market conditions and that pools understand the often unique risks that public entities face. In addition, observers say pools often penalize members that leave by retaining the part of the member's equity in the pool and forbid them from rejoining the pool for two or three years.

'I think the lesson we learned is getting out of a pooling arrangement is really what should be talked about and understood before you ever get into the pooling arrangement.'

Don Dodson
City of La Mesa, Calif.

In fact, some pools are taking advantage of opportunities presented by the soft market. They're buying reinsurance at lower prices with better terms, and passing the savings on to members as enhanced coverages.

Harold Pumford, chief executive officer of the Assn. of Governmental Risk Pools, said the Prague, Okla., organization has "just over 480 pools in our database. I suspect there are probably around 550 depending on how you want to identify them."

The authority granted to pools varies widely, said Dorothy Gjerdrum, executive director-Public Entity & Scholastic Division of Arthur J. Gallagher Risk Management Services Inc. in Minneapolis. "They're formed by state statute and can't share risk across state lines," she said. The pools tend to be "very focused," with some permitted to serve only certain types of entities.

Inter-pool competition

In some cases, pools compete among themselves rather than with traditional insurers.

"In California, I have not seen a lot of new commercial market activity luring members from pools to the commercial marketplace," said Michael Kaddatz, managing director with ARM Tech/Aon Glob-

al Risk Consulting in Lake Forest, Calif. "What has happened is some organizations that have been in pools for substantial periods of time have decided to evaluate alternatives and, in doing so, a portion of them have changed to a different pool."

But such switching does not depend on market conditions, said Sarah Perry, risk manager for Columbia, Mo., and incoming president of the Public Risk Management Assn. "There are people

trying to do that, but it happens during the softer and harder markets. One pool said it loses 2% annually."

Exit can be costly

Leaving a pool is not a decision to be made lightly, said Don Dodson, risk manager for La Mesa, Calif. Because of dissatisfaction with the funding formula used by the California Joint Powers Insurance Assn., of which the city had been a member since 1987, La

Mesa transferred to the Public Entity Risk Management Authority in 2002.

"I think the lesson we learned is getting out of a pooling arrangement is really what should be talked about and understood before you ever get into the pooling arrangement," Mr. Dodson said. "Getting in is really about getting out. You hope you never have to do that, but in the course of business, the pool and the member of the pool may move apart from

each other's core business."

"The whole challenge for governmental risk managers is to help their entities take a long view, and that's tough to do. You have a financial pressure to reduce outflow and a risk financing option arrives at your doorstep that looks like it will save money in the short run. And the executives are making decisions about police and fire and EMS coverage, and they look at

See **POOLS** next page

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Pools: Stability trumps pricing for public entities

CONTINUED FROM PREVIOUS PAGE

that reduction and say, 'Great. We can take on three more paramedics,' " Mr. Dodson said.

But such decisions sour when the losses catch up and that low-cost risk transfer to a pool becomes much more expensive, he said.

"The retention rates in pools remain in the high 90s in both hard markets and soft," said David Ritch, executive vp and national practice leader of Willis Pooling Practice in Ewing, N.J. "I think there are so many more services and advantages to being in a pool vs. not being in a pool."

Mr. Ritch said new players attempted to enter the public entity risk pool arena during previous soft cycles. "But we're really not seeing that anymore, not nearly like it was in past cycles. The pools have gotten so strong that it's very difficult to break into that marketplace," he said.

"Competition is a little more tough, but I think that is not only true for pools but the commercial market in general," said Sheryl Brandt, director of claims and risk management at Enduris Washington, a Spokane, Wash.-based pool with more than 400 members.

"We pride ourselves on stability and being fair to all of our members across the board," Ms. Brandt said. "In the commercial market, they identify prime accounts they want and cut prices to get them. We don't do that. Our goal is to be stable and fair to everyone in the soft and hard markets."

"Government entities find it important to have stable prices. They have to budget every year," Ms. Brandt said. "We're able to give them that year after year."

"Pools have really learned how to underwrite their members," said AGRIP's Mr. Pumford. "When they see people coming in and offering a member considerably less cost, it's usually not that upsetting because I'm pricing someone at \$20,000, I have been providing the coverage for 20 years and I know that's the right number. If someone else comes and offers to write them for \$15,000, I'm not going to get upset because I know they're going to take a loss."

'Better off without them'

More than 20 years ago when he was executive director of the Oklahoma Municipal Assurance Group, Mr. Pumford said, "We lost 40% of members over a two-year period to price competition from the traditional marketplace. We actually improved our financial position. Again, if they're writing somebody for \$20,000 and I was losing money on them at \$20,000, then I'm going to be better off without them." He said all the business lost to the traditional market returned to the pool within four years.

Pools are designed to provide the stability their members seek, Ms. Gjerdrum said. "They don't like to

have their members in and out—it creates instability in pricing and creates a lot more work for management on the problems because if a pool is getting ready to return equity, the formulation can be much more complicated if they have members who were part of the pool and then they left and then they came back."

"One of the strengths is it's a not-for-profit business. At the point of time it makes sense to give some of that money back, the pool board has to decide how to give that money back," Ms. Gjerdrum said. "A lot of pools were formed to try to create stable pricing. They didn't always want to be the cheapest, but they wanted to be stable. If you have members in and out, it makes that more difficult."

"Generally pools don't chase price competition," agreed Mr. Pumford. "Certain, secure, stable—that's what pools are about."

But the pools themselves are profiting from soft market conditions.

"It's having a positive impact on

'In the commercial market, they identify prime accounts they want and cut prices to get them. We don't do that. Our goal is to be stable and fair to everyone in the soft and hard markets.'

Sheryl Brandt, Enduris Washington

pools mainly because the terms and conditions of their own reinsurance are improving," said Willis' Mr. Ritch. "We're seeing more enhanced limits, sublimits, better pricing and broader coverage. Some pools are even lowering retentions."

The soft market has "enabled us to do a couple different things," said John Sallade, managing director-insurance programs at the County Commissioners Assn. of Pennsylvania in Harrisburg, Pa. One of those was to negotiate a multiyear reinsurance contact.

"We just finished our June 1 reinsurance renewal, and we were able to lock in a two-year rate for our excess liability coverages," Mr. Sallade said. "That allows me to have stabler rates. We were also able to enhance some coverages on both the liability side and the property side."

Mr. Sallade said 42 of Pennsylvania's 67 counties belong to the CCAP pool. "We only have two members that are looking" at alternatives, he said.

International NEWS

Class action legislation gains new life in France

Plan would limit suits to consumer groups and omit punitives

By **ANDREW ROSENBAUM**

PARIS—An effort is again under way in the French Parliament to institute the use of class action lawsuits in specific circumstances.

The main proposal—which takes the form of an amendment to the Law on Economic Modernization bill currently under consideration at the National Assembly, the lower house of the French Parliament—would allow consumer associations to make use of class action suits.

But the bill, if passed, is not expected to have a significant impact on corporate liability, observers say.

The bill was adopted last month by the parliamentary committee National Assembly Commission on Economic Affairs.

National Assembly debate on the bill was delayed for procedural reasons. If the bill passes the National Assembly, it must then be heard by the French Senate before becoming law.

Even if the bill is not passed in this form, French Justice Minister Rachida Dati said he intends to make class action suits part of French law, at least for the use of consumer associations, in a different framework.

“We expect class action suits to become part of French law this year in one form or another,” said Laurence Fassier, a lawyer specializing in class actions with the Paris office of law firm Jones Day.

“But under no circumstances will the legislation give rise to a wave of litigation in the style of U.S. class action suits. Punitive judgments, which give rise to huge indemnities in the United States, will not be permitted here,” Ms. Fassier said.

Risk managers in France say the legislation will not give rise to major changes in insurance rates or in risk management operations.

“Because, under whatever version of the law we finally see, there will be no punitive judgments and because indemnity will be limited to material damages suffered by the consumers, we do not expect to see any major change in insurance

practice,” said Guillaume Deschamps, D&O practice leader, Marsh France S.A., the Paris-based arm of Marsh Inc.

“Moreover, risk managers have already taken into account this kind of risk in their consideration of corporate governance practice. So we do not expect much change when class action suits become possible for consumer associations,” he said.

The current move to create class action suits in France began in 2005, when then-president Jacques Chirac announced his support for such legislation. A bill instituting it was proposed in March of last year, but that bill—which called for much broader application of class



The move to create class action suits in France began in 2005, when then-President Jacques Chirac announced his support of such legislation.

action suits and more considerable indemnities—was defeated in the Assembly in the same month.

The current amendment to the Law on Economic Modernization, as proposed by political party Union pour la Mouvement Populaire leader Jean-Paul Charié, offers a more limited perspective than the previous bill.

“The bill creates the possibility for consumers to obtain an indemnity that is equal to the material damages that they have suffered, whether by professional negligence, or by commercial practices, or by anti-competitive practices,” Mr. Charié said.

Consumer association leaders also are eager to see class actions in France, said Reine-Claude Mader, president of the Paris-based association Consumation, Logement, et Cadre de Vie: “This will bring a great improvement to consumer law. Consumers who suffer similar damages will be able to seek help from consumer associations which can represent them in a single lawsuit.”

Pension rulings swing to employers' favor

By **GLORIA GONZALEZ**

TORONTO—Recent Canadian court decisions have given greater weight to the rights of employers in pension disputes, but they may be too late to reverse the decline of defined benefit plans, pension experts say.

Between the mid-1980s and 2005, Canadian court decisions in pension cases fiercely guarded the rights of plan members. But more recent decisions from the Supreme Court of Canada and the Ontario Court of Appeal have recognized the rights of plan sponsors.

One of the first court decisions protecting plan member rights at the expense of employers came in a 1986 decision in *Collins et al. vs. Pension Commission of Ontario*, where the Ontario Divisional Court ordered Dominion Stores to pay back about \$40 million Canadian (\$39.6 million) in pension surplus the company withdrew from its pension plan without notifying its employees.

The Supreme Court of Canada dealt a blow to plan sponsors in 2004 when it ruled in *Monsanto Canada Inc. vs. Ontario (Superintendent of Financial Services)* that surpluses be distributed in partially wound-up pension plans (*BI*, Aug. 9, 2004). According to employers, the *Monsanto* decision highlighted the asymmetry of pension surplus/deficit ownership, in which sponsors must pay off plan deficits but may not be entitled to surpluses.

These decisions “made things very difficult for employers to maintain these defined benefit plans,” said Bethune Whiston, a partner and manager of the Toronto pension legal team of consulting firm Morneau Sobeco.

While it is difficult to argue that courts should not protect the rights of employees who are up against employers with greater resources, it will not help employees if defined benefit plans disappear because of the expense and lack of recognition of employer rights, she said.

In Ontario, home to the majority of defined benefit plans in Canada, the percentage of employees in defined benefit plans declined from 44.1% in 1992 to 32.5% in 2006, according to Statistics Canada, the government statistics agency. The decline was pronounced in the private sector, which saw the percentage of employees in the plans drop from 38.6% in 1992 to 29.2% in 2006.

The Canada Supreme Court and the Ontario Court of Appeal, though, have issued decisions in the past few years that give more weight to employers' rights, pension experts say.

In *Burke vs. Hudson's Bay Co.*, the Ontario Court of Appeal last month ruled that the employer does not have to share a portion of its pension surplus with employees of a unit it sold two decades ago and was entitled to pay expenses from the pension fund (*BI*, May 26). The *Burke* decision followed the Court of Appeal's July 2007 ruling in *Kerry (Canada) Inc. vs. DCA Employees Pension Committee* that the company was allowed to pay plan expenses from its pension fund after taking into account the fund's surplus. (*BI*, June 11, 2007). The *Kerry* decision is being appealed to the Supreme Court.

“This is the court's attempt to try to preserve the DB system,” said Mitch Frazer, chair of the strategic communications committee of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada.

Allowing employers to pay expenses from plans—as well as take contribution holidays—is a critical factor in encouraging plan sponsors to maintain and adequately fund defined benefit plans, said Mr. Frazer, a partner in the pension and employment practice of Torys L.L.P. in Toronto.

The Supreme Court, meanwhile, in 2006 issued two rulings in pension cases seen as generally favor-

See **PENSIONS** next page

CANADIAN RULINGS

Canadian pension cases have evolved from being strongly protective of plan members' rights to recognizing the rights of employers in pension plan management.

CASE *Collins et al. vs. Pension Commission of Ontario* (1986)
COURT Ontario Divisional Court
WINNER Plan members

CASE *Schmidt vs. Air Products of Canada Ltd.* (1994)*
COURT Supreme Court
WINNER Split decision

CASE *TSCO of Canada Ltd. vs. Chateaufort* (1995)
COURT Quebec Court of Appeal
WINNER Plan members

CASE *Hockin vs. Bank of British Columbia* (1995)
COURT British Columbia Court of Appeal
WINNER Plan members

CASE *Froese vs. Montreal Trust Co. of Canada* (1996)
COURT British Columbia Court of Appeal
WINNER Plan members

CASE *Kent vs. Tecsyn* (2000)
COURT Ontario Divisional Court
WINNER Plan members

CASE *Markle vs. City of Toronto* (2003)
COURT Ontario Court of Appeal
WINNER Plan members

CASE *Aegon Canada Inc. and Transamerica vs. ING Canada Inc.* (2003)
COURT Ontario Court of Appeal
WINNER Plan members

CASE *Monsanto Canada Inc. vs. Ontario* (2004)
COURT Supreme Court
WINNER Plan members

CASE *Baxter vs. Superintendent of Financial Services* (2004)
COURT Ontario Divisional Court
WINNER Employer

CASE *Hembruff vs. Ontario Municipal Employees Retirement Board* (2005)**
COURT Ontario Court of Appeal
WINNER Employer

CASE *Rogers Communications Inc. vs. Buschau* (2006)**
COURT Supreme Court
WINNER Employer

CASE *Bisailon vs. Concordia University* (2006)**
COURT Supreme Court
WINNER Employer

CASE *Kerry (Canada) Inc. vs. DCA Employees Pension Committee* (2007)**
COURT Ontario Court of Appeal
WINNER Employer

CASE *Burke vs. Hudson's Bay Co.* (2007)**
COURT Ontario Court of Appeal
WINNER Employer

*Ruling that classic trust principles apply to pension plans created certain problems for employers, but allowed plan sponsors to use surplus to take contribution holidays.

** Overturned lower court ruling in favor of plan members.

Source: Court filings

Cooper Gay wraps 'significant' buy

By **SARAH VEYSEY**

LONDON—London-based brokerage Cooper Gay & Co. Ltd. has acquired the aerospace, U.K. wholesale and reinsurance business of Heath Lambert Group Ltd.

Cooper Gay said it also purchased parts of London-based Heath Lambert's global business solutions unit. Deal terms were not disclosed.

Cooper Gay said in a statement that the acquisition would increase its revenues by more than £8.5 million (\$16.8 million) and noted that 70 of Heath Lambert's staff will transfer to Cooper Gay in London.

Heath Lambert said for the year ended Dec. 31, 2007, its U.K. retail, personal lines and employee bene-

fits/consulting division contributed about 85% of the group's income. The brokerage reported U.K. operating revenue of £113.1 million (\$223.0 million) for that year.

London-based Heath Lambert—which several years ago was the subject of rumors of a takeover by London-based Jardine Lloyd Thompson Group P.L.C.—and Cooper Gay, an independent brokerage founded in 1965, began talks earlier this year.

“We are delighted to have completed this very significant acquisition and look forward to working with our new colleagues as we continue to develop and grow our business,” Toby Esser, chief executive officer of Cooper Gay, said in a statement. “The resources we have

acquired are a perfect fit with our existing operations, strengthening our aerospace, professional risks, and nonmarine reinsurance teams, while also creating a strong U.K. wholesale division for Cooper Gay,” he added.

“From our perspective, we have made no secret of our plans to become a U.K.-focused retail insurance broker and employee benefits consultant, so this sale represents another milestone in achieving that objective,” Adrian Colosso, CEO of Heath Lambert, said in a separate statement. “But we are keen to reiterate that we will retain a number of specialty wholesale lines of business and that our commitment in these areas of our work remains as strong as it has ever been,” he added.

Commentary

Tech-savvy Millennials set to change business

Over the past few years, as insurers and reinsurers have learned lessons from events like the Sept. 11, 2001, terrorist attacks and anticipated the possibility of global pandemics, there's been a lot of discussion of "clash" risks—exposures in which a single event might hit across multiple lines.

I think business might be looking at the arrival of another sort of clash risk—one without the tragic elements of an act of terrorism or the global calamity of a pandemic, but one companies had still best take seriously.

I speak of the new generation of workers and consumers poised to replace baby boomers as we reluctantly give up the position of influence we've grown so accustomed to over the past few decades (even if that influence was bestowed on us by dint of sheer numbers).

Business, prepare for the Millennials.

The impact of the Millennials—the generation born roughly between the late 1970s or early 1980s and the mid-1990s and coming of age as the 21st century begins—is one likely to touch most any business, I think.

As I see it, the clash element in this exposure stems from the fact that the Millennials' arrival exposes businesses to multiple risks, spanning areas such as talent, marketing and technology.

At the annual ACORD LOMA conference last month in Las Vegas, it was obvious that Millennials are very much on the minds of several technology companies, influencing their approach to the solutions they're looking to offer business clients.

Microsoft Corp. is among them. Bill Hartnett, U.S. insurance industry solutions director at Microsoft Corp., noted the impact this next generation's expectations and experiences will have on the insurance industry.

A survey Microsoft conducted earlier this year of adult Millennials—those 18 to 27 years old—shows the issue cuts both ways in terms of the industry's meeting its talent needs and in serving the next generation of insurance buyers.

Among other things, the survey showed that 91% of those questioned said access to newer, innovative technologies would make them more likely to consider potential job opportunities.

Survey respondents also indicated they see the industry's adoption of various technology-based customer service tools as an important issue, with 89% saying they think it's important that insurance companies pro-



RODD ZOLKOS

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vide Web-based customer support; 86% saying it's important that insurance companies offer customers personal Web portals on which they can view their accounts; and 76% saying it's important insurers offer live online chats with agents.

While the survey focused on the insurance industry, I think it's pretty clear that the attitudes Millennials expressed will have an impact on a wide range of businesses.

The Millennials' arrival exposes businesses to multiple risks.

On the plus side, with that risk comes opportunity.

Also at ACORD LOMA, I spoke with Mark W. Lewis, general manager, global insurance industry, at IBM Corp., who described the issue as one of digital immigrants vs. digital natives.

As a baby boomer, I fit into the digital immigrant category. Folks like our young co-workers just starting their adult lives and careers—who've grown up with personal computers and can text message like the wind—are the digital natives.

"In a few more years, you're going to have far more people who don't even think about technology," Mr. Lewis said. For the digital natives, IT is just a fact of life, not something that catches their attention.

The opportunity, I think, is that while this next generation will impose technological demands on businesses, both as employees and consumers, their sheer familiarity with it might allow them to see applications we graybeards might miss.

Or, as Mr. Lewis put it, "One of the advantages that the digital natives will have is the more the business executive knows about technology, the better decisions he'll make about what is possible."

Market Moves

WellPoint acquires DeCare Dental

EAGAN, Minn.—Indianapolis-based WellPoint Inc. has acquired DeCare Dental, an Eagan, Minn., dental plan administrator that handles 4 million members in 22,000 employer groups.

As a result of the acquisition, WellPoint said it will provide and administer dental benefits to 9 million members, and build on the medical coverage it already provides.

Merger forms Arete broker, consultant

DENVER—Three companies have merged to form Arete Partners L.L.C., a Denver-based boutique insurance brokerage and consulting firm. Arete Human Capital Consulting in Denver; Diversified Insurance Services of Castle Rock, Colo.; and WSF Financial Services of Chicago merged to form Arete.

The new entity will provide insurance brokerage, benefits consulting and financial services to clients in the Americas.

Based in Denver, Arete will have an office in Chicago and plans to open offices in Los Angeles and Mexico City this fall. The Denver office is located at 16 Market Square, 1400 16th St., Suite 400, Denver, Colo. 80202. Its phone number is 720-932-8010, and its fax number is 720-932-8100.

Gallagher acquires Missouri-based broker

LIBERTY, Mo.—Arthur J. Gallagher & Co. said it has acquired Specialty Risk Inc., a retail brokerage based in Liberty, Mo. that provides risk management and commercial property/casualty insurance

products and services.

It specializes in occupational accident, corporate and fleet workers compensation, physical damage and nontrucking liability insurance for independent contractors, fleet and company drivers, and motor carriers.

Terms of the purchase by the Itasca, Ill.-based brokerage were not disclosed.

Specialty Risk will continue to operate out of its current location. Michael Henthorn, south central regional manager for Gallagher's retail property/casualty brokerage operation, will direct the office.

Ascension purchases Employers Mutual

STUART, Fla.—Ascension Insurance Inc. said it has acquired Stuart, Fla.-based Employers Mutual Inc. for an undisclosed price.

Ascension is a Kansas City, Mo.-based insurance and employee benefits agency providing brokerage and risk management services to middle-market companies.

Employers Mutual specializes in self-funded workers compensation, employee benefits, property/casualty and liability brokerage services.

California brokers join forces

SAN DIEGO—San Diego-based brokerage Barney & Barney L.L.C. has merged with Saylor & Hill Co., an Oakland, Calif.-based brokerage. The combined companies will provide insurance, risk management and employee benefit services.

They will retain their names, offices, staff and management.

FP Marine Risks adds Sydney office

SYDNEY, Australia—FP Marine Risks Ltd., a Hong Kong-based marine insurance broker, has opened an office in Sydney, Australia. It is the company's sixth international office and second in Australia.

Tim Cutler, will lead the new office as assistant general manager

"Sydney is a strategically important insurance center in Australia and the Sydney office will play an integral role in strengthening our existing relationships," said Phillip Bilney, group executive director for the company that also is a Lloyd's of London broker. "We are particularly excited by the opportunity this gives us to accelerate the introduction of new products and initiatives throughout the region."

Krauter & Co. adds West Coast offices

NEW YORK—Krauter & Co., an insurance and benefits broker specializing in mergers and acquisitions and a member of New York-based Krauter Group, has set up new offices in Kirkland, Wash., and Redwood City, Calif.

The Washington state office is at 5400 Carillon Point, Building 5000, 4th floor, Kirkland, Wash. 98033. The phone number is 425-576-4000 and the fax number is 425-576-4040.

The California office is at 303 Twin Dolphin Drive, Suite 600, Redwood City, Calif. 94065. Its phone and fax are, respectively, 650-632-4532 and by fax at 650-632-4433.

Ohio Casualty expands to Va.

GLEN ALLEN, Va.—Ohio Casualty, a Fairfield, Ohio-based Liberty Mutual Agency Markets regional company, has opened a branch office to provide commercial lines and inland marine underwriting services for agents in central and southern Virginia.

The office at 301 Concourse Blvd., Suite 240, Glen Allen, Va. 23059, will provide access to fidelity, surety, excess casualty and unsupported umbrella products from Liberty Mutual.

Janet Buchanan will manage the branch's staff of 11 people, and the company anticipates the office eventually will become a regional office. The office phone number is 804-270-2671 and the fax number is 804-527-4359.

Pensions: Recent rulings favor employers

CONTINUED FROM PREVIOUS PAGE

able to employers.

In *Rogers Communications Inc. vs. Buschau*, it overturned an appeals court ruling that pension plan members could invoke a common law rule permitting members to force termination of the trust and access the pension plan's surplus. In *Bisailon vs. Concordia University*, the Supreme Court decided that a unionized member of a pension plan could not institute a class action to challenge amendments to the pension plan (*BI*, July 10, 2006).

The decisions reflect a shifting mindset on the need to balance the rights of employers and plan members, led by Eileen E. Gillese, the Ontario Court of Appeal justice who wrote the opinions in *Kerry* and *Burke*, pension experts say. Judge Gillese has extensive experience in pension matters, having been chair of the Pension Commission of

Ontario from 1994 to 1996 and the Financial Services Commission of Ontario—the provincial pension regulator—and the Financial Services Tribunal in 1998 and 1999.

"She has a very, very deep experience in this area, so her decisions carry quite a bit of weight because she understands the issues as only someone with that level of experience can," said Ian McSweeney, co-chair of the pensions and benefits practice of Osler, Hoskin & Harcourt L.L.P. in Toronto.

What effect the legal trend will have on the decline of defined benefit plans in Canada is uncertain, pension experts say. If the Supreme Court upholds the Ontario Court of Appeal ruling in *Kerry*, that will be an important step in the preservation of the defined benefit plan system, Mr. Frazer said.

The Court of Appeal decisions are generally favorable to defined benefit plan sponsors and may help

reverse the trend, but employers typically do not make plan decisions based on a few court rulings, said David Vincent, senior partner and co-chair of the pensions and benefits group of Ogilvy Renault L.L.P. in Toronto.

Questions raised in the court decisions may need more litigation to be resolved and may not go in employers' favor, experts say.

"I don't know that I necessarily agree that courts are becoming more employer friendly," said Randy Bauslaugh, a partner in the pensions and benefits practice of Toronto-based Blake, Cassels & Graydon L.L.P. "It's like employers get two steps forward and one step back."

By the time the courts resolve the complexities of defined benefit plans, sponsors may have already decided they are too complicated and expensive to maintain, he said.

"I think it's too late for defined benefit plans," Mr. Bauslaugh said.

Presumption: More states passing laws on firefighter workers comp benefits

CONTINUED FROM PAGE 1

cancer and heart attacks are prevalent in the general population. In some states, the presumptions are not refutable.

While some states have had presumptive statutes for decades, the IAFF has aggressively lobbied state legislatures in recent years to enact new presumption laws or add presumptions to existing statutes.

On its Web site, the Washington-based IAFF points to growing scientific evidence of the increased risk among firefighters of infectious disease, heart disease, lung disease and cancer as the catalyst behind its push for presumption legislation.

Most recently, researchers reporting in the May issue of the American Journal of Industrial Medicine found that full-time firefighters in Massachusetts have higher-than-expected rates of colon, brain, bladder and kidney cancers and Hodgkin's lymphoma than the general population in the state.

Repeated calls seeking comment from the IAFF, which hailed the Massachusetts research, were not returned.

In May, Connecticut became the latest state to enact a presumption law within its workers comp statute. The law establishes a rebuttable presumption for municipal firefighters, police officers and constables who suffer a cardiac emergency while on duty.

Connecticut's law is a compromise between the firefighter and police unions and the Connecticut Conference of Municipalities lobby, which vehemently opposed the original bill that also sought presumptive status for hepatitis, meningitis, tuberculosis, hypertension, heart disease, multiple myeloma, non-Hodgkin's lymphoma, prostate cancer and testicular cancer.

Last year, Colorado enacted a law establishing a rebuttable presumption for firefighters who contract cancer of the brain, skin, digestive system, hematological system or genitourinary system while on the job.

County's wellness program used to curb comp costs

The Orange County Fire Authority is taking steps toward combating costs associated with California's presumption statute.

Under California's Labor code, if a firefighter contracts any form of cancer, heart-related disease or a blood-borne infectious disease, it is presumed to be job-related and compensable under workers compensation, unless the public entity can present evidence to the contrary.

"It's very much of a concern" not only from a cost standpoint but also from a safety standpoint, said Fausto Reyes, risk manager of the Irvine, Calif.-based fire authority. "If these are presumptive illnesses, what are we doing about it to prevent them?"

Four years ago, the fire authority instituted a wellness and fitness program—called

WEFIT—to help improve the health and well being of its firefighters and to mitigate its presumption liability.

Under the program, firefighters voluntarily undergo a medical examination, blood work, a fitness test, immunization and disease screening and lifestyle counseling every other year, Mr. Reyes said, noting that the authority regularly gets 90% participation among its firefighters.

The thought is "if we spend a little money on prevention, that's going to help us reduce our costs," he said.

And it has.

Over the past three years, OCFA has seen roughly a \$1 million drop in its workers comp reserve each year, he said. "We've really caught some guys with heart disease" before they had an episode.

—By Sally Roberts

And Vermont expanded its firefighter presumptions last year to include leukemia; lymphoma; multiple myeloma; and cancers of the bladder, brain, colon gastrointestinal tract, kidney, liver, pancreas, skin and testes. Heart injuries or diseases that become symptomatic within 72 hours of the firefighter's on-duty service already are presumed to be work-related in the state.

Critics say the liability associated with covering these conditions in the workers comp system is too costly for the public entities that employ emergency responders.

"It's a huge cost factor" for municipalities, said Cathy Spain, director of member programs for

Presumption laws that shift the burden of proof are 'a significant hurdle for employers to overcome. You're having to prove something that is difficult to prove.'

Ron Thomas, Connecticut Conference of Municipalities

the National League of Cities, a Washington-based advocacy group. "What happens is, instead of

dealing with this medical issue in the health care system, it's dealt with through the workers compensation system," Ms. Spain said. So "where you have managed care in the health care system, you might not, depending on the state, have managed care in the workers comp system. Additionally, you have the indemnity that might be paid as a result of it being in the workers comp system."

"These things are extremely costly to municipalities," said Ron Thomas, manager of state and federal relations for the CCM, a New Haven, Conn.-based association of 150 towns and cities. CCM, which offers a workers comp pool, lobbied on behalf of public entities in Connecticut's presumption bill battle.

The number of claims increased significantly after Connecticut passed its heart disease and hypertension presumption for firefighters and police officers in 1977, Mr. Thomas said. The state's General Assembly eliminated the entitlement for new firefighter and police hires after July 1, 1996, as part of its property tax reform initiative.

According to CCM's risk pool—the Connecticut Interlocal Risk Management Assn., which administers heart disease and hypertension claims for about 25 municipalities—such claims have totaled about \$98 million in accrued liability to date for those towns and cities.

Bad public policy

Not only do presumption statutes cost municipalities millions of dollars, "we think it's bad public policy to give a certain class of employees special benefits when there's not any conclusive medical evidence to support it," Mr. Thomas said. He said that for every study that proponents cite in claiming that firefighters are at greater risk of certain diseases, opponents can point to studies claiming the opposite.

For example, while researchers from the University of California recently concluded that retired firefighters may be at a higher risk of developing bladder cancer, a 2006 study by the University of Cincinnati found that firefighters were unlikely to contract bladder cancer as a result of fighting fires.

That university study, however,

did say that firefighters had a greater likelihood of developing multiple myeloma, non-Hodgkin's lymphoma, prostate cancer and testicular cancer.

"Any police officer or firefighter who contracts some sort of disease is eligible to receive benefits under the current workers compensation system" if they can prove that the disease is work-related, Mr. Thomas said. Presumption laws that shift the burden of proof are "a significant hurdle for employers to overcome," he said. "You're having to prove something that is difficult to prove."

Ray Sibley, director of risk management for the city and county of Denver, said he's concerned about Colorado's presumption law, but said "it was a much bigger issue" when he worked in the risk management department in Washoe County, Nev.

In Nevada, if a police officer has a heart attack, it is conclusively presumed to be job-related after he or she has been on the job for five years, meaning it is not refutable, Mr. Sibley said.

"While I was in Washoe County, we had five or six heart attacks and, if I recall, the potential value for each averaged about \$1 million," Mr. Sibley said. In Colorado, if a police officer has a heart attack, it is compensable only if it was caused by an unusual exertion arising from and during the course of the job. "It's very different," Mr. Sibley said, noting that the burden of proof is on the police officer. "I had two cases in Nevada where a deputy sheriff was sitting at home watching TV and had a heart attack," and the cases were covered under workers comp.

"Colorado has done a really good job when it comes to heart attacks compared to other states," Mr. Sibley said.

As for Colorado's new firefighter cancer presumption statute, he said no claims have been filed yet.

"We are concerned about it," Mr. Sibley said, noting that Denver self-insures its workers comp risks up to the first \$2.5 million per occurrence. "But the bottom line is that a firefighter is one of my employees and if he thinks he got cancer as a result of his job, and he did, then I'm going to cover it."

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Depression: Employer coalition tests treatment program

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and Wells Fargo Bank N.A.

Most of the state's health plans have committed to contributing to the pilot in 2010. In addition, the Minnesota Department of Health Services will participate and incorporate the state's Medicaid population into the program, said Carolyn Pare, chief executive officer of BHCAG.

Although the BTE initiative is believed to be the first pay-for-performance program involving depression in the United States, at least one other employer coalition tried to address the costly condition.

From 2000 to 2005, the Kansas City, Mo.-based Mid-America Coalition on Health Care operated a pro-

gram that aimed to destigmatize depression among doctors and employees to ensure people in need were getting appropriate treatment. In particular, the program involved educating doctors about coding depression medical claims to ensure they would be reimbursed sufficiently for the extra time and attention needed to achieve that diagnosis. The program used the PHQ-9 as a diagnostic tool.

But the program didn't produce the desired results, said William Bruning, CEO of the coalition.

Even after doctors were told how to diagnose and bill for treatment, "the practice patterns did not change. In fact, the number of claims with a diagnosis of depres-

sion actually went down by a fraction of a percent," Mr. Bruning said.

He speculated that the main reason for the failure was that most benefit plans do not provide sufficient coverage for depression treatment, leading many patients to dissuade their doctors from applying that diagnosis.

"I salute them for trying," Mr. Bruning said of the BTE initiative. "But what is really needed to ensure that more people are treated for depression is a value-based benefit plan design."

Francois de Brantes, CEO of BTE, acknowledged that inadequate coverage could be a barrier to treatment for some patients. However, "we have the same issues in treatment of

all the chronic illnesses," such as diabetes, and BTE's pay-for-performance programs have achieved positive results despite benefit plan design, he said.

BTE cannot dictate that employers participating in its pay-for-performance initiatives alter their benefit plans to provide better coverage to encourage patient compliance with treatment, he said. BTE does, however, encourage employers to foster consumerism among their employees while urging doctors to do a better job of diagnosis and treatment, he said.

"But if you do one and not the other, you're always going to run into a limiting obstacle," Mr. de Brantes said.

Rights: Employers likely to see more claims under Civil War-era law

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Although racial retaliation claims already are permitted under Title VII of the Civil Rights Act of 1964, plaintiffs likely would prefer suing under Section 1981 for several reasons, including a longer statute of limitations period and the absence of a cap on awards.

According to court papers, Mr. Humphries, who is black, was an associate manager at a Bradley, Ill., Cracker Barrel restaurant owned by Lebanon, Tenn.-based CBOCS. Mr. Humphries said after he protested the firing of a black food server, he was falsely accused of leaving a safe open and was immediately terminated from his job.

Mr. Humphries subsequently brought claims of discrimination and retaliation under both Title VII and Section 1981, but the 7th U.S. Circuit Court of Appeals in Chicago upheld a lower court's dismissal of the Title VII claims because Mr. Humphries failed to pay the filing fees on time. The appeals court, however, overturned the lower court's dismissal of the Section 1981 case and remanded it for trial on Mr. Humphries' retaliation claims.

The Supreme Court upheld the appeals court's decisions. The majority opinion said given prior court rulings—a principle of law known as *stare decisis*—and 1991 amendments made to the Civil War-era law, Congress “intended to restore” retaliation as a valid claim

under Section 1981.

The minority opinion criticized the majority for “retreating behind the figleaf of *ersatz stare decisis*.”

However, the majority ruled, “Principles of *stare decisis*, after all, demand respect for precedent whether judicial methods of interpretation changes or stay the same.”

Jonathan T. Hyman, an attorney with Kohrman Jackson & Krantz P.L.L. in Cleveland, said the decision is consistent with past court rulings on discrimination law. “I think it’s a fair reading of the statute to say that discrimination encompasses retaliation,” he said.

Observers say there likely will be more discrimination claims under Section 1981. The most significant reason may be the longer, four-year statute of limitations vs. 300 day-limit after the alleged discriminatory act to file a Title VII complaint with the Equal Employment Opportunity Commission.

Potential plaintiffs “have a longer time to think about it and, as a result, there’s an increasing likelihood of more claims being filed,” said Ron Chapman Jr., an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Dallas.

Employers may be faced with defending employment decisions made four years earlier “and who knows know if the supervisor and employees are still there,” still alive or in the same state, said Mr. Chapman.

Furthermore, under Title VII, depending on the size of the company, plaintiffs can essentially recover only up to \$300,000 in compensatory and punitive awards, but Section 1981 has no damage cap.

In addition, Section 1981 plaintiffs do not have to go through Title VII’s required administrative remedies. Title VII specifies employers receive proper notice of the complaint and provides a procedure to resolve disputes out of court, said Karen R. Harned, executive director of the National Federation of Independent Business Legal Foundation in Washington, which filed an amicus brief in the case on behalf of CBOCS. Under Section 1981, “the first notice of any claim in many instances could be through court papers,” she said.

Nadine C. Abrahams, an attorney with Jackson Lewis L.L.P. in Chicago, said retaliation claims accounted for 32% of all charges filed with the EEOC in 2007.

Cynthia H. Hyndman, an attorney with Robinson Curley & Clayton P.C. in Chicago, who represented Mr. Humphries, said the opinion “provides a lot of certainty to both workers and other contracting parties going forward, knowing they’ll be protected if they try to assert their right to be free of discrimination” in these situations.

CBOCS West Inc. vs. Hedrick G. Humphries, U.S. Supreme Court, 06-1431, May 27, 2008.

ADEA prohibits retaliation against federal employees

WASHINGTON—The Age Discrimination in Employment Act of 1967 prohibits retaliation against a federal employee who complains of age discrimination, even though retaliation is not explicitly mentioned in the law, the U.S. Supreme Court has ruled.

Last week’s 6-3 decision, which overturned a ruling by the 1st U.S. Circuit Court of Appeals, parallels the court’s decision in *CBOCS West Inc. vs. Hedrick G. Humphries* in which it ruled that racial retaliation claims are covered by federal law even though that law does not use the word “retaliation.”

The plaintiff in *Myrna Gomez-Perez vs. John E. Potter, Postmaster General* was a 45-year-old window distribution clerk for the U.S. Postal Service in Puerto Rico. Ms. Gomez-Perez filed an ADEA complaint after she unsuccessfully sought to return to a full-time position from a part-time position in 2002. She said she suffered various forms of retaliation after

she filed the complaint.

“In reaching this decision, we are guided by our prior decisions interpreting similar language in other antidiscrimination statutes,” the majority wrote in the opinion.

Joseph Guerra, an attorney with Sidley Austin Brown & Wood L.L.P. in Washington who represented Ms. Gomez-Perez, noted two appeals courts had split on this issue, unlike the *CBOCS West* decision, where there was a clear consensus among appeals courts that retaliation in racial cases is covered by Section 1981, a federal law based on the Civil Rights Act of 1866.

The ADEA, which applies to public and private employers, already explicitly prohibits reprisals against employees of private firms.

Myrna Gomez-Perez vs. John E. Potter, Postmaster General, U.S. Supreme Court, 06-1321, May 27, 2008.

—By Judy Greenwald

Modeling: Predicting storms more difficult as temperatures rise

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said there is continuing disagreement about why ocean temperatures have been above average between 1995 and last year, with debate centering on whether the temperature increase is part of a normal cycle or is due to climate change.

No simple answers

Two primary factors that influence hurricane activity are sea surface temperature and wind shear. Wind shear is a measure of the difference between weaker surface winds and strong winds in the upper atmosphere.

But the warming of the equatorial Pacific Ocean, known as El Niño, causes more wind shear and fewer Atlantic hurricanes. La Niña, which leads to cooling temperatures, generally means more hurricane activity.

What global warming “scenarios have in common is that most regions are warming,” said Peter Dailey, director of research and atmospheric science at AIR Worldwide Corp., a Boston-based unit of the Insurance Services Office Inc. While a warmer Atlantic means more storms, an El Niño that warms the Pacific results in wind shear in the Atlantic that holds down the development of hurricanes, he said.

“Ultimately, which one will win out is an area of active debate within the scientific community,” he



STORMY WATERS

Forecasts for the 2008 Atlantic hurricane season

	Named storms	Hurricanes	Major hurricanes
Tropical Meteorological Project, Colorado State University	15	8	4
National Oceanic and Atmospheric Administration	12-16*	6-9*	2-5*

*NOAA qualifies the prediction, saying there is a 60% to 70% likelihood the forecast be accurate.

Source: Colorado State University, National Oceanic and Atmospheric Administration

said. “It’s not so simple—most people want simple answers. The experts themselves have not reached a consensus on how a warming world will impact hurricane activity.”

“Understanding the science is not a problem; adapting the credible science into the models is a challenge, especially when the uncertainties are significant,” said Mr. Dailey. “When it comes to global

warming, what you see is that there are still a wide range of views on how a warming world will ultimately” affect hurricane formation and severity.

Trish Conway, a senior actuarial adviser with Ernst & Young L.L.P. in New York, noted that an article published online last month in the journal *Nature Geoscience* by a group of climatologists, including Thomas Knutson, a prominent research meteorologist with the National Oceanic and Atmospheric Administration in Princeton, N.J., held that “climate change may actually make Atlantic hurricanes rarer.”

Ms. Conway said the fact that some researchers hold that the impact of climate change won’t be felt until 2040 or 2070 may be lessening the urgency of the issue for insurers and reinsurers.

“When you hear a date like 2040, you have to look at the history of the insurance and reinsurance industry,” Ms. Conway said. While there is a desire to prepare for the future, there are a lot more imminent issues that must be addressed, she said.

Incorporating climate change

The developer of the first hurricane catastrophe model thinks climate change can become part of catastrophe modeling eventually.

“I do believe that there is a sound scientific approach for incorporating climate change,” said Karen

Clark, president of Boston-based Karen Clark & Co. “If we look at the most recent Intergovernmental Panel for Climate Change report, scientists currently believe that global warming is likely to lead to 2% to 5% increases in hurricane peak wind speeds over the next 20 years.”

“Losses are highly sensitive to wind speed, so a 2% increase in wind speed is likely to lead to a 10% increase in losses, and a 5% increase in wind speed could lead to a 30% to 40% increase in losses,” Ms. Clark said.

Ms. Clark has contributed to the IPCC’s work for more than a decade, and recently was recognized by the organization for the role her contributions played in the joint Nobel Peace Prize awarded to the IPCC and former U.S. Vice President Al Gore in 2007.

The wind speed increases are predicted to occur over a 20-year period, so they can be factored into the model “gradually over time as the trend unfolds and becomes clearer,” she said. “Rather than trying to predict what’s going to happen over short time period, we can monitor these changes over time and start building them into the model.”

Scientific information about the weather that causes catastrophes is limited, she said.

“What scientists don’t know about catastrophes is at least as much as they do know,” Ms. Clark said. “It’s called a model because it’s a simplification of reality.”

News In Brief

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risks funded through its Vermont captive. Heinz will use the captive, Heinz-Noble Inc., to reinsure long-term disability policies written by Liberty Life Assurance Co., a unit of Boston-based Liberty Mutual Group, and life insurance policies written by Connecticut General Life Insurance Co., a unit of CIGNA Corp. The move will affect about 8,100 individuals. In 2006, the Labor Department approved Heinz's request to use its captive to reinsure group term life insurance policies written by Minnesota Life Insurance Co. and covering about 9,300 individuals.

Oxford Health settles overcharging claims

Oxford Health Insurance Inc., a unit of UnitedHealth Group Inc., will refund \$50 million to small business customers in New York to settle claims it overcharged for health insurance policies in 2006, New York Gov. David Patterson said Thursday. The refunds will be paid to 36,746 policyholders of Oxford Health's small group Freedom Plan Direct, Freedom Plan Metro and Freedom Plan EPO plans. State officials estimate the refunds will average \$1,360 per business, which is about 5.5% of the total average annual premium in 2006.

Missouri names acting regulator

Missouri Gov. Matt Blunt last week named Linda Bohrer acting director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. Ms. Bohrer started work with the department in 1994 and currently serves as its director of insurance market regulation division. In 2000, she left the insurance department briefly to assist Missouri's office of administration but returned in 2002.

Vermont changes captives statute

Vermont Gov. Jim Douglas last week signed a bill making it easier for Vermont captive owners to merge

two existing facilities. The law, S.B. 284, reduces the amount of information required by regulators before approving the merger of two captives. The law also increases liability protection for special purpose financial captives. The measures will help Vermont's captive industry remain competitive, the state's Agency of Commerce & Community Development said in a statement.

Endurance Specialty COO Izard to retire

Daniel Izard, chief operating officer of Endurance Specialty Holdings Ltd., will retire Sept. 1, the company said Thursday. Mr. Izard joined the Pembroke, Bermuda-based property/casualty insurer in 2002 after 14 years as president and chief executive officer of Associated Aviation Underwriters Inc. Endurance has not named a successor and Mr. Izard's responsibilities will be assumed by other members of the insurer's executive team, Endurance said in a statement.

Starr International unit gets A rating from Best

Oldwick, N.J.-based A.M. Best Co. has assigned an A financial strength rating to Dallas-based Starr Indemnity & Liability Co., an indirect wholly owned subsidiary of Starr International Co. Inc. SILC was acquired by a Starr International unit last year and capitalized with \$200 million, according to Best senior financial analyst Jennifer Marshall. It now participates in quota-share reinsurance programs managed by a group of specialized insurance agency subsidiaries of Starr Underwriting Agencies L.L.C., a subsidiary of C.V. Starr & Co. Inc.

Guy Carpenter names CEO of Americas

Guy Carpenter & Co. L.L.C. on has named Andrew Marcell to lead its Americas broking operations. Mr. Marcell will succeed Britt Newhouse as chief executive officer of the unit and will oversee all of New York-based Guy Carpenter's treaty and broking operations in the United States, Canada, Latin America and Bermuda. Mr. Newhouse was recently named as Guy Carpenter's chairman. Mr. Marcell previously was CEO of the broker's continental European operations. He also held executive roles in Guy Carpenter's worldwide casualty specialty practices.

Eating: Coverage mandate

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ment and data analytics with the Willis Employee Benefits Practice in Atlanta, said self-insured companies' coverage for eating disorders or any other psychological or medical disorder typically hinges on whether care is delivered by licensed medical professionals. If so, care is usually covered, he said.

Representatives of Louisville, Ky.-based Humana Inc., Bloomfield, Conn.-based CIGNA HealthCare and Minnetonka, Minn.-based United HealthCare Services Inc. each said the health insurers cover treatment for eating disorders when it is supported by clinical evidence.

CIGNA's spokesman said it does not exclude coverage for such treatment. United HealthCare's spokeswoman said she is unaware of any benefits structure that excludes eating disorders from coverage. Humana's representative did not specify if any exclusions apply. Each cited programs already in place that integrate behavioral and medical care for eating disorders. All said they follow any statutes in states in which they operate.

State Rep. Fred Crespo, D-Springfield, the chief sponsor of the House legislation, said he found insurers for the most part offered minimal coverage to treat eating disorders. Few insurers cover the necessary initial counseling and treatment required for those with the disorder and instead provide coverage only when the disorder results in serious physical complications, he said.

A CIGNA spokesman said the insurer provides treatment in the absence of medical complications. The goal is to treat the disorder before it

creates a medical issue, he added.

Still, class-action lawsuits arguing that insurers have not provided adequate coverage for eating disorder treatments have popped up across the country in the past several years, prompting legislators to act.

Mark Denzler, vp of government affairs for the Springfield-based Illinois Manufacturers' Assn., said the trade association opposes health care mandates, including the one for eating disorders, because of the cost they impose on employers.

He said 15 to 20 mandates for coverage have already been introduced in Illinois this year for conditions ranging from autism to cochlear implants. State law already covers about 45 health-related mandates, causing coverage costs to rise and making employers choose whether they can afford to provide coverage, Mr. Denzler said.

"We certainly empathize with people suffering from eating disorders or other diseases, but it puts employers in a very difficult situation," Mr. Denzler said.

Ms. Grefe said she thinks insurers can save money in the long run if they cover early treatment of eating disorders, which can be deadly. For serious cases, inpatient treatment costs an average \$25,000 to \$30,000 per month, she said. Eating disorders also can have serious implications for a person's lifelong health, including fertility issues, kidney problems and heart failure, further compounding the cost of treatment.

"The expense in the long-term (health effects) is enormous," she said. "If we address these illnesses early, we would save financially, emotionally and every which way."

Massachusetts: Reform

CONTINUED FROM PAGE 4

with virtual unanimous support from Massachusetts lawmakers, while regulatory decisions made by the 10-member Health Insurance Connector Board, whose members have been appointed by both Republican and Democratic governors, have also been nearly unanimous, Mr. Kingsdale said.

Those members "come from very different walks of life and yet they found value in creating consensus," he said.

Plenty of challenges remain, Mr. Kingsdale said. The biggest is maintaining public support for the

reform law and finding the money to continue paying for it.

While annual cost increases per enrollee in the state-subsidized program for the low-income uninsured have been running in the 6.5% range, which Mr. Kingsdale described as reasonable and acceptable, overall costs have been higher than projected because more people enrolled in the program than was originally projected.

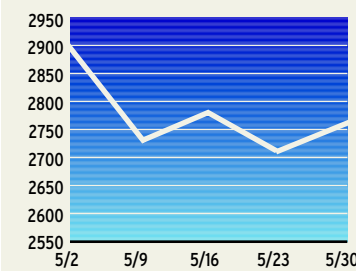
While the cost may be greater than expected, public support for the law has not eroded. The law "offers so much to so many people. Everyone has been willing to stay with it," Mr. Fishman said.

Stock Index

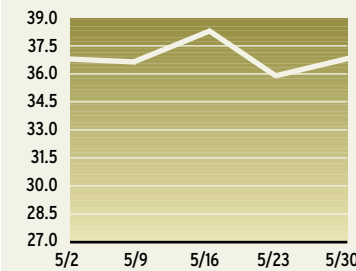
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

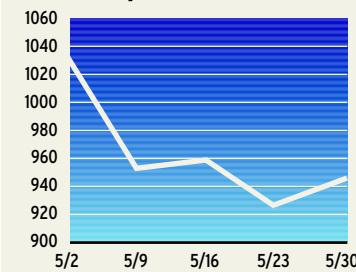
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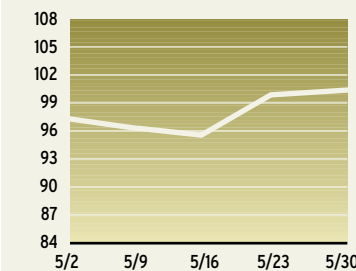
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BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	2767.31	▲ 2.04%
DOW JONES	12638.32	▲ 1.27%
S&P 500	1400.38	▲ 1.78%

LARGEST GAINS

Berkshire Hathaway	8.61%
United Fire & Casualty	5.00%
CNA Financial Corp.	4.79%
Humana Inc.	4.38%
Alleghany Corp.	4.10%

LARGEST LOSSES

MBIA Inc.	-5.56%
Ambac Financial Group Inc.	-2.80%
AIG	-2.57%
EMC Insurance Group Inc.	-2.54%
UNICO American Corp.	-2.46%

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Hump day worst for on-the-job injuries

Workers looking for a good day to call in sick might want to pick Wednesday, since it's the most likely day to get injured on the job, according to a study by the Kansas Department of Labor.

The department's "2006 Survey of Occupational Injuries and Illnesses" of 3,500 private businesses found that middle-of-the-week day is the most likely for an on-the-job injury or illness that requires additional time off.

The survey found that 2,050 of the workplace injuries requiring time off occurred on Wednesday, while each of the other four standard workdays had 1,620 to 1,880 such injuries. Sunday had the fewest on-the-job injuries requiring time off, with 530.

The random survey of private employers found there were an estimated 46,800 occupational injuries or illnesses during 2006. Of those, 21% required additional days off with a median length of seven days. Fractures resulted in the longest absences, which averaged 22 days.

The survey, which was produced in conjunction with the U.S. Bureau of Labor Statistics, said an average of 128 nonfatal accidents or injuries occur each day at private Kansas employers.

Workers age 35-44 were most likely to get injured, and men accounted for 68% of all injuries requiring days away from work, according to the study.

Business Insurance END PAGE



MATT SAYLES/AP IMAGES FOR FOX

Former "American Idol" contestant Sanjaya Malakar joins Kevin Federline, MC Hammer and others who have starred in spots for Nationwide Mutual Insurance Co.

Nationwide voted... Sanjaya is safe!

Sanjaya Malakar's 15 minutes of fame has been extended.

The former "American Idol" contestant, whose hairstyles got as much attention as his "talent" during the sixth season of the popular reality television show, is the latest star of Nationwide's ongoing "Life Comes at You Fast" advertising campaign, the Columbus, Ohio-based insurer said last week.

Mr. Malakar follows in the footsteps of other celebrities such as Kevin Federline, Fabio and MC Hammer, who appeared in previous TV spots for Nationwide Mutual Insurance Co.

According to Nationwide, the ad campaign reminds people that they need to think about preparing for tomorrow and uses humor to hone in on the importance of advance preparation when it comes to insurance and financial planning.

The commercial is one of six new TV spots specifically targeting the South Asian market, the insurer said in a statement.

In the spot, Mr. Malakar, who is of Indian and Italian descent, visits a monastery in India to get advice. He's told that he needs to get a retirement plan as well as get some work done on his hair.

Currently in production in India, the commercials will air in mid-summer, a Nationwide spokesman said.

Contributing: Jeff Casale, Regis Coccia, Dave Lenckus, Sally Roberts

Judge swats suit alleging injuries from flies in water

The fly in the ointment of a Canadian man's lawsuit over contaminated bottled water was that he suffered too much.

Canada's Supreme Court ruled that Waddah Mustapha can't recover damages for mental trauma he suffered after Brampton, Ontario-based Culligan of Canada Ltd. delivered contaminated drinking water to his home in November 2001, because his trauma exceeded what a person of "ordinary fortitude" would suffer.

As Mr. Mustapha and his pregnant wife were sterilizing the neck of a water jug before installing it in a dispenser, they found two dead flies in the water.

Mr. Mustapha sued and provided medical evidence that he suffered "nervous shock," which led to a major depressive disorder with associated phobia and anxiety. According to court papers, he constantly imagines his wife and young daughters drinking water contaminated by flies; medications have made him listless and unable to work; and he has lost his sexual drive.

A judge in April 2005 awarded Mr. Mustapha nearly \$342,000 Canadian (\$272,500) in damages. While noting his "unexpectedly severe" reaction, the trial judge said it was understandable

because of Mr. Mustapha's concern about the health of his pregnant wife and the couple's obsession with cleanliness.

The Ontario Court of Appeal overturned the ruling in December 2006, and the Supreme Court in May also disagreed with the trial court.

The high court found that a defendant is liable only for "foreseeable" harm that its negligence would cause a person with

"ordinary fortitude" and that Mr.

Mustapha's reaction was not foreseeable.

"To say this is not to marginalize or penalize those particularly vulnerable to mental injury," the court ruled. "It is merely to confirm that the law of tort imposes an obligation to compensate for any harm done on the basis of reasonable foresight, not as insurance."



Amid labor dispute, Council event likely to be moved from Greenbrier

For the first time in 95 years, insurance industry executives may not be able to say, "See you at the Greenbrier."

The annual October gathering of the Council of Insurance Agents & Brokers and Council of Insurance Company Executives has taken place at one location since 1913, the Greenbrier resort in White Sulphur Springs, W.Va. But a dispute between the resort and nine labor unions, still unresolved late last week, is threatening to force the CIAB to relocate the meeting.

The CIAB already moved two meetings this spring to the nearby Homestead resort

in Virginia, including last week's Council of Employee Benefits Executives gathering. Ironically, the Greenbrier dispute is about wages and benefits, said Ken Crerar, president of the Washington-based CIAB.

Mr. Crerar placed ads in two local West Virginia newspapers urging management and the unions to settle their differences by June 2 or risk having the CIAB go elsewhere. "I'm not expecting them to resolve it, but miracles do happen," he said. "We're the biggest piece of business at the Greenbrier." The 1,400 people who attend the Insurance Leadership Forum occupy the

entire resort property.

A Greenbrier spokeswoman said the resort is open and negotiations are ongoing.

The CIAB is in talks with other resorts that can accommodate the large group. Mr. Crerar said he expects to announce the site of the October meeting this week.

"It's unfortunate because we have a 95-year tradition with the Greenbrier. When you break a tradition, it changes the dynamics of the relationship," he said. "We're surely going to evaluate the impact of the labor disputes on the quality of service."



The Greenbrier in West Virginia might lose the annual industry meeting it has hosted since 1913.



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