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In Brief

SEC, DOJ seeking info on AIG swap valuation

American International Group Inc. confirmed a report Friday that it has received inquiries from the Securities and Exchange Commission and the U.S. Department of Justice about its valuation of credit default swaps in the wake of huge writedowns on the portfolio. An AIG spokesman said that federal regulators initiated the requests "several months ago." The spokesman confirmed the inquiries following a report in The Wall Street Journal. "While I can't say where these inquiries will lead, I can say that it is not unusual to receive such questions following the kind of volatility that AIG Financial Products and the rest of the credit markets have experienced," he said, adding that AIG is cooperating with the requests. AIG disclosed on Feb. 11

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SECTOR BRIEFING
FINANCIAL INSTITUTIONS

Some financial institutions consider ways to soften blow of uninsured losses; D&O rates jump, insurers add exclusions for some in sector; rogue trader cover returns to spotlight; risk managers' role in light of credit crisis. Page 9

LANDOV

As their parties' presumptive presidential candidates, Sen. John McCain, R-Ariz., and Sen. Barack Obama, D-Ill., differ sharply on health care reform.

Health care debate heads into election

Candidates offer widely divergent plans

By JERRY GEISEL

WASHINGTON—When it comes to reforming the nation's health care system, the differences in the approaches advocated by the presumptive Republican and Democratic presidential candidates are stark.

Sen. John McCain, R-Ariz., the presumptive Republican candidate, would radically change the tax system as it applies to health insurance.

Under the McCain plan, employer-paid health insurance premiums would be added to employees' taxable income instead of being excluded as they have been for decades.

To help offset the cost of the coverage they purchase, individuals, including employees, would get new tax breaks.

Following a model set by a 2002 federal law that provides a refundable health insurance tax credit to employees who lose their jobs due to foreign competition, Sen. McCain advocates giving everyone tax credits to be applied to the purchase of health insurance.

Under his plan, those buying individual coverage would receive a $2,500 annual tax credit and those purchasing family coverage would be eligible for a $5,000 credit. As a refundable tax credit, these amounts would be directly used to pay for health insurance premiums.

Unlike Sen. McCain, Sen. Barack Obama, D-Ill., who emerged last week as the presumptive Democratic candidate following his capture of a sufficient number of delegate votes to secure his nomination, would rely much more on government mandates to help assure an expansion of coverage.

For example, Sen. Obama would mandate that employers—except the smallest firms—provide health insurance coverage and make a "meaningful" contribution or pay into a national plan that would be available to individuals not covered by employer plans.

And while employers would face

See **CANDIDATES** page 20

Big brokers win OK for some contingents

Incentives allowed at newly acquired units

By SALLY ROBERTS

NEW YORK—The world's three largest brokers, which ceased collecting contingent commissions as part of their broad compensation settlements in 2005, were given permission last week to accept the incentive payments from insurers on acquired brokers' existing business for up to three years.

Aon Corp. and Willis Group Holdings Ltd. say the agreements reached with government agencies, including New York's attorney general and director of insurance, will help level the playing field when it comes to making acquisitions.

Itasca, Ill.-based Arthur J. Gallagher & Co., which also ceased collecting contingents as part of its 2005 settlement with Illinois' attorney general and director of insurance in 2005, received similar permission on its acquired business in 2006.

The Risk & Insurance Management Society Inc. last week said that while it continues to believe that contingents contain an inherent conflict of interest between buyers and brokers and that they should be eliminated, the three brokers' "intentions look like they're in the right place."

The move marks the latest change to the brokers' 2005 nationwide settlements, in which they paid millions of dollars in client restitution and agreed to cease collecting the incentive payments to settle client-steering investigations (see box page 6).

Under the latest amendment, acquired brokers will be able to continue accepting contingents for

See **BROKERS** page 6

RIMS heads to Capitol to lobby for reforms

Experts pin hopes on surplus lines measure

By MARK A. HOFMANN

WASHINGTON—Congress may grant risk managers a legislative wish or two yet this year, insurance industry observers say.

That's despite a shrinking legislative calendar that calls for lawmakers to be gone most of August and for them to adjourn early this fall. Legislation, which will be discussed at the Risk & Insurance Management Society Inc.'s RIMS on the Hill legislative conference this week, includes bills that would streamline regulation of surplus lines insurers, set up a new Office of Insurance Information in the Treasury Department and allow risk retention groups to provide property coverage to their members.

The surplus lines legislation, establishing an optional federal charter for insurers and producers, and permitting RRGs to provide property coverage are RIMS' three main legislative issues, said Terry Fleming, RIMS director-external affairs. "We're going to lobby hard for all of them," said Mr. Fleming, who is director of the division of risk management for Montgomery County in Rockville, Md.

He noted that the House passed its version of the Nonadmitted and Reinsurance Reform Act last year, which included a more liberal definition of a "qualified risk manager" that would have to be met before a broker representing a policyholder could access the nonadmitted market directly without first seeking coverage in the admitted market. RIMS considered an initial definition too restrictive, language that remains in the Senate bill, he said.

"We're optimistic about the Senate version," Mr. Fleming said. "We

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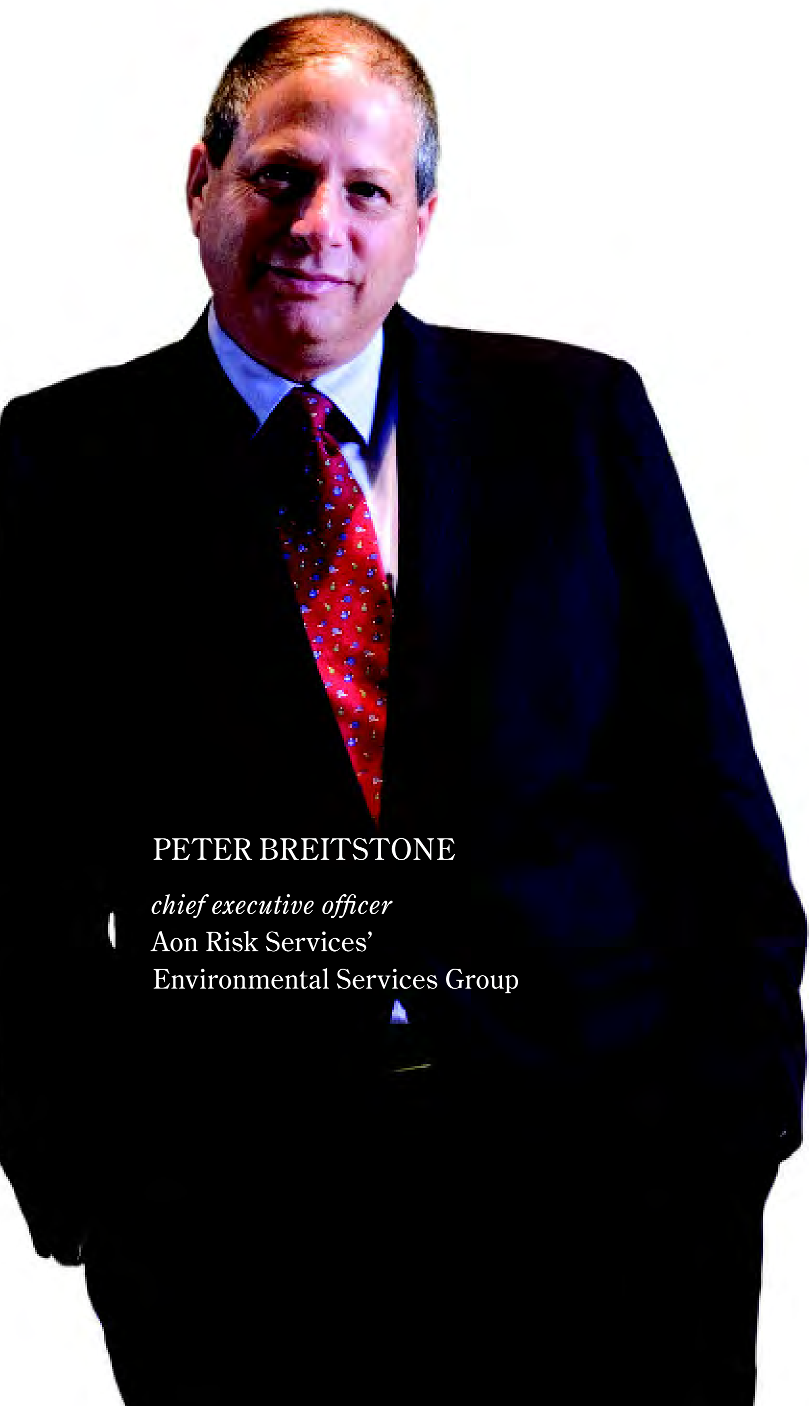

PETER BREITSTONE

chief executive officer
Aon Risk Services'
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On the Web

READERS CHOICE AWARDS

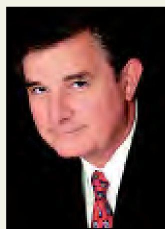
Vote for your choice of the industry's best

Business Insurance's 2008 Readers Choice poll is under way and gives readers a chance to help determine the best overall industry companies in a wide range of different categories relating to risk management and employee benefits. The winners will be announced and profiled in the Aug. 18 issue of the magazine. To take part in the Readers Choice poll, go online to *http://betasurvey.com/bi/readerschoiceballot08.*

BI AUDIO

Listen to William J. Kelly podcast online

Risk management consultant and former leading risk manager William J. Kelly, who is president of WJK Advisory L.L.C. of Morristown, N.J., and is featured in this week's Sector Briefing that begins on page 9, discusses the role of the risk manager in financial institutions in light of the recent credit crunch stemming from the subprime mortgage crisis. To listen to this podcast, go to *www.BusinessInsurance.com/audio.*



BI DIRECTORIES

2008 Directory of Corporate Buyers

The annual *Business Insurance* Directory of Corporate Buyers of Insurance, Benefit Plans and Risk Management Services provides complete contact information for more than 3,200 top-level corporate executives from Fortune 500 companies who are responsible for the purchasing decisions concerning commercial insurance and employee benefits. For additional information, go to *www.BusinessInsurance.com/directories* to search this indispensable resource.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Accusations against drug wholesaler expand

Alleged co-conspirator receives preliminary approval to settle 2005 class action lawsuit

By DOUGLAS McLEOD

BOSTON—Pharmaceutical wholesaling giant McKesson Corp. faces widening litigation charging it manipulated prescription drug prices, while its alleged co-conspirator in the scheme, a leading publisher of drug pricing data, moves closer to a settlement.

Connecticut and a San Francisco city health plan have filed separate civil racketeering complaints against McKesson, charging that, starting in 2001, the company fraudulently added a 5% markup to the average wholesale price of hundreds of brand-name drugs, costing the state and city health plans millions of dollars. The San Francisco Health Plan suit seeks class action status on behalf of all public entity health plans in the state of California.

The two suits, filed in U.S. District Court in Boston, follow a related complaint filed by several union health plans in 2005 against McKesson and First DataBank Inc., a unit of Hearst Corp. and a leading provider of drug price databases. A federal judge earlier this year certified the case as a nationwide class action on behalf of roughly 11,000 private third party payers—including self-insured employers, insurers and union health plans—that reimbursed prescriptions based on average wholesale prices reported by First DataBank between 2001 and 2005.

RACKETEERING SUITS are the latest in a lengthy battle over alleged manipulation of prescription drug prices.

Plaintiffs lawyers estimate the damages to third-party payers at more than $5 billion.

McKesson has not yet responded to the San Francisco Health Plan and Connecticut complaints, but has denied the allegations in the 2005 class action, asserting that it does not set average wholesale prices and did not conspire with First DataBank to do so.

Meanwhile, U.S. District Judge Patti B. Saris last week granted preliminary approval to First DataBank's proposed settlement of the 2005 class action.

Under the settlement—which awaits comment from class members and final approval—the San Bruno, Calif.-based publisher will eliminate the 5% additional markup it included in its reported average wholesale prices for 1,356 drugs identified in the complaint, and pay the plaintiffs $1 million.

Independent of the settlement, First DataBank also announced last week that it will similarly roll back reported average wholesale prices, or AWPs, for other drugs not included in the settlement and will stop publishing AWP data within two years of the pricing changes.

The AWP adjustments aren't likely to produce any savings for health plan sponsors, though First DataBank's settlement could open the door for third-party payers to negotiate better deals with their PBMs, benefit managers say. (See story, page 20).

The racketeering suits filed by San Francisco Health Plan and Connecticut—which do not name First DataBank as a defendant—are the latest in a long-running legal battle over alleged manipulations of AWP data by drug manufacturers and others. AWP data is used by third-party payers and PBMs as the basis for prescription reimbursements.

Since 2001, dozens of states, insurers and health plan sponsors have sued drug makers for allegedly inflating AWP figures to increase payouts. In March, for example, 11

See **DRUGS** page 20

Pregnancy bias law extends to abortion

Woman entitled to hearing on claims: Court

By JUDY GREENWALD

PHILADELPHIA—The Pregnancy Discrimination Act does grant employment discrimination protection to women who have an abortion, the 3rd U.S. Circuit Court of Appeals has ruled.

In a unanimous ruling in *Jane Doe vs. C.A.R.S. Protection Plus Inc.*, a three-judge panel overturned a lower court decision that granted the Murrysville, Pa.-based used-car insurer summary judgment dismissing the case.

The May 30 decision that the Philadelphia appeals court said was one of first impression could be influential, observers say, although such claims are filed infrequently, in part because of the stigma attached to abortion.

The anonymous married plaintiff filed suit charging employment discrimination under the PDA after she was fired as a graphic artist in August 2000. The firing took place three working days after notifying her supervisor that she would undergo an abortion because her fetus was severely deformed and on the day of the funeral, the decision states.

The employer contended she was fired because she failed to follow the company's policy of informing her supervisor in advance that she would be taking time off following the abortion.

However, according to the appeals court ruling, "That fact is subject to dispute from contradictory evidence." Evidence showed that the firm did not uniformly enforce rules regarding vacation or sick time, according to the opinion.

There also was testimony that Fred Kohl, vp and part owner of the company, said Ms. Doe "didn't want to take responsibility," which "may raise a reasonable inference that the abortion was a factor in terminating Doe's employment," the ruling states.

The court held that Ms. Doe did establish a *prima facie* case that she was dismissed because of the abortion, which the appeals panel said is covered by the PDA concerning women affected by "a pregnancy, childbirth or related medical conditions."

Furthermore, Equal Employment Opportunity Commission guidelines "expressly state that an abortion is covered by Title VII," of the Civil Rights Act, the opinion states.

"Clearly, the plain language of the statute, together with the legislative history and the EEOC guidelines, support a conclusion that an employer may not discriminate against a woman employee because she has exercised her right to have an abortion," the appeals court ruled. "We now hold that the term 'related medical conditions' includes an abortion," the court said in remanding the case to the lower court for further proceedings.

Observers say they believe the only other comparable appeals court decision was a 1996 ruling by the 6th U.S. Circuit Court of Appeals in *Kimberly Turic vs. Holland Hospitality Inc.* In that decision, the court ruled a woman who was terminated from her job because she

See **ABORTION** page 6

NAIC calls on insurers to report climate risks

Subgroup working on specifics of proposal

By MEG FLETCHER

SAN FRANCISCO—The National Assn. of Insurance Commissioners has adopted a white paper containing a general but still controversial call for U.S. insurers to disclose their climate-related risks.

"Global warming and the associated climate change represent a significant challenge for Americans," according to the 20-page white paper that NAIC members approved overwhelmingly in a voice vote at last week's quarterly meeting held in San Francisco.

"We believe that the time has come for regulators to work with the insurance industry to thoroughly examine the impact of climate change issues on the insurance industry and make necessary regulatory changes and raise important issues in order to protect consumers and ensure a vibrant market as we move into the future," according to the white paper, which covers a range of topics, under discussion for more than a year.

AP PHOTOS

A white paper calling on U.S. insurers to disclose their climate-related risks is 'the beginning of the process, rather than the end.'

Sandy Praeger, NAIC President and Kansas Insurance Commissioner

The document assesses the potential effect on insurer solvency from direct and indirect climate change-related exposures of properties that insurers underwrite or buy as investments.

In a separate section, the document reviews exposures of property/casualty insurers, including losses from electrical brownouts and the need for products using tiered ratings to encourage use of low-emission vehicles. It urges insurers to support stricter building codes and "green" construction.

The white paper also seeks more research and consumer education, establishment of a federal "climate change czar," and improved federal flood and loan programs. The document that was adopted was revised from a version early this year that drew widespread insurance industry criticism of a potential NAIC mandate that each insurer disclose its climate-related risks in its annual statement.

NAIC President Sandy Praeger, who is the insurance commissioner of Kansas, described the disclosure idea in the white paper as "the beginning of the process, rather than the end" and a "minimum first step" to gauging climate change effects on insurance consumers.

See **CLIMATE** page 19

IRS sets penalties for violating HSA contribution regulations

Early withdrawal will result in added income taxes, 10% penalty

By JERRY GEISEL

WASHINGTON—Employees who enroll for a partial year in high-deductible health insurance plans linked to health savings accounts and make full-year contributions to the HSAs will face stiff penalties if they drop out of the plans too early, according to newly released Internal Revenue Service guidance.

The guidance released last week, IRS Notice 2008-52, relates to a 2006 law and specifies the tax penalties that employees would face if they fail to meet minimum coverage periods detailed by the law.

The 2006 law was intended to increase the appeal of HSAs by, among other things, dealing with a problem faced by employees who enrolled in a high-deductible health insurance plan linked to an HSA late in the year.

Under prior law, the maximum annual contribution to an HSA was pro-rated to reflect when an employee became eligible for coverage. For example, the HSA contribution for an employee who became covered on Dec. 1 was limited to one-twelfth of the annual maximum.

That limitation dampened the appeal of HSAs to employees only eligible to enroll late in the year as their HSA funds may not have been sufficient to cover medical expenses they incurred during the remainder of the year.

The 2006 law eliminated the pro-rating rule and allows enrollees to make the maximum annual contribution to an HSA no matter when during a year they enrolled. In 2008, the maximum contribution for single coverage is $2,900 and $5,800 for those with family coverage.

That change "brought a degree of fairness and simplicity," said Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

But the 2006 law also attached strings to the rule allowing a full-year's contribution for those enrolled for only part of the year. In order to make the maximum contribution, an employee would have to enroll no later than Dec. 1 of the current year and remain in the arrangement through Dec. 31 of the following year, otherwise penalties would apply.

The IRS guidance details those penalties. The guidance stipulates that HSA contributions—except those that would have been allowed under the pro-rating rule—will be added to employees' taxable income, with a 10% penalty tax imposed on that amount for employees who drop coverage in the HSA-linked high-deductible plan in the following year.

The IRS guidance provides numerous examples of when the penalties would apply. One involves an individual who enrolls in a high-deductible HSA-linked plan on Dec. 1, 2008, and then contributes $5,800 to the HSA. In June 2009, the individual drops coverage in the high-deductible plan and thus no longer is eligible to contribute to the HSA.

Under the new rules, the individual would have to include as taxable income on his or her 2009 tax return $5,316.67—11/12th of the $5,800 contribution made to the HSA in 2008—and a 10% penalty tax would be assessed on the amount added.

In effect, Mr. Anderson says, employee contributions are "claw-backed." Employers, he suggests, should warn employees enrolling in a high-deductible HSA-linked plan later in the year of this clawback requirement.

AP PHOTOS

Studio fire sparks business interruption losses

NBC Universal Inc. has notified several insurers that property and business interruption claims are likely from a June 1 fire that destroyed a soundstage, a New York streetscape used in films and TV shows, most of the town square seen in "Back to the Future" movies, and a Universal Studios King Kong tour attraction.

Hundreds of movie and TV show videotapes also were also destroyed in the backlot blaze, but the originals were stored elsewhere, said a Universal spokeswoman, who confirmed that Marsh Inc. placed insurance coverage for the property in Universal City, Calif. The spokeswoman declined, however, to name the insurers and Marsh declined to comment.

More than 400 firefighters fought the hours-long blaze, according to the Los Angeles Fire Department. A construction worker using a blow torch reportedly caused the fire.

Universal last week said it had notified insurers and was still tallying its losses. Observers said that in addition to the loss of sets and props, set designers, production staff and many other vendors contracting with the studio are likely to file their own contingent business interruption claims.

—*By Roberto Ceniceros*

AP PHOTOS

Tropical storm Arthur opened this year's hurricane season June 1. Strong winds from the storm hit Mexico's Chetumal Bay, Quinta Roo. Forecasters are predicting an above-normal Atlantic hurricane season.

Hurricane season expected to be active

Above-average storm activity forecast

By MARK A. HOFMANN

This year's Atlantic hurricane season will feature above-average storm activity, according to reports issued by two forecasters last week.

A forecast released by London-based Tropical Storm Risk said this hurricane season will be 20% above the 1950-2007 norm. That was a decrease from an April projection of a season 35% above the norm.

In a statement announcing last week's prediction, TSR said: "The lowering of the forecast is due to the unexpected rapid waning of La Niña conditions now occurring in the tropical Pacific. However, uncertainties remain, and La Niña and other key climate factors will be closely monitored."

TSR said there is a 53% probability of an above-normal Atlantic hurricane season, a 29% probability of a near-normal season and an 18% chance of a below-normal season. According to TSR, 14 named tropical storms will form in the Atlantic basin, seven of which will grow into hurricanes. Three of the hurricanes will become intense.

Meanwhile, the Tropical Meteorology Project at Colorado State University in Fort Collins, Colo., last week repeated its April 9 prediction that 15 named storms will form during the hurricane season, which officially began June 1. The team included Tropical Storm Arthur, which formed on May 31, among those 15 named storms.

Eight of the named storms will grow to hurricane strength, according to the researchers. Four of those hurricanes will become intense, with sustained winds of at least 111 mph, the team said.

Hurricane season lasts through Nov. 30.

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Business Insurance's 2008 Directory of Corporate Buyers of Insurance, Benefit Plans and Risk Management Services is now available online.

The annual directory contains information on 520 of the largest U.S.-based companies, along with the names of more than 3,200 executives responsible for operations including risk management, property/casualty insurance, safety, human resources and employee benefits.

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AMENDED AGREEMENTS

2005 Leading commercial brokers Marsh Inc., Aon Corp., Willis Group Holdings Ltd. and Arthur J. Gallagher & Co. all agree to pay collectively more than $1 billion in client restitution to settle client-steering allegations. The settlement agreements include a ban on accepting contingent commissions.

2006 Gallagher gets permission to allow brokers it acquires to continue to take contingent commissions for up to three years.

Marsh, Aon and Willis given permission to accept additional profit-based commissions from insurers on business in which they act as a managing general agent or underwriting manager.

2007 Settlement agreements amended to let the brokers accept certain fees from insurers for brokerage transactions.

2008 Aon, Marsh, Willis given permission for acquired brokerages to continue to take contingent commissions for up to three years.

Brokers: Contingents OK at newly acquired units

CONTINUED FROM PAGE 1

three years while they phase out the incentive payments and bring the acquired company into line with the brokers' business practices.

The brokers say the amendments promote fair competition.

'We would hope they will phase them out as quickly as they can.'

Terry Fleming, Risk & Insurance Management Society Inc.

"For the last three years, brokers that have not introduced (similar compensation) reforms have had an unfair advantage in bidding to acquire other brokers, because they could assume a continued stream of contingent commissions from the acquired company, whereas Aon could not," a spokesman for the Chicago-based brokerage said in a statement. "This had the perverse result of favoring brokers (that) still accept contingents and are not transparent to their clients."

"We feel this amendment is necessary to help create a level playing field and a fair competitive environment," said a spokeswoman for London-based Willis in an e-mailed statement. "If and when we make any acquisitions, it allows us to make competitive bids for companies by retaining some of the earnings for which we are paying—and over a short period of time, wean another broker off contingents."

Terry Fleming, RIMS director of external affairs, said that while the New York-based society believes contingents should be eliminated, it recognizes that in cases where a broker is being acquired by another, it might have a multiyear contract with contingent commission provisions in place that should be honored.

"We would hope they will phase them out as quickly as they can and utilize transparency and full disclosure in the meantime," Mr. Fleming said, referring to Marsh, Aon and Willis.

Under their 2005 settlements, Marsh and Willis reached their agreements with New York's attorney general and the state's insurance department. Aon reached its agreement with the attorneys general of Connecticut, Illinois, New York and the insurance departments of New York and Illinois.

Abortion: Ruling on pregnancy bias law

CONTINUED FROM PAGE 3

was considering an abortion was protected under the PDA.

Attorneys say the *Jane Doe* decision is not a surprise.

"From a legal standpoint, the legislative history of the Pregnancy Discrimination Act makes it very clear that the decision whether or not to have an abortion is within the scope of the protection established by the statute," said Jeffrey I. Pasek, an employer attorney with Cozen O'Connor P.C. in Philadelphia.

However, Paul M. Secunda, an assistant law professor at the University of Mississippi School of Law in University, Miss., questioned whether the stance would apply to any abortion, not just cases involving deformities. "It will be really interesting to see going forward whether cases dealing with elective abortions are considered to be covered under the PDA."

But Michael A. Moore, a Lancaster, Pa.-based employer attorney with McNees Wallace & Nurick L.L.C., said he believes the decision applies to all abortions. "The way the case reads, it made no difference" that the fetus was deformed, he said.

The decision could be influential, observers say.

"The 3rd Circuit's not a terribly liberal circuit," said Thomas H. McDonough, an employer attorney with WolfBlock L.L.P. in Philadelphia. To the extent the issue is litigated elsewhere, the case probably will be looked at by plaintiffs' attorneys, he said.

However, Samuel J. Cordes, a plaintiff attorney with Ogg, Cordes, Murphy & Ignelzi L.L.P. in Pittsburgh, said, "I don't see this as leading to more litigation" because the PDA was already available for someone discharged because of a pregnancy-related medical condition.

A C.A.R.S. spokesman had no comment and Ms. Doe's attorney could not be reached.

Jane Doe, appellant, vs. C.A.R.S. Protection Plus Inc; Fred Kohl, 3rd U.S. Circuit Court of Appeals, Nos. 06-3625, 06-4508, May 30, 2008

NCQA seeks input on wellness plans

By JOANNE WOJCIK

WASHINGTON—The National Committee for Quality Assurance is seeking public comment on its proposal to evaluate corporate wellness and health programs.

The program, slated to launch in early 2009, will evaluate organizations that provide services to employers and health plans that seek to help participants better manage their own health. It includes a broad-based accreditation program for organizations that offer comprehensive wellness services, and certification for organizations that offer only specific components such as health risk appraisals and self-management tools.

The NCQA also is proposing a separate accreditation program for organizations that offer stand-alone weight management or smoking cessation programs.

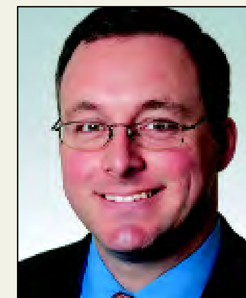
Among other things, the NCQA program will examine whether vendors are using evidence-based methods to improve and maintain good health, whether individual health information is properly safeguarded, whether services such as health coaching are provided, and whether vendors are continuously working to improve the quality of their programs.

"This new program will help employers safeguard the health and productivity of their employees by choosing the best programs available," said Patricia Barrett, NCQA vp for product development, in a statement.

Members of the public have until June 30 to comment on the proposed standards. Visit *www.ncqa.org* for more information.

Commentary

Forethought needed to weather disasters



REGIS COCCIA

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

Now that we've officially entered hurricane season, the question on the minds of property insurers is, "Will the wind blow big this year?"

In 2006 and 2007, the insurance industry sustained no major hurricane losses after June 1, the traditional starting point of the annual hurricane season. That was a welcome reprieve, after two of the most active years on record. The ensuing sharp rate hikes and lack of significant catastrophe losses gave the property/casualty industry a cash cushion that has led us into the current soft market.

That could change in a hurry, though.

The National Oceanic and Atmospheric Administration has predicted a 60% to 70% chance that this year will have 12 to 16 named storms, six to nine of which would become hurricanes and two to five of those developing into major ones, or those with sustained winds exceeding 110 mph. That compares with a forecast by Colorado State University researchers Philip Klotzbach and William Gray of 15 storms, with eight becoming hurricanes and four considered major.

NOAA defines an average season as 11 named storms, including six hurricanes and two becoming major. Whatever the margin of error in their respective research, NOAA's and CSU's similar forecasts suggest we may be in for more hurricanes than we've seen in the past two years.

The question everyone ought to be asking is not how many storms may form, hit landfall, etc., but how prepared are we for the catastrophes that will happen?

Lack of preparedness is what leads to the tragic loss of life, destruction of property and general misery following a natural catastrophe. While technology has enabled insurers and meteorologists to improve their forecasts and alert us to hurricane risks, safety and security ultimately are our responsibility.

More than 1,000 lives might have been saved if people along the U.S. Gulf Coast had heeded evacuation orders as Hurricane Katrina approached. The sluggish federal government response to Katrina notwithstanding, far too many people remained in harm's way.

Let's not forget that while it's hurricane season, there is no "season" for earthquake, flood or fire perils. Those can hit at any time, and usually when they're least expected.

Already this year, we've seen major earthquakes in China's Sichuan province, Cyclone Nargis in Myanmar and tornado outbreaks in several U.S. states.

Businesses and individuals would be foolish to expect that disaster plans developed years ago and gathering dust will be sufficient when havoc strikes.

What other natural or "unnatural" disaster, such as terrorist attacks, might occur? People need to start planning their response to such events.

Preparing for a disaster isn't hard to do. There are ample resources available from insurance companies themselves, as well as sites such as *www.ready.gov*. Stocking supplies to cope with power outages and shortages of food and water, ensuring backup communication and having a continuity plan are all simple measures that can reduce a devastating event to a merely inconvenient one.

Once a plan is formed, though, it must be communicated, practiced and kept up to date. Businesses and individuals would be foolish to expect that disaster plans developed years ago and gathering dust will be sufficient when havoc does strike.

The worst plan in a disaster is having no plan at all.

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Business Insurance OPINIONS

Campaign statements can be public service

SEN. BARACK OBAMA, D-Ill., performed a public service when his campaign issued a statement criticizing Sen. John McCain, R-Ariz., for opposing the creation of a national catastrophe insurance fund.

We call it a public service not because we support the creation of such a fund. In fact, we agree with Sen. McCain, the presumptive Republican presidential nominee, on this issue. Establishing such a fund would represent bad public policy that could put taxpayers on the hook if they had to cover losses from a major catastrophe.

But the presumptive Democratic presidential candidate's criticism of Sen. McCain's stand on a national catastrophe insurance fund represents a public service because it helps focus national attention on catastrophe policy. It is as valuable as Senate Banking, Housing and Urban Affairs Committee Chairman Christopher Dodd's decision a few weeks ago to add a provision calling for the creation of a new commission on natural catastrophe risk management and insurance to a bill that would extend the National Flood Insurance Program.

The whole area of natural catastrophe response deserves vigorous debate, and a presidential campaign provides an excellent forum for it.

We happen to believe that the private marketplace, combined with public enforcement of building codes and the implementation of mitigation strategies, is the best natural catastrophe policy. But the details of such a policy should be subject of public scrutiny.

The whole area of natural catastrophe response deserves vigorous debate, and a presidential campaign provides an excellent forum for it. As Hurricane Katrina and its aftermath so amply demonstrated, natural catastrophe policy presents the nation with critical challenges. How would-be presidents would respond to those challenges should receive prominent attention on the campaign trail.

Reservist-FSA measure the right thing to do

IN A SHINING EXAMPLE of common-sense legislative action, Congress last month approved legislation to allow employees in the military reserves to cash in their health care flexible spending accounts when they are called to active military duty.

The legislation deals with a situation that—with nearly 100,000 reservists now on active duty—likely happens all the time: An employee is called to active duty and has money remaining in his or her FSA.

Given that the employee has full health care coverage through his or her branch of the military, and that dependents receive generous coverage through the Department of Defense health care program called Tricare, employees' need to tap their FSAs after being activated likely will be limited, resulting in the forfeiture of the balances.

That strikes us as an unfair penalty and Congress clearly has done the right thing by allowing employees in such situations to cash in their FSA balances.

Nothing in the legislation requires employers to amend their FSAs to permit distribution of unused balances. But we think the small amount of additional work that would be required by employers to amend their plans and distribute the money would be more than offset by the appreciation of the affected employees.

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:

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Benefits—retirement savings/pensions: Jerry Geisel.
Canada—risk management and benefits: Gloria Gonzalez.
Commercial auto: Jeff Casale
Employment practices: Judy Greenwald.
Environmental risk management: Sally Roberts.
Federal regulation/legislation—benefits: Jerry Geisel.
Federal regulation/legislation—risk management: Mark A. Hofmann.
Health care industry operations: Gloria Gonzalez.
Industry Focus: Rodd Zolkos, Meg Fletcher.
Insurance coverage litigation: Douglas McLeod.
Insurance fraud: Douglas McLeod.
Latin American markets: Roberto Ceniceros.
Marine: Gloria Gonzalez
Property/casualty industry operations: Judy Greenwald.
Professional liability: Dave Lenckus.
Property loss control/cat risks: Mark A. Hofmann.
Regulation of insurance: Meg Fletcher.
Reinsurance: Judy Greenwald.
Risk management profession: Dave Lenckus.
Runoffs/receiverships: Douglas McLeod.
Safety/ergonomics: Meg Fletcher.
Surplus lines/wholesalers: Roberto Ceniceros.
Tort reform: Mark A. Hofmann.
Work/life benefits and EAPs: Sally Roberts.
Workers compensation: Roberto Ceniceros.

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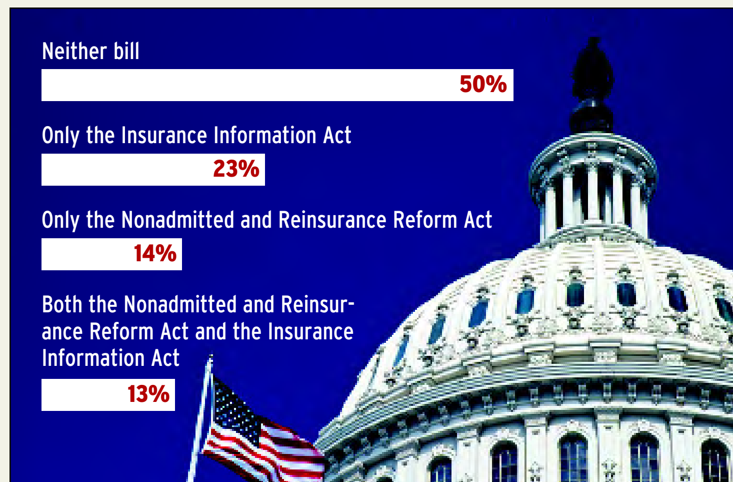
Online Poll at www.businessinsurance.com

Which insurance reform measures will Congress pass this year?



NEXT WEEK'S POLL: *Which presidential candidate has the better health care reform plan?*

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

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SECTOR BRIEFING

FINANCIAL INSTITUTIONS

Class actions spike with subprime squeeze

Only half of large institutions have Side B D&O cover; many lack self-insurance mechanism

By DAVE LENCKUS

Large financial institutions have the wherewithal to absorb any losses they suffer in securities litigation related to the subprime mortgage mess despite a lack of commercial insurance and no formal self-insurance mechanism to respond to the losses, risk management experts say.

But some experts question the wisdom of financial institutions not establishing some kind of formal self-insurance mechanism to help smooth any hits to their balance sheets and income statements.

To that end, some financial institutions are examining options that would soften the financial impact of a catastrophic loss that exceeds the D&O insurance capacity they could purchase if they were willing to pay the soaring cost of coverage.

Various rating agencies and news reports estimate that the subprime mortgage mess—largely the result of banks extending credit to home buyers who were poor risks and defaulted on loans with rising adjustable interest rates—will cost financial institutions worldwide between $285 billion and $400 billion. Those figures include both credit losses and write-offs of subprime mortgage-backed securities.

Outraged investors in financial institutions, as well as borrowers who claim they were duped by unscrupulous lending practices, have sued.

Indeed, financial institutions were a big factor in the about-face last year in U.S. securities litigation filings. Class action filings for 2007 jumped 43.1% to 166 from 116 in 2006, according to a report by the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in cooperation with Cornerstone Research of Boston. With 100 suits filed during the second half of 2007, a two-year downturn in securities filings ended.

MARKET FALLOUT: Sharply higher D&O rates and retentions combine with exclusions for some financial institutions. Page 13

Financial institutions faced more class action lawsuits, 47, than any other sector during 2007, with subprime mortgage-related claims accounting for 25 filings, according to the report. A year earlier, the finance sector was hit with 11 filings (*BI*, Jan. 7).

Altogether, there were 81 securities class action cases pending in late May, with nearly one-fifth of them filed during April and May, according to the Stanford Clearinghouse.

The cost and availability of directors and officers liability insurance has worsened measurably as a result (see story, page 13).

Even before the uptick in securities litigation, many financial institutions purchased only Side A coverage, which covers directors and officers directly when their organization is precluded from indemnifying them, said Kevin LaCroix, a partner with OakBridge Insurance Services L.L.C. in Beachwood, Ohio.

Less than half of the large financial institutions purchase Side B D&O coverage, which reimburses organizations for the cost of their indemnification payments to directors and officers, market experts report.

"So those risks really don't have coverage for shareholder class action lawsuits," said Dan Vecchio, managing director and national practice leader for professional risk with Wells Fargo Insurance Services Inc. in Chicago.

And the vast majority of these companies have not set up any formal self-insurance mechanism that would establish loss reserves over time, instead opting to pay losses as they come

See **SUBPRIME** page 13

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SECTOR SNAPSHOT OF FINANCIAL INSTITUTIONS' PREMIUMS, LIMITS PAGE 12

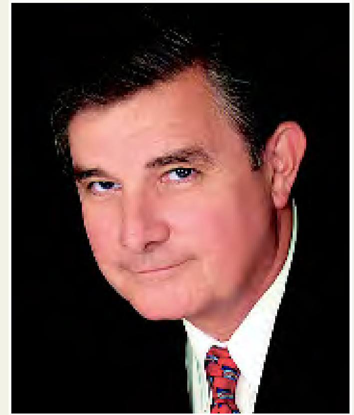
FINANCIAL FIRMS, INSURERS REACT TO ROGUE TRADING AT FRENCH BANK PAGE 12

BASEL BANKING COMMITTEE CALLS FOR MORE CAPITAL TO BUFFER SHOCKS PAGE 14

NEXT SECTOR BRIEFING July 28: Pharmaceuticals & Chemicals

Questions & Answers

William J. Kelly, president of WJK Advisory L.L.C. of Morristown, N.J., has extensive risk management experience at financial institutions and consulting firms, including the former JPMorgan, Merrill Lynch, Willis Group Holdings Ltd. and PricewaterhouseCoopers. Mr. Kelly spoke recently with BI Senior Editor Dave Lenckus about risk management's role at financial institutions that have been caught up in the subprime mortgage debacle.



Risk management's role in subprime crisis

Q: Where was risk management when subprime loans were being made and the financial institutions industry fell into this mess that we're currently in?

I would say that they were really not a part of the process. The thing about financial institutions that you have to remember is that credit and market risk management are actually what they do. I mean, they don't make tires and also have a credit exposure. They are risk takers by definition. And you would have very highly sophisticated financial risk managers and long-standing credit policy and market policy committees reviewing all of the actions of the firm in a highly regulated environment.

Q: But was there no process in place to backstop underwriting decisions that have shown to be unwise decisions?

Again, that goes to credit policy, and again, I don't see the traditional risk manager directly involved in that. To me, it's a little bit analogous to what happens when the insurance market softens and people in insurance companies start assuming greater and greater risk for perhaps less and less money, because of the opportunity to invest that money that comes in premiums into investment vehicles.

Q: In the subprime crisis, we found out that loans were being extended to people with poor credit who shouldn't have been extended that credit. So, it seems to be a little deeper problem than that example.

The analogy has some application there of something that's grossly underpriced. The interesting thing you're pointing to here is the complexity of the issue—that on the one hand we're talking about credit risk, but then these credit obligations are packaged and sold to investors, so then it becomes a market risk. But then the thing you were pointing to even before that is if there's any aspect of fraud or misrepresentation at the very heart of it, then we're looking at what might traditionally be called an operational risk. So, part of the lesson that, as I study this and read what financial commentators are saying, is perhaps the failure to perceive the interrelationship of all of these kinds of exposures that all came together in this particular instance.

Q: Risk managers industrywide are looking more into enterprise risk management—looking at risks that extend beyond traditional insurable risks. Is this something that you see in the financial institutions sector?

If the RIMS member is involved with insurable risk, for one, and then hopefully broader funding of operational risk, the spectrum of operational risk is very, very broad. And any risk that could arise out of people, facilities, systems, the contingency issues, etc.—that operational risk is a huge area to address. The financial risks of market and credit risk, I think, will continue to be addressed in financial institutions by those people who do the business of the financial institution, which is financial risk assessment and analysis, which is generally a different skill set and academic background than a person who may be focusing on the operational and/or insurance risk area.

Q: So, enterprise risk management wouldn't touch on that area?

I think it would in the sense that enterprise risk management is, simply put, a look across the organization at market, credit and operational risk. I think subprime is an interesting example that seemed to touch on every aspect of that. The financial institution will be looking at that. But the degree to which the insurance and risk manager would be involved, I think, would be with respect to the operational risk aspect—the funding of that, possibly the degree to which it might be insurable, perhaps the directors and officers liability implications and professional liability implications of that activity.

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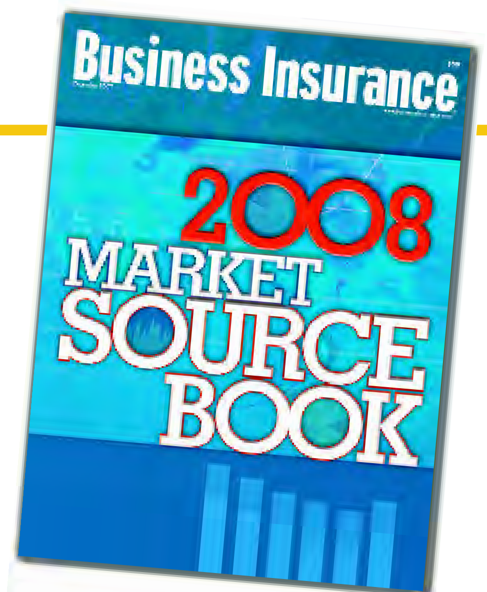

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Rogue-trading loss tightens coverage for banks

European financial institutions face tough market with insufficient coverage available

By TIM EVERSHED

The $7.62 billion fraud perpetrated by trader Jérôme Kerviel of Paris-based investment bank Société Générale S.A. earlier this year has forced financial institutions around the globe to reassess their vulnerabilities to employee fraud and the insurance protection available.

Financial institutions are predominantly covered against employee fraud by bankers blanket bonds and/or unauthorized trading policies.

But, bankers blanket bonds only cover financial institutions against employee fraud when the person responsible for the fraud has benefited by personal financial gain. Consequently, some of the most high-profile employee fraud cases of recent years, such as the losses caused by Mr. Kerviel or those caused by Nick Leeson at the London-based Barings Bank in 1995, have not triggered policies.

The Société Générale incident has pushed up insurance coverage rates and tightened conditions for financial indemnity products, said one U.K. risk manager who wished not to be named.

"The insurance market's reaction to Société Générale has made products...more difficult and expensive to purchase. The limits are very small compared to the historical balance sheets of financial institutions and there are significant deductibles," he added.

Marc Mathijsen, head of corporate insurance risk management at Amsterdam, Netherlands-based ING Group N.V. and a member of the Federation of European Risk Management Assns., agreed that the insurance market is not providing adequate coverage.

"It is quite complicated to buy adequate coverage, and it is not always worth it as €200 million ($311 million) of coverage could cost €50 million ($77.8 million) with a €25 million ($38.9 million) deductible," he said.

Unauthorized trading insurance was developed following the collapse of Barings Bank. The coverage protects banks in the event of unauthorized trading by an employee in relation to the bank's own funds, filling the gap that existed, because it does not require proof of financial gain by the employee, experts say.

Dean White, London-based managing director at Marsh Ltd.'s financial and professional services practice, said: "Unauthorized trading was developed for a specific purpose and it is very prescriptive. So if the incident comes under the definitions then it's adequate."

Mr. White added, "The problem with unauthorized trading is that the losses are not set against particular gains. The insurance market only gets to look at the downside and that is why insurers do not feel it is a risk they want to cover."

Additionally, banks and financial institutions are often uncomfortable with the level of disclosure on levels of fraud and the antifraud measures required by insurers.

"It is a corporate decision not to buy unauthorized trading policies, as we prefer to invest the money in improving our processes, systems and back office," said ING's Mr. Mathijsen.

Nevertheless, the Société Générale fraud may still result in a loss for the bank's insurers, as shareholders filed a lawsuit against unnamed directors at the firm, which exposes the bank's directors and officers liability coverage, experts say.

According to Mr. Mathijsen, "D&O remains quite complicated for big financial institutions, as they operate in so many countries. It is a challenge to adapt the coverage to the local environment. There is capacity available for D&O and that is keeping the prices down and the market good for buyers. So as long as you give the correct information, the right coverage is available."

Professional indemnity coverage with a "dishonesty extension" would cover the bank in the event of a claim by a client where an employee trades the client's funds dishonestly.

However, this coverage does not offer protection in the event that an employee trades the bank's own funds unlawfully, experts say.

According to Mr. White, insurers have not kept pace with developments in technology and operational changes in financial institutions, or with how the fraudsters continue to change their tactics.

Capital adequacy rules under Basel II have caused a general move away from the traditional approach to insurance as banks now look for all-risk cover, rather than named perils, Mr. White said. Some capacity has been generated to cover this, but it is still not enough to satisfy market demand.

"The new products we are seeking as a sector would be particularly focused on information technology risks, as more and more of our business is done over the Internet. We need a proper cyber-risk policy put in place to cover identity fraud, denial of service and other associated risks," said Mr. Mathijsen.

"The changes that Basel II makes to capital relief will also require the development of new products. Insurers are not providing this yet, but it will be difficult as every bank is different in its requirements," he said.

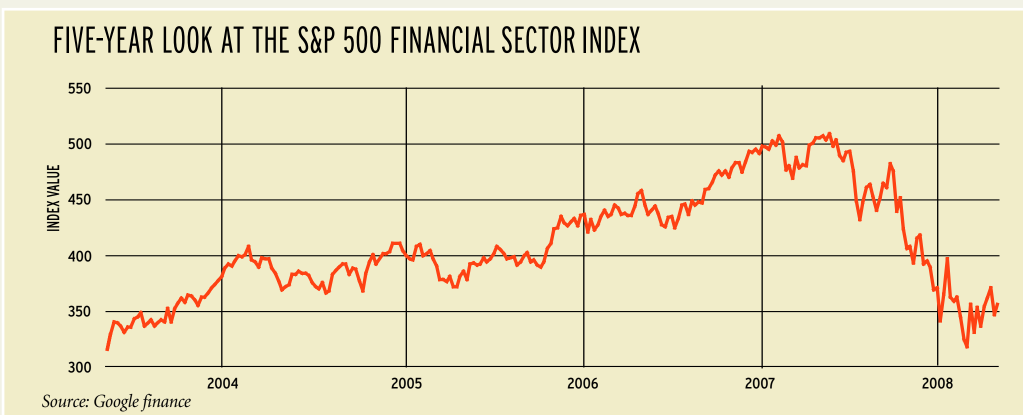
NY TIMES

Paris-based Société Générale S.A. was hit by fraud earlier this year when a single trader racked up over $7 billion in losses.

SECTOR SNAPSHOT

FINANCIAL INSTITUTIONS

THE FINANCIAL INSTITUTIONS sector includes a wide range of banking and other lending and financial firms. With their close association with capital markets investments, some of the biggest insurance exposures for financial institutions are directors and officers liability and professional liability risks. Information from Advisen Ltd. offers details on the how firms in the sector purchase protection.



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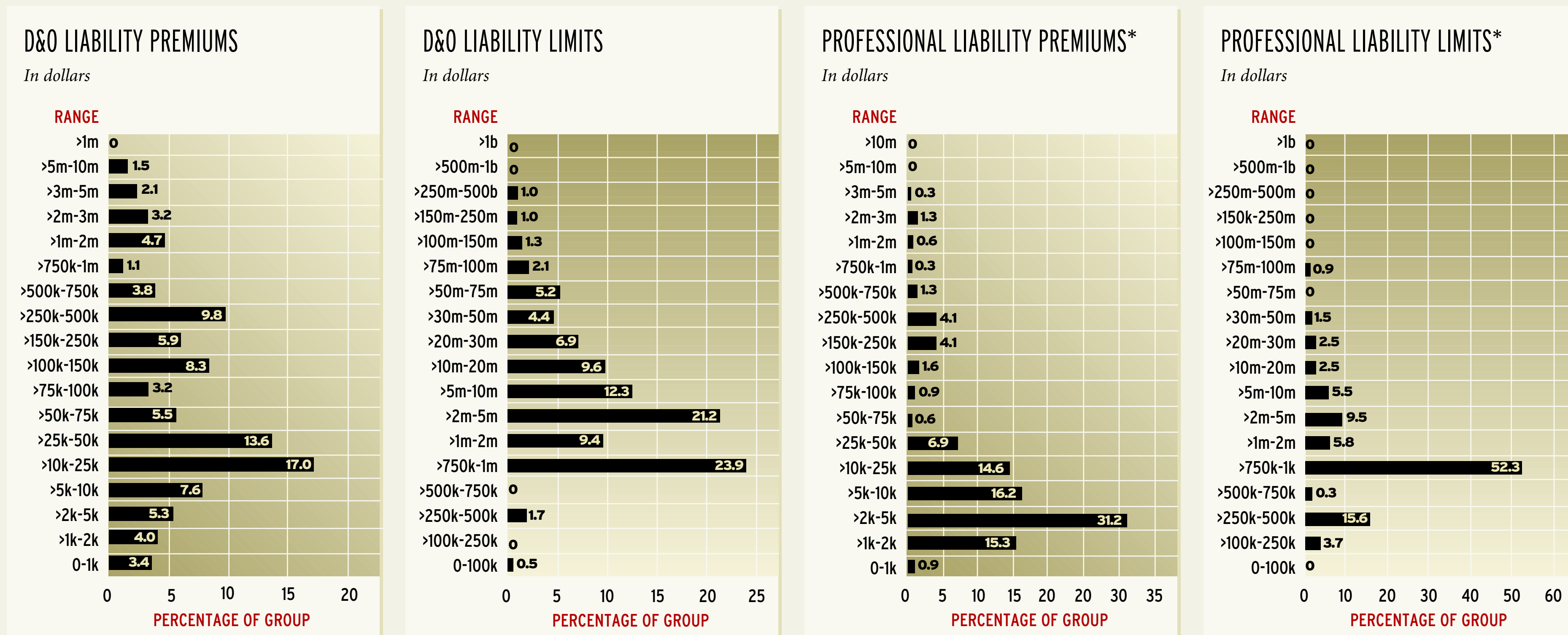

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Subprime: Large institutions seen as being able to absorb losses

CONTINUED FROM PAGE 9

due, according to brokers and consultants.

With their large balance sheets, “they feel they can take that risk in-house,” said Tom Orrico, a managing director and the financial institutions practice leader at Marsh Inc. in New York.

For large financial institutions, the benefit of establishing an alternative risk financing mechanism may not be worth the cost, considering that their substantial balance sheets would not be hurt materially by a pay-as-you-go approach, said Mr. Vecchio of Wells Fargo.

"It just doesn’t make sense” for some financial institutions to formally self-insure the risk, he said.

William J. Kelly, president of WJK Advisory L.L.C. of Morristown, N.J., and a former risk manager at financial institutions, said that a $500 million loss would be catastrophic for the insurance industry but not for large banks. They can write off $2 billion of bad debt without jeopardizing their balance sheets, he said. Employee errors alone amount to tens or hundreds of millions of dollars annually that banks write off, he noted.

Societe Generale S.A., France’s second-largest bank, last year wrote off a $7.18 billion loss resulting from a futures trading scandal, “and it’s still there,” he said.

“Everything has to be put into scale for the institution,” Mr. Kelly said. A $100 million loss “may not be that material to some financial institutions.”

In addition, employing a captive, for example, as an alternative risk-financing solution would amount to trying to “set up a round D&O coverage to fit in a square captive hole,” Mr. Vecchio said. Captives are best used for financing predictable losses that occur at a known frequency, but D&O losses are infrequent and severe, he said.

“They key is you don’t have predictability,” he said. “Without frequency and predictability, you can’t make an educated guess.”

Mr. Vecchio said financial institutions could band together and form a group facility, as large U.S. law firms did in 1979 to form professional liability mutual insurer Attorneys’ Liability Assurance Society Inc.

But he noted that hundreds of large law firms belong to ALAS, whereas “there’s only so many Morgan Stanleys.”

Mr. Kelly also questioned how effectively a captive would smooth a loss for an organization on a consolidated financial reporting basis.

But because of the prospect of a beefed-up regulatory environment, other risk management experts say that formally self-insuring D&O risks might be a better risk-financing approach for financial institutions regardless of the girth of their balance sheets.

The Basel II Accord (see story, page 14) on banking regulation would establish capital reserve requirements tied to a bank’s lending and investment practices to ensure that the bank has safeguarded its solvency. It also would establish a framework for addressing other risks a bank could face, including systemic risk, strategic risk, reputational risk and legal risk.

The accord already has been implemented in Europe; U.S. regulators have agreed on how they will implement the accord, but completing its implementation could take years.

Reserve strengthening

In the meantime, some observers expect that federal regulators, including the Securities and Exchange Commission, will pressure financial institutions to set up reserves against their exposures as well as demonstrate how they are mitigating risk.

Either way, financial institutions should consider arranging a more formal risk financing mechanism for their D&O exposure, said Hannah Findlay, a senior consultant with SMART Business & Advisory Consulting L.L.C. in London.

A group captive would be one approach, she said. Financial institutions examined establishing a “collective insurance program” several years ago, she said.

A couple of large financial institutions already cover their D&O exposures in their captives, said Michael O’Connell, a New York-based managing director and the national financial institutions practice leader for Aon Risk Services Inc. However, the captives are not used to cover D&O risk solely, he said. Instead, they use their captives to “protect themselves against broader exposures,” and D&O liability is a “subset” of that strategy, he said.

But the approach is not the norm, he said.

Even more so than the D&O market, the errors and omissions insurance market is very tight for financial institutions. Many do not buy either coverage.

At least a half dozen, though, are examining alternative catastrophic risk financing vehicles to hedge their D&O and E&O exposures, Mr. O’Connell said.

For financial institutions with strong balance sheets, that would be $700 million of Sides B and C D&O coverage and E&O coverage excess of a $250 million to $500 million retention, he said.

Insurers, reinsurers and capital markets are working on devising an instrument to provide that kind of protection, he said.

Hardest hit have toughest time procuring D&O cover

By DAVE LENCKUS

U.S. financial institutions slammed by huge subprime mortgage-related losses face a severely tightened directors and officers liability insurance market, which has prompted many to go without a key element of the coverage, according to market experts.

Financial institutions continue to purchase Side A D&O insurance, which provides first-dollar coverage to company officials when either their organization is bankrupt or when state statute or corporate governance bylaws preclude their organization from indemnifying them.

The coverage is essential for companies that want to maintain a board of directors, whose personal assets would be at risk if they were not covered by a Side A policy.

At least $250 million and, in some cases, more than $500 million of Side A limits are available, said Michael O’Connell, a New York-based managing director and the national financial institutions practice leader for Aon Risk Services Inc.

However, market experts agree that securities lawsuits over subprime losses are the kind of claims that Side B of D&O policies would cover. Side B requires an organization to indemnify its officials first and then seek reimbursement from the D&O insurer.

And that is where the D&O insurance market has tightened, along with Side C coverage for an entity’s portion of liability for shareholder losses, market experts report.

Advertised capacity is $1 billion, but buyers can expect to line up $500 million of limits at most, said Tom Orrico, a managing director and the financial institutions practice leader at Marsh Inc. of New York.

While some insurers have pulled back capacity, new market entrants have made up for that, he said.

The problem is that rates during the first quarter jumped 60% on average and up to 400% for those “teetering on bankruptcy,” he said.

“A 100% increase is not unusual,” said Hannah Findlay, a senior consultant with SMART Business Advisory & Consulting L.L.C. in London.

And for those risks facing litigation or a significant drop in their market capitalization, renewing coverage at comparable rates and terms would be challenging, Aon’s Mr. O’Connell said.

Even $100 million of coverage is “a hard sell for brokers” as financial institutions proclaim they do not need the coverage because of the confidence they have in their boards, Ms. Findlay said.

Buyers also face retentions that have at least doubled. For those with market capitalizations greater than $10 billion, $10 million retentions have grown to $25 million, and some risks have taken $50 million retentions, Mr. Orrico said. A few have agreed to assume $100 million retentions, he said.

One insurance executive said the market is tougher than that for large financial institutions. “There’s not a lot of interest” in writing a national bank at a $25 million to $75 million attachment point, said Scott Meyer, the New York-based president of the financial institutions group at AIG Executive Liability, a subsidiary of American International Group Inc.

By comparison, financial institutions that do not have subprime mortgage exposures faced flat, nominally higher or lower rates at renewal during the first quarter, he said. In select cases, insurers also have imposed coinsurance requirements of up to 10%, Mr. Orrico noted.

Meanwhile, some insurers have added subprime mortgage-related exclusions, while others have tightened policy language that restricts coverage for any pending or new subprime-related litigation to expired coverage, market experts noted.

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Subprime crisis triggers effort to strengthen banking system

Regulators take steps to guard against future problems

By ADRIAN LADBURY

In mid-April, the Basel Committee on Banking Supervision, the Switzerland-based group that creates standards for the global banking system, announced a series of steps that it hopes will make the banking system more resilient to financial shocks. A key change was a call for bigger capital buffers against future crises.

The committee's actions supported the recommendations made by the Financial Stability Forum's Working Group on Market and Institutional Resilience that presented its report on the recent credit crisis to the G7 finance ministers and central bank governors.

The Basel Committee decided that crisis, which was triggered by the subprime crisis in the United States, indicated that an enhancement of various aspects of the Basel II framework directive is needed.

This would include raising the capital requirements for complex structured credit products, liquidity facilities to support asset-backed commercial paper conduits and credit exposures held in the trading book.

'Supervisors cannot predict the next crisis, but they can carry forward the lessons from recent events to promote a more resilient banking system.'

Nout Wellink, Netherlands Bank

ECB

The committee also said that the crisis underlined the need for the international banking community to promptly implement the Basel II framework, its new risk-based capital adequacy system, because it believes that it will help address several of the problems that caused and exacerbated the credit crunch.

The Basel Committee also said that standards for liquidity risk management and supervision need to be strengthened because nearly all of financial market was ill-prepared for the sudden loss of liquidity that created the credit crunch. The committee will launch a public consultation on this area in July.

It also said that efforts to strengthen banks' risk management practices and supervision in particular for stress testing, would be needed again because so many of the banks were so clearly unprepared for the scale and nature of the problems that followed the subprime crisis.

"The market turmoil has revealed significant risk management weaknesses at banking institutions. The committee will issue guidance in a number of areas to help strengthen risk management and supervisory practices. These relate to the management of firm-wide risks; banks' stress testing practices and capital planning processes; the management of off-balance sheet exposures and associated reputational risks; risk management practices relating to securitization activities; and supervisory assessment of banks' valuation practices," stated the Committee.

Nout Wellink, chairman of the Basel Committee and president of the Amsterdam-based Netherlands Bank said: "Supervisors cannot predict the next crisis, but they can carry forward the lessons from recent events to promote a more resilient banking system that can weather shocks, whatever the source. The key building blocks to core bank resiliency are strong capital cushions, robust liquidity buffers, strong risk management and supervision, and better market discipline through transparency."

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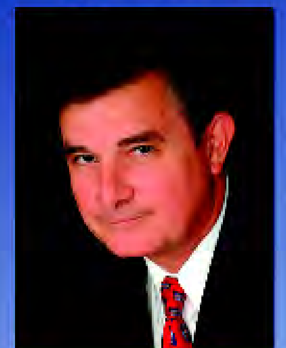

BI TALKS WITH WILLIAM J. KELLY ON THE ROLE OF RISK MANAGEMENT IN THE SUBPRIME CRISIS

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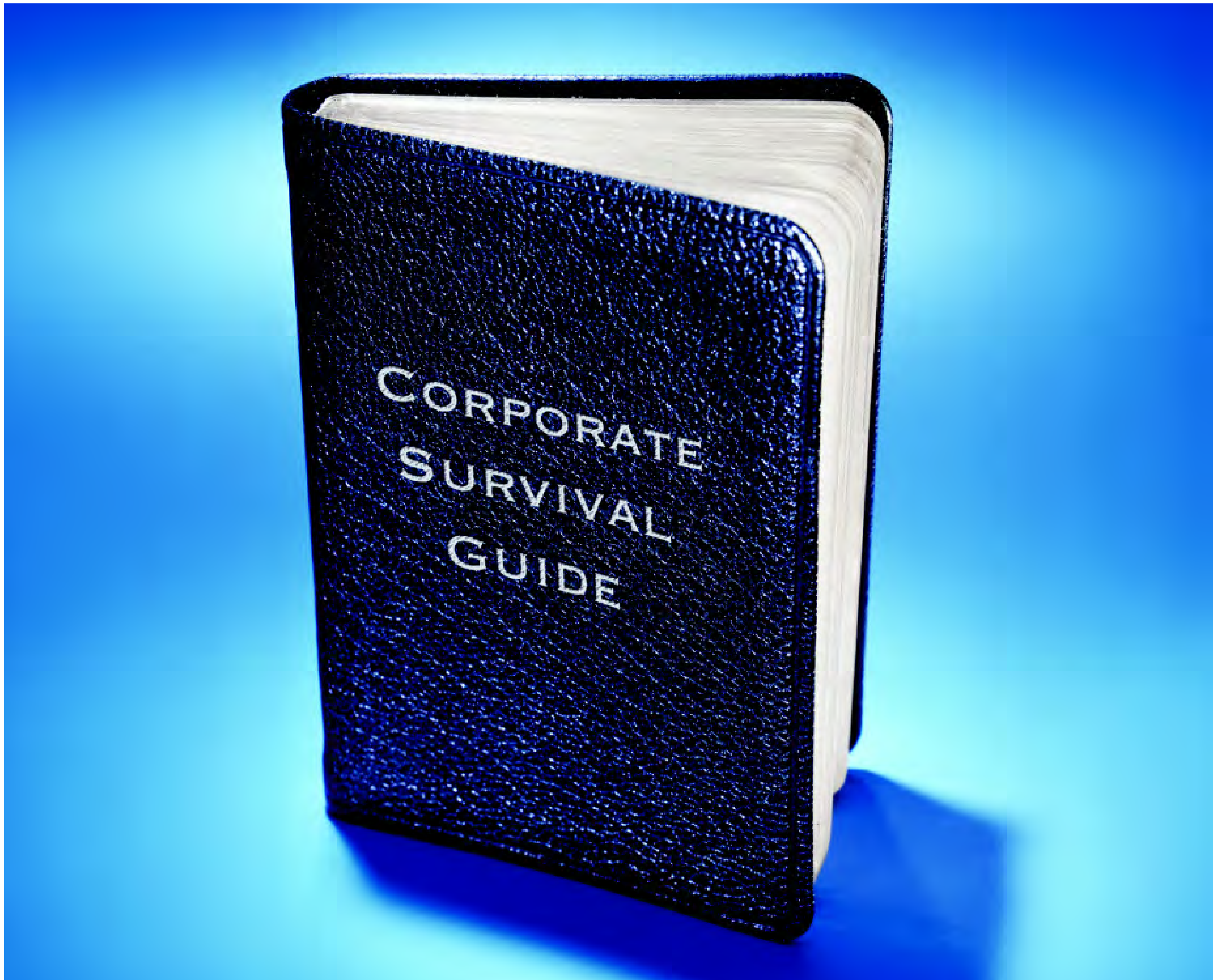

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Comings & Goings

BROKERS

Willis Group Holdings Ltd. has made several senior-level appointments:

- **Bryan Martin** has been named senior vp for Willis North America's Surety Practice in San Francisco. Previously, he was senior vp of ABD Insurance & Financial Services Inc.'s surety practice group.
- **Donovan Nowell** will lead Noodle Specialty Brokers, a Willis unit in New York. He has also been named senior vp of Willis North America's commercial operations. Most recently, he led the company's executive risks unit.
- **Rob Perry** will join the Willis team in Singapore as an executive director. Previously, Mr. Perry was a team leader in Willis' Political Risk Practice in London.
- **Neil Getter** was named executive vp of the Willis Aerospace Leadership team in New York. Most recently, he was at Aon Corp., where he was a regional practice leader and senior account executive.
- **James Wylie** has been appointed executive vp of Willis Americas and regional executive officer and national partner for the central region based in Chicago. Before joining Willis, he was senior managing director for the Midwest region of Wachovia Insurance Services.
- **Dorien Smithson** has been named executive vp of Willis Americas in New York overseeing the North American Claim & Risk Control Practice. Previously, she was senior vp, national sales and marketing at ESIS Inc.

Aon Corp. has announced several senior-level appointments:

- **Peter Breitstone** has been named president and chief executive officer of Agency Specialty Product Network Insurance Services Inc. in Chicago. Mr. Breitstone will continue as president and CEO of Aon's environmental services group. **Jerry Tegan**, who was president and CEO for eight years, will be ASPN chairman.
- **Ed Greenbaum** has been named senior vp, business development, southeast region in Baltimore. Previously, he was vp for business development, southeast region.
- **Katie Bikulcius** has been appointed senior vp, health and benefits, central/west region based in Chicago. Most recently, she was vp for health and benefits, central/west region.
- **Paul Hilling** in Chicago; **Andrea Silva** in Fort Worth, Texas; and **Hugo Sibrian** in Los Angeles have each been appointed senior vp, health and benefits, central/west region. All previously were vps for health and benefits, central/west region.

Lockton Cos. L.L.C. has named **Tim Meacham** senior vp in its operations group based in Kansas City, Mo. Most recently, he was managing director at Wachovia Insurance Services Inc.

Marsh & McLennan Cos. Inc. has named **David R. Frediani** as senior vp, international and client development in the New York office. Previously, he was executive director of MMC International.

Ms. Carpio

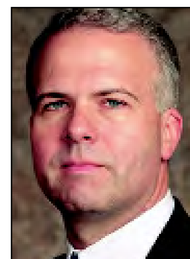
IMA Financial Group Inc. has promoted **Therese Carpio** to executive vp and director of operations for IMA Inc. in Denver. Most recently, she was senior vp of commercial lines at IMA of Colorado Inc.

Mr. Drinkwater

Charlotte, N.C.-based AmWINS Group Inc. has named **James Drinkwater** president of its brokerage division. Most recently, Mr. Drinkwater served as the division's chief operating officer.

INSURERS

Maxum Specialty Insurance Group has named **F. Marshall Turner II** president and CEO of the Maxum Indemnity Co. and Maxum Casualty Insurance Co. based in Duluth, Ga. Prior to Maxum, Mr. Turner was executive vp of AXIS Specialty U.S. Holdings Inc. and president of AXIS Specialty U.S. Services Inc.


Mr. Riordan

Schaumburg, Ill.-based Zurich North America Commercial has named **Daniel W. Riordan** president of its surety, credit and political risk group. Most recently, he was executive vp and managing director of Zurich North America.

Also at Zurich, **Bryan Salvatore** has been appointed head of its specialties accident and health group. Previously, he was senior vp of Zurich North America Commercial's specialties business.

REINSURANCE

Bermuda-based Folksamerica Re, a unit of White Mountains Re Ltd., named **Melissa Emmendorfer** chief underwriter of casualty. Previously, she was senior vp of professional liability and clash.

Also at Folksamerica, **Joann De Blasis** was named chief underwriting officer of the accident and health business. Previously, she was senior vp-accident and health.

OTHER PROVIDERS

GAB Robins Group of Cos. named **Harry Baumgartner** senior vp, general counsel and corporate security in Parsippany, N.J. Previously, he was as director of risk management at BASF Corp.

Towers Perrin appointed **Guy Hengesbaugh** as managing principal of its Bermuda reinsurance operation. Previously, he was president and CEO of Forterra Guarantee Ltd.

TO SUBMIT ITEMS

Business Insurance **would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Allison Martinat, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; *amartinat@businessinsurance.com.***

UP CLOSE

Mark Farrell

NEW JOB TITLE: President of Intracorp, a unit of CIGNA Corp., in Philadelphia

START DATE: April 7

PREVIOUS POSITION: Vp and senior sales consultant at Commerce Insurance Services Inc.

VITAL STATISTICS: B.A. in business administration from Muhlenberg College. In addition to my experience with Commerce, I've held several leadership positions throughout my career with Concentra Inc., now a part of Coventry Health Care Inc., and Genesis Health Ventures.

GOALS FOR NEW POSITION: Case management is the core of Intracorp's business. We've been the leader in case management and managed care services for more than 38 years. It's my goal to enhance our already leading customer service standards and to consistently exceed customer expectations. I want all of our employees—case managers, medical bill reviewers, sales executives—to have the same goal in mind and to continuously demonstrate their shared dedication and commitment to our customers.

FIRST TIME IN THE JOB MARKET: My first job in high school was loading trucks on the night shift for my uncle's trucking company. My first professional job out of college was a sales position with Beecham Products, now a part of GlaxoSmithKline.

TOP ADVICE: The best advice I ever received came from my father. He taught me to treat others as you want to be treated and to always treat others with respect. It's great advice because it can be applied both personally and professionally.

OUTSIDE THE INDUSTRY, A DREAM JOB: My dream job would be in the area of pediatric oncology. The dedication and compassion these professionals illustrate on a daily basis, while treating the needs of children with cancer, is extraordinary.

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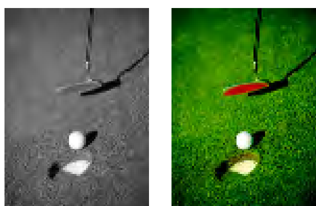

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All Known Creditors who have not already submitted a Scheme Claim Form will be notified of the Final Claims Opportunity Deadline by the Scheme Administrators by letter, enclosing their Scheme Claim Form Pack, which includes data on USI's system specific to their own business with USI.

Should any such Creditor not receive a Scheme Claim Form within two weeks of this advertisement, they are advised to contact the Scheme Administrators or alternatively to download a blank Scheme Claim Form from the website at www.unitedstandard.co.uk. This latter will not contain any data specific to their business with USI.

Scheme Claim Forms which were received after the First Claims Opportunity Deadline have automatically been treated as submitted for the Final Claims Opportunity Deadline. Each creditor may submit their Scheme Claim once only.

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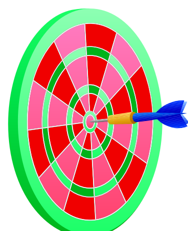

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International NEWS

U.K. changes pension levy formula

Some employers see big increase in sums paid to government backstop

By JONATHAN GARDNER

LONDON—U.K. employers with defined benefit pension plans are seeing unexpected changes in the amount they pay into the U.K. pension safety net program, due to a change in the way the government calculates the levy.

Some companies may be paying millions of pounds more than they budgeted to pay their Pension Protection Fund levies in 2008-2009, although the results will differ across employers because the levy is based in part on companies' risk of insolvency, according to fund officials and industry analysts.

Indeed, many employers are paying less because they have provided the agency with new data indicating they have reduced their underfunding or insolvency risks, and government officials said the aggregate amount paid into the fund will not change.

The change in the method of calculation is the result of a drastic jump in the so-called "scaling factor," a final multiplier applied to the risk-based element of the levy, to 3.77 from a projected 1.6 in November. The Pension Protection Fund disclosed the final figure in a May 30 announcement, noting that financial data from 2,500 plans, gathered by a March 31 deadline, had prompted the changes.

> 'The effect will depend on how much you're underfunded or not and how much you've done to reduce your risks.'
>
> Deborah Cooper, Mercer L.L.C.

"I do appreciate that the volatility between the provisional (scaling factor) and the formal was problematic," PPF Chief Executive Partha Dasgupta said.

But Mr. Dasgupta added that because of the data collected earlier this year, the fund has a clearer picture of insolvency risk and other factors that contribute to calculating the levy. He noted that future final scaling factors will be calculated each October, months before the beginning of the government's fiscal year.

"At the time we publish the scaling factor, they will be able to calculate their maximum bill and be able to take steps to reduce their risk" and, thus, their levy, he said. "We do want to be able to generate predictability and forecastability."

Created in 2005, the fund pays up to 100% of what employees of insolvent companies would have received, up to a cap at age 65 of £30,856 ($61,160) in 2008-2009.

Company levies are based on total liabilities and their risk of insolvency, in which 20% reflects total liabilities that would fall to the PPF should the company go bankrupt and 80% reflects their risk of underfunding and insolvency. Companies that have set aside 140% of pension liabilities do not have to pay the risk-based component.

The scaling factor multiplier is then applied to each component of

See **LEVY** next page

REUTERS

Jennifer Stoddart, Canada's privacy commissioner, says simple steps could avoid "inexcusable security breaches."

'Leaks' of data surge

Canada weighs mandatory breach notification

By GLORIA GONZALEZ

OTTAWA—The number of data breaches in Canada reported so far in 2008 is outpacing last year's figure, with many of the breaches caused by companies failing to take basic steps to protect personal information, according to Canada's federal privacy commissioner.

The Office of the Privacy Commissioner has received 21 voluntary breach reports in the first five months of 2008 compared with 34 reports of breaches for all of 2007, according to Privacy Commissioner of Canada Jennifer Stoddart's annual report on the Personal Information Protection and Electronic Documents Act. The agency received 20 reports of data breaches in 2006.

> **21** DATA BREACHES
> **REPORTED** voluntarily so far in 2008 in Canada compared with 34 for all of last year.

"While the increased number of reports is a positive sign, it's clear we still aren't hearing about every breach which could have a harmful impact on people," the commissioner said in a statement. The agency is supporting a proposal to introduce mandatory breach notification.

Many companies need to do more to prevent "inexcusable security breaches," such as personal information compromised because of a lack of "elementary" security measures such as encryption on laptops, the commissioner said.

In 2007, almost nine in 10 Canadians affected by these breaches had their personal information compromised because it was in an electronic format that was either not secured or lacked adequate protection mechanisms such as firewalls and encryption, according to the commissioner's report. Other data breaches occurred, the report said, because employees did not follow established company practices, which companies can address by providing ongoing privacy training.

"It's clear that organizations of all sizes can and must do more to prevent data leaks," Ms. Stoddart said in her report.

PIPEDA establishes ground rules for how organizations collect, use and disclose the personal information of both customers and employees.

The Office of the Privacy Commissioner received 350 new PIPEDA complaints in 2007, with almost one-third of the complaints involving financial institutions. That figure declined from 2006, when 424 complaints were filed.

The agency attributed the decline to a streamlined process that addresses all complaints of a similar nature under one complainant, unless a complainant wants to file separately.

Nova Scotia refuses to disclose list of employers with the most injuries

Workers comp board argues release may hurt companies' reputations

By GLORIA GONZALEZ

HALIFAX, Nova Scotia—The Workers' Compensation Board of Nova Scotia is defying an ombudsman's recommendation that it release a list of employers with the highest incidences of workplaces injuries.

The comp board should release a list of the 25 companies with the highest number of injuries from 2004 to 2006 and the claims costs paid for those injuries, according to a report by Dulcie McCallum, the Freedom of Information and Protection of privacy review officer for Nova Scotia.

Ms. McCallum was responding to a freedom of information request from the Chronicle Herald, a newspaper in Halifax, Nova Scotia. The newspaper also is seeking information on 79 employers the comp board has identified as sustaining injuries at twice the average rate of their industry sectors, said Dan Leger, director of news content for the newspaper.

"It does appear there's a willingness at the Workers' Compensation Board to resolve the issues and get some clarity" on what information the board can legally release, said Mr. Leger.

"We just want the information," Mr. Leger said, noting that he may seek a court order to force the board to comply.

The board argued in its filing with Ms. McCallum that employers may suffer permanent damage to their reputations or financial harm, and the cooperative relationship between the board and employers will be jeopardized if the information is released.

The board believes the requested information is exempt from disclosure, according to the report.

A comp board spokeswoman, though, said the organization will release the information if the Supreme Court of Nova Scotia determines the employer names can be released legally.

"Once we get clarity, we're happy to comply," the spokeswoman said, noting that the workers comp board had released other information requested.

Ms. McCallum's office may make recommendations, but does not have the authority to mandate compliance.

Canadian workers comp coverage is provided largely by provincial and territorial workers comp boards and is financed by employer-paid premiums set by the boards. Rates for each company in a given sector reflect the loss experience of that sector, though companies with low incident levels are eligible for individual rebates.

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Levy: U.K. alters formula for Pension Protection Fund assessments

CONTINUED FROM PREVIOUS PAGE

the levy make the aggregate levy equal the amount the Pension Protection Fund forecasts it will need. In 2008-2009, the estimate is £675 million ($1.34 billion).

The Pension Protection Fund officials said they had to increase the scaling factor to 3.77 because many pension plans decreased their short-term insolvency risks as judged by Dun & Bradstreet—for example, by reducing their ratio of liabilities to net worth or by providing updated balance sheets after the draft scaling factor was announced in November. They also reduced their fund deficits and added contingent assets that reduced their risk of underfunding in the interim.

Because of those steps, agency officials said, the levy would not have generated the necessary £675 million had they not increased the scaling factor.

According to the agency, 9% of plans pay no risk-based levy now—up from 6% in 2006-2007—because of their funding levels, while an additional 42% will pay a lower risk-based levy. The agency said nearly one-third of plans will see a 20% drop in their levies.

The accumulation of data over the first three years of the program also may assist the agency in providing more accurate levy forecasts in the future, said Mr. Dasgupta.

> Plan sponsors will find 'the PPF has moved the goal posts and they will have to pay more than they thought.'
>
> John Ball, Watson Wyatt

While acknowledging that the Pension Protection Fund does help beneficiaries and insolvent companies, a spokesman for the National Assn. of Pension Funds said the government agency should do more in the future to avoid such a drastic increase in the scaling factor.

"It is a shock to any scheme that estimated its levy charge on the indicative scaling factor," the spokesman said. "We want to see as much done as possible to avoid this much volatility."

Some industry analysts said the change will prove difficult for certain employers.

John Ball, head of Watson Wyatt's U.K. defined benefit consulting business in Reigate, England, said that plan sponsors will be "running to stand still" because even as they have made efforts to reduce their risk and thus their levy, the increase in the scaling factor means their levies will not be reduced.

"Now, they find that the PPF has moved the goal posts and they will have to pay more than they thought," Mr. Ball said in a statement.

However, others acknowledged that it may be a mixed bag.

"The effect will depend on how much you're underfunded or not and how much you've done to reduce your risks," said Deborah Cooper, a London-based principal of Mercer L.L.C.

While some see lowered levies as a result of the change, for the ones seeing a drastic increase, "that's little consolation," she added. For some plans, "they'll be having to pay more than double."

Ms. Cooper questioned the accuracy of the agency's forecasting methods.

"It's hard to believe the extra information they got in after (the provisional scaling factor was announced) was so materially different. To be out by more than a factor of two times—it's a big difference."

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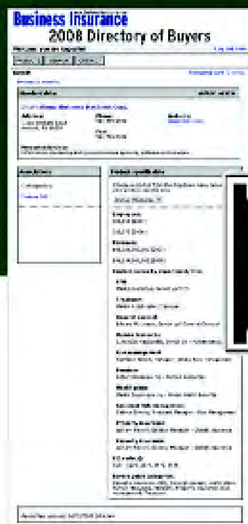

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Climate: Risks disclosure sought by NAIC

CONTINUED FROM PAGE 3

Specifics of how such standardized climate risk disclosures would be made are being worked out by an NAIC subgroup.

A controversial February draft of a Climate Risk Disclosure Proposal was supported by representatives of several consumer and investor groups as being needed to promote transparency. Industry representatives, however, said it would require insurers to reveal proprietary information that could be used against them in lawsuits.

Regulators are seeking comments by June 30 on the latest draft that reduces to nine the number of questions for insurers about how they handle their climate-related risks. It also pushes implementation back a year to 2009 for companies with more than $100 million in premiums, and later for smaller insurers.

Despite those changes, the questions that remain for insurers to answer are "as bad as anything we've seen so far," said David Snyder, vp and assistant general counsel with the American Insurance Assn. in Washington.

A key issue is how insurers would present the information. Wisconsin Insurance Commissioner Sean Dilweg, chair of the NAIC's Climate Change and Global Warming Task Force, said in a late May interview that he supports changing the reporting process from executive-attested interrogatories to questions in an insurer's Management Discussion and Analysis section of the annual statement, but the drafting group will determine the disclosure vehicle.

In other business at the NAIC meeting, regulators:

- Formally adopted a Uniform Health Carrier External Review Model Act to refine standards for establishing and maintaining external review procedures so that consumers could seek an independent review of a health insurer's refusal to cover specific procedures or services.
- Asked for comments by June 30 on "whether it made sense to pursue the establishment of a catastrophe reserve absent favorable tax treatment" by the Internal Revenue Service.

The question is prompted by two previous efforts, said Michael Moriarty, New York's deputy superintendent for property and capital markets.

In 2002, the NAIC adopted a catastrophe reserve proposal but did not implement it because U.S. Treasury Department officials said it would be reviewed only after it was enacted, Mr. Moriarty said. "It was a classic chicken and egg situation," he said.

READ the full NAIC white paper at *Business Insurance*'s Knowledge Center
www.BusinessInsurance.com

In 2007, the New York Insurance Department proposed requiring insurers to establish a catastrophe reserve, even on an after-tax basis. In comments on the idea, regulators learned "that insurers did not think that New York should proceed with the proposed regulation absent favorable federal tax treatment and that insurers believed establishing a single-state catastrophe reserve made little sense," Mr. Moriarty said.

- Asked for comments by June 23 if captives should be required to provide medical professional liability claims data under a proposed NAIC model law intended to make closed claims data available and establish sound public policy.

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Candidates: Health care reform proposals dissected

CONTINUED FROM PAGE 1

a play-or-pay mandate, they also would benefit from a new federal health reinsurance program in which the government would assume liability for catastrophic health care claims, an idea that first surfaced 15 years ago as part of a sweeping health care reform package then pushed by the Clinton administration.

Other government mandates explicitly backed by Sen. Obama include full parity for coverage in health care plans of mental disorders, requiring everyone under age 25 to have health insurance and requiring employers to extend health coverage to employees' children up to age 25, an idea that many state legislatures over recent years have embraced, though only on health plans sold by commercial insurers because of restrictions imposed by federal law.

Yet another sharp difference between the two candidates involves the role of government in providing health insurance coverage. Sen. Obama backs a new national plan—available to individuals and small employers—in which income-linked federal premium subsidies would be provided.

Sen. McCain's approach is more limited. He favors a plan—which he dubs the Guaranteed Access Plan—that would be federally supported, developed through discussions with states and possibly offered through a nonprofit corporation, which would be available to those who are denied coverage by health insurers due to pre-existing medical conditions. Limits would be imposed on the premiums enrollees would pay, while financial assistance would be provided to those below certain income levels.

Health care experts, emphasizing the embrace of mandates by Sen. Obama and Sen. McCain's proposed revamp of the tax code as it applies to health care premiums, say the differences in health care positions taken by the two candidates could not be sharper.

"The differences could not be more stark," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

"The biggest differences is the extent of government involvement, which would be much greater under the Obama plan, while Sen. McCain is putting more emphasis on the individual," said Chantel Sheaks, a principal in the Washington office of Buck Consultants L.L.C.

What the two candidates have in common is a lack of detail in their proposals, though Sen. Obama's plan is much lengthier than Sen. McCain's. For example, Sen. Obama, in his play-or-pay mandate, does not define what a "meaningful" employer contribution would be, while Sen. McCain does not does not define, in his health care tax credit approach, whether the amounts he proposed would be the maximum available or an average.

"There are dozens of unanswered questions," said Paul Dennett, senior vp-health care reform at the American Benefits Council in Washington.

That lack of detail is not surprising. "I would not hold your breath for a lot of details or numbers. It is a big mistake to get specific right away, as you open yourself up to attack," said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington.

Additionally, experts note that the candidates waffle on their health care positions at times. For example, early in the campaign, Sen. McCain advocated the elimination of the exclusion of employer-paid health insurance premiums from employee income. Lately, though, Sen. McCain has been ambiguous, saying that the tax code should be amended to offer choices beyond employer-based coverage.

That ambiguity may be because such a change would be perceived so negatively by the public, said Ted Nussbaum, director of heath care consulting with Watson Wyatt Worldwide in Stamford, Conn.

Indeed, such a change in tax law is a "shocking idea. This is radical," said Uwe Reinhardt, a professor of economics and public affairs at Princeton University in Princeton, N.J., who spoke last week at a Washington briefing sponsored by the Alliance for Health Reform.

HOW THE PRESIDENTIAL CANDIDATES DIFFER ON HEALTH CARE REFORM

JOHN McCAIN

- Would rewrite the tax code to add employer-paid health insurance premiums to employees' taxable income
- Advocates providing a refundable tax credit of $2,500 for individuals and $5,000 for families to pay for insurance premiums. Unused credits could be deposited in health savings accounts.
- Would work with states to develop a plan to provide coverage to those who have been denied health insurance, with premium assistance for those whose incomes fall below certain levels.
- Supports government promotion of walk-in clinics in retail outlets.
- Supports reimportation of prescription drugs and faster introduction of generic drugs.
- Supports tort reform legislation that would shield doctors from lawsuits if they follow clinical guidelines and adhere to safety protocols.

BARACK OBAMA

- Supports establishing a national plan for those without employer-provided insurance. Federal premium subsidies would be provided to lower-income individuals.
- Advocates that employers that do not offer or make a "meaningful" contribution toward coverage pay a percentage of payroll to the national plan. Small employers would be exempt from the "play or pay" mandate.
- Endorses a national exchange to allow individuals to buy health coverage from insurers.
- Supports federal reimbursement of employer plans for a portion of catastrophic costs.
- Supports requiring all health plans to extend coverage to employees' adult children up to age 25.
- Supports mandating health plans to provide the same coverage for mental disorders as other medical conditions.

Obama critical of McCain's view against cat fund

CHICAGO—The campaign of the presumptive Democratic presidential nominee—Sen. Barack Obama, D-Ill.—issued a statement last week blasting his presumptive Republican opponent for opposing the creation of a national catastrophic insurance fund.

Sen. Obama has advocated the creation of such a fund.

In a statement, a spokesman for Sen. Obama said Sen. John McCain, R-Ariz., was continuing the "failed policies" of President Bush.

Sen. McCain has opposed the creation of a national catastrophic insurance fund throughout the campaign—including speaking against it before the Florida primary; he won Florida's Republican presidential primary nonetheless.

Much of the insurance industry opposes the creation of a national catastrophic insurance fund, holding that such a facility is unnecessary and could encourage development in hurricane-exposed areas.

Proponents say such a fund is necessary to keep homeowners' insurance available and affordable in catastrophe-prone areas.

—By Mark A. Hofmann

Drugs: Price-fixing suit widens

CONTINUED FROM PAGE 3

manufacturers, including Abbott Laboratories and Watson Pharmaceuticals Inc., agreed to pay $125 million to settle a class action suit charging that they massively inflated the cost of drugs covered under Medicare Part B.

San Francisco-based McKesson, the nation's largest drug wholesaler, became a target in the AWP litigation in 2005, when a group of union health plans charged that it had conspired with First DataBank to boost markups on hundreds of drugs.

Pharmacy chains and other retailers typically buy drugs from McKesson and other wholesalers on the basis of "wholesale acquisition cost," or WAC, a benchmark price set by manufacturers. The pharmacies and PBMs, though, charge insurers and health plans on the basis of AWP, which is set by manufacturers and includes a markup over WAC.

First DataBank has acted as an information source for the marketplace, compiling WAC data on thousands of drugs and publishing AWP data that was based on surveys of wholesalers until it halted the surveys in 2005.

The 2005 class action suit—and the San Francisco Health Plan and Connecticut suits filed last month—charge that McKesson and First DataBank agreed to artificially boost AWP figures to benefit McKesson's retail pharmacy clients.

Starting in late 2001, the two companies reached a secret agreement to raise the WAC-to-AWP markup on more than 400 brand-name drugs to 25% from 20%, the suits allege. As part of this deal, First DataBank agreed not to use survey information from other wholesalers to establish the AWP for those drugs, but to rely solely on information supplied by McKesson, the suits allege.

The two companies camouflaged the alleged scheme by waiting until a drug manufacturer raised the underlying price of a drug before tacking on the additional 5% spread for that product, the suits allege. Several drug manufacturers asked First DataBank to explain the increases in their products' AWPs, but First DataBank stalled those inquiries and the manufacturers eventually acquiesced to the changes, the suits allege.

The alleged scheme ended in 2005, when First DataBank announced that it would stop conducting surveys to obtain AWP data, court filings say.

The three complaints all charge McKesson with violating the federal Racketeer Influenced and Corrupt Organizations law along with various antitrust, unfair trade practices and consumer protection laws.

The two recent suits expand the scope of the litigation, bringing public entity health plans into an action that until now has involved only private health insurers.

Settlement may improve deals for PBMs

BOSTON—First DataBank Inc.'s proposed settlement of pharmaceutical price-fixing charges is not likely to produce any immediate savings for health plan sponsors or insurers if approved, but it may lead to renegotiation of contracts with pharmacy benefit managers that could produce gains for health plans, benefit consultants say.

First DataBank, a unit of Heart Corp. that publishes price data on thousands of drugs, was accused in a 2005 racketeering suit of conspiring with pharmaceutical wholesaler McKesson Corp. to inflate the average wholesale price of hundreds of prescription drugs by 5%.

A federal judge in Boston last week gave preliminary approval to a settlement in which First DataBank would pay $1 million to insurer and health plan plaintiffs and roll back the 5% markup it reported on 1,356 drugs. Independently of the settlement, the company announced that it would voluntarily adjust reported AWP markups on other drugs and cease publishing AWP data altogether within two years after the adjustments.

The proposed deal replaces an earlier settlement proposal that was rejected by the court in January.

Though AWP is the basis for calculating reimbursements under most PBM contracts, First DataBank's planned AWP adjustments won't likely translate into savings for plan sponsors. PBM contracts typically included clauses allowing renegotiation in the event of such AWP changes, and PBMs will likely seek to adjust the terms of their contracts to maintain their profit margins, consultants say.

"The measuring stick is changing, but I don't get the sense that underlying drug prices are changing," said Joshua Golden, senior pharmacy consultant with Hewitt Associates L.L.C. in Atlanta. "I don't believe it's going to drive significant plan savings for any client."

On the other hand, PBM contract renegotiations triggered by the settlement could give plan sponsors a chance to work out better deals for themselves, consultants add. Health plans should demand more information from PBMs if the First DataBank deal is approved, including exactly how much they spent on the roughly 1,356 drugs covered by the settlement, the drugs' AWPs, and discounts and rebates applied, said Sean Brandle, vp and national pharmacy practice leader for Segal Co. in New York.

Health plans that "dive into the data" will be in a better position to negotiate with PBMs, he noted. One tactic, for example, would be for sponsors to seek a cap on any increase in the next year's costs for certain classes of drugs, such as diabetes medications, Mr. Brandle said.

"Things like the whole AWP shake-up are going to drive us to more realistic pricing, eventually," he said.

—By Douglas McLeod

News In Brief

CONTINUED FROM PAGE 1

that unrealized losses on its credit default swap portfolio totaled nearly $6 billion in 2007, not the $1.5 billion that had been previously reported, based on revised valuation methods. The insurer also reported that its auditor found a "material weakness" in its valuation procedures for last year. Later in February, AIG took an $11.5 billion pretax charge for unrealized losses on the swaps in 2007, and took a further $9.1 billion write-down in the first quarter of 2008. Several other financial companies, including Goldman Sachs Group Inc., Merrill Lynch & Co. and Morgan Stanley, this year have disclosed SEC requests that are related to subprime mortgage derivatives. AIG's stock plummeted amid a falling market Friday, dropping 6.8% to a 52-week low of $33.93.

Court: AIG must provide documents to Greenberg

American International Group Inc. must provide former Chief Executive Officer Maurice R. Greenberg and former AIG Chief Financial Officer Howard I. Smith with legal memoranda prepared before they left the insurer in 2005, according to the New York Court of Appeals. The state's highest court last week rejected AIG's appeal of an intermediate appeals court ruling in February that called for the insurer to turn over the documents, said Mr. Greenberg's attorney, Nicholas A. Gravante Jr. of Boies, Schiller & Flexner L.L.P. Meanwhile, New York Attorney General Andrew Cuomo last week objected to Mr. Greenberg's request to delay a deposition into allegations of financial misconduct in a legal memorandum filed with New York State Supreme Court's appellate division. A spokesman for Mr. Greenberg said the memo was filed in response to Mr. Greenberg's request to delay the deposition until he has the documents he needs to adequately prepare. In his memo opposing the stay, Mr. Cuomo said that Mr. Greenberg "has had three years to obtain evidence to prepare and the time has come for him to sit for a deposition. Whatever outstanding document disputes he has with third parties should not delay his deposition any longer."

TPA gives up N.Y. license to settle investigation

Compensation Risk Managers L.L.C. will surrender its license to do business as a third-party administrator in New York, amid charges of mismanaging several self-insured trusts in the state. Poughkeepsie, N.Y.-based CRM reached a settlement with the New York State Workers' Compensation Board and agreed to surrender its license and stop representing five self-insured employers by Sept. 8. CRM also agreed to transfer all claims for the self-insured trusts that it still administers to the WCB. The subsidiary of Bermuda-based CRM Holdings Ltd. admitted no wrongdoing and was not ordered to pay any fines.

Reinsurers' combined ratio increases in first quarter

U.S. reinsurers reported a 95.2% combined ratio for the first quarter of 2008, a deterioration from the 89.8% reported by a comparable group a year ago, according to a survey of 20 reinsurers by the Washington-based Reinsurance Assn. of America. The 95.2% combined ratio reflects a 67.4% loss ratio and a 27.8% expense ratio, according to the RAA. Among other results, net premiums written increased by 1% to $6.8 billion from the year-ago period, and policyholder surplus increased 2.3% to $75.32 billion.

Noted

Commercial **property/casualty insurance rates** dropped an average 11% in May compared with the same month a year earlier, MarketScout reports....**UnitedHealth Group Inc.** has purchased a minority stake in Fidelity Sedgwick Holdings Inc., the parent company of Sedgwick Claims Management Services Inc....**Marsh & McLennan Cos. Inc.** is seeking a new chief financial officer to succeed Matthew B. Bartley, who is leaving the company after less than two years in the role. Mr. Bartley will remain at MMC to ensure an orderly transition.

RIMS: Heads to Capitol Hill to lobby for reforms

CONTINUED FROM PAGE 1

have problems with the qualified risk manager definition in the Senate bill and we have to get that amended. But we have high hopes of moving that bill forward with the acceptable definition."

He had company in being optimistic.

"Surplus lines is at least a 50-50 proposition for this year," said Joel Wood, senior vp at the Washington-based Council of Insurance Agents & Brokers. "In a truncated presidential election year, one has to be realistic about the extent to which Congress is going to resolve anything, but the surplus lines legislation is certainly the lowest-hanging fruit in the regulatory reform arena."

"I think there's a lot of interest in it," said Leigh Ann Pusey, chief operating officer of the American Insurance Assn. in Washington. "There's hope for a broader hearing on insurance regulatory reform, where it would be one of the subjects discussed" by the Senate Banking Committee.

"I think the one piece of legislation that has any likelihood of passing through both chambers would be the surplus lines and reinsurance bill," said Justin Roth, senior federal affairs director in the National Assn. of Mutual Insurance Cos.' Washington office. "This is legislation that enjoys almost unanimous support among the insurance industry."

The outlook for the Insurance Information Act, which was introduced by Rep. Paul Kanjorski, D-Pa., is a bit murkier. He is holding a hearing on the bill June 10.

"Rep. Kanjorski has introduced legislation that would create the Office of Insurance Information, and we think that's a good first step leading to an optional federal charter," said RIMS' Mr. Fleming.

"AIA has been strong supporter of that bill," said AIA's Ms. Pusey. "It's important legislation that stands on its own no matter how you feel about the optional federal charter. It's a very narrow preemption. I think there's a clear and present need for this, but the shrinking legislative calendar puts everything under a clear reality check."

Still, she said she believes the measure has a chance. "It seems to have the bipartisan conceptual support that it needs to move quickly," she said.

Other observers said passage of the Office of Insurance Information measure looks unlikely this year.

"I think that the idea certainly is more doable than the OFC bill," said Ben McKay, senior vp in the Washington office of the Property Casualty Insurers Assn. of America. "It's less grandiose; it was in the Treasury Department blueprint for financial services regulatory reform, so you have executive branch support. Depending on how he crafts it, (Rep. Kanjorski) could probably put together a coalition of supporters. That would get it through the House. Then we have to go to Senate, where there's no activity now and unlikely to be this year."

"I think there's a very good prospect that the House will act on this legislation," said CIAB's Mr. Wood. "It is very difficult to argue with the core logic of the creation of an Office of Insurance Information at the federal level, given the global nature of the industry."

But Mr. Wood said he does not expect enactment this year. "I think in 2009 there will be a fully joined debate to the extent there should be federal pre-emption of state insurance regulation."

RIMS believes the RRG expansion bill—the Increasing Insurance Coverage Options for Consumers Act—is "pretty easy legislation to pass this year," Mr. Fleming said.

Others were more cautious.

"There is a chance in this Congress, but the current version of the bill needs some work," said Robert Myers, general counsel for the National Risk Retention Assn. and managing partner with Manning, Morris & Martin L.L.P in Washington. "We are working with staff to make some changes that will make the bill acceptable to everyone."

"It's on the list of things that actually could go," Mr. McKay said. "It's been vetted; it's been revetted. In all likelihood, it would pass as part of something else, but anything could happen. It doesn't have a lot of detractors; it just doesn't have enough momentum of its own to get over that invisible hump."

"I don't anticipate passage of the legislation this year," said the CIAB's Mr. Wood. "The political barrier we've got is soft market conditions," he said, noting that the impetus for the risk retention groups had been a hard market.

INSURANCE INDUSTRY REFORM

THE NONADMITTED AND REINSURANCE REFORM ACT–H.R. 1065, PASSED BY THE HOUSE IN 2007

- Would allow brokers for large policyholders to seek coverage directly from the nonadmitted market, provided the policyholder employs a "qualified risk manager."
- Would simplify regulation of nonadmitted insurers by subjecting them to the premium taxes of policyholders' home states. States would create a compact to allocate taxes collected.
- Would subject reinsurers only to solvency laws of their domicile state in most cases.

THE INSURANCE INFORMATION ACT–H.R. 5840

- Would establish a new Office of Insurance Information within the Treasury Department.
- The office would receive, analyze, collect and disseminate data and issue reports on all lines of insurance except health insurance.
- The office would establish federal policy on international insurance matters.
- In limited circumstances, the office could pre-empt state insurance laws regarding non-U.S. insurers.

THE INCREASING INSURANCE COVERAGE OPTIONS FOR CONSUMERS ACT–H.R. 5792

- Would allow risk retention groups to provide members with commercial property coverage.
- Would require RRGs to implement corporate governance recommendations suggested by the Government Accountability Office in 2005.
- Would reduce the likelihood of state insurance regulators illegally interfering with RRGs licensed in other states.

Source: www.thomas.gov

Stock Index

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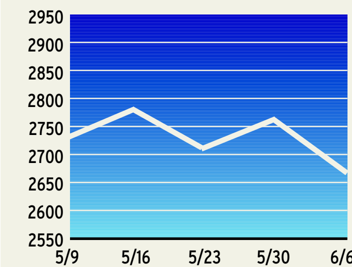
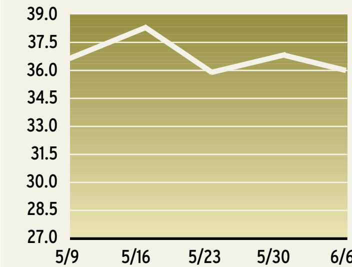
Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

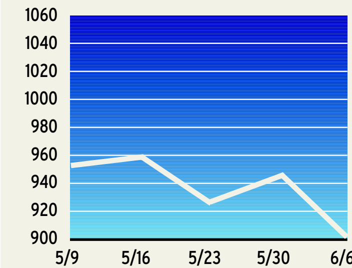
BI STOCK INDEX



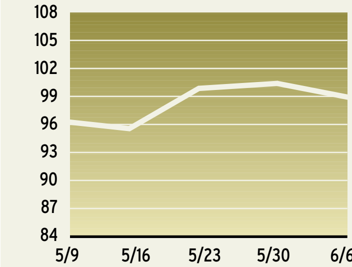
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Index	Value	Change
BI STOCK INDEX	2654.83	-4.06%
DOW JONES	12209.81	-3.39%
S&P 500	1360.68	-2.83%

LARGEST GAINS

Company	Change
SCOR S.A.	3.57%
CIGNA Corp.	2.34%
IPC Holdings Inc.	2.22%
RLI Corp.	1.37%
CNA Financial Corp.	1.32%

LARGEST LOSSES

Company	Change
Ambac Financial Group	-24.92%
MBIA Inc.	-21.84%
Citigroup Inc.	-8.36%
Fairfax Financial Holdings	-7.97%
AXA	-7.91%

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

Business Insurance END PAGE

Contributing: Jeff Casale, Matt Scroggins, Joanne Wojcik

Dose of reality in fight over fantasy baseball

A fantasy sports distribution company completed a sweep of Major League Baseball when the U.S. Supreme Court refused to hear a case challenging the use of MLB players' names and statistics.

Without comment, the justices last week declined to hear the case, upholding a ruling last October by the 8th U.S. Circuit Court of Appeals in St. Louis. The appeals court ruled that C.B.C. Distribution & Marketing Inc. does not need to be licensed by the Major League Baseball Advanced Media L.P. or the Major League Baseball Players Assn. to use players' names in its fantasy leagues.

In its 2005 federal court complaint, St. Louis-based C.B.C. argued it had the right to use, without license, the names and statistics of MLB players in connection with its fantasy baseball products.

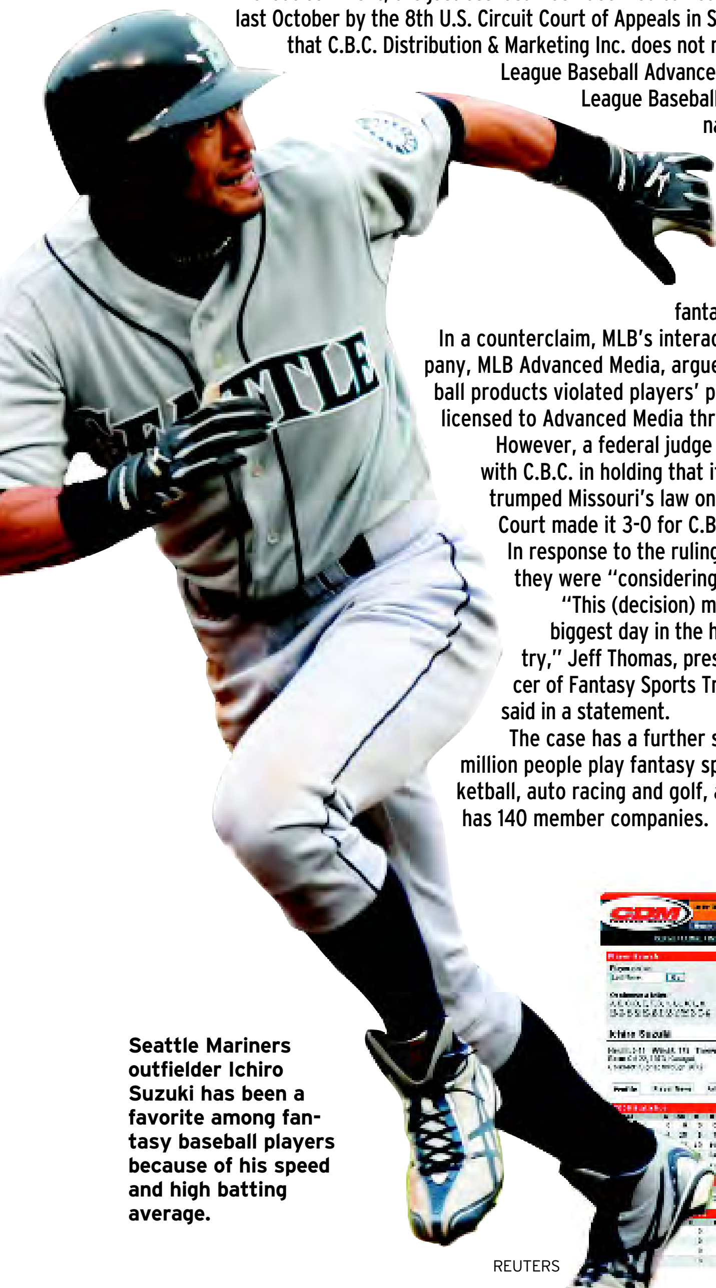
In a counterclaim, MLB's interactive media and Internet company, MLB Advanced Media, argued that C.B.C.'s fantasy baseball products violated players' publicity rights, which had been licensed to Advanced Media through the MLB Players Assn.

However, a federal judge and the appeals court sided with C.B.C. in holding that its First Amendment rights trumped Missouri's law on publicity rights. The Supreme Court made it 3-0 for C.B.C. in refusing to hear the case.

In response to the ruling, MLB officials told reporters they were "considering our options at this time."

"This (decision) marks potentially the single biggest day in the history of fantasy sports industry," Jeff Thomas, president and chief executive officer of Fantasy Sports Trade Assn. and Sportsbuff.com, said in a statement.

The case has a further sweeping effect as some 19.5 million people play fantasy sports, including football, basketball, auto racing and golf, according to the FSTA, which has 140 member companies.



Seattle Mariners outfielder Ichiro Suzuki has been a favorite among fantasy baseball players because of his speed and high batting average.

REUTERS

Coverage for when insurers say 'no'

Concerned about racking up big legal bills fighting your insurers over claims? Don't get mad—get…more insurance?

That's the idea behind a new offering from Swett & Crawford Group Inc., which last week unveiled a product called Claims Dispute Insurance.

According to a statement from the Atlanta-based wholesaler, the coverage will provide up to $250,000 for legal expenses "in connection with an insurance company's denial of coverage."

Swett & Crawford notes that the coverage is not available for certain lines, such as workers compensation and medical insurance.

No disputing this kind of coverage may get some takers. But what happens if a claim under this new policy gets denied?

Health experts study benefits of video games

Parents concerned about whether junior's video game addiction is keeping him from exercising soon may be able to breathe a sign of relief.

Researchers are finding that not only do video games improve eye-hand coordination, but many of them may actually improve players' health.

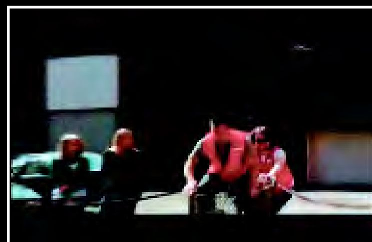
To test this theory, the Robert Wood Johnson Foundation has awarded $2 million in grants to finance 12 different studies of a variety of video games, including PlayStation's EyeToy and the Nintendo Wii.

The studies will investigate whether motion-based games help stroke patients progress faster in physical therapy, or whether a virtual world of a game can prevent real-world relapses of recovering addicts. One study will examine whether a breath biofeedback video game can improve cystic fibrosis patients' self-administration of inhaled medicines. Yet another study will investigate the health impact of online mobile phone games for people with type 2 diabetes.

"Previous studies and clinical trials have shown that well-designed interactive games can significantly improve players' health-related knowledge, skills, behaviors and outcomes," said Debra Lieberman, who heads up Health Games Research program at the University of California-Santa Barbara and is a lecturer in the university's department of communication. Health Games Research is funded by a separate $8.25 million grant from RWJF's Pioneer Portfolio, which supports innovative projects that lead to improvements in the future for health and health care.

"The 12 new studies will give us deeper insights into how and why certain game designs are compelling, fun and effective, and for which types of people," Ms. Lieberman said in a statement. "This work will yield a broad spectrum of validated game design principles that game designers will be able to use to enhance the effectiveness of future health games and game technologies."

Comp fund seeks to reform would-be jackasses



Sword fights with cattle prods, rolling down a hill in a tractor tire and being flung in a shopping cart across a parking lot are among video entries on the Montana State Fund's No Jack Web site promoting safety in the workplace.

A play on the MTV Networks show "Jackass," the state workers compensation insurer late last month launched the youth-oriented safety campaign.

In "Shopping Cart Bungee," a group of supermarket employees attempt to slingshot a co-worker sitting in a shopping cart off of a ramp. Just before the launch, an employee bystander states, "This has got to be the dumbest thing I've ever seen."

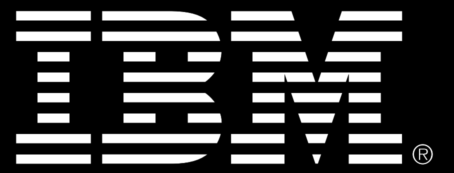
Instead of hitting the ramp and soaring as planned, the cart careens into a parked car with the daredevil flying over the hood and the co-workers scattering in all directions. The clip ends with the message "Don't be a jackass at work."

According to MSF, nearly 1,000 Montana workers ages 16 to 24 are injured on the job each year. While the group makes up 17% of the state's population, it accounts for some 22% of MSF claims, a trend it hopes the humorous approach will help reverse.

"No Jack may seem silly to some adults, but they're not our target audience," said Carl Kochman, MSF's communications and public relations leader. "We know kids today receive their information by viewing YouTube and similar outlets. This is the best vehicle for us to spread our message to young workers."

In addition to submitting and watching videos, Montana residents can take a quiz and enter a contest to win one of four Nintendo Wii videogame consoles. The contest runs through June 22.

"Being safe in your workplace starts with being smart," says the Web site at *www.nojack.net.* "And being smart starts here. Sorta."



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