

Business Insurance

\$5

July 7, 2008

www.businessinsurance.com

**AWAC SET TO GROW IN U.S.
WITH \$550 MILLION DEAL
TO BUY DARWIN / PAGE 3**

**UNITEDHEALTH SETTLEMENTS
OVER OPTIONS BACKDATING
EXCEED \$900 MILLION / PAGE 3**



**R.I. SUPREME COURT
REJECTS LEAD PAINT
CLEANUP SUIT / PAGE 3**

In Brief

Berkshire bond deal to back Florida fund

Florida's Hurricane Catastrophe Fund has arranged for Berkshire Hathaway Inc. to buy \$4 billion of its bonds in the event of severe hurricane-related losses this year. Under the put option deal—which has been negotiated but not yet executed—the fund would exercise the option if it has to pay more than \$25 billion in losses this year, said a spokesman for the State Board of Administration. Berkshire Hathaway then would purchase 30-year tax-exempt bonds, with a par value of \$4 billion, at a 6.5% interest rate. Berkshire would receive \$224 million if the deal is executed, the spokesman said.

Michigan sues Blues plan over comp acquisition

Michigan Attorney General Mike Cox has sued Blue Cross Blue

See **IN BRIEF** page 21

SPOTLIGHT EMERGING MARKETS ASIA

Natural catastrophe exposures pose tough business challenges



for businesses in Asia; political risk coverage rises with foreign investment, commodity prices; key risks in emerging markets; risk management starts to take hold in India; soft market, little litigation eases risk of operating in Vietnam. **Page 11**



Employers unlocking health care expertise

Community outreach efforts benefit both sides

By **JOANNE WOJCIK**

In the continuing battle against rising health care costs, some employers are finding they can best help themselves by helping others.

Increasingly, employers are engaging with local providers, inviting outsiders to take part in their onsite health fairs or investing in health information technology and health improvement research projects.

And while much of this collaborative work is being performed in conjunction with local business health coalitions, in some cases individual employers are breaking free from the pack and are taking leading roles.

Dr. Michael Cryer, senior medical director at Hewitt Associates Inc. in

Woodlands, Texas, likened the phenomenon to years ago when large industrial employers began investing in school science programs because “they knew they were educating their future workforce.”

Working with the community on health care consumerism can also help inform current and future employees. Some employer efforts, such as doctor and hospital report cards, are intended to foster consumerism on a communitywide basis, suggested Dr. Charles Smith, a principal at Towers Perrin in New York.

“Then if they come to work for that employer, they will already have a certain level of knowledge” about how to be a better health care

See **COMMUNITY** page 20

New York set to relax reinsurer collateral

Plan links amounts to financial strength

By **MEG FLETCHER**

NEW YORK—International reinsurers' campaign to relax collateral requirements on U.S. risks gained ground last week when New York Insurance Superintendent Eric Dinallo sent a regulatory modernization proposal to Gov. David Paterson's office for review.

In addition to advancing New York's effort to tackle the controversial issue, the move also brings the state's collateral scale essentially in line with a national effort by the National Assn. of Insurance Commissioners.

The New York Insurance Department has been working on a New York-focused solution to the issue of non-U.S. reinsurer collateral rules since last October. Regulators finished fine-tuning their proposal late last month after Gov. Paterson, who supports the effort, heard non-U.S. reinsurers complain that the U.S. regulatory system discriminates against them based on geography rather than financial stability.

London-based reinsurers from

the International Underwriting Assn. and Lloyd's of London applauded the development.

Mr. Dinallo's proposal is “a significant step toward U.S. and non-U.S. reinsurers being treated equally,” Sean McGovern, Lloyd's general counsel, said in an e-mail.

In addition, the New York-based Risk & Insurance Management Society Inc. supports New York's proposal as a way to increase competition, which “usually means better pricing, expanded market capacity and more comprehensive insurance products,” said Terry Fleming, a member of the RIMS board of directors and director of risk management for Montgomery County, Md.

RIMS, however, prefers congressional action on the issue, he said.

The proposal would eliminate an existing New York rule requiring reinsurers that are neither authorized nor accredited to conduct business in the state to post collateral equal to 100% of their share of insured claims.

See **COLLATERAL** page 19

Rating agencies eye XL's exposure to SCA

Pledge to back some losses sparks concerns

By **DOUGLAS MCLEOD**

HAMILTON, Bermuda—Credit market turmoil last week brought more headaches for XL Capital Ltd., as concerns about potential losses from former financial guarantee operations led Fitch Ratings and Standard & Poor's Corp. to place XL's ratings under review.

Both rating agencies cited XL's ongoing exposure to troubled Security Capital Assurance Ltd.—the holding company for financial guarantee units that XL spun off in 2006—in warning about potential downgrades of XL's insurer financial strength and debt ratings.

Plagued by losses from its minor-

ity stake in SCA, XL is working to commute an unlimited guarantee it issued on SCA business written prior to the 2006 spinoff, according to Fitch.

Fitch analysts pointed specifically to potential charges the Bermuda-based insurer might have to take from any future commutation of the SCA guarantee.

Analyst Tana Higman said Chicago-based Fitch has developed an estimated range for the potential charge, but she declined to disclose it.

Goldman Sachs & Co. estimated in March that the guarantee, if trig-

See **XL** page 21

crain

Entire contents copyright © 2008 by Crain Communications Inc. All rights reserved.

INDEX

Advertiser Index	19
Business Resources	16
End Page	23
International	17
Opinions	8
Perspective	8
Products & Services	19
Professional Marketplace	16
Stocks	21

Collaborate.



Just Ask
salesforce.com.

Aon focuses on delivering value and impact to clients, and as a result more clients choose Aon than any other broker.

Just ask salesforce.com. Through collaboration with Aon, salesforce.com identified 20 opportunities to enhance its D&O coverage that resulted in a net decrease of 11 percent in overall D&O premium.

Does your D&O program maximize your company's growth, profit and continuity? Visit aon.com/collaborate to sign up for a complimentary D&O diagnostic and find out how you can experience results like salesforce.com.

AON RISK SERVICES

On the Web



BI PHOTO GALLERIES

Share your industry news through photos

Is your business or organization involved in charitable endeavors, or do you have other highlights you'd like to share? To submit photos of these events for *BI*'s online photo galleries, go to www.BusinessInsurance.com/submitphoto. View galleries at www.BusinessInsurance.com/gallery.

BI AUDIO

Podcast of expanded Greco interview online

An expanded audio version of the Page 14 Q & A with Joe Greco, director of the Center for the Study of Emerging Markets at California State University in Fullerton, is at www.BusinessInsurance.com/audio.

BI KNOWLEDGE CENTER

Expand your knowledge at a central location

At the *Business Insurance* Knowledge Center, you can find contributed articles by industry experts, white papers and court filings and public documents. Go to www.BusinessInsurance.com/knowledgecenter.

THIS WEEK IN BI

Podcast takes you behind the *BI* headlines

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

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 42, No. 27, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2008 by Crain Communications Inc.

R.I. high court rejects lead paint cleanup suit

State can't compel paintmakers to pay under 'nuisance' law

By MARK A. HOFMANN

PROVIDENCE, R.I.—The Rhode Island Supreme Court's rejection last week of the state's attempt to force three former makers of lead-based paint to fund the inspection and remediation of hundreds of thousands of structures that could contain lead paint may doom future applications of the public nuisance approach in such cases, legal observers say.

In *State of Rhode Island vs. Lead Industries Assn. Inc. et al.*, the state's high court ruled unanimously—with one justice not taking part in the decision—that a lower court erred in finding Sherwin-Williams

Co., NL Industries Inc. and Millenium Holdings L.L.C. responsible for creating a "public nuisance" under Rhode Island law for making and selling a harmful product. The cleanup would have cost the paint manufacturers an estimated \$2.4 billion (*BI*, Sept. 24, 2007).

The high court said the public nuisance claim "should have been dismissed at the outset, because the state has not and cannot allege that (the) defendants' conduct interfered with a public right or that defendants were in control of lead pigment when at the time it caused harm to the children of Rhode Island."

Tort reform advocates hailed the ruling.

"The ruling by the Rhode Island Supreme Court puts an important nail in the coffin of the recent efforts to expand public nuisance theory into a supertort that can

LEAD PAINT NO 'NUISANCE'

Under Rhode Island law, a complaint for 'public nuisance' minimally must allege:

- An unreasonable interference
- With a right common to the general public
- By a person or people with control over the instrumentality alleged to have created the nuisance when the damage occurred
- Causation



Source: Court papers

overcome all previously known bounds of civil liability," said Phil S. Goldberg, an associate in the Washington office of Shook Hardy & Bacon L.L.P., which submitted an amicus brief on behalf of several national trade groups in support of the manufacturers.

"We do hope this puts a stake in the heart of the effort to expand the public nuisance doctrine," said Linda Kelly, vp-policy and research at the U.S. Chamber of Commerce's Institute for Legal Reform in Washington. "The court reached a very reasonable decision and put common sense back into the notion in a tort claim. You have to be able to show causation—that the defendants at the table are actually the ones who caused the harm—which the state of Rhode Island failed to do."

Mr. Goldberg said with four states

See **PAINT** page 6

AWAC to grow in U.S. with Darwin purchase

\$550M deal adds professional liability book

By JUDY GREENWALD

PEMBROKE, Bermuda—Allied World Assurance Co. Holdings Ltd.'s planned acquisition of Darwin Professional Underwriters Inc. would boost AWAC's U.S. business, though some analysts are concerned about the Bermuda company's future financial flexibility and ability to absorb Darwin's business.

Under terms of the merger announced last week, which has been approved by the boards of directors of both publicly held firms, Darwin stockholders would receive about \$550 million in cash, or about \$32 a share.

New York-based Allegheny Corp., Darwin's parent company, said it expects to receive aggregate cash proceeds of about \$300 million for its 9.4 million shares of Darwin common stock, which represents about 55% of Darwin's issued and outstanding common stock.

Stephen J. Sills, Darwin's president and chief executive officer, plans to retire when the deal closes, at which time Jack Sennott, Darwin's chief financial officer, will become chief operating officer.

The deal, which is subject to shareholder and regulatory approval, preserves the Darwin name and is expected to close during the fourth quarter.

Pembroke, Bermuda-based AWAC, which was founded in 2001 to provide post-9/11 capacity, has offices in Bermuda, the United States and Europe. For 2007, it had \$469.2 million in net income and \$1.51 billion in gross written premiums, of which 67% was casualty business and 33% was property. Direct insurance accounted for 64% and reinsurance accounted for 36%.

Farmington, Conn.-based Darwin, which was founded in 2003, reported \$32.2 million in net income for 2007. The specialty insurer, which focuses on health care, posted \$280.3 million in 2007 gross written premiums.

DARWIN'S MAIN LINES

- 50.0% ERRORS AND OMISSIONS
- 36.0% MEDICAL MALPRACTICE
- 13.8% DIRECTORS AND OFFICERS

The deal will expand AWAC's U.S. operating platform with "limited integration risk," Scott Carmilani, AWAC's president and CEO, said in a call with analysts last week.

In 2007, 71% of AWAC's business was written out of Bermuda, 16% from Europe and 13% from the United States, according to the firm.

Mr. Carmilani said Darwin's book complements AWAC's business. Most of AWAC's health care portfolio is large-account, high-excess or medium-excess business. Most of Darwin's business is small-account, primary or first-layer excess business.

"Large accounts tend to be very cyclical," while small accounts are "less volatile and less dependent on cycle movement," he said. Because Darwin is mostly casualty, the merger will decrease volatility of catastrophe risks in AWAC's overall portfolio, which "will actually be a little bit less sensitive to market-cycle risk overall," he said.

Mr. Sennott said, "We are really excited about this transaction. We think this provides us with a great

See **MERGER** page 6

UnitedHealth settles suits over backdating

Pacts remove distraction, but challenges remain

By JOANNE WOJCIK

MINNETONKA, Minn.—UnitedHealth Group Inc. last week lowered its 2008 earnings projections more than 15%, said it plans to eliminate 5% of its workforce and will pay hundreds of millions to settle options backdating litigation.

Citing an "intensely competitive" commercial business environment, the Minnetonka, Minn.-based health insurer cut its full-year earnings projections and said it plans to eliminate 4,000 jobs to reduce operating costs.

It also said it would pay more than \$900 million to settle two options backdating-related lawsuits: a federal securities class action involving the California Public Employees' Retirement System and a lawsuit filed under the Employee Retirement Income Security Act.

Following a reassessment of its preliminary second-quarter results and looking at business trends, UnitedHealth expects its full-year per share earnings to be in the range of \$2.95 to \$3.05, down from the \$3.55 to \$3.60 range it projected previously. The company also reduced cash flow projections to \$5.0 billion from \$6.0 billion.

"During the second quarter, our risk-based businesses produced a lower level of gross margin than expected," Stephen J. Hemsley, UnitedHealth's chief executive officer, said in a statement.

Mr. Hemsley also said UnitedHealth is experiencing greater-than-expected pressure on premium

yields due to an "intensely competitive" commercial business environment.

In its statement, the company also blamed margin pressures from high costs in its special needs plans for seniors, which are responsible for most of UnitedHealth's membership growth in its Medicare business this year.

A.M. Best Co. Inc.'s rating of UnitedHealth and its subsidiaries stayed the same following last week's announcements. Earlier this year, Oldwick, N.J.-based Best downgraded UnitedHealth's issuer credit rating to A from A+ but affirmed its financial strength rating of A.

However, New York-based Standard & Poor's Corp. revised its outlook on the insurer's subsidiaries to negative from stable. S&P affirmed its A- credit rating on UnitedHealth Group, and

S&P's outlook on the holding company, UnitedHealth Group Inc., remains negative.

Although settling the securities litigation had little impact on S&P's rating action, funding of the obligation could increase UnitedHealth's debt leverage "to a level at the high end of tolerance for the holding company," S&P warned.

Under the settlements, which are subject to court approval, UnitedHealth is to pay \$895 million into a fund for the class members of the CalPERS-led action and \$17 million into a fund for the ERISA class members.

See **UNITED** page 21

\$912M

SUM UnitedHealth will pay to settle two lawsuits related to allegations the company backdated stock options.

Out-of-date arbitration clause can't be enforced: Court

Employment law ruling shows need for review of worker contracts

By ROBERTO CENICEROS

SAN FRANCISCO—A state appeals court ruling that a worker is not bound by the terms of an employment arbitration clause crafted nine years ago is a clear reminder that such clauses should be reviewed and updated, several employment lawyers say.

The ruling, which found that the terms of an arbitration agreement were unreasonable, shows that arbitration may not be better than litigation for resolving employment disputes, some lawyers say.

In *Gina Ontiveros vs. DHL Express Inc.*, the First Appellate District in San Francisco ruled an arbitration agreement Ms. Ontiveros signed is unreasonable, or "unconscionable,"

and therefore unenforceable.

Ms. Ontiveros signed the contract when she was hired as a supervisor for Airborne Express in 1999, which Plantation, Fla.-based DHL acquired in 2003.



DHL argued that its arbitration agreement precluded a sex discrimination and harassment lawsuit Ms. Ontiveros filed in 2005. The appeals court did not address the allegations in that suit.

The appeals court agreed with a

trial court that the 1999 agreement is unfair because it states that an arbitrator has exclusive authority to decide whether the arbitration agreement is enforceable.

Arbitrators have a conflict of interest when deciding whether an arbitration contract is enforceable, the appeals court ruled, because arbitrators' pay depends on cases going to arbitration rather than litigation, and their findings may be influenced by concerns about repeat business relations from an employer, the court said.

The court also ruled the agreement unfair because it called for employees to share arbitration costs. In addition, it limited workers to deposing just one witness. Ms. Ontiveros estimated that she need-

ed 15 to 20 depositions to prove her allegations that harassment occurred from 2000 to 2004 at two job sites, according to court papers.

The terms contained in DHL's arbitration contract were common in employment agreements crafted in the late 1990s. At that time, many employers had hopes that arbitration could replace litigation as a method of resolving employment disputes and reduce costs, attorneys said.

Since then, though, many courts have shown hostility toward arbitration agreements and in 2000 the U.S. Supreme Court set minimum requirements for employment-related arbitration agreements, said Hardy Murphy, a partner in the labor and employment group for Reed Smith L.L.P. in Los Angeles.

In *Armendariz vs. Fountain Health*



Employment contracts should have up-to-date language, lawyers say.

Psychcare in 2000, the Supreme Court ruled that, among other requirements, arbitration agree-

See **ARBITRATION** page 6



Jeffery F. Driver, chief risk officer for Stanford University Medical Center, and his department are forming a consulting division at the medical center.

Hospital risk manager set to make house calls

Stanford's Driver leads new consulting division

By DAVE LENCKUS

STANFORD, Calif.—The risk manager for a renowned medical center is launching a consulting division to help hospitals improve their risk management and assist other employers in addressing poor workers compensation results.

Stanford University Risk Consulting draws on the expertise of Jeffrey F. Driver, chief risk officer for Stanford University Medical Center, and his staff of 17.

A panel of independent judges named Mr. Driver to the *Business Insurance* Risk Management Honor Roll this year for, among other things, controlling the Stanford, Calif., medical center's medical malpractice and workers comp losses (*BI*, April 28).

Mr. Driver said he and his staff will take on "a handful" of clients over the next year while retaining their current risk management duties. He said he foresees the consulting practice assembling "a very selective client base" committed to engaging in "robust risk management practices" based on risk assessments that he and his staff perform.

With that level of client commitment, Mr. Driver would not have to beef up his risk management staff

for at least a year, he said.

Clients will be selected based on how much their risk management functions can be improved, Mr. Driver said. After an initial risk assessment fee, the consultant will command an additional fee equal to part of a client's savings over two to three years as recommendations are implemented.

"We don't profit unless they profit," which means the consulting practice should be profitable immediately, Mr. Driver said.

He envisions weaving enterprise risk management into the consulting division's examination of clients' problems but without implementing a formal ERM program.

Beyond hospital risks, automotive concerns, steel mills and national food chains are among many potential workers comp clients for the new consultant, said Ed Hall, senior director of risk management controls and education at Stanford Medical Center.

Dubraski & Associates Insurance Services L.L.C. of San Diego will run the consultant's back-room operations, identify potential clients and place clients' coverage in the worldwide commercial market. While

See **CONSULTANT** page 18

Internet complicates privacy issues

Employer rights often fuzzy amid growing use of e-mail, blogs

By KRISTIN GUNDERSON HUNT

CHICAGO—U.S. privacy law is an "incomplete and confusing patchwork" for employers, especially when it comes to electronic communications in the workplace, according to experts.

There is no single, uniform privacy law that exists in the United States, which is what causes the confusion, said Anthony Oncidi, a partner with Proskauer Rose L.L.P. in Los Angeles.

"There is no comprehensive framework for privacy rights," said Tanya L. Forsheit, also a partner with Proskauer Rose in Los Angeles.

Instead, modern privacy law is a hodgepodge of state and federal laws and regulations, making it critical for human resources pro-

fessionals to stay on top of company policies, state and federal statutes and privacy-related court rulings, the panelists said during a session during the Society for Human Resource Management's Annual Conference & Exhibition in Chicago late last month.

E-mail communications and Internet use certainly present privacy issues for employers.

According to the 2007 Electronic Monitoring and Surveillance Survey from the New York-based American Management Assn. and the Columbus, Ohio-based ePolicy Institute, 66% of

employers monitor Internet connections.

Forty-three percent of companies monitor e-mail. Of those monitoring e-mail, 96% track incoming and outgoing external messages, and 58% track internal messages sent among employees. Twenty-eight percent said they had fired employees for misusing e-mail, according to the survey.

Mr. Oncidi said notice of e-mail monitoring typically defeats an employee's reasonable expectation of privacy. He referenced several cases in which decisions went in employers' favor because they had privacy policies in place.

For instance, in *Gerald Biby vs. Board of Regents of the University of*

See **PRIVACY** page 18

Wellness efforts need CEO support

Focus on value of healthy workers can help gain execs' attention

By KRISTIN GUNDERSON HUNT

CHICAGO—Risk managers promoting wellness programs must sell top management on the plan, educate everyone in the organization and keep the focus on the value of healthy workers, a benefits expert says.

"Education begins at the top and works its way down the organization," Nancy Blough, executive vp of the American Health Data Institute in Fort Mill, S.C., told attendees at the Society for Human Resource Management's annual conference and exhibition.

Changing the culture of an

organization requires benefits managers or human resources professionals to shift the conversation away from the cost of health care and direct it toward the value of a healthy workforce, Ms. Blough said at the June 22-25 conference in Chicago.

One way to engage top executives is asking them to be part of a wellness committee that would decide matters such as which health risk assessment tool to use, she said. Some companies have gone as far as saying manager bonuses require participating in wellness programs, she said.

Still, convincing senior leadership can be difficult, she said, so

reflecting wellness programs in terms of outcomes, such as productivity gains and avoiding future health care costs, is important. It helps chief executive officers and chief financial officers understand the value to the business.

Linking wellness to business value means companies must collect and quantify claims data, thereby identifying risks and allowing the health plan to be designed around the needs of the population, Ms. Blough said.

It's equally important to have data on potential risks, physician

See **MANAGEMENT** page 18

TO HELP A CONSTRUCTION FIRM RUN SMOOTHLY,
WE SUGGESTED THEY HIT A BUMP IN THE ROAD.



When a construction company had a problem with gravel falling off their trucks and hitting other vehicles, our Commercial Auto experts investigated the situation. Seeing that trucks were leaving their locations with loose loads, we recommended inducing vibration to help settle the load, making the roads safer for everyone. The bottom line is, our loss control programs work. Plus, should an accident occur, we investigate quickly and thoroughly, keep you informed and resolve your claim in a timely manner. That's our policy. For more information visit libertymutualgroup.com/commauto.

Lead: Paint cleanup suit rejected by court

CONTINUED FROM PAGE 3

having now ruled against the public nuisance suit approach, attorneys general around the country are going to scrutinize such lawsuits much more carefully.

"The significance of the Rhode Island Supreme Court being the fourth state to have its Supreme Court reject these speculative public nuisance suits cannot be understated," said Mr. Goldberg. "These were the states that the plaintiffs lawyers chose to file their lawsuits because these would be the states that would give them the best opportunities to succeed."

Other states to reject the approach are Illinois, Missouri and New Jersey.

In a statement shortly after the court rendered its decision, Rhode Island Attorney General Patrick Lynch branded the decision "enormously disappointing," adding that "I disagree with it in the strongest terms."

"Those products poisoned our infants and children—and continue

to poison our infants and children—while bringing great profits to the companies that made and sold them....The Supreme Court ruled that these defendants do not have to clean up the mess they have made," he said.



"I find this legally and fundamentally wrong," said Mr. Lynch.

Meanwhile, in another portion of the opinion, the justices rejected the manufacturers' argument that the contingent fee arrangements between the state attorney general and private law firms to assist in litigation violated state law. The court ruled the fees in this case were proper and said any contingent fees paid to outside counsel must be subject to scrutiny by the courts before payment is made.

Tort reform advocates also

praised the court's approach to contingent fee arrangements between attorneys general and law firms, limited though it was.

Although the justices "did not go as far as we would have liked by banning the contingency fee arrangements for public nuisance actions, they made it very clear they were uncomfortable with the attorney general engaging in contingency fee arrangements when the outside lawyers drive the case," said Mr. Goldberg. "It's the attorneys general who must run these cases."

While expressing disappointment that the court didn't prohibit the contingency fees, "we're heartened by the limitation that the court required in managing those relationships," said Ms. Kelly. "The court clearly stated the AG must maintain very tight control and strict oversight over any outside counsel."

State of Rhode Island vs. Lead Industries Assn. Inc. et al. Rhode Island Supreme Court. No. 04-63. July 1, 2008.

AWAC: Deal draws concerns from analysts

CONTINUED FROM PAGE 3

"less volatile and less dependent on cycle movement," he said. Because Darwin is mostly casualty, the merger will decrease volatility of catastrophe risks in AWAC's overall portfolio, which "will actually be a little bit less sensitive to market-cycle risk overall," he said.

Mr. Sennott said, "We are really excited about this transaction. We think this provides us with a great opportunity going forward. Darwin is not going away. We're becoming part of a much larger organization."

Neither Moody's Investors Service nor Standard & Poor's Corp. downgraded AWAC because of the deal, but both expressed concern.

In its rating announcement in

which it changed AWAC's outlook to negative from stable, Moody's said it is concerned AWAC will have reduced financial flexibility and capital adequacy, particularly in light of a \$563 million common share repurchase it completed last December.

Enrico Leo, an associate analyst for New York-based Moody's, said the rating agency expects insurers to maintain at least a portion of their excess capital during the soft market.

S&P revised its rating of AWAC to CreditWatch with negative implications because "we wanted to get a little more comfortable with the change in the risk profile at Allied World, and also just get comfortable with the book of business Darwin

has written," said Dennis Sugrue, an analyst for New York-based S&P.

Oldwick, N.J.-based A.M. Best Co. Inc.'s A financial strength ratings for AWAC's insurance subsidiaries remain unchanged, while the Darwin Group's A- rating is under review with positive implications.

"We're pleased that A.M. Best saw this as a positive from a capital perspective, and we think as S&P and Moody's gets a better understanding of Darwin's business plan and how it feeds into Allied World, they'll see it that way as well," Mr. Sennott said.

Despite the reaction by rating agencies, observers said Darwin's policyholders should benefit from the deal.

Arbitration: Agreement terms outdated

CONTINUED FROM PAGE 4

ments must provide neutral arbitrators, more than minimal discovery and not force employees to pay unreasonable costs.

Last week's appeals court decision joins other rulings applying the *Armendariz* ruling to specific cases, attorneys said.

The decision "should be a warning to all the employers out there who have old arbitration agreements that they need to pull them out and look at them," said Clay Creps, chair of the employment law department at Bullivant Houser Bailey P.C. in Portland, Ore.

"If they look at all like this agreement then they ought to consider requesting that their employees sign new arbitration agreements," he said.

Depending on factors such as the contract's terms, negotiating with

employees to sign new contracts could preclude a court from ruling that an agreement is "adhesive," Mr. Creps said.

A contract is adhesive when it is one-sided and drafted by the party in the stronger bargaining position, attorneys said. The appeals court found the contract Ms. Ontiveros signed to be adhesive.

"It's a terrible agreement," said William Fernholz, an instructor at the University of California Berkeley School of Law, who argued Ms. Ontiveros' case before the appeals court.

"When you have a terrible arbitration agreement, one that was drafted years ago, draft a new one that isn't so terrible," he said.

But arbitration may no longer be the best path for employers involved in "run-of-the-mill employment cases," said Jenni Field an employment attorney in the

Palo Alto, Calif., office of Baker & McKenzie.

Arbitration awards can equal those handed down by courts and defendants can lose the benefit of winning a summary judgment, Ms. Field said.

Arbitration is no faster at resolving cases than litigation and employers can't appeal arbitration awards, added Gregory Valenza, a partner at Shaw Valenza L.L.P. in San Francisco.

Yet agreements can still protect employers against large jury awards, attorneys said.

In addition, arbitration proceedings are confidential, Ms. Field said. Therefore, employers wanting to protect trade secrets or other information may want top executives who possess certain knowledge of company operations to sign arbitration agreements, Ms. Field said.

Questions Answers

Longtime insurance executive John Charman made a name for himself at Lloyd's of London before he launched AXIS Capital Ltd. in Bermuda in 2001. AXIS' story is one of phenomenal growth and profit achieved through selective underwriting. Mr. Charman, whose contract as chief executive officer recently was extended to 2013, spoke with Business Insurance Editor Regis Coccia about AXIS' success and how he sees the insurance business.



AXIS makes its mark

Q: How do you view the current market conditions?

Dealing with the market conditions across specialty lines and the wholesale insurance business first, I think market conditions are as severe as they were in the late '90s during the last major down cycle....To me, there is an awful lot of plainly unmonitored and unmanaged underwriting activity taking place throughout the specialty lines, which is substantially destroying shareholder value. It's real value disruption in my view. It may be temporarily good for clients, but the reality is it is not sustainable and the rebound won't be as aggressive as the rate-cutting that has taken place and the value disruption that's taken place. I find that very difficult to live with in an industry to see such wide swings and such volatility when we're supposed to have a professional and technical approach to our underwriting across all of these different product lines.

With regard to the reinsurance marketplace, I've been a pretty lone voice over the last three years in saying that I believe that in the near term the reinsurance marketplace would provide better margin to us than the primary markets. And that has been proven by the stability that the reinsurance market has shown throughout pretty well most of its product lines. Most of the revenue pressure has come from seeing companies actually retaining more business as opposed to essentially us pricing ourselves out of the marketplace.

The reinsurance market has been much more stable, it's much more disciplined, it has a much more technical approach and I think has the characteristics which industry should be proud of.

Q: How does AXIS maintain its focus on underwriting risks profitably?

For a start, we're one company, from me all the way down to the most junior person within the company. We are completely connected as a company. We have substantial values that we hold ourselves to. Our culture is and has always been to make underwriting profits. We have an

extremely strong balance sheet. We have extremely strong capital to deploy. We're very consistent in our approach. We do not lie, we do not steal and we do not cheat.

Back in 2001 (at AXIS' founding), I was able to bring in the best technology that was available within the marketplace. We continue to invest heavily on technology to allow our people to be connected so that they coordinate and cooperate with each other regardless of where the geographic location of business is. So, we can apply much greater intellectual capital, coordinated intellectual capital and senior intellectual capital to the individual transactions that are occurring every day in every product line through insurance or reinsurance throughout the globe, and we do that.

The typical industry model is of a holding company with disparate businesses that tend to be independent, that tend to be given a business plan, that tend to report back on a quarterly basis. They might have some actuarial oversight on a quarterly basis, but there's no connectability between themselves, there's no cooperation in terms of cross-marketing. We are the complete opposite to that business model. We have a daily focus to our business that nobody else is able to achieve and that is why we differentiate ourselves.

Q: What are your proudest achievements?

My proudest achievement is every day I can watch my staff demonstrate that they're the market leaders in their respective fields. Our mission statement was a lofty one. Bob Newhouse, who is my founding partner, whom I'm indebted to not financially but everything else, said to me the day after we founded AXIS, "OK. Now what? What's your mission statement?" I said that we wanted to create the world's leading global specialty insurance and reinsurance business, measured by profitability, by quality and sustainability. You can understand the word "size" doesn't figure. And I think we've come a long way to achieving that in a very short period of time.

**Aetna
Wellness
Programs**



I want a health care company that helps us stay healthy.

Staying healthy matters. That's why Aetna believes in the power of preventive care. We offer a range of plans that cover preventive services from annual checkups to well-baby visits, at no cost to our members. Helping our members stay healthy is just one of the ways that Aetna supports its 17 million members, one member at a time. To learn more, visit Aetna.com or call your consultant, broker or Aetna representative.



Business Insurance OPINIONS

Exxon Valdez ruling should have influence

SOMETIMES, PARSING Supreme Court opinions can be a bit difficult. The language used may be English, but the words don't carry their customary meaning.

Fortunately, that was not the case in the high court's recent opinion in *Exxon Shipping Co. et al. vs. Grant Baker et al.* As we reported last week, the Supreme Court confronted a liability case that began when the Exxon Valdez ran aground off the coast of Alaska nearly two decades ago, causing one of history's worst environmental disasters. A lower court had approved punitive damages of \$2.5 billion, when compensatory damages totaled less than \$508 million. The court majority held that under maritime law, punitive damages cannot exceed compensatory damages.

The justices' decision is confined to maritime law, but the reasoning behind it could and should apply to punitive damages in other contexts as well.

Associate Justice David Souter, who wrote the majority opinion, stressed the "stark unpredictability" of punitive damage awards. Even though most punitives are less than the underlying compensatory awards, data suggests that the wide range between highest and lowest awards is "unacceptable," he said. High "outlier" awards carry an implication of unfairness, noted Justice Souter.

The opinion governs only federal maritime law, not state law. But even where Supreme Court rulings don't directly affect state law, state courts often apply the Supreme Court's reasoning to cases before them.

We hope both lower federal and state courts heed the majority's assessment of the potential pitfalls of outlier punitive damages when reviewing damage awards that come before them in the future.

The justices' decision could and should apply to punitive damages in other contexts as well.

Employers should seek wider role in health care

DOES IT MAKE SENSE for employers to expand their involvement in the health care arena?

We think that a story on page 1 shows clearly that the answer is a resounding "yes."

For example, efforts to make provider quality information more publicly available obviously will benefit employers by allowing them and their health care plan enrollees to choose providers with the best performance results.

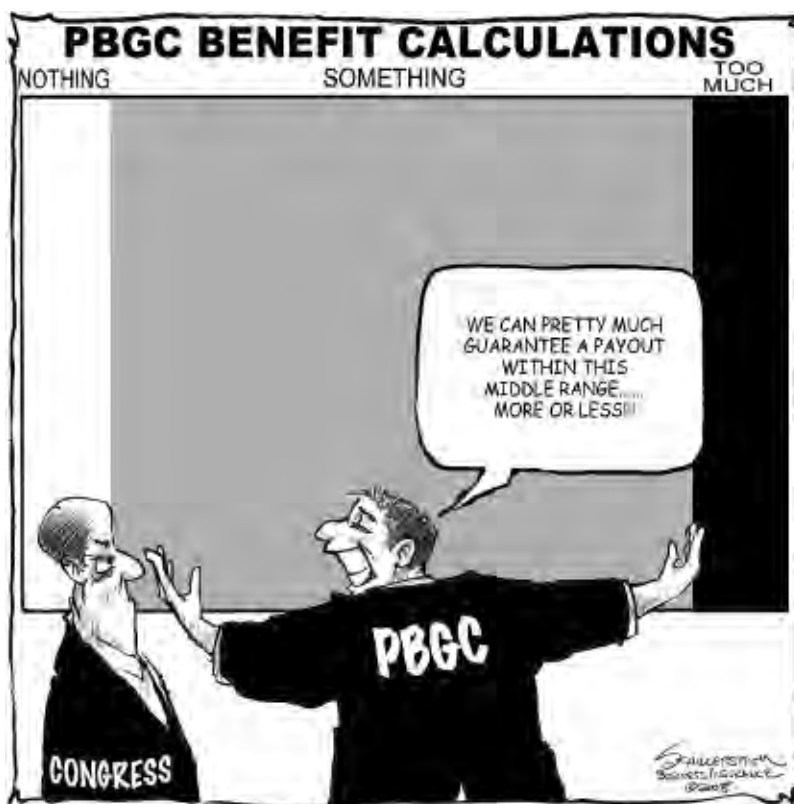
At the same time, employers that promote initiatives in their communities—perhaps something as simple as improving bike paths to enable more residents to cycle to work—will benefit employers not only by improving the health of their own employees but also the health of future workers.

And, as we've seen before, employer involvement in the legislative arena can pay big dividends. Take the health care reform effort a few years ago in Massachusetts. Employers were actively part of the process that shaped the legislation before it became law.

The result provided coverage to several hundred thousand previously uninsured Massachusetts residents without upsetting employers' health care programs.

That stands in contrast to the situation in San Francisco, where the board of supervisors in 2006 passed—with little employer involvement—a health care spending law that, unless overturned, will be a huge disruption to employers.

The bottom line is that employer involvement in health care issues can generate big benefits for companies and their workforces.



WRITE

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

Please send your letters to:

Letters to the Editor
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806

fax: 312-280-3174, e-mail:
rcoccia@businessinsurance.com

VOTE

in the *BI* Online Poll at
www.businessinsurance.com

THIS WEEK'S RESULTS

Q Was the Supreme Court right to reduce the Exxon Valdez punitive damages award?



NEXT WEEK'S QUESTION

Q: Based on claims experience to date, are your company's health care costs this year running higher or lower than projections?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

READ

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



Collaboration key to overcome subprime claims

The 21st century has seen its share of crises for professional and management liability insurers and policyholders, but the subprime mortgage meltdown may be the most serious, write Richard J. Bortnick, left, and Kevin M. Mattessich, who are members of the law firm Cozen O'Connor P.C. Wherever the subprime tentacles reach, it is imperative for risk managers and claims professionals to work together to ensure a successful resolution of claims and a strong liability defense as it is clear that these claims will be complex, they say.



ONLINE

Read the full text of this and other Perspectives at *BI*'s Knowledge Center at

www.BusinessInsurance.com

Vice President/Publisher:
Martin J. Ross III (New York)

Associate Publisher/Editorial Director:
Paul D. Winston (Chicago)

Editor: Regis J. Coccia (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor: Gavin Souter (Chicago)

Assistant Managing Editor - Graphics:
Kathy L. Barnes (Chicago)

Assistant Managing Editor - News:
Matt Scroggins (Chicago)

Senior Editors: Roberto Cenicerros (Boise); Meg Fletcher, A.R.M. (Chicago); Judy Greenwald (San Jose); Mark A. Hofmann (Washington); Dave Lenckus (Tucson); Douglas McLeod (New York); Sally Roberts (Denver); Joanne Wojcik (Denver); Rodd Zolkos - Industry Focus (Chicago)

New York Bureau Chief: Gloria Gonzalez (New York)

Associate Editors: Kristin Gunderson Hunt (Chicago); Colleen McCarthy (New York)

Staff Reporter - Interactive:
Jeffrey Casale (Chicago)

Deputy Graphics Editor: William Murphy (Chicago)

Copy Editors: Charmain Benton (Chicago); Carrie A. Peinado (Chicago); Joe Walker (Chicago)

Research Director: Kevin P. Edison (Chicago)

Online Editor: Katherine Downing (Chicago)

Online Producer: Amy R. Curtis (Olathe)

Assistant Online Producer:
Pharaoh Blackwell (Chicago)

Editorial Cartoonist: Roger Schillerstrom (Chicago)

Editorial Assistant: Allison J. Martinat (Chicago)

Advertising Director:
Robert A. Raidt Jr. (New York)

Director - Business Development:
Robert L. Niesse (Chicago)

Regional Sales Managers: Russell J. Cappel (Chicago); William J. McGuire (Chicago); Ron Kolgraf (Boston); Todd D. Lockwood (New York); Robert B. Murray (New York)

Classified Advertising Manager:
Tina Vasilakis (Chicago)

Assistant to the Publisher:
Pat Ghazvini (New York)

Advertising Traffic: Monique Murray (New York)

Sales Assistant: Mike Tsikoudakis (Chicago)

Production Manager: J. Thomas Janka (Chicago)

Circulation Manager: William O'Driscoll (New York)

Assistant Circulation Manager:
Craig Bowman (Detroit)

Promotion Director: Michael Ambrosio (New York)

Promotion Coordinator: Barbara O'Brien (New York)

EDITORIAL: Boise: 208-286-1425; Chicago: 312-649-5200; Denver: 303-282-4260; London: 44-207-457-1400; Los Angeles: 323-370-2455; New York: 212-210-0100; San Jose: 408-774-1500; Tucson: 520-579-1937; Washington: 202-662-7200

ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Los Angeles: 323-370-2405; New York: 212-210-0133

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
Crain Communications Inc.

Chairman: Keith E. Crain

President: Rance Crain

Secretary: Merrilee Crain

Treasurer: Mary Kay Crain

Executive Vice President/Operations:
William A. Morrow

Senior Vice President/Group Publisher: Gloria Scoby

Group Vice President/Technology, Circulation,
Manufacturing: Robert C. Adams

Vice President/Production & Manufacturing:
Dave Kamis

Crain's Corporate Circulation Director:
Patrick Sheposh

Chief Information Officer:
Paul Dalpiaz

G.D. Crain Jr. Founder (1885-1973)

Mrs. G.D. Crain Jr. Chairman (1911-1996)

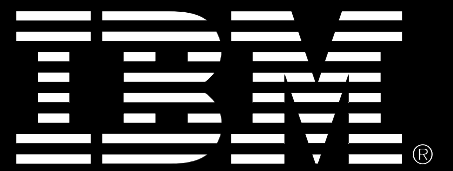
S.R. Bernstein Chairman-executive committee (1907-1993)

Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, biweb@crain.com. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 7300 N. San Anna Drive, Tucson, Ariz. 85704, Fax: 520-579-3476; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401, Fax: 303-733-9941; 12524 Acuff Court, Olathe, Kan. 66062, Fax: 312-280-3174; 77 Franklin St., Suite 809, Boston, Mass. 02110-1510, Fax: 212-210-0704. \$5 a copy and \$97 a year in the U.S., \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: The YGS Group, 1808 Colonial Village Lane, Lancaster, PA 17601; 800-290-5460, ext. 160; BusinessInsurance@reprintbuyer.com.

To subscribe, Call 888-446-1422, or 313-446-0450 outside the U.S.
www.businessinsurance.com

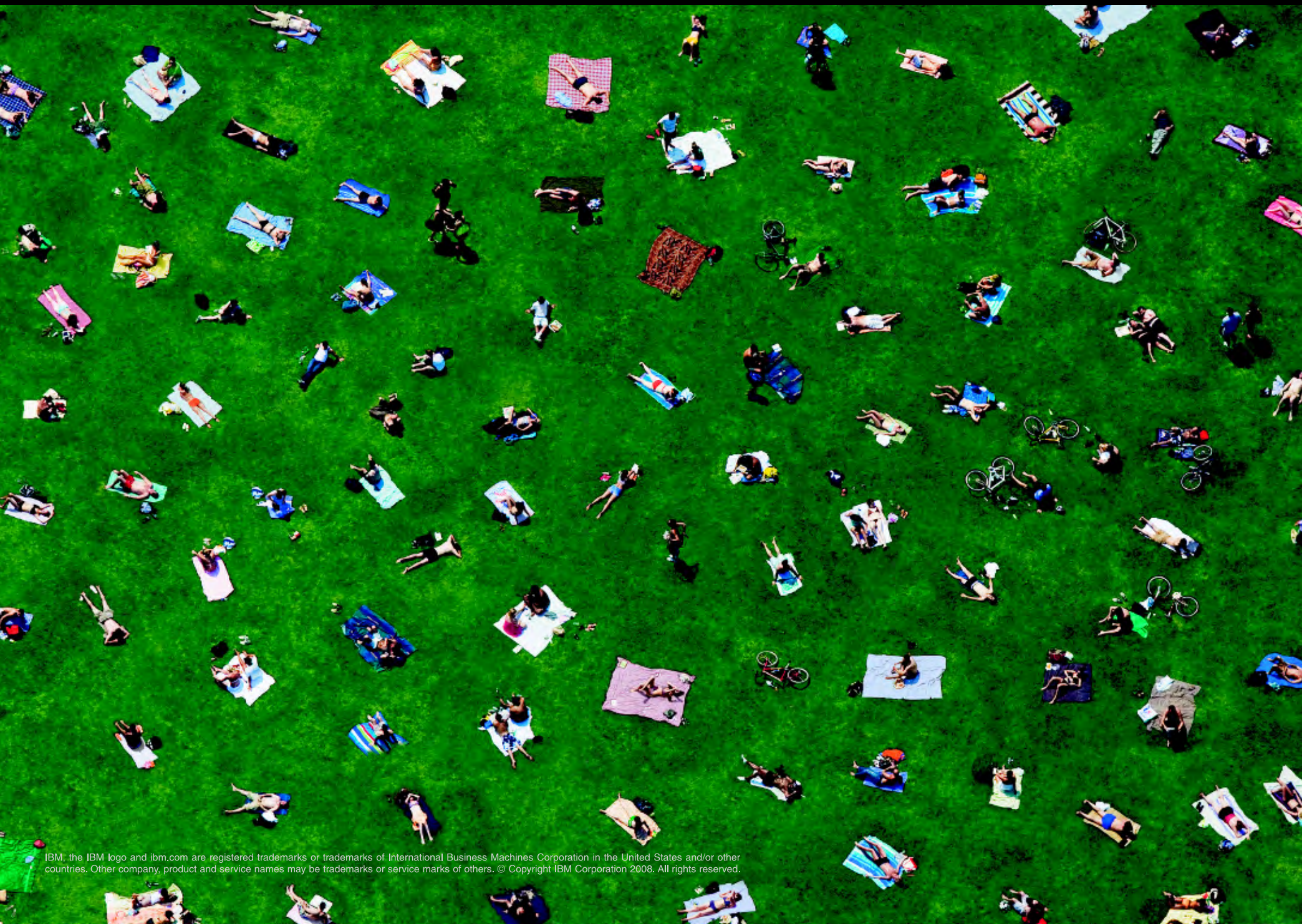
BPA
BUREAU OF PUBLICATIONS
The Association of Business Media Companies

AMERICAN BUSINESS MEDIA
The Association of Business Media Companies



STOP SELLING WHAT YOU HAVE. START SELLING WHAT THEY NEED.

IBM helps major insurance companies develop flexible operations so they can offer clients personalized, dynamic services, and bring down processing costs at the same time. Start exceeding expectations at ibm.com/do/insurance **STOP TALKING START DOING**



IBM, the IBM logo and ibm.com are registered trademarks or trademarks of International Business Machines Corporation in the United States and/or other countries. Other company, product and service names may be trademarks or service marks of others. © Copyright IBM Corporation 2008. All rights reserved.



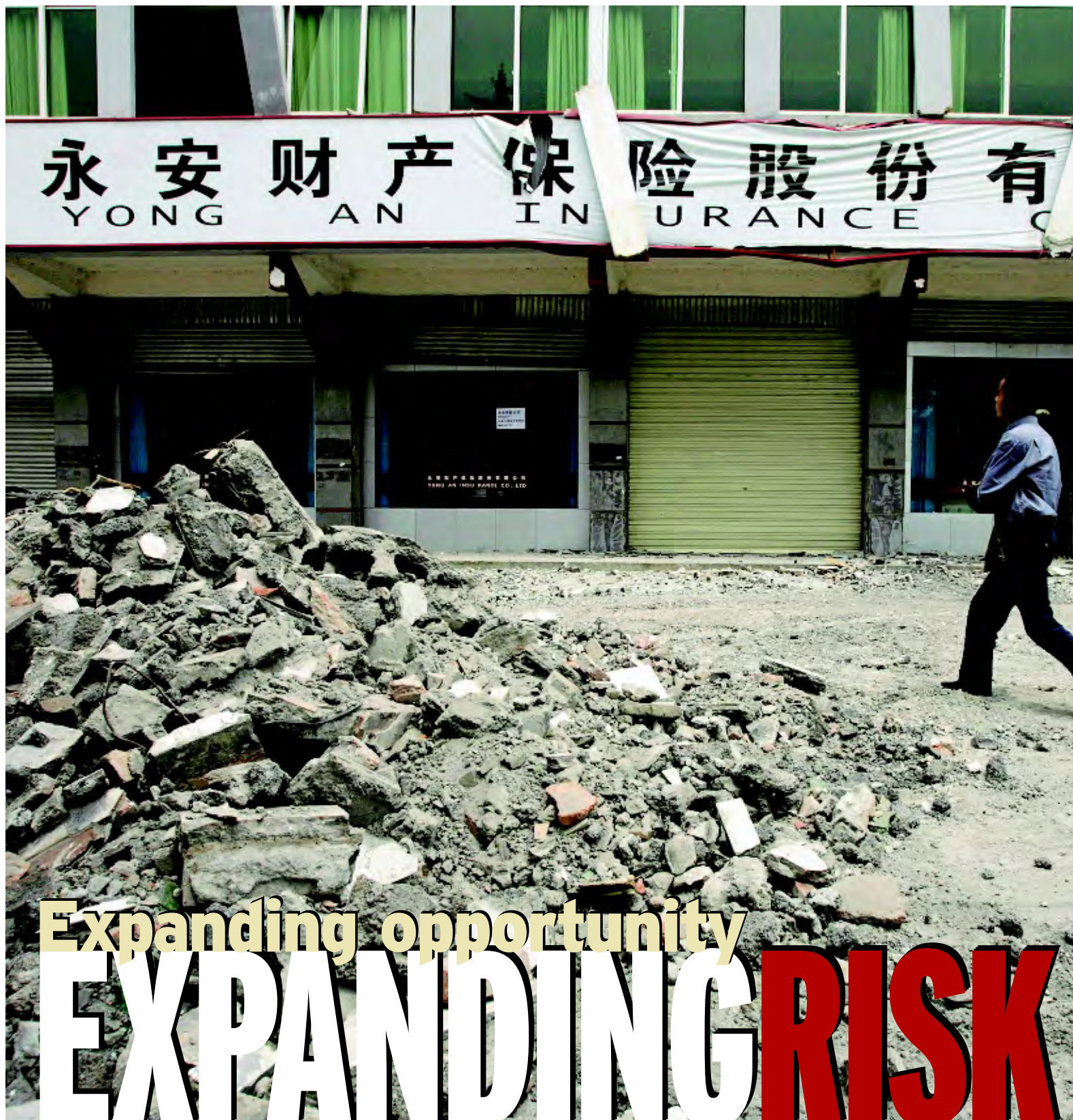
**WHATEVER,
WHEREVER,
WHENEVER
THE RISK,**

**THERE'S A
STARR SOLUTION.**

Whether it's a construction project in San Francisco, a container ship on the North Sea, a petrochemical plant in a developing country, or a company jet soaring over the Pacific coastline, no one can match our ability to expertly assess complex risk. No one offers the depth of experience of our specialized teams of experts, or the level of service we bring through close customer relationships. With more than 55 years as leaders in specialized risk, you can count on the deeply knowledgeable companies of Starr Underwriting Agencies, LLC.

STARR UNDERWRITING AGENCIES, LLC

C.V. STARR & CO / STARR AVIATION / STARR GLOBAL ACCIDENT & HEALTH / STARR MARINE / STARR TECH



Expanding opportunity

EXPANDING RISK

ZUMA PRESS

The May 12 earthquake that struck southwestern China caused widespread damage including to a branch office of a local insurer in Dujiangyan. The quake caused up to \$1 billion in insured losses, according to cat modeling firm AIR Worldwide, and killed more than 69,000, according to government officials in late June.

Cat exposures pose tough challenge

Companies in Asia face far-reaching risks from natural disasters

By COLLEEN MCCARTHY

Emerging markets in China, India and elsewhere in the Asia Pacific region are vulnerable to natural catastrophes and businesses operating there must take special care to mitigate their exposure to these risks, experts say.

In addition, some experts say that global warming will contribute to more severe weather events, which,

combined with rapid development of emerging markets, likely will result in higher volumes of insured losses.

"As the assets and values of companies become concentrated in these regions, risk managers have to ask themselves if they are prepared for events that will most likely happen," said Tobias Farny, head of department for the Indian subcontinent, for Munich Reinsurance Co. in Germany.

Natural catastrophes that include wind storms, tornadoes, monsoons, earthquakes and tsunamis can swiftly devastate an organization's operations.

Recent events, including Tropical Cyclone Nargis that tore through Myanmar and the 7.9 magnitude earthquake that struck southwest China, highlight that natural disasters can be economically crippling as well as deadly, experts say.

"Large-scale natural disasters typically result in major setbacks to development in some of these regions, and recovery can be very slow," said Jessica Feldman, a partner with insurance consulting firm Campioni Risk Solutions L.L.C. in New York.

Despite the effects of natural catastrophes on property and business operations, insured losses tend

to be relatively low. Boston-based catastrophe modeler AIR Worldwide Corp. estimated the China quake caused approximately \$20 billion in losses, but only a small portion of that, a maximum of \$1 billion, was insured.

Assessing natural disaster exposures in emerging markets has historically been a challenge due to a lack of available scientific and economic data, but "we are seeing a greater focus on risk management for these exposures," Ms. Feldman said.

In addition, natural disasters can

See **CATASTROPHES** next page

EMERGING
MARKETS:
ASIA

SPOTLIGHT

FOREIGN INVESTMENT,
COMMODITY PRICES
PUSH POLITICAL COVER
PAGE 12

Q&A WITH JOE GRECO,
EXPERT ON RISKS
IN EMERGING MARKETS
PAGE 14

RISK MANAGEMENT
TAKES HOLD IN INDIA
AS ECONOMY GROWS
PAGE 14

INSURANCE COSTS,
LIABILITY EXPOSURES
STAY LOW IN VIETNAM
PAGE 15



Heavy rains in early June caused flooding in Mumbai, India, where some trains navigated flooded tracks to reach commuters. REUTERS

Catastrophes: Exposures pose difficult challenge

CONTINUED FROM PREVIOUS PAGE

disrupt an organization's supply chain, wiping out roads and other transportation modes and delaying or preventing goods from being shipped out of a country.

In India, about 55% of the land mass is exposed to earthquakes, tsunamis and floods. The nation also suffers from "local inundation," said C.B. Murali, a partner at Campioni Risk Solutions L.L.C. in Mumbai, India.

'As more multinationals invest in China, we are beginning to see a sharing of knowledge and expertise about risk management.'

Ken Davey, FM Global

Intense urban development combines with relatively low engineering standards, severely affecting India's water drainage system and causing widespread flooding when it does strike, Mr. Murali, said. "A business could remain open, but there won't be any roads available for employees to get to work," he said.

Property insurance for U.S.-based programs is available in these regions through a combination of global and local carriers, but catastrophe coverage varies significantly depending on the region and the local capacity available, said Cliff Jeyes, executive director of Willis Global Markets International in London, part of London-based brokerage Willis Group Holdings Ltd.

The complexities of local laws and regulations pose additional challenges for organizations trying to assemble an adequate insurance program, said Robert F. Howe, global leader of property operations for Marsh Inc. in New York.

To create a comprehensive risk management program, companies

need to assess their physical and intellectual property as well as that of their partners and suppliers, Mr. Hughes said.

Establishing diverse backup locations also is important to ensure that no single event could destroy production, Ms. Feldman said.

For example, Ms. Feldman worked with a client who had a customer service call center in Mumbai, India, and a backup location in Colombo, Sri Lanka. "We pointed out that another tsunami-like event could shut down both operations, so we encouraged them to establish a third facility in the Philippines to spread out their risk," she said.

Another challenge in emerging markets is the lack of connection between government regulations and the reality on the ground, observers say.

For example, despite well-established building codes in China, there is a serious lack of adherence to the codes by building contractors. Inadequate construction practices routinely result in commercial property damage, said Ken Davey, senior vp and managing director, international division of Factory Mutual Insurance Co., which does business as FM Global, in London.

However, "as more multinationals invest in China, we are beginning to see a sharing of knowledge and expertise about risk management, and this is slowly raising awareness about these concepts," Mr. Davey said.

The move toward a more collaborative approach in assessing risks also is under way in other areas of the industry.

For example, Newark, Calif.-based modeling firm Risk Management Solutions Inc. is working with the Chinese government to tackle the issue of data quality—historically the biggest challenge for modeling companies, said Domenico del Re, senior model manager for the Asia/Pacific region. The objective is to develop data standards for collecting systematic and high-resolution information describing the location, construction and values of exposures, the only way to truly achieve data quality, Mr. del Re said.



Demand rises for political risk cover

Increased investment in emerging nations drives need for protection

By GLORIA GONZALEZ

Surging foreign direct investment and rising commodity prices are driving increased demand for political risk insurance in emerging markets in Asia.

Investors in China and Vietnam have strong demand for political risk cover as the amount of foreign direct investment soars in both countries. In other Asian nations, food shortages caused by high commodity prices are increasing political risk and prompting interest in the coverage.

Of 35 Asian countries rated by Aon Corp.'s 2008 Political and Economic Risk map, 12 are rated as having high political and economic risks, while nine are rated at a medium-high risks and six are rated at

medium risk (see chart). Six countries have political and economic risk profiles rated as medium-low and two countries have low risk profiles.

Countries such as Afghanistan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan have "been determined to be high-risk areas for underwriters," said Roger Schwartz, senior vp, Aon Trade Credit in New York.

China remains the top market for political risk cover, with financial institutions and manufacturing companies purchasing the insurance, brokers say. Demand has increased in relation to rising foreign direct investment, which government statistics say has topped \$60 billion. The Chinese government, though, maintains firm con-

trol over development and its currency, which can cause major problems for foreign investors from a political risk standpoint, experts say.

China is a medium risk from a political and economic standpoint, according to Aon's analysis. Continued growth results in wider economic disparity, which could lead to citizen unrest, according to the analysis.

"China has its own series of challenges," Mr. Schwartz said.

More recently, investors in Vietnam also are showing increased interest in insurance, with policies being bought for investments in the Philippines, Thailand and Indonesia, brokers and insurers say.

Continued on next page

Soft insurance market, sufficient capacity helps firms spread risk of Asia investments

The political risk insurance market for Asian countries has sufficient and reasonably priced capacity for most exposures, although capacity can be temporarily constrained in particular countries, industry experts say.

Such coverage includes nearly all types of political risks from the nationalization of an organization's investment to political violence to currency challenges. Military coups, for example, can quickly render a country's currency worthless, creating financial challenges for foreign companies.

"Is it a long shot, sure, but it's a potential exposure for a company," said Steven Levine, risk and insurance manager for Lepri-no Foods Co. in Denver, which is

expanding into emerging markets in Asia.

Multinational companies investing in emerging Asian markets want to spread their risk, but often are willing to retain as much as \$500 million to \$1 billion of the risk, said Daniel Riordan, president of Zurich North America's surety, credit and political risk group in Washington.

Zurich offers policies of up to 15 years to cover political risks and can provide capacity up to \$125 million for a single-project risk in an emerging market, he said. "It's directed to long-term investors who want to ensure their investment is protected over time," Mr. Riordan said.

Countries such as Indonesia have experienced temporary

capacity constraints because so many companies have entered the market that many underwriters run out of capacity, making it temporarily difficult to place risk, said Elizabeth Stephens, a political risk analyst with the credit, political and security risk team at Jardine Lloyd Thompson Ltd. in London. These constraints, though, usually last only a few months until reinsurers release additional capacity, she said.

Pricing for political risk coverage has begun to harden slightly, but conditions remain favorable for purchasing the coverage, Ms. Stephens said. "It's still a relatively soft insurance market," she said. "There are some fair deals out there."

—By Gloria Gonzalez

CONTINUED FROM PREVIOUS PAGE

"Political risk coverage in Asia in general is very common," said Jessica Feldman, a partner and co-founder of Campioni Risk Solutions L.L.C. in New York, an independent insurance brokerage and risk consulting firm that works with investors in Asian countries.

For Steven Levine, risk and insurance manager for Leprino Foods Co. in Denver, political risk concerns led him to explore new insurance options, such as trade credit insurance, as the company expands into emerging markets in Asia. "It's giving our businesspeople tremendous comfort to develop broader relationships in foreign countries where we might not have developed relationships because of the risks that are unknown," he said.

The reason for buying political risk cover often depends on the industry. For banks, such coverage in China and Vietnam often is driven by concerns about the aggregation of their exposures, particularly the need to comply with regulations governing the level of capital that banks must reserve to guard against financial and operational risks, said James Quirk, managing director and practice leader, political and credit risk Asia for Willis Group Holdings Ltd. in Singapore. "I still think (China is) a good investment environment, but the

istan, Ms. Stephens said.

"The climate in these markets is becoming slightly more volatile," she said. "The governments' reaction is becoming slightly more unpredictable."

Several Asian governments are trying to stabilize food prices. For instance, Bangladesh recently reached an agreement to borrow \$200 million from the Asian Development Bank. The problem is the governments can not afford to subsidize the price of food indefinitely, leading officials to seek other solutions such as revoking export licenses to stabilize food supplies, Ms. Stephens said.

"The political risk increases because of the change of the government taking drastic action to

shore up its position," Ms. Stephens said. "You have to consider regulatory risk when dealing with emerging markets."

Certain countries remain problematic from a political risk standpoint, experts say. Pakistan, for example, has a high political and economic risk profile because of instability at its highest levels with Pervez Musharraf retaining the presidency, but giving up his title as head of the country's military. Last year, he declared a state of emergency, suspended the country's constitution and ordered the arrest of key officials, including the chief justice of Pakistan's Supreme Court.

"It's a country we're quite concerned about at the moment," Ms. Stephens said.



REUTERS

Pakistan, where traders watch stocks nosedive in early June at the Karachi Stock Exchange, is considered at high risk of political and economic instability.

'You have to consider regulatory risk when you're dealing with emerging markets.'

Elizabeth Stephens,
Jardine Lloyd Thompson Ltd.

amount of investment is getting very high," he said.

In Vietnam, infrastructure investment, such as new power plants, transportation and telecommunications, is a key source of growth. "It's a good opportunity, but people are looking to manage their risk by covering in the political risk market," said Daniel Riordan, president of Zurich North America's surety, credit and political risk group in Washington.

In addition to China and Vietnam, purchases of political risk insurance are also expected to increase in India due to its "massive infrastructure needs," Willis' Mr. Quirk said.

Economic factors also can drive demand for political risk cover, brokers say. In Vietnam, a multibillion-dollar trade deficit and double-digit inflation increases have led to government attempts to stabilize the economy.

"The risk landscape is definitely changing in response to new economic and political realities," said Elizabeth Stephens, a political risk analyst with the credit, political and security risk team at Jardine Lloyd Thompson Ltd. in London.

High commodity prices have become one of the biggest political risk issues as food shortages have created civil unrest, strikes and riots in several countries, including Bangladesh, Indonesia and Pak-

WHAT WE LEARNED FROM THE FIRE AT *BALL PACKAGING EUROPE* MEANS OTHER COMPANIES ARE NOW ABLE TO REMAIN



A true story: It was April 2006. A major fire swept through Ball Packaging Europe's can-manufacturing plant in Germany.

FM Global was immediately on the scene finding ways to minimize the company's loss of production. The experience has helped FM Global work with other corporations on better ways to protect against fire, too. So it's more than the true story of one factory fire. It's the story of many businesses that are better protected today because of it. **To read more true stories, visit fmglobal.com/insurancerevolved**

Insurance Evolved **FM Global**

Questions & Answers

Joe Greco is director of the Center for the Study of Emerging Markets—formed in 1998 to promote research and education about and trade with international markets—at the Mahalo College of Business and Economics at California State University in Fullerton. In a recent interview with Business Insurance New York Bureau Chief Gloria Gonzalez, Mr. Greco discussed key issues for companies expanding into emerging markets in Asia.



Emerging market strategies

Q: What are the key risk management issues that companies need to be aware of when considering expanding into emerging markets in Asia?

There are, in certain countries, currency issues that they need to be aware of. For example, if they're expanding into China, the Chinese currency is not exchangeable outside the country. Other than China, that's not an issue, but a lot of times you're faced with a currency that's depreciating in value so you need to develop a strategy how you're going to deal with that. And there are strategies to deal with that, especially if you're coming from a, let's say, E.U. country where the euro's appreciating

from the currency crisis of 1997 and being a potential for investing. Other than that, Pakistan might be—there is still a question of political risk there. I would say Turkey also would be a potential investing site.

Q: What are the rewards for companies from doing business in emerging markets in Asia?

There's no question about it, you're going to find higher risk in these markets. But the return should accompany it. With the higher risk, you're going to get a higher return. So they can be very, very profitable opportunities. I always tell my students if you structure the transaction correctly, you can still make the high profits. It's just that you need to mitigate risk wherever you can.

There are still, for instance, underpriced companies if they're looking to acquire or merge with companies. There are still industries that you don't find as often as in the United States or European Union. There are opportunities because companies have a product that can be sold globally and they're just not right now able to market it. So there are opportunities, no question about it, especially I would say, of all the places in the world, Asia, especially south and southeast Asia are No. 1 as far as emerging markets as targets to investing.

Q: What are the key steps that Western companies have to be aware of and should consider taking when they're trying to expand their operations into emerging markets in Asia?

Well first and foremost, they need to understand the rules, the laws that they're going to have to live with. If they want to take the most drastic step, which is to set up their own factory or sales office or distribution office, they also have to be aware that there are special labor laws. For instance in India, if you're going to lay people off, you can't do it en masse.

They also should be aware of the restrictions in the financial markets. Probably the best thing if they can afford it is to have a consultant do an analysis of the potential for investing in that country.



in value; but you may go to Malaysia where it's depreciating in value. That's an issue—what we call exchange-rate risk.

These countries many times have market or financial market infrastructures that are not as complete as we expect (in the United States). Sometimes, the banks there will not have the same access...they're not as modernized as you'd expect. You know today you can call up and...get a bank balance right away, but that's not the case there.

There are issues also with the volatility in their markets, especially in their financial markets. They're very risky sometimes depending on various issues. Political risk could also be there, and that could cause volatility in the exchange rates in the financial markets.

Q: Which emerging markets in Asia have shown the most potential for growth?

Of course China, no question about it—that will continue to be a high-growth economy—and then of course India, although India has some definite problems. Their infrastructure still is years behind where it should be if it wants to continue to grow as rapidly as it is. But besides that I see the country of Indonesia recovering



REUTERS

As India's economy continues to grow, so does the country's insurance market. In 2000, the market was liberalized and opened to private Indian insurers and joint ventures. Prior to that, the insurance market consisted of just four government-owned insurers.

Risk management in India sees significant advances

But foreign firms must still adapt to business culture

By TONY DOWDING

Many U.S. and European companies have established operations in India to take advantage of the nation's rapidly growing economy, where risk management practices may not match Western standards.

Kavita Pandey, director of Aon Ltd.'s India Desk in London, said while India has lagged Western nations in adopting corporate governance standards, "today a lot of companies can boast of having very good risk management standards."

She said Aon recently took some Lloyd's of London underwriters to India to dispel the myth of poor risk management practices in India. "They were absolutely astonished at the kind of risk management standards which are being practiced by Indian companies in the local market," Ms. Pandey said.

C.B. Murali, a Mumbai, India-based partner at New York-based Campion Risk Solutions L.L.C., said India is undergoing an infrastructure overhaul.

"At the moment, you wouldn't necessarily find construction standards or protection standards that you would find in Western markets. However, many foreign companies are investing in India to gain cost benefits and cost advantages....Over the last decade there has definitely been a clear shift towards better construction standards, but it cannot be achieved overnight," Mr. Murali said.

Sanjay Kedia, Mumbai-based managing director of Marsh India, a unit of Marsh Inc., said he believes companies can impose Western risk management standards "in terms of their own plant and facilities and construction," he said. "But they find difficulty as soon as they try and do the same in areas that involve outside elements, for example when dealing with vendors, suppliers, supply chains and external agencies."

A manufacturing facility, for example, can impose internal risk management standards, he said. However, if it depends on an outside power supply, "You will be in for a rude shock if you assume that the quality of the power and the continuity of the power will be similar to what you experience in Western countries."

He said all such external issues need to be factored into business plans.

Kenneth Kwidzinski, risk manager at Santa Clara, Calif.-based Intel Corp, said, "Intel has rather uniform standards around the world and I don't know that there is any significant deviation from that in India. We have a campus providing (research and development) and back-office support in Bangalore, and they follow the same management practices, such as environment health and safety, business continuity, typical loss control programs."

Even so, Intel does no manufacturing in India. "It would be quite different if you were there with a business trying to sell to that environment, or relying on sub-contractors," Mr. Kwidzinski said.

One driver of risk management is corporate governance as more companies are making initial public offerings on stock exchanges in India (See story, page 15).

The stock exchange listing agreement set by the Securities and Exchange Board of India contains "a very specific element with regard to risk management, including a minimum requirement to have some sort of risk management framework to be signed by the board, and this has raised awareness at the highest level," Mr. Kedia said. "Clause 49 (of the listing agreement), which specifically provides a link between corporate governance and risk management, has certainly

\$1.1 TRILLION
GROSS DOMESTIC PRODUCT of India with a growth rate in excess of 8%.

See **INDIA** next page

Soft rates, few lawsuits cut risks for Vietnam operations

While progress has been made, many development issues remain

By DAVE LENCKUS

Foreign companies investing in Vietnam face risk management issues that are far less challenging than some of the economic, infrastructure and social issues they will encounter in the rapidly developing Southeast Asian nation, risk management experts say.

Weather perils and legal protections for consumers and workers do pose threats, but a soft insurance market, a nonlitigious culture and the sophisticated operating standards that foreign firms import make those risks manageable, they say.

Foreign companies typically import workplace safety standards that at least meet and often exceed Vietnam's mandates, experts say (see story).

While it is a communist country, over the past two decades the government of Vietnam has been moving the country away from an isolationist command economy and toward a free-market economy. Vietnam became a member of the World Trade Organization in early 2007, and the Vietnamese government—with assistance from the U.S. Agency for International Development, a U.S. government agency—has implemented laws and regulations the WTO requires.

More reforms needed

The Washington-based U.S. Chamber of Commerce welcomes Vietnam's economic reform program, which is known as *doi moi*, but says additional work is needed to attract more foreign development investment. More transparent government, anti-corruption measures, a modern infrastructure, better market access, and improved human rights protections are all needed, the organization says.

Risk management experts acknowledge those issues but maintain that the government is open to criticism about policy, though protective of individual officials.

In assessing the biggest risk management challenges that foreign-owned companies face when establishing operations in Vietnam, experts routinely begin by pointing out that the country has not completed its transformation and still faces many development issues.

Experts say that means company management has to



REUTERS

A variety of infrastructure improvements, including connecting rural areas to the national electrical system and upgrades in Hanoi (above), are under way in Vietnam.

manage all of its expectations about Vietnam, which is about the size of Italy but has a population that, at more than 85 million, is 50% greater.

For example, Internet speed is often slow, despite recent investments in the country by telecommunications companies.

Travel time by car also can be protracted and chaotic on the country's narrow roads, which often are congested with motorbikes—sometimes traveling in the wrong

See **VIETNAM** next page

Safety standards lack bite

Workplace safety is much less of a problem for companies expanding into Vietnam than for local enterprises, insurance market executives say.

Companies entering the country import safety standards that, unlike those at many locally owned companies, meet and often exceed national regulations. As a result, foreign companies typically have little trouble meeting the nation's safety regulations, experts say.

The regulations in Vietnam are clear but not onerous, said Gary Leong, chief executive officer of Marsh Vietnam Ltd. in Ho Chi Minh City. So regulators typically do not give employers any slack during inspections, he said.

But enforcement is uneven and not a top priority of the government, said Philippe Robineau, CEO of Gras Savoye Willis Vietnam Insurance Brokers in Ho Chi Minh City.

That does not mean the government is unconcerned about safety, he said, pointing to the recent enactment of a helmet requirement for motorcycle riders, who make up the vast majority of motorists in Vietnam.

Employers can cover workplace accidents and illnesses

through either workers compensation insurance or more expensive 24-hour coverage.

Companies in the service sector usually provide the 24-hour coverage in an effort to attract skilled workers, who are in high demand, according to market experts.

Meanwhile, manufacturers, which often employ workers from rural areas, can expect a "significantly" higher percentage of those workers will be injured, according to a U.S. researcher.

That's because many of those workers also work on their family farms at harvest time, said Helen Marucci-Wellman, a Hopkinton, Mass.-based research scientist and the principal investigator for a research study conducted by the Liberty Mutual Research Institute for Safety, a unit of Liberty Mutual Group Inc.

Ms. Marucci-Wellman's findings were based on a study she conducted of workplaces in Xuan Tien, a community of about 11,000 people about 210 miles southeast of Hanoi.

The study also revealed that injured workers seek treatment not only from doctors but also community healers, she said.

—By Dave Lenckus

Corporate governance drives need for risk management

Observers say corporate governance is increasing in importance in India because so many corporations are listing their shares on Indian stock exchanges, which is driving the need for risk management standards.

The relevant section of Clause 49 of the stock exchange listing agreement set by the Securities and Exchange Board of India, which was revised and went into effect in January 2006, states: "The company shall lay down procedures to inform board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework."

Unlike the United States and much of Europe, India's legal environment is not a big driver of risk management or insurance buying.

India's legal system is well-

established and all contracts are in English, but Jessica Feldman, a partner at Campioni Risk Solutions based in New York, said slow action by the courts has encouraged out-of-court settlements of lawsuits. Unlike U.S. courts, India does not allow class action lawsuits, though "social development looks like changing this position in the future."

Sanjay Kedia, Mumbai-based managing director of Marsh India, agreed. "People don't generally sue and if they do, settlements are lengthy and damages are very low. So that is not a driver of purchases of liability insurance. What we have seen is businesses that have a global interface in terms of client base, for example IT companies. They are driven by this global interface to buy product liability, E&O and D&O, which is becoming increasingly important for companies that are listed on global exchanges."

—By Tony Dowding

India: Risk management developments

CONTINUED FROM PREVIOUS PAGE

raised the profile."

As India faces an economic evolution with a gross domestic product growth rate in excess of 8% a year and a GDP of nearly \$1.1 trillion, so does its insurance market. Ten years ago, the Indian market consisted of just four government-owned insurers.

In 2000, the market was liberalized and opened to private Indian insurers and joint ventures, which are capped at 26% foreign ownership. Currently, there are 11 joint insurance ventures.

Intel's Mr. Kwidzinski said India is a highly regulated country from an insurance perspective, "but the regulations are changing such that it is becoming a more open environment, and you can apply some of the Western solutions now, such as using fronting arrangements with captives behind the scene. From our perspective, we can now give direction to the overall insurance program and it brings the Indian operation fully into our corporate setup."

Paul Buckley, vp of risk management at Pembroke, Bermuda-based Tyco International Ltd., said it can be very difficult to impose Western risk management standards on

Indian operations. While India is relaxing its rules on insurance rates in a process known as "detrification," he said, "implementing changes in a different culture is not always easy. You are dealing with people, even in your own organizations, who have typically bought local coverages on their own. Re-educating them in the process is a challenge as well."

'The whole market has crashed and is on average down by 75% on the large commercial risks.'

Sanjay Kedia, Marsh India

Tyco, a diverse manufacturing company, examines India operations separately from other nations in terms of its global insurance program. India will be brought into Tyco's global insurance program "once we fully understand clearly all the tariff issues. We would rather do it right than fast," Mr. Buckley said.

The removal of government con-

trol of insurance pricing that was completed this year has resulted in a rapidly softening market in most lines, including commercial, amid intense competition.

"There has been a bloodbath taking place in the market as far as rates are concerned," said Aon's Ms. Pandey of the "very, very soft market."

Marsh's Mr. Kedia agreed. "The whole market has crashed and is on average down by 75% on the large commercial risks compared to the previous tariff regime. For some very good accounts, it has even gone down by 85% or 90%."

Mr. Murali said insurers' focus is on retail products such as life, health and auto, largely because of the growth opportunities and because banks are able to provide distribution through well-established branch networks.

"The growth prospects for property/casualty business are going to be limited in the medium term. The challenge always is to get the right product to the customer at the right cost. And that is a big challenge in a country like India because you don't have ready-made networks; you always have to invest in your distribution," Mr. Murali said.

Vietnam: Soft rates, low litigation reduces risk management concerns

CONTINUED FROM PREVIOUS PAGE

direction—or obstructed with animals and sometimes children.

And with the median age of Viet-

nam's population at 26, "in a business meeting, you're likely to be dealing with someone 30 or younger," noted Aaron Yip, a Singapore-based assistant vp and the

regional manager for Southeast Asia for Chubb Specialty Insurance, a division of Chubb Corp.

By understanding "how things work" in Vietnam and planning accordingly, "50% of your headaches would be more or less resolved," said brokerage executive Gary Leong, chief executive officer of Marsh Inc. unit Marsh Vietnam Ltd. in Ho Chi Minh City.

Simple measures such as allowing sufficient time to travel to business meetings in other cities can eliminate many problems, he said.

But as the government continues to implement and iron out various reforms, companies entering the country will find that conventional risk management, in many respects, is not a major headache, according to brokerage and insurer executives.

For example, the two dozen or so local- and foreign-owned property/casualty insurers operating in the country's relatively young insurance industry continue to prize market share over profitability, though Marsh's Mr. Leong says he sees that changing slowly.

The persistent soft market means that even resorts and entertainment risks in the central part of the country, which is susceptible to windstorms and flooding, have no trou-

ble purchasing needed property coverage, experts say.

Rates are higher for those risks—which typically incur frequent but not total losses—than for property risks elsewhere in the country, "but not critically so," said Vu My Lan, CEO of Aon Vietnam Ltd. in Hanoi.

Liability insurance rates also are soft, and insurance experts say that the nonlitigious nature of Vietnam's culture in combination with some powerful deterrents to litigation will ensure rates remain low.

Vietnamese routinely settle disputes out of court and without lawyers, said brokerage executive Philippe Robineau, CEO of Gras Savoye Willis Vietnam Co. Ltd. in Ho Chi Minh City. Gras Savoye is an associate broker of Willis Group Holdings Ltd., which owns 42% of Gray Savoye. "It's a failure to solve things (without lawyers) that will lead people to go to court."

Those who do retain lawyers to resolve disputes usually are foreigners or Vietnamese who have studied overseas, he said.

"That's why liability insurance in Asia in general and in Vietnam in particular is not in demand," Ms. My Lan said. Companies in Vietnam typically purchase primary general liability coverage—for as little as \$1,000 for \$2 million of limits—and no excess limits, she said. The cost of primary general lia-

bility coverage in the United States typically is substantially greater, though rates vary significantly from risk to risk, according to Aon.

Changes occurring in the country, such as the enactment of consumer protection laws, likely won't lead to a surge in lawsuits, said Terence Anderson, the Ho Chi Minh City-based general director of AIG General Insurance (Vietnam) Co. Ltd., a unit of American International Group Inc.

Besides the society's ongoing nonlitigious nature, statutes determine awards; cases are heard only by judges, not juries; and the losing party pays the winner's legal costs, he said.

In addition, courts are not bound by precedent, Mr. Leong noted.

Still, more companies are seeking liability coverage to ensure they are covered for product liability claims, Mr. Anderson said. Growing demand is not driven by loss experience but by requirements in contracts with companies based outside of Vietnam, he said.

The various factors that deter litigation also are reflected by the lack of any directors and officers liability lawsuits during the past year despite plummeting share prices on the local stock exchange and a recently implemented U.S.-style regulatory framework for the securities market.

Investors understand that Vietnam's bear market is the result of tough economic conditions, including inflation of around 20% and tight credit, Chubb Specialty's Mr. Yip said.

But, in addition to the other legal and social factors that discourage litigation, class action lawsuits are not permissible, though derivative lawsuits are, risk management experts noted.

As a result of the limited exposure, D&O liability insurance is not a popular product in Vietnam, Aon's Ms. My Lan said.

But Chubb's Mr. Yip said he sees that changing.

He noted that private equity funds are the biggest investors in companies expanding into Vietnam, and those funds' representatives—many of whom are not Vietnamese—sit on those companies' boards.

"If you're a director of a Vietnamese company, you're not really sure what's around the corner and feel more comfortable with a D&O policy," Mr. Yip said. "Given this is an emerging economy, there's a good deal of uncertainty how things will evolve."

Whatever the uncertainties and resulting concerns of risk managers at foreign companies looking at expanding to Vietnam, open-mindedness is important, according to a U.S. research scientist.

"It's not wise to go into the country with preconceived ideas," said Helen Marucci-Wellman, a Hopkinton, Mass.-based research scientist. For example, Ms. Marucci-Wellman said, the government was very helpful in facilitating a workplace safety study for which she was the principal investigator for Liberty Mutual Research Institute for Safety, a unit of Liberty Mutual Group Inc.



AP PHOTOS

More than \$30 billion in direct foreign investment was pledged for Vietnam during the first half of the year, the government said. Above, construction of a five-star hotel backed by a South Korean group progressed in May.

PROFESSIONAL MARKETPLACE

Broker Trends & Profiles

A *Business Insurance* Spotlight Report.

Don't keep a low profile.

Publishing: July 21, 2008

Ad Close: July 15, 2008

**Contact Tina Vasilakis
at 312-649-5340 for details.**

BUSINESS RESOURCES

SPECIALTY RISKS

BROWNYARD PROGRAMS
WE PROTECT THE PROTECTORS

Guards • Investigators • Alarms
WC • GL/Professional • Umbrella
1-800-665-7304
www.brownyardprograms.com



**Some things just work
better in color.**

Like your BUSINESS RESOURCES ad
in *Business Insurance*. Contact
Tina Vasilakis at 312-649-5340.

To place your ad,
contact **Tina Vasilakis**
at (312) 649-5340
fax: (312) 649-7937
tvasilakis@BusinessInsurance.com

**Business Insurance,
Classified Department,
360 N. Michigan Ave.,
Chicago, IL 60601-3806.**



LISTEN:

**"This Week
in Business Insurance"**



Our new weekly podcast
reviews the headlines
in each new issue
of *Business Insurance*
and interviews reporters
for in-depth insights
to the top stories
of the week.

Subscribe to
this free podcast on iTunes
or listen to these audio
reports online at
www.businessinsurance.com/thisweek

BusinessInsurance®

www.BusinessInsurance.com

International NEWS

Swiss revamp system for financial regulation

Single authority will oversee banks, insurers

By MICHAEL BRADFORD

BERN, Switzerland—Swiss insurers and banks are moving with little fanfare toward a new single-authority regulatory system.

Most market sources see little change as a result of the new regulatory regime that will be implemented in 2009. But some say a single regulator would have broad oversight that could help prevent problems such as the current credit crisis from spreading among financial services companies.



Switzerland's Federal Assembly passed the Federal Act on Financial Markets last year, which creates a single financial services regulator.

Switzerland's Federal Act on Financial Market Supervision, which passed a year ago, merges the Federal Office of Private Insurance, the Swiss Federal Banking Commission and the Anti-Money Laundering Control Authority into the new Swiss Financial Market Supervisory Authority. The new authority will begin operating Jan. 1, 2009.

The law allowed the authority, known as FINMA, to appoint its board of directors earlier this year. Patrick Raaflaub, formerly head of

group capital management at Swiss Reinsurance Co., was named to head the board.

Swiss insurance market sources say they do not expect the establishment of a single financial services authority to prompt major regulatory changes.

Swiss insurers are governed by the country's Insurance Supervision Act, which is not affected by the new regulatory setup, sources noted. "The insurance supervision law remains in force as it is now," said a spokesman for the Federal Office of Private Insurance in Bern, the agency with current regulatory authority over insurers. "So, technical supervision should remain the same."

A spokesman for the Swiss Federal Banking Commission said there may be advantages in a single regulator with responsibility over both banking and insurance. A single authority will have the ability to monitor activities in both sectors and spot any issues in one that could create problems in the other, he said.

"Banking and insurance are similar," he noted, and a single regulator will have "a much greater ability to see the whole marketplace." That could mean broad issues—such as the credit problems that grew from the subprime credit crisis—might be identified before they have a severe effect on insurance markets, he said.

Risk managers, meanwhile, have been quiet on the potential impact of the new regulatory system.

"On a national risk management level, it's not seen as a major issue," said Franck Baron, a board member with the Swiss Assn. of Insurance & Risk Managers and director of global insurance and risk management at Firmenich S.A. in Geneva. He acknowledged that it's a topic risk managers may want to give more attention to.

Canadian ruling curbs punitives

High Court sides with employer in wrongful termination case

By GLORIA GONZALEZ

OTTAWA—In a significant victory for Canadian employers, the Supreme Court of Canada overturned a damages award against an employer that fired a worker for not cooperating with its efforts to manage his disability-related absences.

A trial judge awarded punitive and aggravated damages to punish the employer, but the alleged misconduct did not occur, according to Supreme Court's ruling in *Honda Canada Inc. vs. Kevin Keays* late last month.

"This was a spectacular result for employers," said George Avraam, a partner at Baker & McKenzie L.L.P. in Toronto, who intervened in the case on behalf of the Alliance of Canadian Manufacturers & Exporters.

Mr. Keays was diagnosed with chronic fatigue syndrome in 1997 and received disability benefits until 1998 when Honda's insurer discontinued his benefits after determining he could return to work full time. He was placed in Honda's disability program, which allows employees to take absences from work if they provide notes from a doctor confirming that the absences are related to their disability. The company, though, felt the notes provided by Mr. Keays were "cryptic." Honda asked Mr. Keays to meet with its occupational medical specialist to determine how his disability could be accommodated, but he refused, on the advice of his lawyer, and was terminated.

After Mr. Keays sued for wrongful dismissal, a trial judge ruled he was entitled to a notice period of 15 months, but awarded aggravated damages in the form of an additional nine months notice because of acts of discrimination, harassment and misconduct by Honda. The judge also awarded punitive damages of about \$500,000 Canadian (\$498,200)—which is large by Canadian legal standards. The punitive damages award was reduced to \$100,000 Canadian (\$99,640) by the Ontario Court of Appeal, which upheld the rest of the judgment.

In its ruling, the Supreme Court said the trial judge made "overriding and palpable errors of fact" in faulting Honda for relying on the advice of its medical experts to request additional information from Mr. Keays and asking him to

RULING'S KEY POINTS

Canada's Supreme Court ruled for the employer in *Honda Canada Inc. vs. Kevin Keays*—a case involving the termination of a disabled employee, which said:

■ Employees are not entitled to compensation for "normal" distress and hurt feelings caused by a termination.

■ Aggravated damages are warranted only when the employer acts in bad faith in terminating an employee.

■ Punitive damages in employment-related disputes should only be awarded when an employer's conduct is "so malicious and outrageous" that it deserves punishment.

■ An employer should not be punished via punitive damages for an



LANDOV

independent decision by its insurer to terminate benefits.

■ Employers are entitled to ask employees who are absent frequently for medical information to monitor absences.

■ Employers that rely on the advice of their medical experts are not acting in bad faith.

meet with its physician. The judge also incorrectly determined that Honda's decision to cancel its accommodation and stop accepting doctors' notes was in reprisal for Mr. Keays' decision to retain a lawyer, the Supreme Court said.

Honda's actions were not "calious and insensitive," which the trial judge found in awarding the aggravated damages, commonly known as Wallace damages after a



1997 Supreme Court ruling in *Wallace vs. United Grain Growers Ltd.* that allowed additional damages to be awarded when an employer acts unfairly or in bad faith.

"The employer's conduct in dismissing (Mr. Keays) was in no way an egregious display of bad faith justifying an award of damages for conduct in dismissal," the Supreme Court said.

The Supreme Court confirmed that employers have the right to implement absence management programs, particularly in light of their legal obligation to accommodate disabled employees.

"Employers can go back and deal with employee absences and dis-

abilities in a common-sense manner," Mr. Avraam said.

Punitive damages also should not have been awarded because they are restricted to acts that are "so malicious and outrageous that they are deserving of punishment on their own," the Supreme Court said.

"That's a very high standard for punitive damage awards," said Connie Reeve, senior partner in the labor and employment practice of Blake, Cassels & Graydon L.L.P. in Toronto.

The trial judge also unfairly penalized Honda by awarding punitive damages in relation to the decision by its independent insurance provider London Life Insurance Co. of London, Ontario, to discontinue benefits, according to the ruling.

The Supreme Court did not overrule the concept that an employer has to act fairly when terminating an employee, but the employee has to prove he or she suffered harm to receive additional damages, employment lawyers say.

"One reason Honda didn't pay punitive damages was because the manner of their termination was professional," said Neena Gupta, a partner at Gowling Lafleur Henderson L.L.P. in Toronto. "The courts will still punish an employer who is abusive...or lies about the honesty of the employee that is terminated."

See **DAMAGES** next page

U.K. group works to develop risk management standards

Move to define role seen as way to grow buyers' influence

By STUART COLLINS

BIRMINGHAM, England—The public sector risk management association in the United Kingdom plans to launch two new sets of standards

later this year in a bid to increase its influence.

The Assn. of Local Authority Risk Managers is seeking the views of its members on two core performance standards, according to Peter Andrews, immediate past chairman of ALARM and chairman of the association's education and development committee.

Speaking at ALARM's annual conference last week in Birmingham,

England, Mr. Andrews outlined plans for the standards: Risk Management Competencies and the National Performance Standard in the Public Sector.

The Risk Management Competencies should raise professional standards and public sector risk managers' standing, Mr. Andrews said.

It will define the role of a risk manager, their responsibilities and

core knowledge and competencies, he added.

The National Performance Standard, meanwhile, is intended to be used in measuring and benchmarking risk management performance in the public sector, he told delegates.

ALARM is ready to consult on the National Performance Standard, calling for volunteers and regional groups to help with the detail of

the standard, Mr. Andrews added. Member views are also sought on the Risk Management Competencies, he noted.

ALARM hopes to launch both initiatives in December, Mr. Andrews told delegates.

"We need professional standards to help us lobby. If we can't define risk management standards, then we can not influence the decision makers," he said.

Consultant: Stanford offers risk advice

CONTINUED FROM PAGE 4

clients would “not necessarily” be compelled to engage Dubraski, the specialty broker could work with a client’s captive insurer and alongside an existing broker, said Bob Dubraski, president and chief executive officer.

Dubraski will not share any of those fees with Stanford Risk Consulting.

The idea of a successful health care organization branching out into the risk management arena is not unique. For example, Harvard Medical Institutions Inc. decades ago established risk retention group Controlled Risk Insurance Co. of Vermont Inc., insurer Controlled Risk Insurance Co. Ltd. and consultant Risk Management Foundation. CRICO/RMF says it serves nearly 10,000 physicians, 18 hospitals and 238 other health care organizations.

Indeed, Mr. Driver retains an RMF division to conduct loss analyses. Mr. Driver, who was chief risk officer for a Harvard University teaching hospital earlier this decade, acknowledges that there has been “some influence from the East Coast” on the Stanford University Risk Consulting model.

But he said the two consultants’ business models differ, and he foresees recommending that clients use RMF’s services where appropriate.

James D. Hinton, another award-winning hospital risk manager, said he contemplated but ultimately rejected the idea of forming a consulting practice division for Nashville, Tenn.-based HCA Inc. two years ago, when the nation’s largest multihospital organization went private.

Mr. Hinton, vp-risk and insurance and the 2005 *BI* Risk Manager of the Year, said his biggest “fear”

was that any revenue generated by a new consulting practice would be offset by diverting his staff’s attention from HCA’s risks.

While that’s a potential problem for Stanford University as well, “Jeff’s a smart guy,” Mr. Hinton said. “There is a lot that other hospitals can learn from him.”

Elizabeth Summy, the Chicago-based executive director for the American Society for Healthcare Risk Management, said despite the number of consultants available to hospitals, there is “a lot of demand for risk management right now.”

The issue is not a lack of risk management at hospitals but a wide variance of risk management resources from hospital to hospital, she said. In addition, risk management is just beginning to emerge in health care settings such as ambulatory care and long-term care facilities, Ms. Summy said.

Damages: Canada court curbs punitives

CONTINUED FROM PREVIOUS PAGE

The *Honda* decision reflects a signal by Canada’s Supreme Court that lower courts may have expanded the scope of the *Wallace* decision and other Supreme Court rulings beyond their original intent and increased the notice period even in the absence of egregious misconduct by employers, employment lawyers say.

“The mere fact that one is terminated doesn’t give rise to a cause for

damages as long as the employer does what they are supposed to do” such as giving reasonable notice, said Earl Cherniak, a partner with Lerner L.L.P. in Toronto who represented Honda.

The Supreme Court upheld the trial court’s ruling that Mr. Keays was entitled to 15 months notice. Under Canadian law, employers must follow statutory requirements on minimum notice or offer equivalent pay, however, reasonable notice may extend beyond the statutory minimums based on fac-

tors such as the likelihood of a worker finding comparable work.

The ruling has significant implications for employees in similar situations, said Hugh Scher, an employment and human rights lawyer with Scher & De Angelis L.L.P., who represented Mr. Keays. “I think it’s a tremendous blow to workplace fairness and it will embolden employers to act with carte blanche to do whatever they want to do,” he said.

Honda Canada Inc. vs. Kevin Keays, SCC 39; June 27, 2008.

Privacy: Internet adds employer worries

CONTINUED FROM PAGE 4

Nebraska at Lincoln et al., in 2005 the 8th U.S. Circuit Court of Appeals affirmed a lower court ruling that dismissed the invasion of privacy claims brought by an employee of the University of Nebraska. The university had sought documentation for a discovery request and, after Mr. Biby failed to produce the documents, the university searched his computer. Once the university located the documentation on his terminal, Mr. Biby was fired. The court ruled he had no reasonable expectation of privacy on his computer in light of the

university’s policy.

“Notify employees early and often they have no expectation to privacy,” Mr. Oncidi said. “The better and the more frequent notice that is given, it’s easier to defeat these claims.”

Additionally, policies regarding employee blogs are becoming equally important as blogging popularity rises, the panelists said. In 2004, a flight attendant was fired from Delta Air Lines Inc. for posting “inappropriate” photos of herself in a Delta uniform on her personal blog that was not tied to her work.

She complained to the Equal Employment Opportunity Com-

mission, which issued a right-to-sue letter. In the 2005 lawsuit she filed, the woman accused Delta of sexual discrimination because some male employees had included pictures of themselves in Delta uniforms on their blogs but were not fired. The lawsuit is still pending in court.

The panelists said companies should develop blogging policies that, among other things, address whether work-related equipment and Internet connections may be used and whether blogs will be monitored; forbid discriminatory, disparaging, defamatory or harassing comments; require a disclaimer; and require that employees identify themselves.

Instant messaging and “cyber smearing,” or criticizing companies and their executives typically through any online public forum, such as chat rooms, message boards or Web sites, also require employers’ attention.

Mr. Oncidi said concerns about privacy and technology in the workplace today to an extent are a generational issues, as younger people feel more comfortable expressing themselves through e-mail and blogs.

He said the one thing that is certain about the rules surrounding such technologies and how they relate to privacy in the workplace is that they are “ever-changing.”

Diverse benefits needed

Differing concerns require varied approach

By KRISTIN GUNDERSON HUNT

CHICAGO—Benefit managers need to ensure that their companies offer the most cost-effective programs that appeal to employees’ diverging needs, a consultant says.

Gary B. Kushner, president of Kushner & Co. Inc., a Grand Rapids, Mich., employee benefits consulting and administration firm, said a one-size-fits-all health care plan does not always best serve an increasingly diverse workforce.

“A lot of dollars are not being used appropriately, yet (employers are) spending more dollars,” Mr. Kushner told attendees of Society for Human Resource Management’s 60th Annual Conference & Exhibition, held June 22-25 in Chicago.

Mr. Kushner said benefits managers first should analyze the coverage, language and conditions of benefit designs. Then they can consider removing benefits that have little value to the workforce, such as accidental death and dismemberment coverage for certain companies. He said it is likely few employees will stay with a company for its outstanding accidental death and dismemberment policy, and many employees probably don’t recognize it is a benefit.

“Think about the benefits you’re offering,” Mr. Kushner said. “Target those things that will make the organization more effective and employees will appreciate.”

Examining paid time-off designs is another way to enhance the company’s effectiveness and desirability, he said.

While most companies have what he described as the outdated pyramid system of recent hires receiving the least paid time off and longtime employees receiving the most, companies might consider reducing other benefits to increase recent employees’ PTO. Longtime employees might appreciate

enhanced security benefits in lieu of additional time off, he said.

Depending on a company’s culture and operations, it might want to eliminate the traditional separation of vacation, sick and personal days and adopt PTO days that can be taken for any reason or even PTO banks of time off. Mr. Kushner said more companies are moving in this direction.

He advised against using PTO plans that penalize all employees because of the few offenders who violate time-off policies. “You don’t have a benefits issue, you have a performance issue,” he said. “Deal with sick leave abuse as a performance issue.”

In addition, he suggested companies audit everyone enrolled in their health plans. In the plans he analyzes, Mr. Kushner said 8% to 10% of enrollees are ineligible, often being employees’ children or ex-spouses who no longer qualify for the coverage.

In terms of medications, he said companies should remove barriers to coverage of prescription drugs that are known to be effective, such as those for diabetes, but weigh whether they continue covering certain “prescription drugs that might not bring much value to the company.”

Companies need to consider whether they “pay for procedures that might do more harm than good,” and whether their health plans should be “paying for items that don’t have medical payback,” he said.

He also said companies should determine cost-sharing “wisely” and consider compensation-based formulas in which low-wage employees pay less than high-wage employees for health care services. While such a plan would not bring more money into an organization, it would provide relief to a valuable class of workers, he said.

Management: Selling idea of wellness starts at the top

CONTINUED FROM PAGE 4

and hospital quality, and a host of other factors, she said.

“The data has to be linked,” Ms. Blough said. “Put the dots together to tell the story of the organization.”

While collecting and quantifying health care data may seem overwhelming, she said it can be done. A variety of technology tools are needed, and risk managers must require providers to analyze claims and cost information, she said.

“Health care and wellness can be quantified without you having to get a Ph.D. in analytics,” Ms. Blough said.

Once the pertinent data has been analyzed, companies can begin stratifying their risks and implementing programs that will positively affect employees. She said it is

best to focus on a few key strategies aligned with the company’s cost drivers.

She also suggested establishing a three-year budget that focuses on containing rather than shifting health care costs.

Proactively managing high-risk employees and forecasting future costs through predictive modeling are other components of successful wellness programs. Profiling physicians and having hospital quality data on hand, and then communicating all that information to employees is essential and a task that is ongoing, Ms. Blough said.

She said employers need to teach employees to be smarter, better consumers of health care.

“You’re not going to control health care costs,” Ms. Blough said, “without spending a big portion of time educating the consumer.”

19,500 join SHRM in Chicago

CHICAGO—The Society for Human Resource Management’s 60th Annual Conference & Exhibition held June 22-25 in Chicago drew approximately 13,500 paid attendees and 6,000 other individuals, including exhibitors, the media and the organization’s board of directors.

Human resources executives were offered more than 150

educational sessions on a wide variety of topics ranging from strategic management, human resources and the law, employment, skill development and total rewards programs.

Next year’s conference will be held June 28-July 1, 2009, in New Orleans. Online registration is open at www.shrm.org.

—By Kristin Gunderson Hunt

Collateral: Revised New York proposal now closer to NAIC model

CONTINUED FROM PAGE 1

Reinsurers with the highest credit agency rating would have equal footing with New York-domiciled reinsurers and would not have to post collateral. Less financially strong reinsurers would be required to post collateral ranging from 10% to 100% on a sliding scale.

Current collateralization rules "are blatantly protectionist and are neither effective nor efficient; and the illogical demand for collateral based on ZIP code, not financial health, must have the effect of driving up costs and restricting capacity," said Lloyd's Mr. McGovern.

Many U.S. ceding companies and reinsurers, however, strongly disagree that such a change is needed, noting that non-U.S. reinsurers already can write reinsurance in the United States on the same basis as

U.S. companies if they submit to state-based regulation.

"I'm flummoxed by the continuing claim that posting collateral discriminates against foreign firms," said Michael Koziol, assistant vp and counsel for the Property Casualty Insurers Assn. of America in Des Plaines, Ill.

Mr. Koziol's views represent those of U.S. ceding companies—as well as guaranty funds—that fear a reduction in collateral may mean they would suffer if cedents cannot collect reinsurance recoverables from reinsurers that are not subject to U.S. court jurisdiction.

A copy of the New York regulation was unavailable last week, but Deputy Superintendent and General Counsel Robert H. Easton described revisions from the previous version, which was released last year (*BI*, Oct. 22, 2007).

One major change from the earlier plan would increase to 75% from 50% the collateral required for reinsurers that are placed in a category known as "BBB," Mr. Easton said. That made the proposed collateral requirements nearly identical to the latest version of the NAIC proposal, which is being drawn up by the Reinsurance Task Force (*BI*, April 7). NAIC drafters hope to complete the project by year end. Absent national legislation, enactment would fall to the states.

Mr. Dinallo described his goal as "a desire to move the ball forward." If New York's proposal is replaced later with the NAIC model, "it's fine."

Another revision to New York's proposal underscores two major issues that any state-based regulatory modernization effort faces—determining regulatory equivalency and requiring the enforceability of

judgments.

Mr. Easton said drafters removed a reference to both issues because "there is some legal debate whether states can compel a foreign regulator to take or require specific legal actions against a company domiciled there." As a result, New York regulators may have to review those topics in their vetting process to determine the supervisory systems with which the department will maintain a cooperative relationship, including exchanging information.

The New York proposal would require a new memorandum of understanding with the insurance regulatory authority of a jurisdiction before a non-U.S. reinsurer domiciled there can apply for reduced collateral under the proposed changes, Mr. Easton said.

Although the New York Insurance Department currently has

such agreements with insurance authorities in Germany and Taiwan, new agreements would be required, he said.

While New York may lack some authority to enforce U.S. court judgments abroad, "there are other ways to skin the cat," Mr. Easton said.

For example, to collect reinsurance recoverables that courts and regulators consider owed to a U.S. ceding company, Mr. Dinallo said he might consider canceling an MOU arrangement with a non-U.S. jurisdiction. That would bar all reinsurers from that country from using the relaxed collateral standards.

In addition, Mr. Dinallo noted, New York would consider basing financial strength determinations on information from the NAIC's Securities Valuation Office, rather relying solely on ratings agency analysis.

Products & Services

XL endorsement backs green rebuilding

NEW YORK—XL Insurance, a unit of XL Capital Ltd., has added a green building endorsement to its property portfolio to encourage customers who experience property losses to rebuild using environmentally friendly materials.

XL's sustainable property endorsement is designed to be attached to U.S. property insurance policies and is adaptable to other tailored or manuscript forms.

The endorsement is based on the Leadership in Energy and Environmental Design Green Building Rating System developed by the U.S. Green Building Council. It compensates policyholders with an amount greater than the value of the damaged property, provided it is replaced with an environmentally acceptable substitute.

In addition, the coverage extends to undamaged property under the building laws provision as well as recycling and recertification expenses after both full and partial losses.

For more information, contact John B. Gallagher, chief underwriting officer of XL Insurance Global Property in New York, at 212-915-6706 or visit www.xlinsurance.com.

AIG offers liability cover for public entity managers

NEW YORK—AIG Executive Liability, a unit of American International Group Inc., has introduced a policy that protects managers of public entity employee benefit plans from fiduciary liability exposures.

The Public Entity Plan and Trustee Protector policy includes broad coverage for trustees, employees, elected or appointed officials, the benefit plan or the retirement system for claims that allege a breach of employee benefits law or an error in plan administration.

The policy, which is available in more than 30 states, has limits up to \$50 million.

A number of recent high-profile cases have spotlighted the liability of individuals who oversee public entity employee benefit plans, and this policy addresses the unique litigation issues faced by these individuals, according to the company.

For more information, contact Michael Smith, president AIG Executive Liability, at executiveliability@aig.com or visit www.aig.com/aigexecutiveliability.

Sedgwick claims program aimed at financial entities

MEMPHIS, Tenn.—Sedgwick Claims Management Services Inc. has launched a claims administration program and risk management service for companies with credit card programs, consumer warranty plans and other specialized financial products.

The Memphis, Tenn.-based third-party administrator offers credit card-related claims and warranty claims services to banks, credit card companies, affinity groups and other issuers and sponsors of credit cards and consumer warranties.

Sedgwick CMS also provides risk management consulting services to companies with credit card programs and other financial products.

For more information, contact Brenda Lott, vp and director of financial sector specialty services at 303-766-8522 or finsectorsvcs@sedgwickcms.com.

ADVERTISER

INDEX

Issue of July 7

ADVERTISER	PAGE #
Aetna Corporate	7
AIG Corporate	24
Aon Corporation	2
Brownard Programs	16
Business Insurance	19
C.V. Starr	10
Catlin US	23
FM Global	13
IBM	9
Liberty Mutual	5

Broker Trends & Profiles

A Business Insurance Spotlight Report

Publishing: July 21, 2008
Ad Close: July 9

Face the facts... the best way to reach buyers and sellers of commercial insurance is by advertising in **Business Insurance's Broker Trends & Profiles** annual special report.

All year long, our readers – your clients and prospects – will read and refer back to this issue for our coverage of the major trends shaping the brokerage industry, as well as our exclusive profiles of the world's 10 largest brokers and our ranking of the 100 largest U.S. brokers.

Don't keep a low profile. Contact Bob Raidt at 212-210-0133 or e-mail Advertising@BusinessInsurance.com to place your ad today.

Business Insurance
www.BusinessInsurance.com

TARGETED NEWS. TARGETED AUDIENCE. TARGETED REACH.

NEW YORK: 212-210-0133 | CHICAGO: 312-649-5275
BOSTON: 617-292-4856 | LOS ANGELES: 323-370-2405

Employer receives funding to start statewide wellness project

By JOANNE WOJCIC

VALDOSTA, Ga.—A Georgia employer that co-founded a community-based health initiative has received \$150,000 in state funding to launch a statewide wellness incentive research project at the end of this summer.

The objective of the pilot project, which is being conducted with the Lowndes County Partnership for Health, is to identify “best practices” in workplace and community-supported wellness programs, said Mark Wilson, vp and director of human resources for Valdosta, Ga.-based Langdale Industries Inc.

Langdale is a 114-year-old family business with 1,300 employees at more than 20 diversified affiliates, related mainly to the forest products industry.

The \$150,000 in state money will provide initial funding to develop a design for the multiyear research project, said John Sparks, executive director of the partnership co-founded in 1996 by Langdale and the Georgia Hospital Assn. Additional funding for subsequent years’ work will be sought from the state legislature on an annual basis.

Langdale got Georgia lawmakers’ attention when word spread of its success in keeping its health care cost trend relatively flat for the past several years, Mr. Wilson said.

“The trend for the last seven years has not varied \$1,000 per employee per year,” said Barbara Barrett, assistant director of human resources at Langdale and manager of the company’s self-insured and self-administered health plan. “Since August

2000, we have not gone above \$6,100 per employee per year.”

Ms. Barrett said Langdale did so by taking over administration of its self-funded health plan, which enabled it to identify cost drivers and focus on prevention.

“Most (third-party administrators) focus on managing large claims,” she said. “The focus also needs to be on preventing those large claims. By having our own data, we were able to drill down and look at the specific diseases and who those people were, and then tailor programs to manage those chronic diseases.”

To ensure that employees’ health information is kept confidential as required by federal law, Langdale formed a subsidiary to provide claims administration services at a Valdosta location.

Individuals identified as having or being at risk of having specific diseases and conditions receive face-

‘Most people know what to do already. It’s not a matter of knowing what to do. It’s motivating people to do it.’

Mark Wilson, Langdale Industries Inc.

to-face counseling in a disease management program provided by the partnership.

“We’ve got a very blue collar

workforce,” she said. Individualized counseling gains “a lot more information from them about their home environment, who’s doing the cooking, that type of thing.”

The state-funded research project will focus on wellness incentives because there already is enough evidence to support what people need to do to be healthy, but there is very little information available on what types of incentives work to get people to do it, Mr. Wilson said.

“Most people in America know what to do already. It’s not a matter of knowing what to do. It’s motivating people to do it,” he said.

“So incentives are the actual pivot point on whether or not a wellness program or a disease management program actually works or not,” Mr. Wilson said.

Community: Employer involvement moves beyond the workplace

CONTINUED FROM PAGE 1

consumer, he said.

Indeed, “the degree to which employers can promote community health, and a culture of health in the communities where they operate, that’s good for business,” said Andrew Webber, president of the National Business Coalition on Health in Washington.

“An employer can obviously do a lot at the workplace to promote healthy behavior,” he said, but they have little or no influence over how their employees act once they enter the community at large. As such, “we are definitely encouraging our coalitions and the employer members of our coalitions to get more involved in community health.”

“This is the pool, the community, from which they draw not only their current workforce, but their

future workforce,” Mr. Webber said. “And employers’ No. 1 goal is to have healthy and productive workers.”

As part of this effort, the NBCH recently entered into a five-year cooperative agreement with the Centers for Disease Control and Prevention in Atlanta to pair up member coalitions with public health agencies so they can collaborate on community health initiatives, Mr. Webber said.

The Florida Health Care Coalition in Miami, for example, hosts communitywide health fairs. Other employers have also teamed up to improve the health care delivery system (see related story).

“It’s not just for the employees of members of the coalition. The coalition is trying to do health fairs that can impact the community at large,” Mr. Webber said.

“In community after community, business coalitions are working with physician groups, with hospitals, with consumer and labor groups to try and improve quality in their community,” said Peter Lee, executive director of health policy at the Pacific Business Group on Health in San Francisco.

Those efforts are anchored in the understanding that providers don’t discriminate in how they deliver care based on who an individual works for, he explained.

“If you go to a hospital and get a surgical site infection, someone doesn’t say, ‘excuse me, we’re going to make sure the Chevron employees don’t get infections, but the rest of you, we don’t really care about,’” Mr. Lee said.

“You can’t really address the affordability and quality issues for an individual employer without

addressing it for the entire system,” he said.

A government program spearheaded by Secretary of Health and Human Services Michael Leavitt is also encouraging more employers to become involved in community health improvement efforts via the Chartered Value Exchange program, which enables them to gain access to performance information from Medicare that gauges how well physicians treat patients.

“Those community efforts have to have, by definition, the employer community at the table,” Mr. Lee noted.

Likewise, the Robert Wood Johnson Foundation, a Washington-based philanthropic organization that focuses on health care issues, is requiring major employer involvement in order for a community to qualify for grants totaling \$300 million under its Aligning Forces for Quality program, Mr. Lee said.

“To really have improvement throughout a community, everyone has to be at the table. For many years, business coalitions in some ways have been at the cutting edge of these efforts, but now I think we’re seeing a real growth in really robust collaboration,” he said.

But sometimes it takes the driving force of an individual employer to give these efforts the spark needed to get started, Mr. Lee said, pointing to an effort led by Caterpillar Inc. in Peoria, Ill., as an example.

In 2006, Caterpillar joined forces with Peoria-based OSF Healthcare System, which, among other things, operates seven acute care facilities, to form the state’s first regional health care improvement coalition called Quality Quest for Health.

Since Caterpillar and OSF are the region’s two largest employers, providing coverage to a substantial number of individuals living in the community either as employees, retirees or their dependents, the two organizations realized they could have a significant impact on the region if they worked together.

“Quality Quest for Health’s mission is to achieve exceptional patient service and outcomes by

serving as a catalyst health care transformation,” said Dr. Gail Amundson, president and CEO of the coalition.

The program’s initial focus was on increasing the affordability of medications by boosting generic prescribing rates among local providers, implementing preventive care treatment guidelines developed by the Institute for Clinical Systems Improvement, and improving the quality of colorectal cancer screenings performed in the community, Dr. Amundson said.

This year, the alliance is also working on reducing secondary cardiovascular risks by helping people with heart disease and diabetes better manage their conditions and collecting data on healthy lifestyles using the health risk assessment that more than 90% of Caterpillar’s employees complete twice each year, she said.

Although Caterpillar will no doubt be the primary beneficiary of its work in the Peoria area, there may be another reason why employers like it are reaching out into their communities rather than keeping to themselves, suggested Bruce Kelley, a senior group health care consultant at Watson Wyatt Worldwide in Minneapolis.

“If the big employers just used their power to achieve a specific cost reduction they desire, they would likely experience backlash from the much larger number of smaller employers that do not have that market power,” he said. “So they’re not doing it for altruism’s sake.”

But even if employers’ motives are not purely selfless, “there has to be a champion” in the community for any significant change to occur, said Debra Draper, associate director at the Center for Studying Health System Change in Washington.

“The time of employers keeping to themselves has passed. They have to become more of a community citizen. There are real synergies when they work collectively with health plans, providers and other employers. Everyone’s got ownership and has a role in improving health care,” said Mr. Webber of NBCH.

Employers collaborate to improve health care

Employers are banding together in communities across the country to effect change in their local health care delivery systems.

In Kansas City, Mo., the Mid-America Coalition on Health this year began expanding its work-site cardiovascular education program to non-member small businesses and community residents, partnering with the city parks and recreation department and a local ambulance service, the coalition newsletter reported.

The Dallas-Fort Worth Business Group on Health is collaborating with the major health plans that cover most residents in the region to rate individual physicians based on how well they follow treatment guidelines for diabetes patients, according to Marianne Fazen, executive director of the Dallas-based coalition.

The Dallas effort is modeled after a doctor grading project

conducted by the New York Business Group on Health that began as a pilot in 2006 and was expanded to the greater New York metropolitan area in 2007, she said.

The objective of both projects is to raise the bar on health care quality throughout the community, because “if you can float all of the boats in the community, then every employee is going to have better care,” Ms. Fazen said.

In Minnesota, employers served as the catalyst for creation of the Institute for Clinical Systems Improvement, an organization that seeks to improve physician practice patterns by establishing guidelines and treatment standards, said Bruce Kelley, a senior group health care consultant in the Minneapolis office of Watson Wyatt Worldwide.

In 1992, 15 employers operating as the Business Health Care Action Group adopted a uniform

health plan design and sought bids from the local medical community. In response, three competing group medical practices and a health plan came together to form ICSI, which essentially functioned as a fully integrated health care system to measure outcomes, develop practice guidelines, and meet other BHCAG requirements.

Today, teams including members from clinics and BHCAG continue to develop best-practice algorithms, and each guideline is then reviewed and piloted before being implemented in all ICSI clinics.

In Washington’s Puget Sound area, employers, health plans, physician groups, consumers and other stakeholders are banding together to create a claims data repository that is being used to construct quality scores for hospitals.

—By Joanne Wojcik

News In Brief

CONTINUED FROM PAGE 1

Shield of Michigan, accusing the nonprofit insurer of diverting money from subscribers' premiums to help fund its for-profit subsidiary's purchase of another insurance company. The suit stems from a 2007 deal in which the workers compensation insurance subsidiary, Accident Fund, acquired CompWest Insurance Co. In that transaction, Accident Fund paid \$127 million to buy CompWest, a California-based comp insurer. An investigation by the attorney general's office showed

BCBSM transferred \$125 million to Accident Fund in November 2007, Mr. Cox said in a statement. "Michigan law prohibits Blue Cross from purchasing a for-profit workers compensation company" other than Accident Fund, Mr. Cox said. And if Blue Cross does transfer subscriber money to Accident Fund, "it must be in the form of a loan, not a gift that is never repaid." Neither BCBSM nor the attorney general's office could be reached.

Senators seek probe on PBGC calculations

Thirteen U.S. senators last week asked the Government Accountability Office to investigate how the Pension Benefit Guaranty Corp. initially estimates benefits due to participants in pension plans it takes over and why it may take so long before the PBGC makes final

benefit determinations. In a letter to the GAO requesting an investigation, the senators cited the case of Republic Technologies International Inc., a failed steel bar manufacturer, for which the PBGC took six years to make final determinations on benefits it owned plan participants. A PBGC spokesman declined comment, but noted that litigation held up final benefit determinations in the Republic Technologies case.

Noted

Costa Rica lawmakers last week passed legislation opening the country's insurance market to competition. President Oscar Arias is expected to sign the legislation into law, said a spokeswoman for the state-run Instituto Nacional de Seguros. INS has held an insurance monopoly since 1924, but Costa Rica has been breaking up its monopolies

in order to join the Central American Free Trade Agreement....Catherine J. Weatherford, the top administrator of the **National Assn. of Insurance Commissioners**, is leaving her post. Ms. Weatherford, the NAIC's executive vp and chief executive officer, has headed the Kansas City, Mo.-based organization for the past 12 years, which makes her the longest-serving top executive in the association's history. She will continue to serve as a consultant through the organization's fall meeting....**American International Group Inc.**, which ousted President and Chief Executive Officer Martin J. Sullivan last month, said in a Securities and Exchange Commission filing that it has agreed to pay him a total of \$47 million, including severance of \$15 million, a \$4 million bonus, and stock and long-term cash awards valued at about \$28 million.

XL: Guarantee unit prompts ratings review

CONTINUED FROM PAGE 1

gered by an SCA unit's inability to pay claims, could result in XL taking a charge between \$1 billion and \$1.5 billion.

S&P likewise cited potential costs to XL of the guarantee and other reinsurance arrangements with SCA in putting XL's ratings under review with negative implications.

"The credit volatility of the (residential mortgage-backed securities) exposure materially raises the likelihood that XL will face additional obligations under these arrangements," S&P said.

Fitch warned that if XL takes a sizable charge related to the SCA guarantee and does not compensate with an "equity-like capital raise," its A+ insurer financial strength and A issuer default ratings likely would be downgraded one notch.

S&P predicted a similar downgrade if XL takes a charge of more than \$500 million without replenishing capital.

An XL spokeswoman declined to comment on Fitch's announcement and could not be reached about S&P's.

An SCA spokesman could not be reached.

The rating agency actions are only the latest of XL's SCA-related woes.

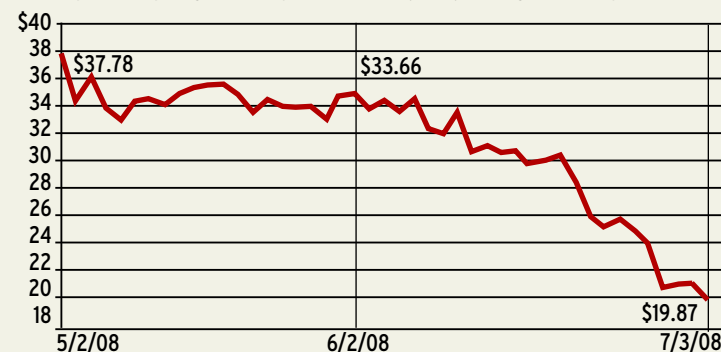
The insurer spun off 54% of its financial guarantee operations in initial and secondary offerings of SCA stock in 2006 and 2007. As part of the spinoff, XL provided several reinsurance covers on the business, including a \$500 million excess of loss cover capping individual paid losses of SCA's XL Financial Assurance unit, and facultative covers on specific SCA policies.

XL also issued a guarantee covering SCA's pre-IPO business, ensuring that XL Financial Assurance will pay losses when due. The guarantee is triggered if underlying insured debt securities default on principal and interest payments and if XLFA fails to pay claims.

SCA's business has deteriorated rapidly in the credit crunch. Earlier this year, XL reported a \$915.5 million SCA-related charge for 2007, writing down its 46% stake in the

XL CAPITAL'S STOCK DROP

Its stock price has plunged due to potential losses from former guarantee operations.



Source: financialcontent.com

operation to zero and creating a \$300 million reserve for the SCA excess-of-loss cover in anticipation of a full-limit loss of \$500 million, according to XL's financial statements.

Recent weeks have brought more bad news for SCA. In New York last month, a federal judge rejected an SCA unit's attempt to terminate \$3.1 billion in credit default swaps with Merrill Lynch & Co., finding that Merrill had not violated terms of the contracts.

The following week, Moody's Investors Service Inc. downgraded the financial strength ratings of SCA's insurance units to junk status. The downgrades had various ripple effects: Moody's withdrew its ratings of SCA-guaranteed securities that had no underlying ratings of their own. In addition, the downgrades likely will lead Canadian Imperial Bank of Commerce to report a pretax write-down of at least \$1 billion in the third quarter of this year on SCA contracts covering various debt securities, according to a report by Toronto-based investment firm Blackmont Capital Inc. A CIBC spokesman declined to comment on the report.

XL has noted in its financial filings that potential losses under its guarantee of SCA's pre-IPO business are "substantially less significant" than SCA's own exposure on business written after the IPO. This is because the worst-performing mort-

gage-related business was written after the spinoff, XL has said.

Fitch and S&P, however, cited ongoing exposure to SCA losses in placing XL's ratings under review.

Both agencies noted that while XL has taken steps to address exposures under its reinsurance agreements with SCA units—putting up reserves for expected losses—the guarantee of pre-IPO liabilities remains a concern.

Fitch's action assumes that XL will commute its SCA guarantee and that it will report a charge to cover the cost of the commutation, Ms. Higman said.

While the two rating agencies said that downgrades likely would result from XL taking a large charge without raising capital, they also noted that the insurer's ratings likely would be affirmed if it does raise capital or if SCA-related charges turn out to be small or nonexistent.

XL's stock plummeted 13.5% to \$20.56 a share last Monday after the Fitch announcement, and finished the week at \$19.87. Since January, the stock has slumped more than 50% from about \$50 a share, largely because of concerns about its SCA exposure, analysts say.

"It's pretty clear that XL's underwriting operations have had a good year in 2008, but the stock being down 50% shows that SCA is a problem in investors' eyes," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York.

United: Suits settled over backdating

CONTINUED FROM PAGE 3

A UnitedHealth spokesman said insurers will cover most of the ERISA settlement, but it was still in discussions with insurers about the larger agreement.

UnitedHealth's debt-to-capital ratio currently is less than 40%. However, Best predicts it could near 45% if the company uses debt to pay the litigation settlements. If its debt-to-capital ratio increases above 45% or if the company announces another negative revision to earnings, a negative rating action may occur, Best said in a statement.

No surprises

Industry analysts expressed little surprise over UnitedHealth's earnings projection adjustment.

"United's reduced earnings outlook for the year was well-anticipated across the market; the only suspense was in what United would cite as the main driver," Carl McDonald, executive director and senior analyst covering managed care at Oppenheimer & Co. in New York, wrote in a note to investors.

"The commercial risk business was the culprit again for United, driven primarily by pressure on premium yields, as competitors target the company's higher-margin accounts," Mr. McDonald said. However, UnitedHealth's fortunes should improve in 2009 when insurers start raising premiums to compensate for their own earnings shortfalls, he said.

Among specific steps UnitedHealth said it is taking to improve performance are revamped benefit designs for special needs and Medicare Part D and revised approaches to commercial underwriting and pricing.

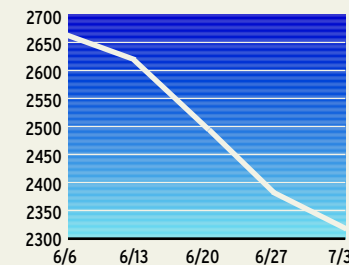
UnitedHealth's complete second-quarter 2008 earnings release is scheduled for July 22.

Stock Index

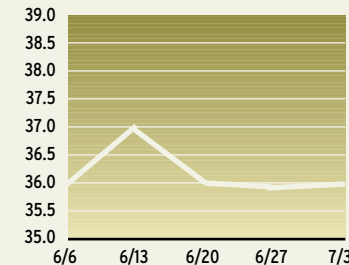
[6/30-7/3]

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

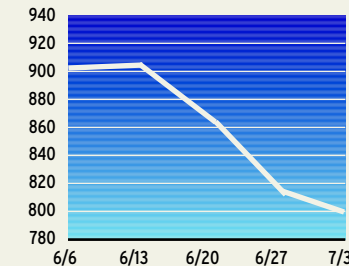
BI STOCK INDEX



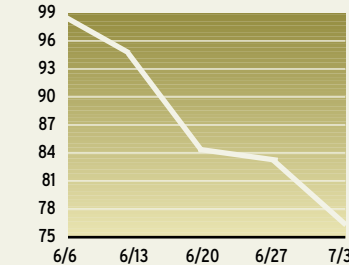
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	2324.53	↓ -3.26%
DOW JONES	11288.54	↓ -1.44%
S&P 500	1262.90	↓ -1.58%

LARGEST GAINS

Fairfax Financial Holdings	5.39%
Aon Corp	2.19%
MMC	1.34%
RenaissanceRe	0.85%
Allstate Corp	0.60%

LARGEST LOSSES

Ambac Financial Group	-26.11%
XL Capital Ltd.	-19.65%
UnitedHealth Group	-11.59%
NYMAGIC, Inc.	-11.21%
Old Republic	-11.04%

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

Productivity research is food for thought

If it's true that we are what we eat, then it would seem logical that employees who eat healthy diets have more energy and are more productive than their junk food-binging counterparts.

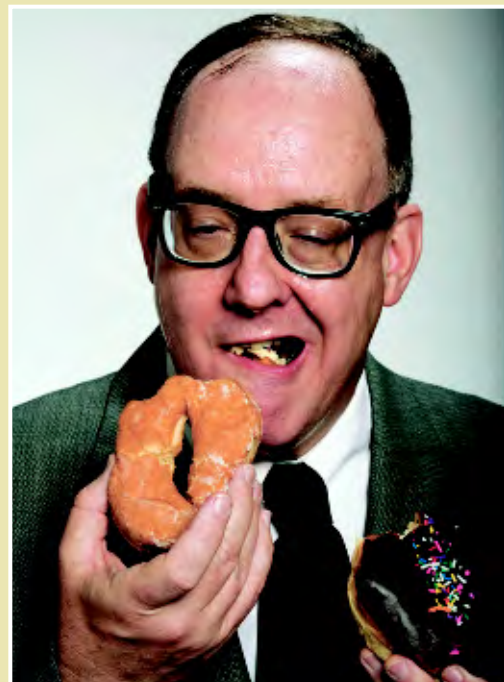
The findings of the "2008 Health & Productivity Index," a workplace wellness study conducted by ComPsych Corp., support this premise. It found that only 5% of workers with unbalanced diets feel energetic, compared with 50% of workers with balanced diets.

"Lack of energy is also one of the most common health-related complaints we hear from employees," Richard Chaifetz, chairman and chief executive officer of ComPsych, said in a statement.

"Given the connection between balanced diets and energy, organizations that promote healthy food—as part of a comprehensive wellness program—can expect to see a payoff in terms of productivity and performance," Mr. Chaifetz said.

The study also found that 73% of those with healthy diets reported having high workplace productivity vs. just 24% of workers with poor eating habits.

The study included responses from more than 1,000 employees across different sized employers in various industries.



Business Insurance END PAGE



Members of new wave band Devo reportedly are suing McDonald's Corp. over a toy, left, they say infringes on a band trademark.

GETTY IMAGES

Trademark beef? Sue it—sue it good

Members of the band Devo are singing anything but a happy song about a toy being offered with McDonald's Happy Meals.

The band, which reached its peak popularity with the 1980s song "Whip It," told the Australian Associated Press that they were in the "midst of suing" Oak Brook, Ill.-based McDonald's Corp. for its New Wave Nigel toy, which is clad in an orange jumpsuit, oversized shades and a hat that looks very similar to Devo's "energy dome."

"This New Wave Nigel doll that they've created is just a complete Devo rip-off and the red hat is exactly the red hat that I

designed, and it's copyrighted and trademarked," bassist Gerald Casale told reporters.

The doll—part of a McDonald's toy line linked to television show "American Idol"—also plays a distorted song when a switch is flipped that sounds very similar to Devo's "Doctor Detroit," according to reports.

"(McDonald's) didn't even ask us anything," Mr. Casale said. "Plus, we don't like McDonald's and we don't like 'American Idol,' so we're doubly offended."

The group says it is in the process of filing the suit.

McDonald's did not respond to requests seeking comment.

Contributing: Jeff Casale, Mark A. Hofmann, Joanne Wojcik

Alabama proves no sweet home for comp exec

Both sides claim a partial victory in a dispute between an insurance executive and some high-ranking Alabama officials.

John Goff, who owned the Montgomery, Ala.-based Goff Group, sued Alabama Gov. Bob

Riley, former Lt. Gov. Steve Windom and Insurance Commissioner Walter Bell, alleging they conspired to drive him out of business.

Mr. Goff's company had been one of the state's major workers compensation businesses but fell on hard times a few years back.

Mr. Goff's personal fortunes also fell on hard times, when a federal grand jury indicted him in April on mail fraud, conspiracy and embezzlement charges in collecting \$3 million in premiums never forwarded to insurers, according to the U.S. attorney's office.

Mr. Goff, who once supported Gov. Riley, said he was the victim of political conspiracy. But late last month, the Associated Press reported that a Montgomery Circuit Court judge dismissed the cases against the governor and former lieutenant governor.

The judge, however, allowed Mr. Goff to continue one part of his case against Mr. Bell without deciding the merits of Mr. Goff's charge that Mr. Bell led him to surrender his insurance license in 2005 by saying that Mr. Goff would not face prosecution.

Attorneys and spokesmen for all parties involved expressed satisfaction with the judge's ruling to the AP. But who wins the ultimate victory won't be known until next year when Mr. Goff's criminal case goes to trial.



An Alabama insurance exec sued several state officials, including (from top) Gov. Bob Riley, former Lt. Gov. Steve Windom and Insurance Commissioner Walter Bell, over the collapse of his insurance business.

Atlanta hopes to drive consumers to health museum

Dr. C. Everett Koop may be a little disappointed that the National Health Museum's first physical home will be Atlanta instead of Washington's Capitol Mall as he envisioned during his time as surgeon general.

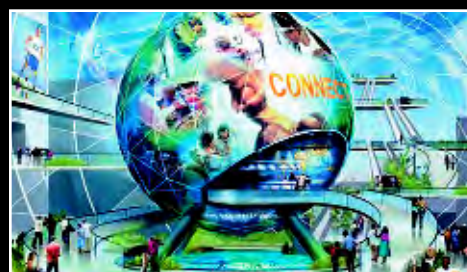
But with 62% of Georgia's population being either overweight or obese vs. 53% of the District of Columbia, according to the Centers for Disease Control and Prevention, Atlanta may be the better choice, particularly since the purpose of the museum is to teach visitors about healthy living.

Museum organizers also point out that Atlanta is home to the Centers for Disease

Control and Prevention, the American Cancer Society, the Arthritis Foundation and other major health institutions. Area universities' growing medical and biotech programs also were a big selling point.

"We see tremendously powerful synergies for a location in Atlanta because of its great array of health assets," said National Health Museum President Mark Dunham during a speech at the recent 2008 BIO International Convention in San Diego, where the museum's location was announced.

Dr. Koop thought up the idea while serving as U.S. surgeon general from 1981-89. From



NATIONAL HEALTH MUSEUM

his office overlooking the Mall, Dr. Koop noted that school children visiting Washington could learn about the wonders of aviation and

Artists rendering of an exhibit at the planned National Health Museum.

America's pioneering history at the many Smithsonian museums, but not about their personal health. What was needed, he believed, was a museum on the Mall to inspire children to achieve better health and well-being.

Dr. Koop went on to become chairman of the board of the museum and he now serves as chairman emeritus. Today's museum board chairman is former Health and Human Services Secretary Dr. Louis Sullivan.



If you can
create it,
we can
underwrite it.

Specialty Insurance
and Reinsurance. Visit
www.catlin.com or contact
us at usinfo@catlin.com

CATLIN

Underwriting Ambition



AIG PASSPORT.SM **INSURANCE THAT SPEAKS THE LOCAL LANGUAGE.**

AIG Passport helps businesses secure a coordinated, global insurance program with locally admitted policies for their international operations. With operations in more than 130 countries and jurisdictions, the AIG companies[®] deliver critical protection to appropriately address indigenous tax, regulatory, insurance, customs and language differences around the globe.

AIG Passport is currently available for the following coverages:

- Accident & Health
- Directors & Officers
- Errors & Omissions
- Excess Casualty
- Fidelity
- General Liability

The AIG companies' local claims handling expertise, financial strength and AIG Passport spell protection in any language.

Contact your insurance broker, local AIG office or email aigpassport@aig.com



THE STRENGTH TO BE THERE.[®]