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July 12, 2004

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# Class action bill stalls in Senate

## Reform's chances slim after close vote

By MARK A. HOFMANN

**WASHINGTON**—The drive for class action reform legislation appears dead in the current Congress.

A motion to invoke cloture—thus limiting debate and amendments—on the Class Action Fairness Act failed in the Senate Thursday evening by a largely party-line vote of 44 to 43, 16 votes shy of the minimum 60 required to head off any filibusters. Senate Majority Leader Bill Frist, R-Tenn., called the cloture vote in an effort to block an expected torrent of nongermane amendments on such issues as raising the minimum wage and controlling greenhouse gas emissions.

But Sen. Frist's maneuver angered many Democratic supporters of the class action bill, such as Sen. Tom Carper, D-Del., who voted against limiting debate on S. 2062. Rather than continue pushing for wider support of the measure, Sen. Frist moved on to other legislative business, making a return to class action reform highly unlikely given the Senate's upcoming six-week recess.

The reform legislation had wide support among risk managers, insurers and business in general. Among other things, the measure would have permitted the removal to federal court from state court certain interstate class actions. Supporters of the bill claimed that the change would curb what they regard as abusive "forum shopping, whereby plaintiffs seek the most plaintiff-friendly state or local jurisdiction in which to file class action suits involving defendants and plaintiffs from different states.

The bill also would have subjected so-called "coupon settlements"—whereby members of a

See **CLASS ACTION**/page 19

# California employers fear costs, hassles from paid leave

By JUDY GREENWALD

California employers may face significant and costly productivity problems stemming from the state's paid family leave law, which is the nation's first, employers and consultants say.

The law, which was enacted in 2002 and then modified last year, guarantees workers in California six weeks of partial pay within any 12-month period if they need time to care for an infant or a sick child or family member. Employees, both full- and part-time, became eligible for the leave on July 1.

Employees taking such leave receive 55% of their weekly pay, up to a maximum of $728 per week. The benefit has been funded since January through employee payroll deductions of 0.08% of salary under the state disability insurance program.

But that does not cover many employer costs associated with employee absence, including those related to overtime pay, training, hiring temporary workers and

See **LEAVE**/page 17

Business groups are scrutinizing Sen. John Kerry's choice of Sen. John Edwards, right, as a running mate.

PHOTO: NEW YORK TIMES

# Edwards' record shows little employer advocacy

By ROBERTO CENICEROS

John Edwards has shown little support for employer-backed legislation in his time as a lawmaker, and that is not likely to change if he becomes vice president next year, say Washington observers.

From tort reform to health care, the voting record of the Democratic senator for North Carolina shows that he often opposes legislation favored by employer groups, these observers say.

And his background as a trial lawyer and the financial support he currently receives from the trial bar would indicate that there is little hope that Sen. Edwards will alter his views, they say.

Trial lawyers, though, last week hailed as "refreshing" the choice by John Kerry, the Massachusetts senator who is the presumptive Democratic candidate for president, of Sen. Edwards as his running mate in the November election.

See **TICKET**/page 17

# Late News

## WorldCom pension settlement reached

MCI Inc. and 19 of its former executives have agreed to pay nearly $51 million to settle a class action lawsuit brought by workers who lost billions of dollars in retirement savings when a massive accounting scandal caused the telephone company formerly known as WorldCom Inc. to collapse. If the settlement is approved, MCI and its insurers will be required to submit $46.8 million to employees, according to a company spokeswoman. MCI will pay roughly half that figure, she said. In addition, as much as $4 million will be paid by former WorldCom Chief Executive Officer Bernard Ebbers.

Mr. Ebbers

PHOTO: NEW YORK TIMES

## WellPoint denies it underpaid taxes

WellPoint Health Networks Inc. has denied a consumer group's charges that the company's Blue Cross of California subsidiary underpaid California state taxes by $106 million in 2003 and by up to $1 billion over the last 10 years. The charge, made by a group known as the Foundation for Taxpayer and Consumer Rights, comes in the midst of WellPoint's attempt to gain California approval for its merger with Indianapolis-based Anthem Inc. The group charged that WellPoint's Blue Cross unit has not been paying the annual gross premium tax for preferred provider organization products that is required from for-profit insurers.

## Treasury to provide HSA guidance

The Treasury Department this week is expected to issue guidance to resolve questions that have been raised about health savings accounts linked to high-deductible health insurance plans. The upcoming guidance is expected to address whether certain prescription drugs used to keep medical conditions from getting

See **LATE NEWS**/page 19

## Benefits Management Take-Out

## BENEFIT FINANCING STRATEGIES

NEWSPAPER

Conflicting rulings on age bias vex employers

# Legislators vow to address cash balance uncertainty

By JERRY GEISEL

**WASHINGTON**—Federal legislators are beginning to respond to employers' pleas for rules to make clear that cash balance pension plans do not violate age discrimination law.

At a congressional hearing last week, Rep. John Boehner, R-Ohio, who chairs the House Education and the Workforce Committee, pledged congressional action to resolve the legal uncertainties that now surround the plans.

PHOTO: NEW YORK TIMES

'Congress has sat back too long, and it is time to act.'

*Rep. John Boehner, R-Ohio*

"Congress has sat back too long, and it is time to act," Rep. Boehner said, warning that a failure to do so would place the nation's employer-provided retirement system at risk.

Other members of Congress also said they wanted to end the uncertainty that worsened last year when a federal judge in Illinois ruled that IBM Corp.'s cash balance plan discriminated against the company's older employees.

In his ruling, Judge G. Patrick Murphy said the plan was age discriminatory because a cash balance plan credit provided to an older employee was worth less—expressed as an annuity payable at age 65—than the same credit provided to a younger employee (*BI*, Aug. 4, 2003).

Since then, though, a federal judge in Maryland issued a contradictory ruling, saying that if the credits provided to younger and older employees are equal, then there is no age discrimination (*BI*, June 21). Additionally, as controversy has swirled, regulators at the Internal Revenue Service have said they will not act on their own and instead will work with Congress to come up with rules.

Rep. Robert Andrews, D-N.J., also

See **CASH BALANCE**/page 18

# Ontario health changes won't hit employers' hard

By GLORIA GONZALEZ

**TORONTO**—The introduction of new health care premiums and the removal of some covered health care services in Ontario are not expected to have a significant impact on the costs of employers in the province.

The government of Ontario has introduced the Ontario Health Premium, a new individual income tax that will be used to fund improvements in Ontario's health care system, according to the Ministry of Health and Long-Term Care in Toronto. Currently, only two other Canadian provinces levy health premiums on their citizens: British Columbia and Alberta.

The amount each individual in Ontario contributes varies based on taxable income levels. For example, an individual making between $25,000 to $36,000 Canadian ($18,845 to $27,137) would pay a premium of $150 Canadian ($113) for 2004 and $300 Canadian ($226) in 2005.

The tax, which the government began collecting on July 1, is expected to generate $1.6 billion Canadian ($1.20 billion) in 2004-2005, according to the ministry.

Benefit experts say the introduction of the tax will have little direct impact on Ontario employers.

Some employers with a unionized workforce are obligated to pay

See **ONTARIO**/page 16

PHOTO: AP/WIDE WORLD

**Archbishop John G. Vlazny announces that the Archdiocese of Portland, Ore., is seeking bankruptcy protection as it confronts new abuse exposures and strained finances.**

# Portland Diocese seeks bankruptcy protection from harassment claims

By DOUGLAS McLEOD

**PORTLAND, Ore.**—The Archdiocese of Portland in Oregon is filing for Chapter 11 bankruptcy protection in the face of potentially huge clergy sexual abuse liabilities.

The archdiocese was scheduled to go to trial today in two abuse lawsuits seeking $155 million in compensatory and punitive damages. It also faces 60 other pending claims, Archbishop John G. Vlazny said in a July 6 letter announcing the bankruptcy filing.

"In the last four years, we have settled more than 100 such claims. Last year alone, the archdiocese paid almost $21 million from its own funds. Major insurers have abandoned us and are not paying what they should on the claims," the archbishop charged.

The bankruptcy action "offers the best possibility for the archdiocese: to resolve fairly all pending claims, to manage a difficult financial situation and to preserve the ability of the archdiocese to fulfill its mission," he wrote.

Earlier this year, the archdiocese released a report on sexual misconduct cases between 1950 and 2003, finding that 37 of the 1,150 priests serving over that period had been accused of misconduct. Settlements totaling $53 million were paid over the 53 years, including $26 million paid by the church and $27 million paid by insurers.

Other Roman Catholic archdioceses, particularly the Archdiocese of Boston, also are in difficult straits.

The Boston archdiocese and its insurer, Lumbermens Mutual Casualty Co., are at odds over Lumbermens' refusal to contribute to an $84.3 million settlement last year of more than 500 clergy sexual-abuse claims against the archdiocese (*BI*, May 3).

## Inside Business Insurance


### Re-evaluating the reason for offering benefits

Soaring costs spur a re-evaluation of benefit goals, say speakers at the Society of Human Resource Management conference. Page 4

### Cell phone liabilities prompt changes

Employers are taking a closer look at managing the risks of employees' use of cell phones. Page 4

### Lawmakers praised for pension plan interest

Congress finally recognizes the threat to defined benefit pensions, an editorial says. Page 8

### TRIA extension crucial to national security

Congress must extend TRIA to protect the country, writes Liberty Mutual CEO Edmund Kelly in Perspectives. Page 9

### Probe into cause of collapse continues

Investigators are focusing on the deterioration of structural concrete in the May terminal collapse at Charles de Gaulle airport. Page 13


## Online

• The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.

• **Searchable directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.

• New **Opinion Poll** for readers: Does your organization intend to terminate or freeze its defined benefit pension plan in the next 12 months?

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**REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.**

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# Regulator lends expertise to Iraq's insurance market

## Pickens travels to Baghdad to aid reconstruction effort

By RUPAL PAREKH

**BAGHDAD, Iraq**—There is huge potential for a flourishing insurance market in the "New Iraq," according to Arkansas Insurance Commissioner Mike Pickens, who recently returned from more than two months in the country, where he helped draft new insurance laws.

Mr. Pickens traveled to Iraq as an independent contractor on behalf of the McLean, Va.-based consultant BearingPoint Inc., which last July secured a one-year, $79.5 million contract with the U.S. Agency for International Development to reconstruct Iraq's war-torn economy. He performed the assignment while on leave from his regulatory duties.

When he first arrived in Iraq on April 12, Mr. Pickens said he was surprised by the range of products available in Iraq's relatively small, untapped insurance industry.

"Iraqis understand insurance," said Mr. Pickens, who said he now believes that, if not for U.N. sanctions that isolated Iraq from the global economy, the country could already have a competitive insurance marketplace.

The current market consists of just seven insurance companies, four of which are government-owned and three that are private. Together, they offer property, liability, auto, life, engineering, key-man and marine insurance as well as mortgage-related products, he said.

Although Iraq in 1997 did pass a law allowing private insurers to enter and participate in the market, government-owned insurers are dominant, Mr. Pickens said. All reinsurance must be purchased through the government-owned reinsurer, and auto insurance, which is mandatory on all vehicles in Iraq, is a government-run program funded by a gasoline tax.

"We weren't going over there to try and privatize the government companies," Mr. Pickens explained. "We just wanted to show them the

See PICKENS/page 16

PHOTO COURTESY OF ARKANSAS INSURANCE DEPARTMENT

Arkansas Insurance Commissioner Mike Pickens spent months in Iraq working to draft new insurance laws for the war-torn nation.

PHOTO: GETTY

Concerns about liability and safety issues related to employee cell phone use, especially the use of phones while driving, have prompted some employers to implement cell phone policies.

# Safety, liability concerns spur employers to make rules on cell phone use

By MEG SHREVE

Recent state legislation on cell phone use and accidents involving distracted drivers are prompting employers to look closer at managing the risks of employees' cellular telephone use.

ExxonMobil is one employer that recently implemented a formal policy regulating cell phone use among its employees. Since June 1, the Irving, Texas-based oil company has prohibited its workers from using cell phones while driving.

With the growing number of phones on the road, many other companies have had to consider similar policies to ensure safer driving.

Kathy Lusby-Treber, the executive director of the Network of Employers for Traffic Safety in Vienna, Va., said the passage of state legislation and high-profile liability cases involving employee accidents and cell phones have forced companies to look internally at policies. In the past few years, several multimillion-dollar verdicts have been issued in distracted-driver lawsuits (*BI*, Dec. 24, 2001).

According to the National Conference of State Legislatures, 42 states looked at distracted-driver legislation last year, and 17 passed laws regulating cell phone use.

NETS advocates that companies institute policies covering all distractions. Cell phone use is the "tip of the iceberg" and is the distraction "people love to hate," Ms. Lusby-Treber said.

See CELL PHONES/page 16

SHRM's 56th Annual Conference & Exposition

# Tough times make employers rethink basic benefit strategies

By JOANNE WOJCIK

**NEW ORLEANS**—In response to continuously rising health care costs and stock market declines, many employers are going back to the drawing board to retrace the evolution of their benefit programs, making adjustments as necessary to get back on track, one benefit expert notes.

In the case of health plans, some employers are adopting compensation-based cost-sharing in recognition that further cost-shifting is not feasible for workers at the low end of the wage scale.

In the case of retirement plans, some employers are taking a "best-in-class" approach and picking and choosing among vendors, rather than buying bundled services.

But perhaps the most widespread trend is the shift toward a defined contribution approach in all benefits—including health care—with employers giving each employee a finite number of benefit dollars and allowing him or her to select from a menu of benefits that fit individual wants and needs.

"We're seeing employers go back and revisit the strategic rationale and the purposes of their plans," said Gary Kushner, the president and chief executive officer of Kushner & Co., a benefit consultant and administrator based in Portage, Mich.

"They're asking themselves, 'Why are we doing what we're doing?' and 'Why are benefits structured the way they are?'" Mr. Kushner told a group of benefit and human resource managers attending the 56th Annual Conference & Exposition of the Society for Human Resource Management, held June 27-30 in New Orleans.

"If you go back to the health plans of the 1960s, we wouldn't recognize them today because, in most

See BASICS/page 6

HR® SOCIETY FOR HUMAN RESOURCE MANAGEMENT — Conference coverage continues on page 6

# Judge names trustee to watch Segal's assets in Near North

By SALLY ROBERTS

**CHICAGO**—A federal judge appointed a trustee last week to oversee convicted insurance executive Michael Segal's assets in Near North National Group Inc. and its affiliates.

Following a six-week trial, a federal jury convicted Mr. Segal last month on 26 counts of fraud, racketeering, embezzlement and other charges and ordered him to forfeit $30 million in illegal gains and 60% of his interest in the Chicago-based holding company, which he owns outright (*BI*, June 28).

Prosecutors alleged that Mr. Segal looted Near North's insurance premium trust account of $35 million for his own and his company's use.

Illinois law requires licensed agents and brokers to maintain trust accounts for premiums collected from policyholders and prohibits use of trust account funds to pay general operating expenses or claims.

PHOTO: AP/WIDE WORLD

Mr. Segal

Near North Insurance Brokerage Inc., formerly one of the nation's largest insurance brokers, also was convicted on similar fraud charges.

Mr. Segal, who was taken into custody immediately after the jury's forfeiture verdict, is awaiting sentencing. He could face more than 20 years in prison.

"We received information that he was making efforts to try to transfer (his Near North) assets while awaiting sentencing," said a spokesman for the U.S. attorney for the Northern District of Illinois. "We wanted to put a stop to it."

U.S. District Judge Ruben Castillo appointed M. Scott Michel, an attorney with Lord, Bissell & Brook L.L.P. in Chicago, trustee over the assets.

A spokeswoman for Mr. Segal did not return phone calls by press time.

# Basics: Rethinking benefit strategies in tough times

Continued from page 4

cases, those plans had a design that was geared toward in the event (that) an employee or family member had a medical catastrophe, you did not want them to have a financial catastrophe as well," he recounted.

"So those plans of the 1960s, for example, paid for a hospital visit," he said. "By the way, I went and looked at one about a month ago, and it did have the wonderful semiprivate $35-a-day hospital (room) bill—just like today," he said facetiously. "It paid the surgeon's bill; it paid the anesthesiologist's bill. What did it cover for your office visit? Nothing. What did it cover for your prescription drugs, your dental visits, your vision visits to those various providers? Nothing. These were catastrophic plans."

The health plans employers offered 40 years ago, in addition to providing primarily for hospitalization, had deductibles that averaged $100 for an individual and $200 for families, which was a significantly larger share of the average worker's take-home pay than are today's deductibles, Mr. Kushner noted.

"Let's put that into context; the average U.S. worker that year earned $3,000. A $100 deductible was a very large chunk of change," he said. "I still see $100 deductibles today, when the average U.S. worker earns just over $30,000 a year. If you inflated that just at (consumer price index), forget about inflating that for medical inflation, we should have deductibles in the $600 and $700 range today for individuals."

"So employers are beginning to go back and ask, 'What is it that we're doing? Why are we doing what we're doing?'" he said.

Employers are also re-examining their cost-sharing strategies with employees, according to Mr. Kushner. What many organizations have been doing is to try to find "some kind of balance" in employer/employee premium contributions, as well as in deductibles, copayments and coinsurance, he said.

For example, some employers are beginning to move to compensation-based contribution formulas, in which those who earn higher wages make proportionately greater contributions to their benefit costs, Mr. Kushner said.

"I'm not seeing it terribly widespread yet, but I am seeing organizations starting to consider it," he said.

What's behind this move is the recognition that some employees may not be able to afford health care benefits, he said.

"We are now seeing employers where employees at the low-wage end of the scale are, in essence, making groceries-or-health-insurance decisions," Mr. Kushner said. "I have yet to meet my first HR professional who said, 'My golly, that was my goal. I want them to think before they fed their family or picked our health plan!' But we're seeing it."

Compensation-based contributions aren't necessarily discriminatory, though it might seem so, according to Mr. Kushner.

> **'Let's put that into context; the average U.S. worker (40 years ago) earned $3,000. A $100 deductible was a very large chunk of change. ... I still see $100 deductibles today, when the average U.S. worker earns just over $30,000 a year.'**
>
> *Gary Kushner*
> *Kushner & Co.*

"If you look in the tax code, the only thing you're not allowed to do is discriminate in favor of the highly paid," he said. "It may not be a good career move, but you are allowed to discriminate against the highly paid."

In response to the decline of stock market investment returns and mutual fund scandals, many employers are also closely examining the management of their defined contribution retirement plans, stepping up employee education so that their workers are protected from losses, Mr. Kushner said.

"We seem to see this pendulum swinging back and forth between bundled approaches, where one vendor—an insurance company, a mutual fund, a bank—is providing all of the different services to a plan vs. an unbundled approach, where I go out and look at a best-of-class basis—the best investment adviser, the best investment manager, the best fund or funds from different families, the best trustee, the best record keeper, the best compliance individual," he said.

Mr. Kushner acknowledged that an employer that has adopted such a best-in-class approach might find it difficult to persuade one of those vendors to act as the quarterback to lead the team of other vendors. Having such an arrangement, though, would provide a single contact point for employees and human resources department personnel, he pointed out.

Perhaps the most significant shift occurring as a result of employers rethinking their benefit strategies is the tendency to adopt a defined contribution approach in all benefits, according to Mr. Kushner.

"We're seeing a huge move in this country away from defined benefit approaches toward defined contribution approaches," not only in retirement plans but also in health plans, he said.

"If I continue to offer my employees a one-size-fits-all benefit program…I would argue that's a defined benefit approach," Mr. Kushner said. "If, instead, I go to my employee and I say, 'Here's $5,000; there's an array of benefits across the room, each one has its own price tag on it, you can choose and tailor a plan to fit your individual or family needs,'" that's a defined contribution approach, he said.

While the first-generation flexible benefit plans recognized the diverse needs of a variety of employees, today's new "lifecycle" plans go even further, addressing the varying needs of one individual over time, Mr. Kushner said.

"That means my benefit needs at age 20 are different than my benefit needs at age 40 and my benefit needs at age 60," he explained.

In fact, some organizations are even tailoring their benefit programs to give younger employees the benefits they want while still providing older employees the more traditional benefits they prefer, he said.

For example, Mr. Kushner said, in recognition that time off tends to be more valuable to younger employees, some employers are giving their employees the opportunity to use their benefit dollars to buy additional vacation time.

SHRM 56th Annual Conference & Exposition

# Fairness of spousal, family benefit subsidies mulled

By JOANNE WOJCIK

**NEW ORLEANS**—It was a common compensation practice, from the turn of the last century into the 1960s, for a male employee, when he got married, to be awarded a hefty raise so that he could afford to start a family.

While such an outright gesture would be considered discriminatory in this day and age, benefit plans that provide percentage-based subsidies for spousal and family coverage essentially do the same thing, a benefit consultant points out.

For many employers, making more equitable contributions to the health benefits of married employees could save a significant amount of money, according to Gary Kushner, the president and chief executive officer of Kushner & Co., a benefit consultant and administrator based in Portage, Mich.

"How many of you still have in your compensation program the ability that, when an employee gets married, they come back and you give them a big pay increase?" Mr. Kushner surveyed an audience of benefit professionals attending the 56th Annual Conference & Exposition of the Society for Human Resource Management, held in New Orleans June 27-30.

"Actually, all of you do," he said. "When I come back, aren't you subsidizing my now-dual or -family health plan, prescription plan, dental plan, vision plan?"

"We're the ones who, once a year, tell our employees, 'No, we don't just give you a paycheck, we give you a total compensation package.' Right?" Mr. Kushner asked. "And we do those benefit statements, total pay statements (saying), 'You're not $30,000 a year; we really spent $40,000 on you.' Right?"

"But if two employees—hired on the same day, with the same background, education and experience performing at the same level—come into your office with their benefit statements in hand and ask, 'You know, we looked at these, and you're paying one of us $5,000 a year more than the other?' what's our answer?" he asked.

"Single employees carry an undue burden of cost responsibility in funding health care plans in America today," agreed Larry Hicks, a senior consultant at the Hay Group in Chicago who spoke at another conference session. "It's been true universally since day one, and it's still true today."

> **'Single employees carry an undue burden of cost responsibility in funding health care plans in America today. It's been true universally since day one, and it's still true today.'**
>
> *Larry Hicks*
> *Hay Group*

If 60% of the employees in a 1,000-person company elect family coverage and the company pays 80% of the premium, "what percentage of health care costs are for employees?" Mr. Hicks queried a group of benefit and HR managers.

In that scenario, "half of your cost is going to dependents, not employees," he said.

Moreover, if plan costs increase 15% and the employer absorbs only 10% of that increase, single employees are hit with a proportionately larger increase should the employer continue to pay 80% of the total premium for each employee, Mr. Hicks pointed out.

Because of the escalation in health care costs, employers are rethinking their cost-sharing strategies, examining who pays and how much, Mr. Kushner said.

"I'm not advocating that you bring all of your singles up by giving them a $5,000 raise. It would make singles very happy," he said. "Or that you bring people with family coverages down to a subsidy at a single level. Instead, you'd have other problems in the workplace."

## '05 SHRM conference slated for San Diego

**NEW ORLEANS**–More than 10,000 human resource professionals attended the 56th Annual Conference & Exhibition of the Society for Human Resource Management, held June 27-30 in New Orleans.

The topics for educational seminars ran the gamut from trends in benefits to employment law, corporate governance, recruiting and training.

Attendees were also treated to keynote speeches from Queen Noor of Jordan and actor-director Christopher Reeves, as well as a free concert featuring the Doobie Brothers.

Next year's conference will be held June 19-22 in San Diego.

For further information, contact the Society for Human Resource Management, at 1800 Duke St., Alexandria, Va. 22314, 703-548-3440; or visit the society's Web site at *www.shrm.org*.

## Paul Winston

*Editor Paul Winston's weekly column will return in the July 19 issue.*

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AMERICAN ABM BUSINESS MEDIA

## Editorial

# Cash balance hearing a good sign

A CONGRESSIONAL HEARING last week on cash balance plans encourages us that when it comes to restoring the nation's defined benefit plan system, legislators will not fiddle while Rome burns.

Most encouraging were the words of Rep. John Boehner, R-Ohio, who chairs the House Education and the Workforce Committee. Rep. Boehner pledged congressional action to resolve the legal uncertainty that currently is discouraging employers from offering the plans and staying in the defined benefit plan system.

Also encouraging was the almost total absence of the typical congressional demagoguery that, regrettably, has been commonplace when legislators have discussed cash balance plans.

Even Rep. George Miller, D-Calif., who has been one of the House's most vocal critics of cash balance plans, conceded there is a role for them.

What accounts for this change of heart?

Maybe legislators are at last aware that the defined benefit plan system is crumbling and that their actions have a lot to do with that. Hardly a week goes by without another employer saying it is phasing out its defined benefit plan and is instead enriching its 401(k) plan or perhaps setting up a second defined contribution plan.

Thousands of employers have concluded that traditional defined benefit plans no longer make sense for them or for their employees. The plans, many employers say, have severe design flaws, including paying too little in benefits for shorter-service employees, while encouraging experienced employees to leave long before normal retirement through rich early retirement benefit subsidies.

Starting in the mid-1990s, employers began to shift to cash balance and other hybrid pension plan designs. Under those models, shorter-service employees received higher benefits than they would under traditional designs, and the plans no longer offered lucrative early retirement subsidies.

Since then, however, the plans have come under legal attack as being age discriminatory, while legislators have joined in the fray by preventing the Internal Revenue Service from developing rules.

It shouldn't come as a surprise to legislators that employers in this needlessly litigious and uncertain climate are throwing up their hands and deciding there is too much risk in moving to cash balance and other defined benefit hybrids. It's hard to blame those employers for choosing to offer only defined contribution plans.

Perhaps legislators at last are becoming aware of the negative implications of this trend. For example, employees lose federal insurance protection they enjoy in a defined benefit plan when their employers shift to defined contribution programs.

The federal Pension Benefit Guaranty Corp. also suffers, with a shrinking source of badly needed revenues from employer contributors.

Now that federal lawmakers appear to recognize the problem, we hope they move swiftly to create a legislative solution that will encourage employers to stay in the defined benefit plan system.

# Paid leave to see key test

WITH CALIFORNIA'S paid family leave now in effect, we will be watching closely to see if what supporters say are the benefits of the law outweigh what critics say are the negatives.

As we report on page 1, California's pioneering law, effective July 1, allows employees to take six weeks of partially paid leave within any 12-month period to care for a newly born or adopted child or to take care of a seriously ill child, spouse, parent or domestic partner.

While employees are funding the benefit through mandatory payroll deductions, there is no question that there is a cost to employers.

Employers will incur such costs as increased overtime expenses as other employees are called on to work longer to take up the slack of those on paid leave. Additionally, employers may have to hire more temporary workers, who will require training and may not be as productive as those on leave.

But there are benefits, we believe, that should not be overlooked or discounted.

When employees return to work and are not financially walloped, as they could be if they had to take unpaid leave, they may be a lot less stressed and distracted. That, in turn, could make them a lot more productive than they otherwise would be.

Obviously, at this point, that is just a theory. But over time, enough information should emerge to determine whether the California law is worth replicating, or if it's a well-intentioned experiment that is too costly for businesses.

## Schillerstrom

## Letters to the Editor

### New York City mandate on domestic partners creates complications

To the editor: The requirement by New York City for companies holding a contract worth at least $100,000 with the city to provide domestic partner benefits to their employees in the same manner as they do spousal benefits (*BI*, July 5) will be interesting to watch develop as it pertains to group life insurance.

This is because the New York Department of Insurance states that New York law prohibits providing domestic partner benefits under a life insurance contract.

So for those companies that currently provide spousal benefits under their employee group life insurance contract, how are they going to comply with the new New York City requirement? Self-fund the domestic partner life benefit? Cancel the current spouse life coverage under their employee benefit plan?

**Mike Cochrane**
Assistant Vp, Compliance
Jefferson-Pilot Corp.
Omaha, Neb.

## Online poll

*Each week Business Insurance posts an opinion poll question about current industry issues and events on the BI Web site, www.businessinsurance.com.*

*Two weeks ago, the poll found that 79% of respondents thought it likely that their company would offer a consumer-driven health plan. The results for last week's poll appear on page 19.*

*Visit the BI Web site and cast your vote in this week's poll.*

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# Invest in national security by extending TRIA

## Renewing terrorism cover act this year would be a first step in protecting country, economy

**By Edmund F. Kelly**

The terrorists who attacked the United States on Sept. 11, 2001, understood that a nation's economic security and its national security go hand in hand. The attackers targeted the World Trade Center precisely because they recognized that economic damage and psychological damage are inextricably linked.

Recognizing this interdependence, Congress passed the Terrorism Risk Insurance Act. Under TRIA, the federal government would assume a large share of the costs in the event that insured losses from an act of terrorism were to exceed a set limit. By providing this "stop-loss," the government has ensured that terrorism insurance is available.

In passing TRIA, Congress acknowledged—as have lawmakers in countries with long histories of terrorism, such as the United Kingdom, Spain and Israel—that terrorism is unlike any other risk. Acts of terrorism are utterly unpredictable. They are deliberate, not accidental. They are attacks against the state; preventing them and ensuring that they do not cause long-term damage is a national responsibility.

TRIA is scheduled to expire on Dec. 31, 2005—that is, the federal backstop will no longer be available from that date. As a practical matter, though, TRIA will end for insurance policies issued or renewed after Jan. 1, 2005, because private-sector coverages are on a policy-year basis. Absent action on TRIA, there will be limited, if any, terrorism coverage available. Insurers will either exclude terrorism or—as is the case with workers compensation, where they cannot exclude it legally—they will withdraw capacity from geographic areas viewed as likely targets for terrorists. It is fair to say that the future of TRIA—and the uncertainty as to what will happen if it expires—is the most pressing issue facing risk managers, insurers and intermediaries today.

The short-term solution is a straightforward extension of TRIA for a period of two years. That would be long enough to give the administration and Congress an opportunity to develop an enduring program—one that both recognizes the reality of the continuing threat of terrorism and its potential economic consequences, and provides the certainty of continued financial protection in the face of this reality.

There needs to be greater recognition that there is not enough capital in the insurance industry to absorb the consequences of a large terrorist event. The industry cannot expose itself to the very real possibility of a loss that would cripple its ability to meet its obligations under all its policies, not just those providing coverage against terrorism. Responsible insurers will not expose a significant portion of their capital to losses from terrorism. As capacity is withdrawn, problems will surface in the economy, because large pools of workers will be unable to get workers compensation insurance and banks will cease making credit available for real estate projects.

Extending TRIA—or creating another form of public-private partnership—is not a concern only for buyers and sellers of insurance, nor does it represent special assistance for a single industry. Rather, in its broadest sense, TRIA is an investment in national security, a way to guarantee that the nation is prepared to deal swiftly and adequately with the aftermath of a terrorist attack and to keep our economy operating at a high level.

Congress has developed other successful public-private partnerships such as flood, federal deposit and crop insurance programs. Surely the nation's economic viability following a terrorist attack merits the same attention from policymakers.

As noted above, TRIA begins to expire soon; insurance buyers are beginning to think about what coverage will be available for their 2005 renewals. Insurers want to meet their customers' needs, but without an extension of the federal backstop, terrorism coverage will be very limited, if available at all. Given the pace at which Congress moves, a simple extension of TRIA—this year—is the wisest course and will prevent the inevitable market uncertainty this fall when policies that would extend beyond TRIA's current deadline come up for renewal.

In enacting TRIA originally, Congress recognized not just the need for a federal backstop but also the ultimate federal responsibility to protect the country and economy from outside attack. Each of us must urge our senators and representatives to do so again and extend TRIA.

*Edmund F. Kelly, chairman, president and chief executive officer of Liberty Mutual Insurance Co. in Boston.*

# Bermuda's insurance history is captivating reading

## Book review

**"Held Captive—A History of International Insurance in Bermuda"**
By Catherine R. Duffy
Privately published, available at *www.booksonbiz.com*
$150

**By Michael Bradford**

Bermuda, perhaps as no other place, owes a debt of gratitude to bad weather.

It was a hurricane in 1609 that blew the first settlers to the remote mid-Atlantic island carved by centuries of wind and waves. They were a small band from England, heading to the newly established settlement of Virginia when their ship was blown off course and wrecked on the island's reefs. After building new vessels and sailing on to America, those explorers eventually found their way back to the island and began to shape a place that would become something they could scarcely imagine—a bustling insurance hub and one of the world's key financial centers.

Catherine R. Duffy begins her encyclopedic new book, "Held Captive—A History of International Insurance in Bermuda," with the story of those castaways and follows it with more than 500 pages of a comprehensive and heavily documented account of Bermuda's insurance history.

Nature played an important role not only in Bermuda's settlement but also in the development of its insurance industry, the book points out. The "catalyst for the explosion of our international insurance business was yet another of nature's furies, Hurricane Betsy in 1965," Ms. Duffy writes.

The massive storm that devastated parts of the U.S. Gulf Coast served to bring to light weaknesses in the insurance market and force ways to correct them, according to Ms. Duffy. She quotes Brian M. O'Hara, president and chief executive officer at XL Capital Ltd., who said in a 1998 speech that "the Bermuda market is a product of our industry starting in 1965," when the hurricane helped dry up property insurance capacity and gave fuel to the captive movement.

The book is laid out chronologically, with 50 chapters that cover what surely is every detail that has affected the island's development as an insurance marketplace. The chronology begins in earnest in chapter 11, with an account of how Niagara Insurance Co. was formed in 1959 because its parent, Continental Insurance Cos., opted to stop buying catastrophe reinsurance and instead fund that exposure in a Bermuda startup.

There was, of course, some international business already being conducted in Bermuda by the time Niagara formed, and the account of those days in the early chapters is among the book's most interesting reading.

There are profiles of the movers and shakers who shaped the international scene. Henry Tucker in the 1930s played a role by attracting the first exempted companies, and his efforts to promote the island earned him the nickname "the Father of International Business." William "Bill" Kempe arrived from military duty in the late 1940s, recognized Bermuda's potential as an international business center and set about courting business from London banks. David Graham, who was seen by "many who knew him as a very strange man," was a tireless advocate for the island; the book credits him as among the first to tout the message that "God blessed Bermuda with the perfect geographic location and if it doesn't grow and take off, Bermudians are just dumb."

The history carries through the decades to finish with the impact of the 2001 terrorist attacks on Bermuda's insurance market and the wave of new companies that formed on the island in the wake of that disaster.

Near the end, Ms. Duffy relates some of the problems that have come partly from the success of the Bermuda insurance community. "The infrastructure of Bermuda is under strain at every level," she writes. "The international insurance industry is booming but the ancient divide between 'have and have not' is broadening once again," with many Bermudians feeling disenfranchised and priced out of their homeland by the packaging of Bermuda as "'the place to be' for whomsoever may aspire to the topmost branches of the international finance tree."

The book was conceived by Brian R. Hall, a longtime Bermudian who began his career there in 1958 and continues to work as a spokesman and ambassador for the marketplace. He wrote the book's foreword.

Ms. Duffy also is a veteran of the Bermuda market, leaving the business as a senior vp with Zurich Global Energy in 1999 to devote time to domestic life and writing.

*Michael Bradford is a senior editor of Business Insurance in New Orleans.*

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# Hard market created stronger risk managers

## Approaches adopted in difficult times should be maintained as conditions improve

**By Gregory Belton**

Hard market risk managers have proven their mettle as never before. Coming off the unprecedented soft market of 1985-2001, they've adapted remarkably to an abrupt and brutal market correction, satisfying the draconian demands of underwriters who've sharpened their pencils to the finest point they've wielded in a generation.

The big question now is whether the experience and lessons of the past few years and the enhanced role of risk management that ensued will prevail.

The answer isn't far off, because we're now in the nascent stages of a softening market. The early signs are here, across the board.

Suddenly, more than one underwriter is interested in renewals, not just in big increases on existing accounts. Suddenly, we see intense and precipitous competition on a number of accounts and, in some cases, significant price decreases. It's happening very quickly.

Of late, risk managers have certainly proved their value to their employers. They've gotten back to basics, and they've shown there's no fancy or easy way to navigate a hard market. No longer the "unappreciated asset," they've significantly enhanced their roles in these tough times through their ability to engineer and manage costs.

**Risk managers have adapted remarkably to an abrupt and brutal market correction, satisfying the draconian demands of underwriters who've sharpened their pencils to the finest point they've wielded in a generation.**

But precisely what did risk managers do so well in the hard market that should continue into the future? Some suggestions:

- Provide comprehensive and complete information to the underwriter. Engage in full disclosure and full transparency, done in timely fashion.
- Meet with the underwriter. Don't just provide information to the broker to be conveyed to the underwriter. Meet at the client's workplace to develop a comfort level, to ensure that nothing gets lost in translation and to give the underwriter the opportunity to see the facilities. It has more impact.
- Get to what I call "the top of the pile." During the hard market, underwriters saw huge numbers of submissions from various brokers. The key was to get the attention of the underwriter, preferably by sitting down face to face, so that it was hard for him or her to avoid paying full attention. Such a meeting also allows the underwriter to see firsthand whether the client has a healthy attitude toward loss avoidance and the responsible use of insurance.
- Analyze past claims and put them in the context of various deductible scenarios. Instead of just saying, "Here's our claims history," sit down and analyze the claims and the causes of loss. Determine what loss control measures are in place to avoid those losses in the future and how you'd deal with some of the frequency losses through deductibles and so on.
- Pick the right broker. Find one that provides services that add value, which really translates to insurers as well. If the broker has a reputation for working effectively with clients to manage and improve loss experience, the underwriter is more likely to respond. In a soft market, you could dispense with a lot of that, but not now.
- Differentiate your company and your risk portfolio. Provide complete longtime data of your loss experience. Exhibit an aggressive attitude toward loss control and safety and toward claims management, as well as a desire to work closely with underwriters.
- Adopt a holistic approach. There's a lot of talk about segmenting risk: credit risk, market risk, operational risk, currency risk and reputational risk, for example, in addition to hazard or insurable risk. And they're not mutually exclusive. There's a lot more sophistication in the risk management community today, a broader domain of risk.

I started by saying that the role of the risk manager has been enhanced in the hard market. One way it has been enhanced is that the cost of insurance is on everyone's radar screen. That and the inability, in some cases, to procure adequate insurance. Consequently, risk managers have become more integral to their operations. They no longer work in isolation, and they don't deal strictly with hazard risk. They're now co-dependent with others in their organizations.

Unlike in the past, when the risk manager was viewed as a necessary evil who didn't generate revenue and who was always delivering bad news, now they're beginning to be accepted as an integral part of their companies.

This is no short-term thing. It's an important part of a company's culture to have a solid and enduring risk management philosophy.

*Gregory Belton is president of Toronto-based brokerage Hunter Keilty Muntz & Beatty, an Assurex Global Partner. He also serves as the current chairman of Assurex Global.*

# Injury at mandatory company event compensable

## Legal briefs

If a workers compensation claimant is injured at a social event she was required to attend by her employer, then the injury arose in the course of employment, according to the Court of Appeals of Kansas.

MCI Business Services Inc. employed Darla J. Beck as a telemarketer. Ms. Beck was injured at an MCI awards banquet at a hotel. After receiving a sales award at the banquet, Ms. Beck returned to her seat, where a co-worker pulled her chair out from under her. Ms. Beck was injured by this incident and required medical treatment. She provided evidence that employees of MCI were required to attend the awards banquet. She filed for, and was awarded, compensation benefits. The employer appealed.

On appeal, the employer argued that Ms. Beck was under no duty to attend the event at which she was injured, and, therefore, the injuries did not arise out of or in the course of her employment. But the court said that the uncontradicted evidence was that MCI required its employees to attend the banquet. According to the court, Ms. Beck's uncontroverted testimony indicating mandatory attendance at the banquet was substantial competent evidence, which supported the decision that the injury arose out of and in the course of her employment. The award of benefits was affirmed.

*Beck vs. MCI Business Services Inc.*, Court of Appeals of Kansas, March 14, 2003 (BI/03/Au-$10)

### Pollution exclusion bars coverage for bacteria

The Court of Appeals of Wisconsin ruled that the term "contaminants," as used in a pollution exclusion of a commercial property insurance policy, includes bacteria.

Landshire Fast Foods of Milwaukee Inc. prepares sandwiches and other foods for sale to businesses and institutions. In 1999, Landshire began delivering sandwiches to the Great Lakes Naval Training Station commissary. In May 2000, Great Lakes, which is north of Chicago, reported it had found bacteria, specifically Listeria monocytogenes, on some of Landshire's products.

Great Lakes returned all of the food to Landshire and refused to accept any additional Landshire products. Testing revealed that the slicer used by Landshire to cut meats was the sole source of the bacteria contamination to the products. Landshire instituted a corrective plan, including the use of presliced meat, new sanitizing practices, employee training sessions and random testing of the products. Landshire was covered under a commercial property insurance policy issued by Employers Mutual Casualty Co., which excluded coverage for pollution. Landshire submitted claims for loss of income, loss of product, sanitizing expenses and costs related to investigating the source of the bacteria. The insurer denied coverage.

Landshire then sued but lost in the trial court.

On appeal, Landshire argued, in part, that the pollution exclusion did not include bacteria and, therefore, could not be invoked to exclude coverage for the bacteria outbreak. The court said that the presence of the bacteria in Landshire's food products plainly rendered the food unfit for consumption and, as such, met the ordinary, unambiguous definition of "contamination." The court affirmed the lower court decision denying coverage.

*Landshire Fast Foods vs. Employers Mutual Casualty Co.*, Court of Appeals of Wisconsin, Jan. 28, 2004 (BI/02/Au-$10)

### Re-employment a reason to suspend pension: Court

A regulation in an Employee Retirement Income Security Act plan that allegedly precluded a pension fund from suspending pension benefits due to self-employment did not apply to a participant who retired at 53 years of age, instead of at the normal retirement age of 65, according to the 7th U.S. Circuit Court of Appeals.

As a retired truck driver, Anthony Militello received pension benefits from his union pension fund. After learning that Mr. Militello ran his own trucking company, the fund suspended his benefits and sent him a benefits denial letter. The fund determined that Mr. Militello's ownership of the trucking business constituted prohibited re-employment. Mr. Militello was given 30 days to terminate his ownership or face suspension of benefits.

Subsequently, the fund sent him a letter informing him that he had received overpayment of benefits of $75,400, which would be deducted from future benefits. Mr. Militello sued the fund for unlawful termination of pension benefits. The trial court ruled against Mr. Militello, and he appealed.

The appellate court reviewed the record and concluded that it was clear that the fund's decision to suspend benefits could not be characterized as arbitrary and capricious. The court noted that Mr. Militello listed his business as "trucking" on his tax returns and also described fuel expenses totaling nearly $100,000 and a driver bonus exceeding $20,000. Based on this information, the court said, it was not unreasonable for the fund to determine that Mr. Militello was doing more than leasing trucks, which would have been permissible under the pension plan.

The court also rejected Mr. Militello's argument that ERISA precludes the fund from suspending benefits due to his self-employment. The court said that ERISA specifically excludes claimants who have not attained normal retirement age from its protection. The trial court decision was affirmed.

*Militello vs. Central States, Southeast and Southwest Areas*, 7th U.S. Circuit Court of Appeals, March 3, 2004 (BI/05/-$10)

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

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# Marlins strike out on claim against Lloyd's to cover injury

PHOTO: UPI

Alex Fernandez in May 2000 before his career-ending injury.

By PETA MILLER

**MIAMI**—Lloyd's of London syndicates are not on the hook for a claim by Major League Baseball team the Florida Marlins seeking coverage for losses related to a player's injury, a Florida court has ruled.

Pitcher Alex Fernandez in 1997 signed a five-year contract with the Marlins that guaranteed him a salary of $7 million a year, regardless of whether injury or illness prevented him from playing. The team that year purchased a three-year insurance policy from Lloyd's underwriters—led by Creechurch Underwriting Ltd.—that covered it for 70% of its contractual obligation to Mr. Fernandez, in the event that he was injured.

After paying a claim for an injury in October 1997, the Lloyd's syndicates received another claim in July 2000—after the policy had ended—for a serious "recurrent" shoulder injury that the Marlins said was sustained in September 1999, the decision notes. After the claim was denied, the Marlins sued for coverage.

In a summary judgment dismissing the suit, a Miami-Dade County Court in Florida found that the team's claim was invalid for several reasons, including that the Lloyd's underwriters had not been notified of a change in the team's ownership, which occurred during the policy period in 1999. This contravened the "no assignment of policy" clause and principle in Florida law that says insurers cannot be subjected to "unbargained for risk," ruled Judge Ronald M. Friedman.

In addition, the judge noted that the Marlins had sought to recover for losses related to Mr. Fernandez on a subsequent policy, written by Hartford Insurance Co., for a May 2000 injury, according to the decision. That policy, which had essentially the same terms as the Lloyd's policy, was bound in February 2000. At the time, the Marlins did not inform Hartford of a 1999 injury to Mr. Fernandez, the decision states.

Evidence presented at the trial showed that this amounted to an unlawful attempt to recover twice for the same injury from different insurers, which would have provided a coverage payout that was greater than the Marlin's "insurable interest," the judge found.

As a result, Judge Friedman said the Marlins could recover only under the Hartford policy, and he dismissed the claim against Lloyd's.

*Florida Marlins Baseball Club L.L.C. vs. Certain Underwriters at Lloyd's, London Subscribing to Policy No. 893/HC/97/9096; 11th Judicial Circuit Court of Miami-Dade County, No. 01-09660 CA 02., June 30, 2004.*

# N.Y. court upholds policies offering less coverage for mental injury

By ROBERTO CENICEROS

**NEW YORK**—Long-term disability plans open to disabled and nondisabled employees do not violate a state law by providing richer benefits for physical disabilities than for mental disabilities, New York's highest court has ruled.

The unanimous July 1 decision by the Court of Appeals in *Charlene Polan vs. State of New York Insurance Department* stems from Ms. Polan's claim that a group policy violates state law by limiting coverage to 24 months for mental or nervous disorders. The same policy, issued by Travelers Indemnity Co. and later taken over by Metropolitan Life Insurance Co., provides coverage for physical disabilities until a disabled employee is 65 or the disability ceases, court records show.

Ms. Polan suffers from a chronic psychiatric disability and has been unable to work since 1994, but her long-term disability benefits terminated in September 1996. The New York Insurance Department later rejected her claim that the policy violated a 1994 state law that prohibits insurers from limiting coverage for physical or mental disabilities.

A state trial court and the Appellate division agreed with the Insurance Department. The state's high court concurred, ruling that the New York law was intended to ensure that insurers make coverage available to individuals regardless of their disability rather than to ensure the parity of coverage.

"Nothing in this anti-discrimination provision requires an insurer to offer the same benefits for all ailments unless statistically or empirically justified," the court ruled.

*Charlene Polan vs. State of New York Insurance Department, New York Court of Appeals, No. 97, July 1, 2004.*


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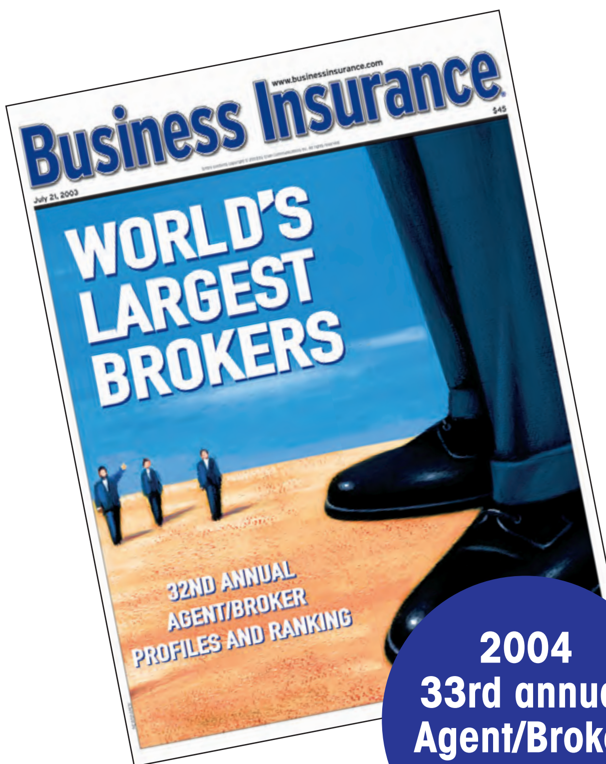


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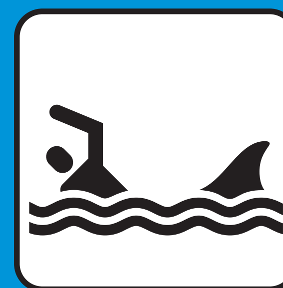

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# Between the Lines

Compiled by Joanne Wojcik

## Insurer must defend Krishnas against lawsuit

An insurers must defend the International Society of Krishna Consciousness against a lawsuit alleging the Texas branch of the worldwide religious group was negligent for letting members "sexually, physically and emotionally abuse" children in their care, an appellate court has ruled.

PHOTO: GETTY

A lawsuit alleges abuse of children in Krishna boarding schools.

In the underlying suit, the plaintiffs assert that, as part of their training, Krishna converts were required to enroll their children in Krishna-sponsored boarding schools, known as "gurukulas," where the alleged abuses occurred. The children, both male and female, ranged in age from 3 to 18, court documents state.

Burlington Insurance Co. had denied coverage, asserting the Texas Krishnas were "conscious" of the alleged acts when they bought a comprehensive general liability policy. Burlington also argued the losses were not "occurrences" because they were not "unexpected" or "without intention." But both the trial court and the 11th District Court of Appeals of Texas disagreed.

In a June 30 opinion upholding the trial court decision granting coverage, the appellate court ruled that, because the plaintiffs' allegations could be covered by the CGL policy, the insurer owed a duty to defend, regardless of the eventual outcome of the case.

## AIG, MassMutual make it to The Show

Could the crosstown rivalry between New York's Yankees and Mets be infecting the insurance industry? MassMutual Financial Group and American International Group Inc. say it isn't so, but both insurers are sponsoring star players on each team.

Springfield, Mass.-based Massachusetts Mutual Life Insurance Co. and MassMutual Life Insurance Co. of Japan recently announced they had been named the official financial services sponsors of the Mets and the team's star shortstop, Kazuo Matsui.

MassMutual and MassMutual Japan, whose logos will be on rotating signs in English and Japanese at Shea Stadium, is using Mr. Matsui, who was born in Japan, to attract business in his native country, says a MassMutual spokesman.

"Kaz is really seen as a blue-chip player in Japan, and our tag line is 'The Blue Chip Company.' so we think it's a perfect fit," said Sue Tougas, assistant vp at MassMutual.

New York-based AIG donated 1 million yen ($8,912) to the Parkchester Little League in the Bronx and the Japan Little League Baseball Assn. for a home run hit by Yankees left fielder Hideki Matsui—of Japan but not related to the Mets shortstop—in a May 15 game against the Seattle Mariners as part of a larger promotion. An AIG spokesman didn't say whether part of the insurer's goal was to boost its Pacific Rim presence but acknowledged AIG has several subsidiaries in Japan that could gain recognition from its philanthropy.

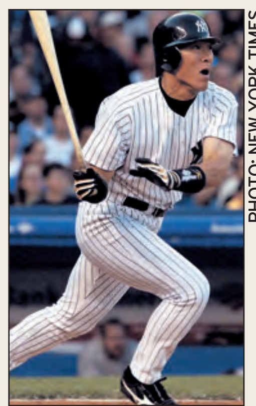


PHOTO: NEW YORK TIMES

Hideki Matsui is one of two New York ballplayers featured in insurer promotions.

## Worker charges bias in ban on cross-dressing

A 50-year-old pharmacist at Denver-based grocery store chain King Soopers, a unit of Cincinnati-based Kroger Co., is charging his employer with discrimination for not letting him wear women's clothes at work.

Kim Dower, who has worked for King Soopers for nine years, plans to undergo gender reassignment, but doctors won't perform the surgery until he has lived as the target gender for at least a year.

In March, when Mr. Dower asked his supervisor for permission to cross-dress, the manager took that request to a higher authority, which declined. In response, Mr. Dower hired a lawyer and filed a complaint on Friday with the Equal Employment Opportunity Commission.

King Soopers did not return calls seeking comment.

*Tips and feedback from readers are welcomed. Please send information to jwojcik@businessinsurance.com.*

# Products & Services

## Chubb enhances RMIS system

**WARREN, N.J.**—Chubb Corp. has enhanced its online risk management information system, RMIS Dimensions 7.2.

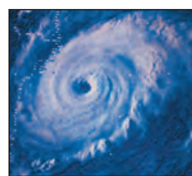
The fee-based program provides customized loss information via the Internet. The enhancements include the ability to create customized reports with charts and graphs, which can be exported as Excel, Adobe PDF or Comma Separated Value files. It also includes a revised sorting feature, allowing users to sort up to three information fields.

A new feature to help users manage their claims information is the Source Target Action Results application. Chubb's STAR element allows users to define claims information by completing the fields that ask for the cause of the accident, the injured body part as a result of the accident, the employee action at the time of the accident and the outcome of the accident.

To obtain more information on Warren, N.J.-based Chubb's RMIS Dimensions 7.2, e-mail Richard Kaiser, assistant vp/business services manager of Chubb & Son Inc., at *rkaiser@chubb.com.*

## RMS introduces update on hurricane tracking

**NEWARK, Calif.**—Risk Management Solutions Inc., an enterprise risk management, catastrophe and weather services provider, has introduced its 2004 RiskOnline program.



The Web-based RiskOnline system tracks hurricanes that threaten the U.S. coastline and provides modeling of potential insured losses associated with these storms.

The program works with the National Hurricane Center storm updates. The RiskOnline program uses the updates from the NHC to filter and assign probabilities by tapping the Newark, Calif.-based RMS' stochastic database.

This database consists of 400,000 simulated storm tracks and assigns probabilistic loss by analyzing the National Hurricane Center notifications. By matching hurricane characteristics such as central pressure, forward velocity and directional coordinates, loss estimates and event landfall statistics can be assessed. RiskOnline subscribers receive 24-hour access to the latest loss projections.

For more information, contact Bill Tuttle, vp of product marketing, at 952-854-0632, or visit the company's Web site at *www.rms.com.*

## Eckerd offers PBM options

**PITTSBURGH**—Eckerd Health Services has launched a new pharmacy benefit management program to help employers reduce pharmacy coverage costs.

The program, EHS RxOptions, allows health plan sponsors to offer four different pharmacy benefit plan options from which plan members can choose. The Pittsburgh-based EHS program allows employers to tailor disease management programs and also provides online tools for plan members, including a decision-support program designed to help members choose the best options for their needs and a health and wellness educational program.

For more information, visit the company's Web site at *www.ehs.com.*

## Computer salvaging service offered

**EDISON, N.J.**—Electronic Renaissance Corp. is offering a computer and electrical equipment salvaging service for risk managers.

The salvaging service allows the Edison, N.J.-based Electronic Renaissance engineers to evaluate the loss of computer, electrical and/or instrumentation equipment by assessing its value and the estimated restoration cost. The company also provides restoration services if the product can be restored. If the equipment cannot be restored, the company will calculate its economic value and sell it at salvage to maximize the return on the equipment.

For more information, contact Steve Aghaei at 732-417-9090.

## The Principal offers consumer-driven plan

**DES MOINES, Iowa**—The Principal Financial Group is offering employers a new high-deductible group health plan with a health savings account component.

This consumer-driven model is intended to give plan members greater control over their health plan spending. The high-deductible coverage protects plan members from the cost of prolonged hospitalization and other catastrophic expenses. Both the plan member and employer can contribute to the HSA, which accumulates funds tax-free for expenses not covered by the plan. The plan also allows a member to roll over the funds in the HSA, and the account is portable.

The Principal product also benefits employers and employee members by offering a variety of investment options for their funds and providing a single source for administration and benefits management.

More information can be obtained by contacting Jerry Ripperger, medical product director, at 515-248-2240 or *ripperger.jerry@principal.com.*

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PHOTO: AFP

Liability has not yet been determined for the collapse of a terminal at Paris' Charles de Gaulle airport, but a recent government report cited deterioration of concrete as a factor.

# Terminal collapse at Paris airport blamed on concrete

By PETA MILLER

**PARIS**—The partial collapse of a terminal at France's Charles de Gaulle International Airport likely stemmed from deterioration of the concrete used in the 1-year-old structure, according to French transportation authorities, but liability for the accident has not been determined.

Four people were killed and others were injured on May 25, when part of the roof of the airport's Terminal 2E collapsed.

In a report issued last week, government investigators conclude that the collapse occurred after metal struts, which separate the tube-shaped building's outer glass layer from an inner layer of reinforced concrete, punctured that inner layer. The penetration of that layer, which caused the roof to fold in on itself "like a wallet," likely resulted from degradation of the concrete, the report notes.

Investigators are still trying to determine what factors led to the deterioration of the concrete. A separate criminal inquiry will attempt to decide who was responsible.

The facility, which is operated by the quasi-governmental Aéroports de Paris, has been shut down since the accident.

In a statement following the report's release, ADP President Pierre Graff said: "The investigations are still going to last several months. I will abide by their conclusions."

Lafarge S.A., a Paris-based manufacturer of building materials, produced the concrete used by the consortium of companies that cast the concrete shells of Terminal 2E. In a statement, the firm stressed that its product met French national standards before it was sent to the consortium. Lafarge declined to comment on its insurance coverage, but market sources said that liability claims would likely be covered by policies purchased for the project as a whole.

ADP has not commented on its insurance coverage for potential claims stemming from the accident. According to market sources, Paris-based AXA Corporate Solutions S.A. wrote the primary layer of a 1.5 billion euro ($1.86 billion) airport operator liability policy for the terminal, including coverage for property damage and bodily injury. AXA S.A., the company's parent, declined to comment on the report.

London-based Global Aerospace Underwriting Managers Ltd., which sources say led reinsurance for the policy, also declined to comment.

Munich, Germany-based Munich Reinsurance Co. also participated in the reinsurance coverage. A spokesman for the reinsurer said it has lowered its estimated exposure to claims—originally projected in the mid-double-digit millions of euros—to between 20 million and 30 million euros ($24.8 million and $37.1 million) on a worst-case-scenario basis.

Air France, which was the airline used by the passengers involved in the accident, will likely be strictly liable to pay up to 100,000 special drawing rights ($146,900) per person, according to Sean Gates, senior partner at law firm Gates & Partners in London. An SDR is an instrument that consists of a basket of currencies. The airline could then subrogate, said Mr. Gates, who is not involved in advising

See TERMINAL/next page

CIDP Annual Employment Law Conference

# U.K. employers cope with new bias law

By SARAH VEYSEY

**LONDON**—A relatively new U.K. law designed to prevent religious discrimination has created a duty for employers to accommodate different religious requirements.

The Employment Equality (Religion or Belief) Regulations 2003 took effect in December of last year, incorporating a European Union directive into U.K. law, said Makbool Javaid, partner and head of equality and diversity at London-based law firm DLA.

And the law—which bars discrimination on the grounds of religion, religious belief or similar philosophical belief—could be interpreted broadly to cover a wide range of beliefs, Mr. Javaid told delegates attending the Chartered Institute of Personnel & Development's annual Employment Law Conference last week in London.

The law defines "religion" as including, among other things, a clear belief system and collective worship, Mr. Javaid said.

But other beliefs could be judged by the courts to fall under the law's scope, he noted. For example, druidism; pacifism; veganism, which is the avoidance of animal-based products; or anti-vivisectionism may be considered by some to be a belief or life system equivalent to a religious belief, Mr. Javaid explained.

The extent of the law's scope has yet to be tested by the courts, Mr. Javaid said, but he warned employers to be aware of the impact that Article 9 of the European Union's Convention on Human Rights might have on affirming an individual's rights in such cases. That provision states that everyone has the right to freedom of thought, conscience and religion.

Also broad is the U.K. law's impact on employment practices, Mr. Javaid said.

See DISCRIMINATION/next page

CIDP Annual Employment Law Conference

# Policies may ease workplace stress

By SARAH VEYSEY

**LONDON**—Although it has become increasingly difficult for U.K. employees to bring successful stress claims against their employers, companies still should have polices in place to combat the condition, experts at a conference on stress emphasized.

The London-based Chartered Institute of Personnel Development held conferences on "Stress and the Law" and employment law on successive days earlier this month in London.

Legal experts told those in attendance that a set of guidelines on stress claims laid down in February 2002 by Lady Justice Brenda Hale—then a senior appeal judge and now a member of the Appellate Committee of the House of Lords—in response to a group of stress-related cases have made it tougher for workers to prevail in such cases over their employers.

One of the central themes of the guidelines is that an employee has a duty to inform the employer that the individual believes himself or herself to be suffering from work-induced stress, according to Dominic Regan, a solicitor and employment law consultant to Brabners Chaffe Street Solicitors.

In one conference session, Ian

See STRESS/next page

# Gothaer Re planning runoff of current business lines

By SARAH VEYSEY

**COLOGNE, Germany**—Gothaer Rueckversicherung A.G. has stopped writing new business and will run off its current book.

Cologne, Germany-based Gothaer Re, a unit of Cologne-based Gothaer Versicherungsbank A.G., said in a statement that it stopped taking on new business as of June 29.

Gothaer Re, which wrote both property/casualty and life reinsurance, said the move was part of its parent company's strategy to concentrate on primary insurance business.

In 2003, Gothaer Re, which provided reinsurance for small to mid-size insurance entities, recorded gross written premiums of 370 million euros ($466.2 million).

Standard & Poor's Corp. on June 30 downgraded Gothaer Re to BBB from A- in the wake of the changes.

# World Updates

## U.K. pension deficits fall in 2003: Mercer

The aggregate pension fund deficit of the largest employers in the United Kingdom fell by 13.5% in 2003, according to Mercer Human Resource Consulting in London. Mercer determined that the total pension fund deficit of the FTSE 350 companies—the 350 largest publicly traded U.K. companies—was £64 billion ($114.57 billion) at the end of 2003, down from £74 billion ($119.13 billion) a year earlier. Mercer also noted that while the U.K. employers' pension fund deficits were, on average, equal to about 3% of a company's market capitalization, in one in 10 cases, deficits rose to 20% or more.

## Lane Clark buys Swiss consultant

Lane Clark & Peacock L.L.P., an actuarial consulting unit of Alexander Forbes Ltd., has acquired Liberia, a Swiss employee benefit consultant. Liberia, which has offices in Zurich and Basel, has about a 20% share of the Swiss employee benefits consulting market, London-based LCP said in a statement.

## Canada to publish rules for bank/insurer M&A

Canadian Finance Minister Ralph Goodale said he plans to publish new guidelines for large bank and insurance company mergers by the end of the summer, despite the emergence of a minority government in Canada following the recent elections. Observers had speculated he would delay releasing the guidelines to avoid a political debate on lifting the merger ban. The Department of Finance was originally scheduled to release its decision June 30, but Mr. Goodale postponed the release due to the elections.

## Soft market will test Lloyd's board: Report

Soft insurance market conditions will test the Lloyd's of London franchise system, which began operations in 2003, according to a report by reinsurance broker Benfield Group Ltd. Benfield's report said that so far "the consensus view on (the Franchise Board's) efficacy to date would appear positive." Benfield noted, however, that during a soft market, the Franchise Board, which monitors syndicates' business plans, would need to balance quality controls against "the need to nurture entrepreneurial flair." Conflicts of interest could arise, the report notes, when a syndicate wishes to expand in a line of business that the board believes has reached an optimal level in the market.

# Discrimination: Employers cope with rule

Continued from previous page

The equality rules apply to job applicants, employees, the self-employed, contract or agency workers, and former employees, who may charge that they were discriminated against after leaving a job if they subsequently receive an unfavorable reference, he noted.

Employers must also be aware that the regulations cover indirect discrimination as well as direct bias, Mr. Javaid noted.

So, for example, if an employer has a working practice or criteria that covers all staff but that can be viewed as inadvertently or indirectly discriminatory to workers of a certain religious belief, then that practice could be deemed a violation of the law, he explained. Mr. Javaid said that while he doesn't expect a large number of claims for direct discrimination, indirect discrimination claims are likely to be more common.

He outlined several steps that employers can take to avoid religious discrimination claims.

Employers should ensure that they are aware of the requirements of certain religions, he stressed. This will help them to adjust working practices where necessary and practicable, as well as to have a better understanding of whether the rules are being abused.

Employers may need to alter their bereavement policies to accommodate the practices of different religions, Mr. Javaid explained. He noted, for example, that the Muslim and Jewish faiths seek to bury the deceased as soon as possible—so workers may need time off on very short notice—while the Hindu faith incorporates a 13-day mourning period.

Adjustments may also need to be made to staff uniforms to incorporate religious dress codes, he said.

Employers may also need to consider altering workers' hours so that they can comply with rules on religious observance, such as holidays or prayer requirements. And some employers may even want to consider providing areas where people can pray, or so-called "serenity rooms," he noted.

But while employers should aim to be flexible in their working practices to prevent discrimination, they should not have to make unreasonable adjustments, he said. If employers can make a strong business case to explain why certain religious practices cannot be accommodated, then this should serve as a defense against discrimination claims, he noted.

# Stress: Workplace policies suggested

Continued from previous page

Smith, a professor of employment law at the Norwich Law School at the University of East Anglia, England, cited a stress case in which a claimant not only failed to inform her employer that she was suffering from work-induced stress but expressly asked her doctor not to inform her employer of her condition.

The claimant lost the case, Mr. Smith said, on the grounds that she had not informed her employer about her condition and that her employer could not reasonably have been expected to foresee that she was susceptible to stress in the course of her work.

Because stress, by its nature, is an internal condition, a duty falls upon the employee to inform his or her employer if that individual feels unduly stressed at work, Mr. Regan said.

According to the guidelines, he said, employers that provide their staff with access to confidential counseling or advisory services are unlikely to be found in breach of their duty of care to employees in stress claims.

Mr. Regan said that the stress guidelines have been upheld in some recent judgments handed down by the House of Lords, the United Kingdom's highest court.

He told delegates, though, that employees do not necessarily need to use official complaint procedures to tell employers that they are stressed. If an employer has been made aware of an employee's illness, whether through official procedures or not, he or she must take reasonable steps to address the issue, Mr. Regan said.

In another conference session, Joe Jordan, a consultant at Manchester-based Robertson Cooper Ltd., warned delegates that workplace stress policies must be more than simply "paper exercises."

Mr. Jordan said that such a policy should include a definition of "stress," among other things. He noted that the phrase "when pressure exceeds one's perceived ability to cope" is a widely accepted definition.

A workplace stress policy also should include reference to the rehabilitation of employees when they return from stress-related absences, he said.

Sue Cruse, manager of employee health, support and resilience at GlaxoSmithKline P.L.C. in London, told delegates that her company realized that because of its size—about 20,000 workers are employed across 20 sites—it needed to address workplace stress at the team and line-management level. "The thing most proximate to an employee, the way they experience the organization, is through their line manager," she said.

Mental illness is a major cause of employee absence, Ms. Cruse noted, and is frequently underreported.

GSK has instituted guidelines based both on legislation and litigation in order to encourage managers to take the issue of stress seriously and to report and manage it, she said.

In addition, each GSK site worldwide is audited against the company's "resilience and mental well-being" standard at least once every three years, Ms. Cruse said.

# Terminal: Report faults construction

Continued from previous page

on the accident.

Another aviation attorney unrelated to the case said that because the Air France passengers were embarking at the time of the accident, there would be carrier liability regardless of the cause of the accident.

But a spokesman for Paris-based Air France said that such compensation is entirely the responsibility of ADP, as the passengers were in the airport at the time of the accident.

The spokesman also confirmed that Air France, which is the main user of Terminal 2E, plans to present a compensation request to ADP for costs the airline has incurred because of the terminal's closure.

The sum requested will be in the region of several million euros, he predicted, noting that the airline does not expect its insurance coverage to respond to the losses.


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## LEGAL NOTICE

**NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**No 1563 of 2004**

**IN THE MATTER OF**

**LAKEWOOD INSURANCE COMPANY LIMITED**

**(FORMERLY SAMPO INSURANCE COMPANY (U.K.) LIMITED)**

**IN THE MATTER OF THE COMPANIES ACT 1985, Section 425**

NOTICE IS HEREBY GIVEN that, by the Order dated 18 June 2004 made in the High Court of Justice in England and Wales in the matter of the above company, the scheme of arrangement proposed (the "Scheme") to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the meeting held on 14 May 2004, was sanctioned. The Court Order and an office copy of the Scheme were lodged with the Registrar of Companies on 28 June 2004, and the Scheme became effective on that date.

Under the terms of the Scheme, the Final Claims Submission Date has been extended. Scheme Creditors are now required to submit completed Claim Forms by 25 February 2005 or will be adjudged to have a claim valued at nil. Claim Forms should be returned to Lakewood Insurance Company Limited, 42 Crutched Friars, London EC3N 2AP, marked for the attention of David Read to arrive on or before 25 February 2005.

Should you have any questions regarding this Notice, please address them to Simon Hawkins at: PricewaterhouseCoopers LLP, 31 Great George Street, Bristol, BS1 5QD, United Kingdom (Telephone: +44 (0) 117 929 1500, Facsimile: +44 (0) 117 929 0519, e-mail: simon.w.hawkins@uk.pwc.com)

## LEGAL NOTICE

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

IN RE PETITION OF JOHN GIBBONS, AS LIQUIDATOR OF **NEW CAP REINSURANCE CORPORATION**, DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 99-B-42752 (CB)

NOTICE IS HEREBY GIVEN THAT ON JUNE 30, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT UNTIL JULY 15, 2004. A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED BEYOND JULY 15, 2004 IS SCHEDULED TO BE HELD ON JULY 14, 2004 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER BEYOND JULY 15, 2004 SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST THREE (3) DAYS PRIOR TOTHE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

**CHADBOURNE & PARKE LLP**
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# Ontario: Health tax changes won't hit employers hard

Continued from page 3
employee taxes under their collective bargaining agreements, said Jeremy Pereira, senior benefits consultant with Mellon Canada in Toronto.

The number of these employers, though, is unclear because companies are still reviewing their collective bargaining agreements to see if they are obligated to pay these taxes, he said.

Most employers not governed by collective bargaining agreements would not cover the premium for their employees, mainly due to the administrative burden involved in determining what each person's premium would be under the complicated tax system, Mr. Pereira said. "In general terms, we haven't seen employers seeking to cover the Ontario Health Premium," he said. "If they're not picking up the Ontario Health Premium, there's no impact on the employer."

A study by Toronto-based human resource consulting firm Morneau Sobeco showed that almost 90% of employers with a concentration of employees in Ontario do not plan to make changes to their current practices or policies.

"The results of this survey suppose that, with reaction to the budget in its infancy, employers are not inclined to take action immediately," said Joy Sloane, a partner in Morneau Sobeco's benefits consulting practice in Toronto. "They may still make changes to their benefits plans or compensation strategies after employee concerns—that have not yet been heard—have been addressed."

Only about 2% of respondents plan to adjust cash compensation to offset their employee's requirement to pay the OHP, according to the study.

Toronto-based Oxford Properties Group, like most employers, is not picking up the premiums, said Wendy Turner, director of compensation and benefits.

Most employers are looking at the OHP as a tax and they feel that they already pay enough of health care costs through the Employer Health Tax, which is based on a percentage of payroll and is used to fund the Ontario health care system, Ms. Turner said.

"We're already picking up a huge portion of tax," she said. "I think that's a big reason most employers have decided not to pick it up."

The issue of the premium, however, is expected to come up during annual salary negotiations, Mr. Pereira said. "It's not going to be picked up right now, but a lot of employers anticipate it will be an issue," he said.

## De-listing services

The Ontario budget also calls for the de-listing of "less critical" services from the province's coverage, according to a government statement.

The cost of routine optometry exams, except for seniors and residents under 20 years old, will be de-listed. The government health insurance program also will no longer cover the cost of chiropractic services. In addition, physiotherapy services will be de-listed for most residents, with the exception of seniors who will continue to receive physiotherapy through home care and long-term care facilities.

> **'We're already picking up a huge portion of tax. I think that's a big reason most employers have decided not to' pick up the Ontario Health Premium.**
>
> *Wendy Turner*
> *Oxford Properties Group*

The Ministry of Finance estimates the government will save $47 million in fiscal year 2004-2005 from the de-listing of these services and $157 million per year going forward, a spokeswoman said.

Ontario is aligning its coverage package with other provinces, most of which do not pay for these services, Mr. Pereira said. The de-listing of these services in other provinces has been taking place since the early 1990s and some large national companies have amended private health insurance under their employee benefit plans to provide coverage for de-listed services, he said.

The Morneau Sobeco study, however, indicated that only 9% of surveyed employers plan to amend their policies or practices to account for the de-listing of services to occur in the fall, according to the Morneau Sobeco study.

Markham, Ontario-based IBM Canada has revised its benefits package to include coverage for the routine eye exams being de-listed by the government health insurance plan, a spokeswoman said. Routine eye exams will become an eligible expense under its existing vision care plan and will cover one exam every two years, she said. The change will take effect on the same date the exams are de-listed by the government.

The government has not set a specific date for the de-listing of chiropractic services, but expects this to occur in late fall, according to the Ontario Ministry of Finance spokeswoman. The de-listing of optometry exams will take place Nov. 1, while the de-listing of physiotherapy services will take place April 1, 2005, she said.

Oxford Properties has not yet decided whether it will cover any de-listed services, Ms. Turner said. The company is "still gathering information on what kind of risks that's going to expose us to in terms of premiums."

"I think what companies will do really will depend on cost impact," she added. "Consulting firms are still working on that data. Insurance underwriters are taking a look at how it will affect premiums."

One benefit for employer-sponsored plans is that the government has expanded its child immunization program to cover chickenpox, meningitis and pneumonia vaccinations, which can save employers or individuals more than $600 per child, according to government estimates.

"There are some improvements that the government is including, though the net effect is deemed to be minimal," said Greg Durant, group and health care practice leader for Watson Wyatt in Ontario.


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# Pickens: Arkansas regulator helps build Iraq market

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benefits of good insurance regulation."

To write the insurance code, Mr. Pickens met weekly with management from Iraq's insurance companies and other foreign advisers. The draft insurance code is modeled upon cross-border best practices outlined by the Basel, Switzerland-based International Assn. of Insurance Supervisors and borrows from Jordanian insurance regulations, Mr. Pickens said.

A key feature of the code, he said, is the creation of an independent regulatory insurance authority to protect policyholders. The authority would ensure ongoing supervision of all insurers in Iraq, foreign or national, to make sure requirements for confidentiality and capital adequacy and solvency are met.

No formal capital requirements were included in the draft. Nor did it include restrictions on foreign ownership of insurers in Iraq, though it is possible that the final version will contain some ownership restrictions, Mr. Pickens said.

Mr. Pickens, who served as president of the National Assn. of Insurance Commissioners in 2003, learned of the position in Iraq in February. He said he immediately jumped at the chance to go, using accumulated vacation time from his state job to work in Iraq.

"From a personal standpoint, it was a unique opportunity to get in on the ground floor of an emerging insurance market," he said, adding: "Baghdad really has been ground zero the past year and a half, and it seemed like a way to help contribute to the cause."

While he declined to disclose, for security reasons, details about lodging or how he moved about the country, Mr. Pickens did say he stayed outside the intensely-guarded "Green Zone" in Central Baghdad. The "Green Zone" hems in the palaces of former Iraqi President Saddam Hussein and the area where the majority of U.S. occupation authorities and consulting companies reside and work.

**'I'd say in anywhere between three and five years, we can see the (Iraqi) marketplace start to open up' to foreign competition.**

*Mike Pickens*
*Arkansas Insurance Department*

"I thought the situation would be much worse," Mr. Pickens said. But "it really was not as dangerous, or at least it didn't feel as dangerous, as I thought it would be," in Iraq. "I really felt relatively safe." He stayed in touch with his office as well as his wife and two children nearly every day, he said.

Not that Mr. Pickens was able to altogether ignore the day-to-day violence in Baghdad.

"If a car bomb went off one or two miles away, you could hear it and in some cases, you could feel it," he said. And on May 6, he had a close call when a car driven by a suicide bomber exploded at a bridge checkpoint Mr. Pickens passed through just minutes before, killing a 24-year-old National Guardsman from Arkansas.

"You just have to try and keep your ears and eyes open and concentrate on your work," Mr. Pickens said.

Despite prior experience both as an attorney and as a foreign consultant—Mr. Pickens has helped the governments of Egypt, China and Vietnam to restructure their insurance laws—he said his work in Iraq was particularly challenging because it required creating laws from scratch.

Yet, he said he returned to Arkansas on June 21 pleased that within a short time, not only was a draft completed, but it was also endorsed by the then-Iraqi Finance Minister Kamil Al-Gailani.

And now that the U.S. protectorate has transferred power to a new Iraqi government, Mr. Pickens is confident that his proposed legislation will again receive support and be implemented, though he acknowledged he's "not sure where it will fall into their priorities right now."

"They've got a lot to do," he noted, "form a new government, hold elections in January, try Saddam Hussein....But I do hope it will continue to remain on the front burner," he said of the draft law.

PHOTO COURTESY OF ARKANSAS INSURANCE DEPARTMENT

**Arkansas Insurance Commissioner Mike Pickens posed with children in Iraq, where he traveled to work as an insurance consultant.**

Mr. Pickens said he is optimistic as Iraqi insurers and regulators are open-minded and eager to make improvements in their country, concerned only with the pace at which the insurance marketplace opens up to foreign competition rather than the competition itself.

He thinks insurers can expect an active Iraqi insurance market in the not-so-distant future.

"I'd say in anywhere between three and five years, we can see the marketplace start to open up," in Iraq, assuming that the country becomes relatively politically stable in the next couple of years, Mr. Pickens said.

As for himself, he said "there's certainly a chance I could be involved again in the future....And I would be interested in staying involved because we built up some good contacts and the work is important."

# Cell phones: Employers taking steps to control risks

Continued from page 4

Ms. Lusby-Treber quoted a 2003 study by the National Highway & Traffic Safety Administration that estimated it cost an employer an average of $16,500 each time an employee was in a traffic accident. Included in this figure are the costs of loss of productivity, workers compensation, medical treatment, repairs, replacement transportation, substitute labor and higher insurance premiums.

More companies are putting policies in place with top-level management support that include awareness, training and safety campaigns, said Ms. Lusby-Treber. NETS sponsors an annual Drive Safely Work Week, scheduled this year for Oct. 4-8. Last year, nearly 3,000 employers took part in promoting safe driving.

For the Washington-based Cellular Telecommunications & Internet Assn., the key to ensuring safe driving is education.

CTIA's Web site cites studies conducted by the American Automobile Assn. and Virginia Commonwealth University. Both concluded that cell phone use is not the biggest distraction for drivers. The AAA study monitored the behavior of 70 drivers and found that talking on the telephone accounted for 1.3% of time spent on the road. In the Virginia study, 2,700 crashes were examined. Five percent of these crashes were attributed to cell phones. The largest factor was looking at other crashes or traffic, which caused 16% of crashes.

The CTIA also urges state legislatures to collect more statistics regarding how many times cell phones are involved in crashes, enforce existing distracted-driver laws and educate the public about safe telephone use.

Wireless companies have spearheaded their own safety education initiatives. Motorola Inc., which is also a member of CTIA, has developed with AT&T Wireless a cell phone safety curriculum for NETS and a novice driver program with AAA.

## Promoting safety

Some employers don't have formal policies on cell phone use but nevertheless promote safe driving practices for their employees.

At New York-based Verizon Communications Inc., employees are encouraged to make calls from the side of the road or use hands-free devices, said Sheila Small, assistant treasurer of risk management and insurance. Verizon pays for hands-free devices for employees who conduct business from the road, she added.

Verizon also encourages its customers to practice safe driving and become comfortable using their phones' features.

**'We hold our employees to the same standards as our customers (on the safe use of cell phones). We practice what we preach.'**

*Chuck Eger*
*Motorola Inc.*

Chuck Eger, director of the office for driver safety at Schaumburg, Ill.-based Motorola, said the company expects its employees to practice safe driving behavior. "We hold our employees to the same standards as our customers," he said. "We practice what we preach."

The company educates employees by promoting safe driving tips, such as assessing traffic before making a call or letting voice mail answer calls in the car.

Like other wireless companies, Verizon and Motorola both offer hands-free devices.

Denver Water does not have a written policy, and opposes the use of hands-free devices. The public utility company in Colorado has general language in its guidelines discouraging the use of cell phones while driving, said Jim Crockett, Denver Water's risk and benefits manager and a member of the Risk & Insurance Management Society Inc.'s External Affairs Committee.

Employees are encouraged to avoid any distraction while driving. This includes cell phone use. As part of monthly safety meetings, one of the topics the company addresses is defensive driving. Denver Water requires employees to make calls before driving and to stop safely to answer calls.

Mr. Crockett also said that the company did not purchase hands-free sets for its 400 vehicles. He said there was not enough research to prove hands-free sets reduced accidents. He added that it is the telephone conversations that make the employee inattentive to driving.

## Debate on hands-free

Legislation in many states bans the use of hand-held cell phones but not hands-free devices. However, according to a University of Utah study from 2003 that looked at the driving habits of 110 college students, cell phone conversations on hands-free sets can cause "inattention blindness." Drivers had a hard time remembering street signs and focusing on road conditions.

Lisa Sheikh, the executive director for the Partnership for Safe Driving, a nonprofit organization in Washington, advocates banning the use of all cell phones while driving, including those with hands-free devices. What is at issue is the distraction of the conversation, Ms. Sheikh said; driving "requires a person's full attention."

Ms. Sheikh said that companies should pursue policies that prohibit cell phone use while driving. "It's really a safety concern for their employees," she said.

At the forefront of ExxonMobil's cell phone policy is safety. The company has 80,000 employees globally and has workers on the road for 1.5 million miles a day. With so many employees and contractors doing business from cars, a cell phone policy was necessary after the company conducted its own studies on cell phone use and road safety.

Through e-mail newsletters, the company's intranet site and meetings, ExxonMobil educated its employees about the new policy. Enforcing the policy requires making sure new employees understand the directive and investigating accidents for possible cell phone use.

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# Leave: California employers brace for new burdens

Continued from page 1

rescheduling work, observers say.

While it will take a while for employees to learn of the law, over time "it'll be a negative impact, both in lost productivity and increased labor costs," said Martin Levy, vp-human resources for Pomona, Calif.-based PFF Bancorp, a bank holding company.

Some companies, however, are integrating the benefit into their existing benefits program, such as by making up the difference between the family leave benefit and the employee's regular pay by using accumulated sick time and vacation time.

The law provides that the leave must be taken concurrently with the 12 weeks of unpaid leave permitted under the federal Family Medical Leave Act and the California Family Rights Act, the state's leave law. Employers can also require that employees take up to two weeks of accrued vacation time before they can receive benefits under the law. Employees must provide a medical certificate or other documentation to establish their eligibility.

One significant difference between the paid family leave act and the federal FMLA and state CFRA is that it applies to businesses of any size, whereas the FMLA and CFRA apply only to firms with 50 or more workers. The new law itself does not provide for job reinstatement rights, but these are granted to employees of large firms under the FMLA and CFRA.

In addition, whereas the FMLA and CFRA require employees to work 1,250 hours over the most recent 12 month period to take leave, there is no such minimum eligibility requirement for the paid leave program, although there is a seven-day waiting period before leave pay is provided.

At least initially, relatively few employees are expected to apply, in large part because few know about the program.

Only 22% of Californians are aware of the available benefits, said Ruth Milkman, director of the UCLA Institute of Industrial Relations in Los Angeles, who co-authored a study on the issue. But this number is expected to grow, at least in part because of a publicity program conducted by the state Employment Development Department, the state agency that administers the program.

About 300,000 employees are expected to apply for the program its first year, according to an EDD spokeswoman.

"I think the real key issue is going to be the number of people that use this thing," said Roland Mittica, a consultant with Towers Perrin in San Francisco. "As time goes on and more people become aware of it and used to it, I think we're going to see much greater utilization."

Mr. Mittica said while many new mothers are likely to want to take the six weeks off to bond with their babies, "the interesting thing is going to be how many of the fathers are going to want to take this." He said he has already heard from clients that some fathers are expressing such an interest.

Being able to receive partial paid leave may also encourage baby boomers whose parents are aging to take the six weeks of leave annually, said Mr. Mittica.

> **California's paid-leave law will have 'a negative impact, both in lost productivity and increased labor costs.'**
>
> *Martin Levy*
> *PFF Bancorp*

"I think it's going to take two or three years to play out before employers realize just what this is going to mean," he said.

Victoria J. Schweitzer, senior vp with Aon Workforce Strategies in San Francisco, said: "One of the larger reasons that a lot of people didn't take family leave before was that it was unpaid, and they couldn't afford to. So the minute you switch that lever" and provide pay, it will encourage these employees to take the time off, she said.

"It's going to significantly impact employers' ability" to meet their business goals, she said. Employers are already "doing more with less," so "it hurts when people are gone."

Other observers agree.

"It certainly could be costly in terms of shifting around other employees to cover the work, or just the planning process of trying to sort of figure out how to make this happen," said Linda Bergthold, a senior consultant with Watson Wyatt Worldwide in Los Angeles.

For an employee, though, "it's a great thing to be able to not completely lose wages if you're confronted with a family issue that you want to deal with and need to deal with," Ms. Bergthold said. And taking sick leave is difficult, she said, as it may be needed later for an employee's own illness.

In addition, the law could be perceived as one more argument against doing business in California, which is already an expensive state in which to operate.

"It's very detrimental to job creation here," said a spokeswoman for the Sacramento-based California Chamber of Commerce, which sought unsuccessfully to exempt businesses with fewer than 50 workers from the law.

Some employers are responding to the change by coordinating the paid family leave program with their own benefits programs. While some employers initially opposed the law, "now that it is here, they're trying to make the best of it," said Ms. Milkman.

A Los Angeles-based spokesman for Washington Mutual Inc., which has 20,000 California employees, said "what we've basically done is provide an option for employees to use available sick and vacation time to supplement the remaining portion of their salary that is not covered through the insurance."

"Quite frankly, as a corporation we just view this as one of the things we need to comply with… .It's just something we need to do," the spokesman added. He said the company has not estimated how many employees it expects will take advantage of the program.

The Los Altos, Calif.-based David & Lucile Packard Foundation is also permitting employees to use their vacation and sick time to extend the period of full pay under the program, although they will not receive more than 100% of their normal pay, said a spokesman. "The key operative word here is integration," he said.

The California law could encourage other states to adopt similar legislation, depending on its success.

Ms. Schweitzer said 12 other states are considering legislation providing for some form of paid family leave and are waiting to see what happens in California. Those states are Hawaii, Illinois, Kansas, Massachusetts, Maine, Nebraska, New Hampshire, New Jersey, Oklahoma, Oregon, Rhode Island and Wisconsin.

"I think other states will look at it, depending on the pressures they get," said Richard Sinni, New York-based regional practice leader for HR Services unit of PricewaterhouseCoopers L.L.P. But, in light of the extra expense the law entails, "I think a lot of states won't want to do a lot to break the momentum" of the improving economy.

"I think they'll take a cautious approach to it," Mr. Sinni said.

# Ticket: Little employer advocacy in Edwards' record

Continued from page 1

tion.

Among employer groups, the main concern about Sen. Edwards is his support for patients' bill of rights legislation.

Sen. Edwards was a central sponsor of legislation that sought to guarantee employees' ability to sue employers and their health plans, said Neil Trautwein, assistant vp for human resource policy at the Washington-based National Assn. of Manufacturers.

Although efforts to pass the legislation failed after several attempts and the issue appeared to fade away, last month Sen. Edwards called for reviving patient protection legislation in light of a June 21 Supreme Court decision.

In that ruling, the high court provided protections for employers and health care plans by finding that the Employee Retirement Income Security Act pre-empts plaintiffs from suing managed care companies in state court for coverage decisions (*BI*, June 28).

Sen. Edwards has also opposed certain medical malpractice tort reform efforts and the legislation that added a prescription drug benefit to the Medicare program.

"He certainly has not been any friend of the business community when it comes to health care," Mr. Trautwein said. "Based on his outspoken advocacy and sponsorship of the patient bill of rights, his opposition to reasonable medical liability limits and (the fact that) he opposed the Medicare reform bill, I can't think of a health care issue he has been with us on."

But although Sen. Edwards has opposed some tort reform legislation, he has made his own proposals for reforming the tort system.

In 2003, while seeking the nomination of the Democratic Party for president, Sen. Edwards spoke out against frivolous medical malpractice lawsuits and suggested a review procedure to weed out such suits.

The senator proposed that, before a lawyer could bring a medical malpractice case to court, he or she would have to produce expert testimony from a physician that such malpractice had occurred. He also proposed penalizing any lawyer who had brought three lawsuits deemed frivolous by forbidding him or her from filing any additional complaints for 10 years.

And to help reduce medical errors, Sen. Edwards advocated strengthening the state medical boards responsible for disciplining doctors.

But despite those proposals, significant tort reform is not likely to occur if Sen. Kerry and Sen. Edwards occupy the White House, according to Sherman Joyce, president of the American Tort Reform Assn. in Washington.

Sen. Edwards did not support legislation that would have reformed asbestos-related litigation, and he has opposed class action reform,

> **Sen. John Edwards, who has sponsored patients' rights legislation, 'certainly has not been any friend of the business community when it comes to health care.'**
>
> *Neil Trautwein*
> *National Assn. of Manufacturers*

Mr. Joyce pointed out. The selection of Sen. Edwards as a vp running mate "clearly puts the plaintiffs' lawyer agenda in the forefront, right there on the ticket," Mr. Joyce added.

"He is definitely opposite the stances we think would be good for the American economy," he said. "He came from the plaintiff's bar. He is very much in lock step with the plaintiffs bar and has not strayed from their agenda."

Among employer organizations, the ATRA and the NAM were the most outspoken last week about Sen. Kerry's selection of Sen. Edwards as his running mate. Other employer groups, such as the New York-based Risk & Insurance Management Society Inc. and the United States Chamber of Commerce in Washington, declined to discuss the selection of Sen. Edwards.

His defenders say that, as a successful trial attorney, Sen. Edwards represented individual plaintiffs and did not participate in class-action lawsuits. His Web site states that he has helped families and their children through the "darkest moments of their lives" by "standing up to the powerful insurance industry and their armies of lawyers."

His notable trial victories include a jury award of tens of millions of dollars for a young girl trapped and severely injured by an uncovered swimming pool drain. He also won multimillion-dollar awards in lawsuits against doctors and hospitals in cases that alleged that incidences of cerebral palsy were the result of child-delivery mishaps.

"It is refreshing that one presidential candidate has chosen a running mate whose priority is fighting on behalf of individuals, workers and families, as opposed to a vice president whose priority is secretly working behind the scenes to serve the special interests of and expand the rights of large multinational corporations at the expense of American families," said David S. Casey Jr., president of the Assn. of Trial Lawyers of America in Washington and a senior partner in the San Diego-based law firm of Casey Gerry Reed & Schenk L.L.P.

Throughout his political career, Sen. Edwards has raised more money from attorneys than from any other industry, according to the Washington-based Center for Responsive Politics, a nonpartisan organization that tracks money in politics. Law firms constitute 16 of Sen. Edwards' top-20 campaign contributors.

The CRP found that the Los Angeles law firm of Giardi & Keese has been Sen. Edwards' top contributor. Its employees have donated $158,000 to the senator's campaign efforts. The firm lists a variety of specialties, including product liability, employment law and business and personal injury from toxic contamination.

But Sen. Edwards also enjoys some support from other businesses. The center lists New York-based investment bank Goldman Sachs Group Inc. as second among his top contributors, with its employees having given $136,000. And Warren Buffett, the renowned investor and chairman of Omaha, Neb.-based Berkshire Hathaway Inc., reportedly is among the advisers to the Kerry campaign.

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# **Cash balance:** Legislators vow to address uncertainty

**Continued from page 3**

said that Congress needs to act, adding that he sees nothing inherently wrong with the plans.

Even Rep. George Miller, D-Calif., one of the House's most vocal critics of cash balance plans, acknowledged that there is a "future for cash balance plans" and said that he wants to work with the Republican majority in the House to develop a bipartisan solution.

But Rep. Miller said that any legislation designed to clarify the legal status of cash balance plans must also include benefit protections for older employees when their companies convert traditional pension plans to cash balance plans. Such workers may be just short of qualifying for rich early retirement benefits in the old plan and won't have enough time to earn significant benefits in the new plan.

"These are the workers Congress needs to protect," Rep. Miller said.

## A pivotal time

The hearing comes at a pivotal time for cash balance plans, as well as for the nation's retirement system. While the first cash balance plan was set up 19 years ago, it wasn't until the mid-1990s that a significant number of employers began to convert their traditional final-average-pay plans to cash balance plans.

As of the year 2000, the most recent year for which complete information is available, more than 1,200 hybrid plans—mostly cash balance plans—were operating. These plans, according to the Pension Benefit Guaranty Corp., have more than 7 million participants, or roughly one-quarter of all single-employer plan participants.

While the reasons for conversions varied, many employers said they made the change because they thought that traditional plans—in which benefits are tilted in favor of older, longer-service employees—offered little appeal to an increasingly mobile workforce that likely would move on after a few years.

Additionally, some employers, eager to retain experienced employees, wanted to move away from plans that subsidized early retirement benefits, as many traditional plans do. Such plans, they reasoned, encourage employees to retire years sooner than normal retirement age.

Finally, employers said that despite the high cost of traditional plans, few employees appreciated those plans, largely because benefits were expressed as an annuity payable at retirement, rather than as a lump sum.

By contrast, cash balance plans, as career average plans, provide richer benefits to shorter-service employees than do traditional plans, which is an attraction for employees likely to stay in a job only for a few years. The plans also rarely offer early retirement subsidies and thus eliminate the incentive for an employee to retire early just to collect a pension benefit.

Finally, cash balance plan benefit formulas are easy to understand—typically a benefit credit is a percentage of salary—while accumulated benefits are expressed as a lump sum, as they are with 401(k) plans.

But the plans have proven to be highly controversial.

Even before the IBM ruling, which is being appealed, critics said the plans were age-discriminatory, making the same argument cited by Judge Murphy. Additionally, critics said cash balance plan conversions could be financially devastating to older employees who were just on the cusp on earning rich benefits in the old plans.

Amid that controversy, the IRS several years ago stopped issuing determination letters for new plans. A determination letter, while not required, is a kind of regulatory seal of approval.

At the same time, cash balance plans faced a wave of attacks, with some suits charging the plans were age discriminatory, while others challenged how benefits were calculated for terminating employees.

As a result, cash balance plan formation has ground to a halt. Employers, still convinced that their old-style plans no longer meet corporate benefit objectives, increasingly have phased out their defined benefit plans and instead beefed up 401(k) plans or added new defined contribution plans.

## Words of warning

With so much legal uncertainty hanging over them, employers will be forced to abandon the defined benefit plan system, said Ellen Collier, director of benefits at Cleveland-based Eaton Corp. Congress must clarify the legal status of the plans to prevent the defined benefit plan system from collapsing, she said at the hearing.

"This cannot be the result you want. It is in your power to change," James Delaplane, a partner with the law firm Davis & Harman L.L.P. in Washington, told the committee.

> **If employers are locked into a benefit design for what could be decades, they may be reluctant to add employees to their workforces.**
>
> *James Delaplane*
> *Davis & Harman L.L.P.*

Mr. Delaplane, though, rejected suggestions from several lawmakers that as part of legislation to clarify the legal status of 401(k) plans, employers converting traditional plans to cash balance should be required to give all current employees a choice between the two plans.

Noting that most employers have voluntarily provided such a choice or taken other action to mitigate any potential adverse financial impact of cash balance plan conversions on older employees, Mr. Delaplane warned that imposing such a mandate could prove to be a "slippery slope."

If such a requirement were developed, legislators might also be inclined to extend it to other benefit plans, such as 401(k) plans or health care plans, he asked.

And if employers are locked into a benefit design for what could be decades, they may be reluctant to add employees to their workforces, Mr. Delaplane warned.

Another witness warned of what she called the "law of unintended consequences" of such a mandate. If employers are forced to offer choices or are burdened with other restrictions, they may instead exit the defined benefit plan system, said Nancy Pfotenhauer, president of the Independent Women's Forum, a Washington-based organization that focuses on issues of importance to women.

Noting that pension plans are offered on a voluntary basis, employers "could decide to freeze benefit accruals or completely terminate plans altogether if costs become too burdensome," she said.

In addition, she said that any legislative approach that discourages employers from offering cash balance plans amounts to a kind of gender discrimination. That is because women tend to move in and out of the workforce more frequently men and, thus, are likely to earn bigger benefits in a cash balance than a traditional plan, she said.

But not all witnesses were supportive of cash balance plans.

Robert Hill, a partner with the law firm Hill & Robbins in Denver, which has represented employees in several suits challenging the legality of cash balance plan conversions, said the real reason many employers have adopted the plans is to disguise benefit cutbacks.

The plans would not exist, he said, if they did not save employers money.

While cash balance plan proponents may talk publicly about how the plans are needed to better meet the benefit needs of a mobile workforce, in private, they say achieving cost-savings was a key objective in adoption of the plans, according to Mr. Hill.

Lawmakers, Mr. Hill said, need to separate myth from fact.

# SEC expands investigation into mutual fund industry

By GAVIN SOUTER

PHOTO: REUTERS

**The SEC is asking Putnam and other mutual fund companies for information.**

**WASHINGTON**—The U.S. Securities and Exchange Commission has broadened its investigation into the mutual fund industry by examining payments made by funds to 401(k) plan consultants and others.

Several mutual fund companies, including T. Rowe Price Associates Inc. in Baltimore, Fidelity Investments in Boston and Putnam Investments, also in Boston, confirmed that they have received the SEC questionnaire regarding the payments.

According to a statement by Lori Richards, director of the SEC Office of Compliance Inspections and Examinations in Washington, the regulator is seeking information on the nature of payments made by mutual funds to 401(k) plans and whether they might be related to the positioning of the funds within the plans.

"We are looking into payments by funds and their advisers to 401(k) plans, plan consultants and plan platforms. We want to better understand the nature and purpose of these payments, including whether they are reimbursements for plan expenses or payments for shelf space or some other purpose. We are also asking why these funds are included in particular 401(k) plans," Ms. Richards said in the statement.

The questionnaire is part of the SEC's ongoing investigation into mutual fund industry practices.

# Seeking the young, extraordinary

## *BI* soliciting nominations for 40 under 40 feature

**CHICAGO**—*Business Insurance* is seeking nominations for its "40 Under 40: People to Watch" feature, a roundup of men and women who are doing extraordinary work in the commercial insurance industry before celebrating a 40th birthday.

Anyone working in the commercial insurance industry serving the buyers of risk and benefit management services, and whose birthdate falls after Oct. 4, 1964, is eligible for consideration. Candidates may nominate themselves or may be nominated by someone else.

There is no formal nomination form. Simply send a 250- to 300-word statement detailing the nominee's qualifications to:

40 under 40, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Please include a resume, if possible, and be sure to state the candidate's date of birth.

Names also can be e-mailed to *40under40@business-insurance.com*, as long as "40 under 40" is in the subject line.

The deadline for nominations is Aug. 2. Winners will be featured in the Oct. 4 issue of *Business Insurance* and on *www.businessinsurance.com*.

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# Late News

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worse could be considered preventive and, thus, eligible for first-dollar or low-deductible coverage. The guidance also is expected to resolve whether disease management, wellness and employee assistance programs can be considered preventive.

AP PHOTO/ED ANDRIESKI

Colorado auto dealer Steve Taylor offers discounts on vehicles damaged by hail recently.

## Second-quarter cat losses put at $1.65 billion

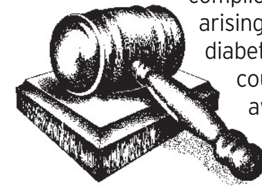
Catastrophes caused an estimated $1.65 billion in insured property damage during the second quarter of 2004, according to the Property Claim Services unit of the Insurance Services Office Inc. That brought estimated total catastrophe-related insured property losses for the year to $2.69 billion, the second-lowest first-half total in the past 10 years. PCS estimates that Colorado sustained $295 million in catastrophe-related insured property damage—the most among the U.S. states—from a June hailstorm.

## Indiana upholds levy on stop-loss insurers

The Indiana Court of Appeals has upheld the authority of the state's insurance commissioner to levy an annual special assessment on several insurers selling stop-loss insurance to self-insured health plans operated under the federal Employee Retirement Income Security Act. The court ruled against a group of stop-loss insurers that sued to set aside millions of dollars in assessments to support the state's high-risk insurance pool. The insurers argued that, among other things, the insurance commissioner had exceeded her authority in ordering the assessments and that the assessments on stop-loss insurers were invalid and unenforceable.

## Wisconsin med mal damages cap upheld

The Wisconsin Supreme Court has upheld the constitutionality of the state's noneconomic damages cap in medical malpractice-related wrongful death cases. The case, *Yvette M. Maurin et al. vs. Gordon Hall, M.D. et al.*, centered on the death of a 5-year-old girl from complications arising from diabetes. A trial court awarded the child's parents $550,000 for pain and suffering and $2.5 million in a wrongful death award. A circuit court judge then held that the state's inflation-adjusted $410,000 cap on wrongful death medical malpractice awards was unconstitutional. The unanimous Wisconsin Supreme Court held that the limit on noneconomic damages in medical malpractice cases is constitutional.



## Briefly noted

**California workers compensation** insurers' pure premium rate filings for policies renewing on or after July 1 declined 13.9%, on average, compared with a year earlier, according the American Insurance Assn. The AIA credits workers comp reforms adopted in the state this spring and in 2003 for a swing in rates averaging nearly 26% in the last year....A group of House Democrats has introduced legislation to extend the **Terrorism Risk Insurance Act** until Dec. 31, 2007. The federal terrorism insurance backstop currently is set to expire at the end of 2005. The measure, H.R. 4772, also would extend TRIA's scope to apply to group life insurance as well as property/casualty insurance....**USI Holdings Corp.** has acquired Matawan, N.J.-based benefits consultant Future Planning Associates Inc. for an undisclosed amount. FPA has about $10 million in annual revenues, according to a USI statement....The Michigan Supreme Court has upheld a 1995 state law that caps **the vicarious liability of automobile rental firms** at $20,000 for each injured person, to a maximum of $40,000 for each accident. A lower court had held that the caps violated the state constitution.

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# Class action: Measure stalls in Senate

Continued from page 1

class receive coupons redeemable for the defendant's goods or services in lieu of money, while the class attorneys receive cash—to heightened judicial scrutiny. In addition, the measure would have barred settlements in which class members would suffer a net loss because they were charged legal costs in excess of their recovery.

A cloture motion in the Senate on an earlier version of the bill failed by one vote in October 2003. But after months of negotiations, three Democrats who had opposed cloture announced that they would support the bill. That support, however, evaporated amid last week's amendment controversy.

Not surprisingly, bill supporters expressed great dismay over the failure of the Senate's most recent cloture vote.

The Risk & Insurance Management Society Inc. "is disappointed by the Senate's continued lack of action on class action lawsuit reform, while the U.S. business community struggles under an inefficient and unfair legal system," said Janice Ochenkowski, vp-external affairs for New York-based RIMS in a statement.

"RIMS applauds the efforts of those in Congress who support meaningful tort reform, and encourages them to continue to advocate for this critical legislation. The risk management community remains committed to tort reform, and RIMS looks forward to future debate on the issue," said Ms. Ochenkowski, who is also a senior vp at Chicago-based Jones Lang LaSalle.

"The Property Casualty Insurers Assn. of America is very disappointed that the Senate once again failed to pass class action reform legislation," said in a statement from Carl Parks, senior vp-federal government relations in the insurance trade group's Washington office. "The measure is designed to help stop forum shopping and frivolous lawsuits. Current law allows plaintiffs lawyers to obtain millions of dollars in fees while consumer victims often receive coupons of little value. In addition, state courts are deciding cases affecting national companies...and overturning other states' laws and regulations.

"Our Founding Fathers provided for creation of a federal court system and intended that such cases be heard in federal courts, so this bill would have fulfilled their intentions," Mr. Parks said.

There is a slim possibility that the measure still could be resurrected later this year, say some supporters of the bill.

"I think everybody would like to see it resurrected, and if the opportunity presents itself, we will push to do so," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. "But we also have to be realistic concerning the short amount of time left in the congressional schedule."

With the upcoming six-week summer recess, and a planned adjournment in October, there are fewer than 30 working days left in the current Congress.

The National Assn. of Manufacturers "was pleased to hear last night that both the majority leader and Sen. Carper expressed a desire to continue to work to resurrect the bill," said Lawrence Fineran, vp-regulatory and competition policy for the NAM in Washington. "We would encourage the leadership and supportive Democrats to try to reach a procedurally agreeable way to bring the bill back. This will, however, require some heavy lifting by bill supporters," he said.

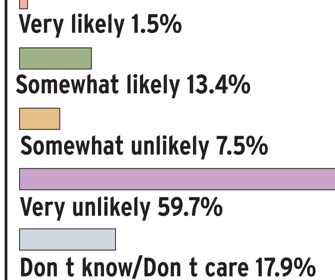
An opponent of the measure, however, said that supporters of the bill likely are running out of time.

"I think the lesson they probably learned is if you want to pass a bill like this, that you need to develop a consensus proposal that every group supports," said Jackson Williams, legislative counsel for Public Citizen's Congress Watch in Washington. "These things have a certain life span, and if they don't pass within three or four congresses, they tend to go away. I think this was a sort of last gasp."

## Online Poll

[ 7/5 -7/9 ]

**With the Senate beginning debate on class action reform legislation this week (July 6), how likely is enactment of federal class action reform by the end of this year?**




## *BI* Stock Index

[ 7/6 - 7/9 ]

**Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com***

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

| Index | Value | Change |
|---|---|---|
| *BI* Stock Index | 2233.45 | -1.31 |
| Dow Jones | 10213.20 | -0.68 |
| S&P 500 | 1112.81 | -1.12 |

**Largest gains**

| Company | % |
|---|---|
| SCPIE Holdings Inc. | 10.45% |
| Zenith National Insurance | 2.80% |
| Aetna Inc. | 2.71% |
| SAFECO Corp. | 2.50% |
| Aspen Insurance Holdings | 2.11% |

**Largest losses**

| Company | % |
|---|---|
| Trenwick Group Ltd. | -20.00% |
| American Safety Insurance | -7.37% |
| Vesta Insurance Co. | -6.76% |
| PacifiCare Health Systems | -6.16% |
| NYMagic Inc. | -5.79% |

**Weekly change by market segment**

| Segment | % |
|---|---|
| Brokers | -1.16% |
| Insurers/Reinsurers | -1.52% |
| Managed Care Organizations | -1.83% |

Source: FinancialContent Inc. (*http://financialcontent.com)*

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Business Insurance

Special Take-Out Section

Benefits Management

July 12, 2004

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# Benefit Financing Strategies

## Employers weigh options in cost-of-benefits analysis

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Business Insurance

Special Take-Out Section

# Benefits Management

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## Inside


### Stop-loss woes ail self-insured

As the cost of stop-loss coverage for health plans grows—even outpacing medical inflation—some self-insured employers are buying less coverage or going bare.
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### Use of captives for benefits grows

The use of captive benefits funding arrangements, once thought out of reach for most companies, has gained momentum in recent years.
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### Pools dip toes into benefits

In response to rising health care costs, public entities are asking their purchasing pools to provide benefits coverages. And although there have been challenges, some pools have seen early signs of success.
Page T10


# Benefit Financing Strategies

# Improving economy, workforce worries prompt some to restore 401(k) match

By JUDY GREENWALD

With the economy showing signs of improvement, some of the employers that had cut their 401(k) matching contributions have begun restoring them.

Although the total number of companies that eliminated the match was relatively small, it included many high-profile firms in the automotive, energy, financial, high-tech and media sectors.

Employers often perceive their match as a profit-sharing mechanism that can justifiably be reduced or eliminated in difficult times, say observers. And employees, while not pleased with the cuts, generally regarded them as preferable to certain alternatives, such as layoffs.

Nevertheless, companies generally cut their matches reluctantly and have been happy to restore them, they say.

"I think a lot of the companies think of the match as something they're not necessarily obligated to do, but altruistically—something they feel they should do," said Paul Bracaglia, a partner with the HR services unit of PricewaterhouseCoopers L.L.P. in Philadelphia. "I do think that companies that have cut their match have done it begrudgingly, and I don't think they saw it as an easy way to reduce expenses."

Houston-based El Paso Corp., which originally cut its match in March 2003, when it faced liquidity problems, fully restored its program as of July 1, said a spokeswoman for the energy company. The cut "was a very difficult decision to make, but we're glad to bring it back as quickly as we have," said the spokeswoman.

Other companies that have either fully or partially restored 401(k) matches that were cut in recent years include: Chelmsford, Mass.-based Brooks Automation Inc.; San Francisco-based Charles Schwab Corp.; Auburn Hills, Mich.-based DaimlerChrysler Corp.; Troy, Mich.-based Delphi Corp.; Dearborn, Mich.-based Ford Motor Co.; Cleveland-based Lincoln Electric Co.; Nashville, Tenn.-based St. Thomas Health Services; and Providence, R.I.-based Textron Inc.

In addition, both CMS Energy Corp. in Jackson, Mich., and U.S. News & World Report L.P. in New York, have announced plans to reintroduce their matches in January.

And General Motors Corp., which started out with an 80 cent match for every $1 contributed by employees, made two cuts beginning in March 2001. Ultimately, GM cut the match to 20 cents for every $1 contributed by employees. The Detroit-based automaker then increased the match in January 2003 to 50 cents, where it has remained since, said a spokesman.

Some companies are still making cuts, though. For instance, Pewaukee, Wis.-based CIB Marine Bancshares Inc. eliminated its match ear-

See 401(K)/next page

# Employers slow to seek subsidy for Medicare Rx

By MICHAEL BRADFORD

A federal government subsidy that will cut employers' prescription drug costs beginning in 2006 is drawing the interest of some large companies, but most employers are holding off on making a commitment until the rules become clearer and their potential savings can be better quantified.

And, though the subsidy is a welcome relief for some employers, sources point out that its financial impact is limited.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003, signed by President Bush last December, will add a new prescription drug benefit, called Part D, to the Medicare program. The law says that employers that offer Medicare-eligible retirees prescription drug benefits to that are actuarially equivalent to Part D will be eligible for a 28% tax-free federal subsidy of drug costs between $250 and $5,000 per beneficiary.

The final regulations regarding actuarial equivalency have yet to be released, but some large employers with plans that are easily identifiable as equivalent to Part D have quickly committed to the subsidy. The subsidy is expected to cut billions of dollars of the costs those companies incur for retirees' prescription drugs.

General Motors Corp. said the subsidy will reduce its accumulated retiree health care obligations by more than $4 billion, to $63 billion. "It's a really good first step," said a spokesman for the automaker. "Hopefully, it will allow companies to continue to provide the benefit," he said of the subsidy's impact.

Although GM's retiree health care liability obligations will be slashed by billions of dollars thanks to the subsidy, $63 billion still is "a pretty good liability," the spokesman said. And the reduced amount is higher than the $57 billion liability GM had a year earlier, he noted.

"It's welcome relief for GM, but it's limited relief," the spokesman said. "It won't keep up with the rate of inflation for prescription drugs, which (is) rising 12% to 15% year

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# 401(k): Economy prompts some to restore match

Continued from previous page
lier this year, said a spokeswoman.

According to a 2003 survey by Lincolnshire, Ill.-based Hewitt Associates Inc., only 5% of the roughly 500 large companies surveyed eliminated or reduced their 401(k) matches.

Michael Weddell, a retirement consultant in the Southfield, Mich., office of Watson Wyatt Worldwide, said, "If you look at the companies that cut the match, they tend to be companies who were in cyclical industries, or companies that were entering bankruptcy." While some of these companies are now restoring their matches, "they're being kind of cautious about it," he said. "They want to impress investors that they've really restored the company to financial health before they turn around and start to increase their benefits costs again," Mr. Weddell said.

Karen Field, Washington-based director of compensation and benefits with KPMG L.L.P., estimates that about a quarter of her clients that cut their match have since reinstated it, although the rest are discussing it.

Some employers consider it "like a bonus," and have the attitude, "if times are good, I'm going to give you something; if times are bad, I'm not going to give you something," said Ms. Field.

Mr. Bracaglia said he has not seen any movement yet back to restoring the employer match, "but I've seen many (companies) talk about it."

Companies that are considering such moves know their employees' perception is that the economy is doing better, "and they're fearful if they don't reinstate the match, it's going to create some bad will," Mr. Bracaglia said.

Furthermore, "it's a competitive posture," he said. Employers are worried that if they do not restore their match, it could put them at a competitive disadvantage in terms of recruiting and retaining employees.

Brooks Automation, which is in the semiconductor industry, cut its match with the understanding that once it was through with a restructuring program and the economic downturn ended, "then we would restore it at some point," said Director of Investor Relations Mark Chung. "We told our employees that it was not a permanent thing." Once the economic environment improved, "We were able to return that 401(k) match to our employees, and, hopefully, going forward we can maintain that," he said.

## Employee reactions

Observers say employees generally took the cuts in stride.

Employees' attitude "depended on the circumstances," said Mr. Weddell. In the automotive sector, for instance, "companies have already done a pretty good job of getting employees to buy into the fact that their compensation is going to vary when they're in a recession," he said. They have a history of suspending the match in poor times but rewarding employees in good times, he said.

When Brooks Automation suspended its match, "there were a lot of bad things going on at the time, including layoffs," at other companies, said Mr. Chung. "I think the majority of the employees understood the reasons why we were doing it. They didn't necessarily have to be happy with it, but I think they understood the reason."

When Saint Thomas Health Services suspended its match last year, "there was a certain amount of skepticism in some camps. The folks that tended to be negative were negative," said Glenn Carnathan, senior vp and chief human resources officer. Others, though, recognized that the health care system, which was created by the merger of two systems a couple of years previously, faced some financial challenges to meet its targets, he said.

As part of a new retirement program, beginning Jan. 1, St. Thomas increased its match to 50% for the first 4% of employees' salary, up from the 35% on the first 5% that it offered before the match was suspended. It has also switched from cliff vesting—in which an employee becomes fully vested in a plan after a certain period of time—to immediate eligibility and vesting, said Mr. Carnathan.

**'I believe we're moving toward a labor shortage, and the companies' thinking processes are beginning to switch' from making cutbacks to finding ways to retain good people.**

*David Wray*
*Profit Sharing/401(k) Council of America*

Leslie Reagan, director of compensation, benefits and employee services for Clearwater, Fla.-based Tech Data Corp., said, "I don't think there were any surprises" on the part of employees when the company cut its match in 2002. It was one of the alternatives other companies used as well to avoid reducing head count, she said.

However, cutting the match may have some unintended consequences.

Susan Alford, an Atlanta-based senior vp with Aon Consulting, said there are indications that employees, who already fail to save enough to begin with, respond to employer match cuts by reducing their own contributions. The issue is "all wrapped up into just getting employees to save in general," she said. "If there's no longer the enticement to give up to 6%, they drop down to 3%, or whatever it takes to do the match. And if there's no match, they may drop out entirely," she said.

## What's to come?

Observers differ about how employers are likely to treat their 401(k) matches over the next few years.

Watson Wyatt's Mr. Weddell said that companies are likely to reintroduce matches gradually. "We're going to see some match increases going forward, but I think it's not going to be a sudden thing," because companies "just want to make sure they can afford it."

However, Ms. Field of KPMG said the matching contributions have come back more quickly than she had expected. Companies, she said, need it "as way of coaxing people to come to the company."

David Wray, president of the Chicago-based Profit Sharing/401(k) Council of America, said, "the willingness of the company to be generous with company contributions to their 401(k) plans is very much proportional to their need to attract, retain and motivate high-quality workers."

"I believe we're moving toward a labor shortage, and the companies' thinking processes are beginning to switch" from making cutbacks to finding ways to retain good people, Mr. Wray said. As result, "I think the future's pretty bright for company support of 401(k) plans."

But that may depend on the economy. Alicia Munnell, Chestnut Hill, Mass.-director of the Center for Retirement Research at Boston College, said, "The lesson that we learned is that this is not a fixed commitment, generally, and that I wouldn't be surprised to see the matches varying over the business cycle."

Changes in some employers' approach to retirement benefits also could play a role.

Lori Lucas, manager of participant research at Hewitt Associates, noted that plan sponsors are restructuring their retirement benefit programs, and in some cases reducing their retiree medical and phasing out their defined benefit plans, or switching to cash balance or other plans. As part of this process, they are looking to their 401(k) plans to ensure their employees have an adequate retirement income, said Ms. Lucas.

As a result, where once the 401(k) plan was "kind of the icing on the cake," it has now become a fundamental part of the retirement benefit program and is "becoming more so," Ms. Lucas said.

"From that perspective, the trend is likely to be that plan sponsors will consider the match much more viable going forward," she said. "It's going to be a much harder decision to reduce the match."

# Medicare: Employers slow to seek drug subsidy

Continued from previous page
over year, but it will offset some of that."

"It's a modest drug benefit that doesn't become effective until Jan. 1, 2006," said Joe Martingale, national leader for health care strategy at Watson Wyatt Worldwide in New York. "It's about half as much of a subsidy as the government would have to pay to those who do not have retiree medical coverage." Therefore, he said, it represents an attempt to "keep employers involved in order to limit the amount the government will have to pay for the Medicare drug benefit."

Other large companies also are reporting that they the federal subsidy will enable them to reduce their retiree health care liabilities by hundreds of millions of dollars.

BellSouth Corp. in Atlanta said its future obligations will be cut by $572 million, and Delphi Corp. in Troy, Mich., said it expects its reduction to be around $500 million (*BI*, March 15). Pittsburgh-based U.S. Steel Corp. has said the law will cut its retiree health care liabilities by $450 million, and American Airlines in Fort Worth, Texas, reported a $415 million reduction.

Frank McArdle, manager of the Washington office of Hewitt Associates Inc., said the subsidy is a "helpful savings" but is "by no means a bailout." Large companies might see a savings of as much as 10% to 15% of their total liability for retiree health care, he said, with their savings on the cost of prescription drugs amounting to as much as 20% to 25%.

The subsidy is most appealing to tax-paying entities, Mr. McArdle said, because the "subsidy is not taxable and the company still takes a deduction for the expenses that were the basis for the subsidy," providing, he said, a sort of double tax break.

Brent Bowditch, assistant director of human resource services at Purdue University in West Lafayette, Ind., said the subsidy probably will not prove attractive to the school—a nonprofit organization—because the tax deductibility is not as important as it would be to a for-profit entity. "For us, it's not a real enhancement," he said.

**The Medicare prescription drug subsidy is a 'helpful savings,' but is 'by no means a bailout.'**

*Frank McArdle*
*Hewitt Associates Inc.*

Mr. Bowditch acknowledged that the school hasn't put a lot of thought into the subsidy program because its implementation remains far away.

For many employers, it is going to take time to determine whether to accept the subsidy or take a different direction.

"I think everyone is waiting for the final regulations on the actuarial equivalency issue," said Jonathan Nemeth, senior vp at Aon Consulting in Somerset, N.J. Many employers awaiting the regulations anticipate that their plans will be equivalent, or, if they are close, can be amended to become equivalent, he said.

Barbara Bald, a principal with HR unit of PricewaterhouseCoopers L.L.P. in New York, said that while the eligibility requirements aren't yet available, there is a general belief that they will require employers to look not only at their plan designs but to take into account retiree contributions. "What is the net cost to the employer vs. the Medicare plan? If it is equal to or greater after considering retiree contributions, you would think it would be actuarially equivalent," Ms. Bald said.

Mr. Martingale said that "it's probably still fair to say that the majority of employers have just not yet decided" whether to participate in the subsidy program or choose another path.

One dilemma they face is whether to take the subsidy or to simply stop offering prescription drug coverage altogether, Mr. Martingale said. Some might feel they would be "filling a gap in Medicare that no longer exists," he said, because the federal program will be offering a prescription benefit.

Apart from accepting the subsidy or eliminating the drug benefit and allowing Medicare to provide it for retirees, companies may also be able to redesign their plans to forgo the subsidy and function secondarily to the Medicare benefit, sources say.

"A lot of employers are exploring the option where they would be secondary to Medicare and wrap around it," Ms. Bald said. It might be a useful option for companies with plans that cap the amount they pay for future benefits because

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# Big rate hikes, 'lasering' raise cost of stop-loss cover

## Sole bright spot in market is smaller premium increases for consumer-driven self-insured plans

By JOANNE WOJCIK

Premiums for stop-loss insurance for self-insured health plans are growing at an even faster clip than is underlying medical inflation, forcing some employers to either go bare or buy less.

Because of the limited amount of protection provided by aggregate stop-loss insurance relative to its cost—insurers often pay only after total claims exceed 125% of expected losses—some employers are forgoing that coverage.

In addition, employers today are finding that, to avoid premium rate hikes that typically are ranging "in the high- to mid-teens," they have to assume higher attachment points for specific stop-loss coverage, which kicks in if an individual claim exceeds a specified amount. In some cases, employers are also being forced to accept higher attachment points for certain individual high-cost claimants, a practice known as "lasering."

Still, there is one bright spot in the market, with premium increases for stop-loss coverage above consumer-driven health plans running five to 10 percentage points behind those for other, traditional, types of health plans such as preferred provider or health maintenance organizations.

"Does anyone buy aggregate stop-loss any more?" queried Mark Kitchen, director of benefits at Marsh Supermarkets L.L.C. in Indianapolis, during an interview following a recent meeting of the Midwest Business Group on Health in Chicago.

Mr. Kitchen said that though he does not purchase aggregate stop-loss insurance, he does buy specific stop-loss cover from Minneapolis-based NBR, an affiliate of UnitedHealth Group.

More than a decade ago, Chicago-based Hartmarx Corp. purchased aggregate stop-loss insurance that provided excess coverage when claims rose 25% above expected losses, because "they charged a very nominal rate, like 10 cents per month per employee," recounted Mike Pikelny, corporate actuary and employee benefit consultant at the clothing manufacturer.

> **'We never expected to get any reimbursement. It was like buying peace of mind for a low premium. And then...they increased the premium from 10 cents (per month per employee) to 60 cents or 70 cents...and we weren't convinced that they could justify it properly.'**
>
> *Mike Pikelny*
> *Hartmarx Corp.*

"We never expected to get any reimbursement. It was like buying peace of mind for a low premium. And then...in 1989 or so, they increased the premium from 10 cents to 60 cents or 70 cents—it was some ridiculously high percentage increase—and we weren't convinced that they could justify it properly. They were just telling us, 'Well, our experience requires us to increase it because we've experienced losses.' Well, we haven't filed any claims," he said. "So we figured, now that the cost isn't small anymore, we'll just drop it. And we did."

Although aggregate stop-loss insurance is relatively inexpensive compared to specific stop-loss coverage because aggregate limits are usually set at 25% higher than the expected total for claims, the likelihood of coverage ever being triggered is small, especially for large employers, acknowledged Brian Diedrick, senior managing director of Mesirow Financial, a Chicago-based insurance broker.

"If you're at $20 million in claims...if you factor in the trended inflation rate, and you have some specific (stop-loss coverage) to protect you, it's very unlikely that you're going to hit that aggregate with an adverse year," Mr. Diedrick explained. By contrast, "a smaller group, obviously, is more volatile, and their aggregate hits are much more probable," he added.

While many employers may choose to forgo aggregate insurance, most still purchase specific coverage, whose rate of increase is outpacing that of medical inflation.

"Our expectations are increases between 15% and 25%, with averages around 20% for specific stop-loss," said Bill Sharon, senior vp at Aon Consulting in Tampa, Fla.

"The reason it's typical that the stop-loss premiums are higher than the general underlying trend is because of the leveraging impact. If I buy $100,000 specific stop-loss and I don't change that $100,000 threshold but the claims are going up 15%, then the amount over $100,000 is actually going up faster than 15%," Mr. Sharon explained.

The typical rate for specific stop-loss coverage with an attachment point of $100,000 for an employer with 1,000 employees in, for example, the St. Louis area today amounts to about $36 per employee per month, assuming half of the employees elect dependent coverage, according to Rick Nelson, a consultant at Tillinghast in St. Louis who prepares rate manuals for managing general underwriters and reinsurers that provide stop-loss coverage to self-insured health plans. Mr. Nelson noted that there are literally "hundreds" of carriers that underwrite stop-loss coverage.

But pricing is not getting more competitive despite the glut of players in the field, sources say. And because of its high cost, some companies are betting on their past good claims experience and putting the money in the bank rather than buying specific stop-loss coverage.

Hartmarx hasn't purchased specific stop-loss insurance for more than five years now, according to Mr. Pikelny.

"From time to time...we've requested stop-loss quotes for individual stop loss and...we've gotten these pretty high quotes and our experience doesn't justify paying that much every year," he said. "We really haven't had any claims over $200,000 a year—the point where insurance companies put the stop-loss limit—and they would be charging us $200,000 a year for coverage that we wouldn't need."

As a result, Mr. Pikelny said, "we've saved over $1 million."

When negotiating specific stop-loss renewals, insurers today are often requiring employers to accept higher attachment points for certain individuals who are expected to exceed the attachment point set for the rest of the members of the group, a practice known as "lasering."

> **'Let's say the whole group had $100,000 specific; we might say this guy is on a transplant list for a liver, and we need a $350,000 specific for him because we know about it.'**
>
> *Brian Diedrick*
> *Mesirow Financial*

The term "comes from the concept, you take a laser beam, a point of light, and point it at one person, and that person gets a different specific deductible than the rest of the group," explained Mr. Diedrick. "Because that person is a known risk, they are not going to receive the same lower level of coverage."

For example, "let's say the whole group had $100,000 specific; we might say this guy is on a transplant list for a liver, and we need a $350,000 specific for him because we know about it," he explained.

While some stop-loss carriers have not been lasering on renewal, "those are becoming few and far between," according to Mr. Diedrick.

"It's been around forever, but it used to be as kind of a defensive measure or an alternative to buying an increase. Now it's almost a standard business practice for most reinsurers. They just don't want to take on known risk," he said.

Lasering has been common practice for about three years now, according to Mr. Nelson.

"Lasering kicked into vogue a couple of years ago," he said. The practice started among managing general underwriters, Mr. Nelson said, "and they were followed by the carriers who were feeling pressure from the competition."

But lasering may not be feasible for some employers, according to Mr. Diedrick, who added that he often advises clients to pay higher premiums to avoid it.

Mr. Diedrick said he also is finding that employers with good claims experience aren't getting any breaks in this market.

"It's kind of a one-way look. Let's say the pool needs a 17% increase; they're going to get 17% from everybody," he said. "But then, if they've got somebody who really hurt the pool, they'll go for a little bit more."

Employers sometimes avoid steep premium increases by raising their specific stop-loss attachment points above the underlying medical trend, according to Mr. Sharon.

"For example, if they have a $100,000 attachment point, and their trend is 15%, the attachment point would increase by 15%. But because the market doesn't always offer increases in those discrete amounts, they may have to go to the next level of coverage, such as $100,000 to $120,000," he explained.

In determining whether raising the specific attachment point is worthwhile, brokers and consultants conduct cost-benefit analyses, comparing the increased premium with past claims experience to determine whether it would cost more to absorb the higher losses or to pay the additional amount for the coverage.

Some sources have noticed, though, that one area of the market appears to be doing better than others: Premium increases for stop-loss coverage purchased by employers that are self-insuring consumer-driven health plans are significantly less than those for other, traditional, health plans, they say.

"The reinsurance market is buying into consumer-driven," Mr. Diedrick said.

For example, Humana Inc., which provides stop-loss coverage to the customers of its SmartSuite and SmartSelect consumer-driven plans through an affiliate, is offering to cap premium increases on aggregate stop-loss cover at 9.9%, according to Jeff Bringardner, vp of commercial sales in Louisville, Ky. In addition, the insurer is not raising attachment points for aggregate stop-loss coverage.

Mr. Bringardner noted, though, that the cap does not apply to specific stop-loss cover.

# Medicare: Employers slow to seek subsidy

Continued from page T4

such caps could make the plans ineligible for the subsidy. "So those employers are looking for other options—'How do I redesign these programs so that they are eligible for the subsidy or so that they will be secondary wraparound arrangements?'" she said.

Mr. Nemeth said there might be situations in which large companies could benefit from putting all three of those options in place for various benefit plans.

A Fortune 100 client of Aon is considering such a move because it has a "very generous plan for grandfathered retirees," a capped plan for recent retirees and an access-only plan for surviving spouses, who must pay the full cost of coverage, he said.

The subsidy could be an option for the older retirees, while those in the capped plan could benefit from the arrangement that makes the company plan secondary to Medicare. As for the access-only plan participants, it may not make sense to offer health benefits when Medicare beefs up its own offering by including its prescription drug plan, Mr. Nemeth said.

There is some concern, though, as to how insurers of prescription drug plans and prescription benefit managers would coordinate with Medicare, Mr. Nemeth said. Because those entities have never coordinated such benefits with the federal plan, there is a "lot of uncertainty as to how coordination will work," he said.

Ms. Bald said employers are concerned as to whether the PBMs will be able to deliver a supplemental type of arrangement that employers can put in place.

Mr. McArdle agreed. "I think most of the PBMs have been spending all their time on the drug discount card to date," he said, "and haven't come forward on any clear idea on what they are doing on the prescription drug plan."

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# Fast-track approval encourages use of captive benefits

**By JERRY GEISEL**

With a regulatory blueprint as a guide, employers are steadily expanding their use of captives to cover employee benefit risks.

Ever since the late 1970s, a handful of risk management and employee benefits experts have been touting the advantages—cost savings, better spread of risk and possible tax savings—of funding benefit risks through employers' existing property/casualty captives.

For nearly all employers with a captive, though, those advantages remained theoretical: A Labor Department rule, issued in 1979, effectively closed off captive benefits funding for all but a handful of employers.

**Use of the 'Columbia model' increases the likelihood that a captive benefit funding arrangement will be approved by the Labor Department.**

Under that rule, for an employer to use its captive to fund its benefit risks, the captive must be licensed in at least one domestic state, and no more than 50% of the captive's business can be related to its parent.

That 50% test effectively blocked captives from being used to fund benefits, as few employers would want their captives to take on that much outside risk.

For years, those employers that sought a liberalization of the 50% test came away empty-handed. In one well-publicized case in the early 1990s, transportation company CSX Corp. of Jacksonville, Fla., asked the Labor Department for permission to reinsure the company's group term life insurance benefit program through its Vermont captive.

The department rejected the CSX filing, though, saying that too much—in that case, about 90%—of the captive's business was related to CSX.

While that decision ended CSX's bid to fund benefits through its captive, the issue did not die. In the wake of that setback, captive benefit attorneys continued discussions with the Labor Department, hoping to win greater regulatory flexibility.

"There was a lot of explaining to the department," said Ted Scallet, a principal with the Groom Law Group in Washington and a former benefits attorney at the department.

Those efforts paid off, though, ultimately leading to a change in Labor Department policy.

In 1999, Ivan Strasfeld, director of the Labor Department's Office of Exemption Determinations, said the department, while not abandoning the 50% test, would consider alternatives, as long as they were in the best interests of benefit plan participants.

Among other considerations, the department said that for captive funding proposals to pass muster, the primary insurers used to issue policies would have to be highly rated. Additionally, the transaction would have to benefit participants, with an outside independent party used to ensure that all conditions were met.

Employers quickly moved to avail themselves of the increased flexibility.

Within weeks of Mr. Strasfeld's announcement, Columbia Energy Group of Herndon, Va., sought permission to use the Vermont branch of its Bermuda captive to reinsure long-term disability policies written by Employers Insurance Co. of Wausau, a Wausau, Wis., subsidiary of Boston-based Liberty Mutual Group Inc.

In accordance with the Labor Department guidance, Columbia Energy agreed to sweeten benefits, use a top-rated insurer and hire an independent fiduciary. In August 2000, the Labor Department approved the arrangement.

Since then, the Labor Department has approved three other captive benefits funding applications, giving the go-ahead to agribusiness giant Archer Daniels Midland Co. of Decatur, Ill.; International Paper Co. of Stamford, Conn.; and, most recently, Svenska Cellulosa Aktiebolaget, a Swedish-based paper, packaging and consumer products company, better known as SCA.

And a fifth company—Alcon Laboratories Inc., a Fort Worth, Texas, unit of Swiss ophthalmic product manufacturer Alcon Inc.—now is seeking permission to do the same.

## On a fast track

The captive benefit funding arrangements of those four employers all share features from what some describe as the "Columbia model"—the use of a highly rated primary insurer, benefit improvements and an independent fiduciary.

And employers have good reason to follow that model: It increases the likelihood of Labor Department approval. Indeed, International Paper took advantage of a fast-track approval process—available in situations where the Labor Department has approved two substantially similar applications within the previous five years—and Alcon Laboratories is seeking to do the same.

Under that expedited review process, the Labor Department must issue its initial decision within 45 days of receiving an application and make a final decision about 30 days

See CAPTIVES/page T10

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# Captives: More firms considering funding benefits

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after that.

Efforts to fund benefits through captives are expected to gain more momentum.

Some companies already are actively exploring such arrangements.

David Crofts, vp-risk management, Americas, for Cadbury Schweppes P.L.C. in Dallas, said the company is exploring captive benefits funding.

"The project is moving forward. There are some potential cost savings," he said.

"Several clients are doing feasibility studies to determine if this is the right thing to do," said Jill Husbands, a managing director with Marsh Management Services (Bermuda) Ltd. in Hamilton.

Indeed, benefit consultant Towers Perrin pegs the cost savings—compared with commercial insurance—at between 15% to 25% for LTD coverage, 10% to 15% for group-term life insurance and 10% to 12% for medical stop-loss coverage.

"The fact is, there are real financial savings. Where these arrangements work, they can work very well," said Mitchell Cole, a Towers Perrin principal in New York.

Other observers, though, question whether such cost savings are possible.

Paul Shimer, a senior international consultant with Mercer Human Resource Consulting in Hartford, Conn., said employers, in calculating the cost-effectiveness of captive benefit funding arrangements, need to include costs such as those related to improving benefits and retaining an independent fiduciary.

Still, there may be other reasons to fund benefit risks through captives, Mr. Shimer says, such as risk diversification and enhancing the tax-deductibility of property/casualty premiums an employer pays to its captive.

The tax issue refers to a 1992 Internal Revenue Service ruling in which the IRS said employers can deduct group term life insurance premiums paid to captives, as the premiums represent outside business.

Courts have ruled that employers can deduct premiums paid to a captive as long as the captive funds a significant amount of outside business. Thus, putting benefit risks into a captive would boost a captive's outside business, increasing the likelihood that an employer could deduct other premiums it pays to the captive.

Still, captive benefit funding proponents say that growth in the use of the arrangements is likely to be modest.

Towers Perrin's Mr. Cole notes, for example, that employers may face more pressing financial issues that demand immediate consideration. "Some issues are more important in a company's business cycle than others," he said.

Additionally, captive benefits arrangements involve analysis by both corporate employee benefit and risk management departments, with each bringing its expertise to the effort.

"To get all these people together can be a long process," Ms. Husbands said.

# Public pools wading into employee benefit coverage

## Success in controlling property/casualty risks leading some to take on health care

By ROBERTO CENICEROS

Rising health care costs are pushing more public entity purchasing pools to consider offering their members employee benefit coverage.

While most pools begin by providing property/casualty insurance for groups of municipalities, counties and other government entities, members increasingly are asking their property/casualty pools to expand and help them address benefit cost concerns, explained Harold Pumford, chief executive officer of the Assn. of Governmental Risk Pools in Prague, Okla.

"Any pool that does not provide benefits (coverage) has probably been under pressure from their membership to consider providing it because of the extreme success pools have had in the property/casualty field," he said.

Creating an employee benefit program, though, can prove more challenging than offering property/casualty insurance, Mr. Pumford acknowledged. Unlike some property and liability risks, health care losses are inherently difficult to predict.

But some purchasing pools that recently have added employee benefits to their coverage offerings are showing early signs of success.

The California State Assn. of Counties, for example, began offering its members employee health care coverage, said Catharine Mauldin, the association's manager of employee benefits. The pool's cost for its preferred provider organization plan rose 5.7% during the year, at a time when most PPO plans experienced percentage increases in the teens, she noted.

"So it's a good first year," Ms. Mauldin said.

Currently, the pool, which has 171 members, provides four counties with health coverage. It self-insures the benefit costs and purchases stop-loss coverage from the Netherlands-based ING Group. The pool contracts with Thousand Oaks, Calif.-based Blue Cross of California for its PPO network, Ms. Mauldin said.

In the future, the Sacramento, Calif.-based association may create its own doctor network for workers compensation claims; that network could also serve as a PPO for medical benefits, Ms. Mauldin said. But for now it is more economical to contract with an insurer for PPO services.

"It's real tough to compete with insurance carriers that are so large," Ms. Mauldin said. "When you bring in only thousands of lives and the carriers bring in millions of lives, the doctors and hospitals sometimes are not willing to give you the deals you can get through the insurance companies."

The pool began offering benefits because of demand by rural members that had few insurers competing for their business or few options for reducing costs, Ms. Mauldin said.

"A lot of public agencies are looking into the possibility of forming (health benefit) pools because they know they have more clout in the insurance market with larger numbers," Ms. Mauldin explained, "especially smaller-size groups that on their own are only a few hundred lives."

Mr. Pumford said he knows of 420 pools across the nation that represent about 74,000 local government units. Nearly 80 now provide members with employee benefit coverages, including health, dental and vision coverage.

Although most pools stick with offering employee benefits once they start, some later stop doing so, Mr. Pumford said.

He cited the case of one pool that studied the possibility of offering health care coverage along with its roster of property/casualty products but decided against it. That pool estimated it could reduce members' employee benefit costs by as much as 6% annually. Still, members had expected to cut costs by 15% to 25%, so the pool decided against providing the coverage, Mr. Pumford said.

Launching a benefit pool, though, can be challenging because potential customers want to know how much they would save before committing to participate. But how much a pool can save them is determined, in part, by how many members participate.

> **'Any pool that does not provide benefits (coverage) has probably been under pressure...to consider providing it because of the extreme success pools have had in the property/casualty field.'**
>
> *Harold Pumford*
> *Assn. of Governmental Risk Pools*

It's a "chicken or the egg thing," Mr. Pumford said.

It's likely tougher to contract with health insurers to offer health coverage through a pool today than it was when Concord, N.H.-based HealthTrust first started doing so, surmised John B. Andrews, HealthTrust's executive director.

HealthTrust began as a workers compensation pool in 1979. In 1984, the pool negotiated a deal with Blue Cross & Blue Shield of New Hampshire allowing HealthTrust to provide members with health care coverage.

Anthem Insurance Cos. Inc. in 1999 announced it was purchasing the New Hampshire Blues plan. Such health plan consolidation has left fewer insurance companies willing to contract with pools, Mr. Andrews said. The remaining insurers are more likely to seek underwriting gains for themselves rather than help send business into the alternative market, he said.

HealthTrust, though, continues to contract with Anthem, which administers claims for a health maintenance organization, various point-of-service plans and an indemnity plan for HealthTrust participants.

Every Monday, Anthem informs HealthTrust of the total amount the pool owes for claims and HealthTrust pays the bill. HealthTrust also collects the premiums and handles other functions such as marketing and enrollment. It also spends about $3 million annually on wellness and health promotion.

It reduces costs by unbundling certain services, Mr. Andrews said. For example, it contracts directly with Franklin Lakes, N.J.-based Medco Health Solutions Inc. for pharmaceutical services.

HealthTrust has about 335 pool members and provides health care for 27,000 employees plus their dependents. *Business Insurance* ranks it as the largest public-entity risk pool, based on member contributions of $205 million in 2003 (*BI*, June 14).

HealthTrust plan participants carry a Blue Cross & Blue Shield card that also has HealthTrust's logo on it, Mr. Andrews said. The insurance is written on Blue Cross & Blue Shield paper, but plan documents have a disclaimer stating that the Blues are not financially responsible for the plan's losses.

The chances of HealthTrust going belly up are slim, Mr. Andrews said. But even with the disclaimer, regulators would probably hold Anthem responsible if HealthTrust did become insolvent, he said.

So while HealthTrust sets the rates for its coverage, the pool's contract with Anthem calls for Anthem's actuaries and underwriters to work with HealthTrust's underwriters, Mr. Andrews explained.

"So it's a partnership in the sense that they have an interest in making sure we are charging adequate rates," he said.


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