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Business Insurance

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FINITE UNDER FIRE

Regulators eye civil charges against MBIA

Investigators focus on finite risk deal

By DOUGLAS McLEOD

NEW YORK—MBIA Inc. may be the next insurer to face charges over accounting practices related to finite risk transactions.

The Securities and Exchange Commission and New York Attorney General Eliot Spitzer's office, which have served the bond insurer with multiple document subpoenas in recent months, are

reviewing a draft civil complaint but have not yet discussed specific charges with MBIA, a person familiar with the matter said.

Such discussions normally precede initiation of settlement talks or the filing of a lawsuit.

An spokeswoman for Armonk, N.Y.-based MBIA declined to comment, though the company has said it is continuing to cooperate with investigators.

The scope of any complaint against the insurer is unclear.

In its most recent quarterly financial filing, MBIA reported that subpoenas from the SEC and Mr. Spitzer's office last November sought records of nontraditional or loss mitigation reinsurance

transactions without citing specific deals. In later conversations, regulators zeroed in on 1998 reinsurance contracts covering MBIA's guarantee of bonds issued by a bankrupt unit of Pittsburgh-based Allegheny Health, Education & Research Foundation, the insurer reported.

The deals—with a unit of Conventium Holding A.G. of Zug, Switzerland, that is now in runoff and that was formerly known as Zurich Reinsurance North America—allowed MBIA to take a \$70 million reinsurance credit against its \$170 million loss on the AHERF bonds.

MBIA concluded earlier this year that it should

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Late News

Swett & Crawford appoints COO

Swett & Crawford Group has appointed Neal Abernathy as its chief operating officer. Mr. Abernathy previously served as the wholesaler's regional manager of its Southeast marketing territory. He is expected to replace David R. Hartoch as president and chief executive officer upon Mr. Hartoch's retirement. Mr. Hartoch, who headed the wholesaler from 1997 to 2003, rejoined in March to oversee Swett & Crawford's divestiture from its parent, Aon Corp. Swett & Crawford did not say when Mr. Hartoch is expected to retire.

Sun gets tentative OK for captive benefits plan

Sun Microsystems Inc. has received tentative authorization from the Labor Department to fund benefit risks of its U.S. employees through the Vermont branch of its Bermuda-domiciled captive. Sun has proposed using the Vermont branch of Solaris Indemnity Ltd. to reinsure life insurance policies written by AIG Life Insurance Co. Ltd., an American International Group Inc. unit. Final approval is expected next month.

EEOC sues Supercuts, charging language bias

The U.S. Equal Employment Opportunity Commission has sued more than 20 Chicago-area Supercuts hair salon franchises, alleging they discriminated against Hispanic employees by requiring them to speak only English. The suit, filed in the U.S. District Court for the Northern District of Illinois, alleges that Primps L.L.C. and Management Advantage Group Inc., which operate the Supercuts salons, violated Title VII of the Civil Rights Act of 1964. Executives from Primps and Management Advantage Group Inc. could not be reached.

See LATE NEWS/page 35

Contingent pay loss hits brokers' bottom lines

By SALLY ROBERTS

Reverberations from investigations of contingent compensation are clearly reflected in the six-month results of the world's four largest brokerages, which have paid substantial settlements relating to the investigations.

The softening property/casualty market coupled with the loss of millions of dollars in contingent commission income, which the four brokerages ceased collecting last year, took a bite out of their revenues in the first two quarters of 2005.

At the same time, various settlement and restructuring charges hurt profits, leading Itasca, Ill.-based Arthur J. Gallagher & Co. to report a \$22.2 million loss for the six months. Among the four, only Aon Corp. reported improved profits for the period, with net income rising 13.7% to \$390 million. The Chicago-based brokerage, however, announced a new restructuring initiative that likely will lead to a pretax charge of \$200 million to \$300 million in the third

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PHOTO: AP PHOTO/JULIE JACOBSON



Inderjit Singh, a station agent for the New York Metropolitan Transportation Authority, shows the patch that the MTA wants him and four other agents to place on their turbans. The men are suing the MTA for religious discrimination.

Employers facing more claims of religious discrimination

By JUDY GREENWALD

Avon Automotives Inc. makes chaplains available to employees who want to discuss personal issues, but the company is careful not to infringe on any of its employees' beliefs in the process.

The chaplains approach workers only at their request, stressed Dale Rosser, human resources vp for the Cadillac, Mich.-based company.

"They are not to approach anybody who does not want to be approached, and they are not in there preaching or holding prayer meetings," said Mr. Rosser. "That's the way we have approached it, and we have maintained oversight of what is done to make sure that's the way it's handled."

Avon's situation is illustrative of one many employers face in as they strive to address their employees' spiritual needs while, at the same time, avoiding charges of religious discrimination in an increasingly pluralistic society in which religion has become a focus of attention.

Meanwhile, the number of charges of religious discrimination filed with the U.S. Equal Employment Opportunity Commission is growing rapidly, and many expect the total to continue to accelerate (see chart, page 32).

Additionally, proposed federal legislation that would require employers to further accommodate their employees' religious needs—a measure

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BENEFITS MANAGEMENT



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International Benefit Networks

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Diabetes management program goes nationwide

Program's backers say employers should have little trouble cutting costs.
Page 4

Alcoholism costs billions, but treatment is poor

About 8% of health plan members have the disease, but less than 1% receive treatment.
Page 4

Modernization is crucial to survival of Medicare

There are reasons to be optimistic about the program, an editorial says.
Page 8

U.K. company wins claim related to computer virus

Business interruption policy did not specifically exclude virus attacks.
Page 29

Online poll - [8/8 - 8/12]

When it comes to paid paternity leave, is your organization:



Participate in BI's online polls at www.businessinsurance.com.

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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PwC found liable in old insolvency

20 years after insurer's collapse, jury puts auditor on hook to pay claims

By MEG FLETCHER

NEWARK, N.J.—Most policyholders of Ambassador Insurance Co. could have their claims paid in full following a \$119.9 million jury verdict in an accounting malpractice case brought against the long-defunct surplus lines insurer's auditor.

The verdict in federal court in Newark, N.J., against PricewaterhouseCoopers L.L.P. comes more than 20 years after the collapse of the North Bergen, N.J.-based insurer (see box).

New York-based PwC plans to challenge the verdict. If the verdict stands, Ambassador policyholders—most of whom have already received at least 90 cents on the dollar for their claims—could have their claims completely covered, and reinsurers and other creditors could also benefit.

"First and foremost, this verdict goes a long way towards allowing policyholders,

History in brief

Vermont's then-Insurance Commissioner George Chaffee seized Ambassador Insurance Co. in November 1983.

- The insurer challenged the action, which was ultimately upheld by the Vermont Supreme Court.

- A state court entered a final liquidation order in March 1987 against the insurer, which was insolvent by \$119.9 million.

Since then, liquidators have seen:

- 17,435 individual claims resolved
- \$247 million claims paid
- 399 claims, mostly asbestos, still pending

claimants and other creditors to be fully compensated for their insured losses," said Vermont Commissioner John P. Crowley in a statement. Ambassador was domiciled in Vermont before regulators seized it in 1983.

In 1985, Vermont insurance regulators filed a lawsuit alleging that the financial statements prepared by Coopers & Lybrand concealed the insurance company's weakness from regulators. Though the trial was delayed due to actions in other states, the jury late last month found that the auditor "breached the standard of care" in its 1981 audit of Ambassador.

The verdict, which equals the amount by which Ambassador is currently estimated to be insolvent, was rendered against PwC as the successor to the original defendant Coopers & Lybrand, which merged with Price Water-

See **AMBASSADOR** / page 31

Traditional health plans begin to adopt elements of consumer-driven approach

By GLORIA GONZALEZ

The lines between traditional health care insurance products and consumer-driven health plans are beginning to blur as insurers look to include consumerist elements in all product lines.

Health maintenance organization, preferred provider organization and point of service offerings are all being modified to incorporate features typically associated with CDHP products.

The changes follow significant moves into the CDHP market by large insurers.

In the past year, the two largest managed care insurers—Minneapolis-based UnitedHealth Group and Indianapolis-based WellPoint Inc.—have bought, respectively, New York-based Definity Health and Alexandria, Va.-based Lumenos Inc. Other major insurers

CDHP prevalence

According to a March study, **22%** of employers offer a consumer-driven health plan, while **50%** of those that do not currently offer a CDHP intend to do so in the future.

Source: Aon Consulting, International Society of Certified Employee Benefit Specialists

such as Hartford, Conn.-based Aetna Inc. have aggressively developed their own CDHP divisions.

The insurers are gambling on the notion that CDHPs will become a sizeable source of health care delivery, with WellPoint estimating that CDHPs will encompass from 10% to 15% of the marketplace within three years.

But the entrance of the major managed care companies also has implications for all

their policyholders as they attempt to make CDHP tools available to members in their traditional plans.

UnitedHealth, for example, will begin to offer Definity's health statements to select employer-based populations beginning Jan. 1, 2006, with the expectation that they will be more broadly offered throughout 2006. The health statements revamp traditional explanation of benefit statements into easier-to-read documents that resemble credit card statements and can include personal messages.

The company's strategy is to get individuals involved in making informed decisions about health spending, an approach that should not be limited to a particular plan design, said Meredith Baratz, vp, market solutions, for

See **CDHP** / page 31

TRIA needed, with revisions: Report

Wharton study says deductibles under backstop must spread risk more equitably

By ROBERTO CENICEROS

A government-funded terrorism backstop is still necessary, but the current program established by the Terrorism Risk Insurance Act should be revised to be more equitable for all insurers, according to a report released last week.

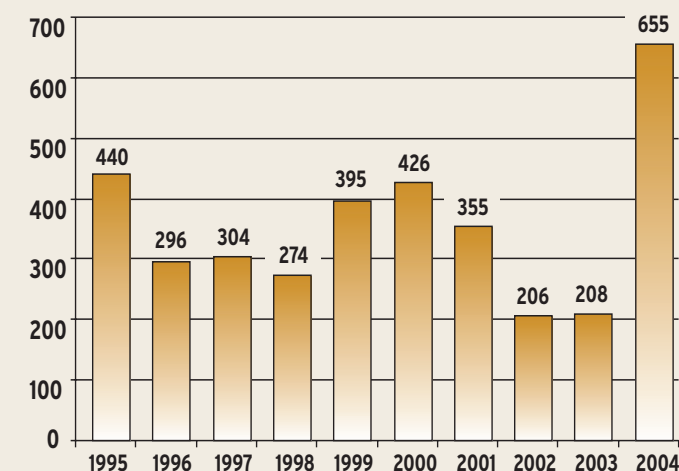
In particular, the system for calculating individual insurers' deductibles under TRIA needs to be revised to ensure that the largest insurers of TRIA-related risks do not pay a disproportionate amount of future terrorism losses, the reports authors say.

The 224-page report, "TRIA and Beyond: Terrorism Risk Financing in the United States," is one of several recent reports to provide an analysis of terrorism insurance coverage. However, the reports' findings on the relationship between deductibles and policyholder surplus has not been examined in detail elsewhere, said Howard Kunreuther, one of the report's researchers and co-director for the Philadelphia-based Wharton Risk Management and Decision Processes Center.

The report was issued by the Wharton School of the University of Pennsylvania.

The Wharton researchers found that under TRIA's current structure, insurers with high deductible/surplus ratios—those insurers that have

International terrorist attacks 1995-2004



Source: Wharton Risk Center, U.S. Department of State

See **TRIA** / page 34

Program seeks to cut the cost of treating diabetes

Ten-city disease management project intended to increase wellness efforts

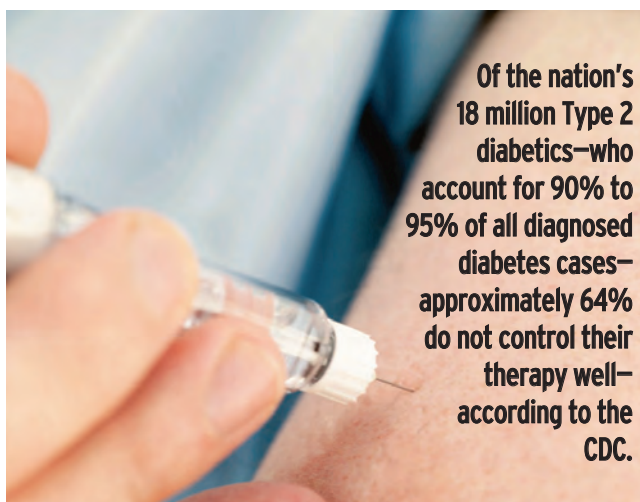
By DAVE LENCKUS

It's called "The Cities' Challenge," but those promoting the nationwide disease management project assert that employers participating in it will have little trouble slashing health care costs associated with diabetes.

The promoters say the results achieved in similar efforts involving employees with diabetes and other chronic illnesses already show the validity of the project's premise: Shouldering more prescription drug costs and adding fully covered pharmacist consulting services will vastly improve disease management and help employers curb health care expenses.

One pharmaceutical company, GlaxoSmithKline Inc. of Research Triangle Park, N.C., is so confident that the new project's results will replicate those in earlier efforts that it is picking up the seven-figure tab for collecting and analyzing project data.

An important aspect of the disease management plan for



Of the nation's 18 million Type 2 diabetics—who account for 90% to 95% of all diagnosed diabetes cases—approximately 64% do not control their therapy well—according to the CDC.

drug companies as well as health plan sponsors is that it promotes much greater patient adherence to prescription medication regimens. For drugmakers, that means patients will have the means to purchase more of their products.

Among the nation's 18 million Type 2 diabetics—who account for 90% to 95% of all diagnosed diabetes cases—approximately 64% do not control their therapy well, according to a January 2004 Centers for Disease Control and Prevention report.

The project's developers currently are selecting 10 large cities to participate—a process that is expected to run through the end of September. The employers being targeted for the project would be the cities themselves and large private employers located within them.

Meanwhile, a group of a dozen public and private entities in western North Carolina and eastern Tennessee is set to launch a similar project that GSK also will partially underwrite.

Besides the drugmaker, the major players involved in the two projects are consultant John Miall, president of Asheville,

See CITY CHALLENGE / page 32

Court gives final approval in IBM pension case

EAST ST. LOUIS, Ill.—A federal court last week gave final approval of a partial settlement between IBM Corp. and tens of thousands of current and former employees over the conversion of its traditional pension plan to a hybrid arrangement, moving the litigation forward to the next and potentially crucial stage.

The partial settlement approved by Judge G. Patrick Murphy of the U.S. District Court for the Southern District of Illinois involves a 2003 ruling—which captured national attention—by Judge Murphy that IBM's pension program is age discriminatory. Under one part of the settlement, IBM will pay in the form of enhanced benefits more than \$300 million to plan participants. That part of the settlement relates mainly to claims involving IBM's conversion of a traditional final-average-pay plan to a pension equity plan.



Judge Murphy

Under the other part of the settlement, IBM will appeal Judge Murphy's ruling that its cash balance plan, which IBM set up in 1999 to succeed the PEP plan, is age discriminatory. The appeal will be heard by the 7th U.S. Circuit Court of Appeals in Chicago, and its future ruling would be the first by an appeals court on the cash balance plan age discrimination issue. If the court rules in favor of IBM, it will have no further liability. If IBM loses, its liability will be capped at \$1.4 billion.

A formal order announcing Judge Murphy's final approval of the partial settlement will be issued later this week.

Since the partial settlement was proposed, IBM has frozen its cash balance plan, with employees hired as of Jan. 1, 2005, receiving pension coverage under an enriched 401(k) plan.

—By Jerry Geisel

Errors & omissions

• Due to incorrect information supplied to *Business Insurance*, an incorrect number of worldwide offices and employees appeared in rankings of Willis Group Holdings Ltd. in the July 18 issue. In 2004, Willis and its wholly owned subsidiaries had 11,700 employees and 250 offices. Based on revenues per employee, Willis ranks as the second most productive of the world's 10 largest brokers, at \$188,462 per employee.

Arizona high court strikes down bar on comp cover in substance abuse case

By DAVE LENCKUS

PHOENIX—Arizona's Supreme Court has struck down a state law that significantly jeopardizes workers compensation benefits for workers injured while under the influence of controlled substances.

The law violates the state's constitution, the court determined in its 5-0 ruling last week.

The ruling resolves conflicting decisions at the state appellate court level in two cases involving workers comp claimants who tested positive for alcohol and illegal drug use shortly after they were injured. The workers had taken the substances the night before or in the days before the work shifts during which they were injured, according to court papers.

In one case, a construction worker

who used 42-inch drywall stilts in his work installing metal trim to building exteriors fell and broke his right wrist and left knee in the fall. The worker admitted that on the previous two days, when he was not required to work, he had smoked marijuana and ingested methamphetamine.

In the second case, a worker suffered a serious injury after his arm was caught in a conveyor belt that he was attempting to fix. He later admitted that he had consumed four mixed drinks containing vodka the night before the accident.

In both cases, the state's Industrial Commission sided with the workers comp insurers that denied the workers' claims. The insurers based their claim decisions on a state law that requires injured workers to prove they were not impaired by alcohol or illegal drugs before they can collect workers

comp benefits.

In ruling for the workers, the state's high court cited a section of the state constitution that mandates that an injured worker must receive workers comp benefits if a necessary risk or danger of employment caused or contributed to the worker's accident.

Even when those circumstances existed in a workplace accident, the state law at issue "would preclude benefits if alcohol was 'anything more than a slight contributing cause' of the injury," the court noted. The state constitution "does not permit the Legislature to enact such a statute," the court ruled.

David C. Grammatico vs. The Industrial Commission et al. Austin Komalestewa vs. The Industrial Commission et al.; Arizona Supreme Court, Nos. CV-04-0197-PR; CV-04-0364-PR.

Most health plans poor at addressing alcohol problems, researcher claims

By ROBERTO CENICEROS

ORLANDO, Fla.—Workers and their dependents with serious alcohol problems cost employers billions of dollars annually in health care costs, lost productivity, and missed work time, a researcher from George Washington University said.

Yet health plans do a poor job of identifying and treating employees and their dependents with drinking problems, according to research. Employer-sponsored health plans also do a poor job of identifying and treating employees with chemical dependency and mental health problems.

About 9% of working adults suffer from depression, for example, while only about 3.6% are diagnosed, according to health plan data analyzed by Ensuring Solutions to Alcohol Problems, a George Washington University Medical Center-based research center. The research was



8% of the U.S. population have an alcohol problem, though less than 1% of health plan members are diagnosed with such a problem.

conducted for the National Business Coalition on Health in Washington.

Employees or their dependents account for 80% of the people in the United States that abuse alcohol, according to Eric Goplerud, director of Ensuring Solutions. As a result of the alcohol abuse, U.S. workers miss 33 million workdays a year, he said.

Absenteeism due to alcohol costs employers about \$4 billion in productivity and other losses, while another \$36 billion is spent on health care costs to treat alcohol-related injuries and illnesses, Mr. Goplerud told the Disability Management Employer Coalition's 10 Annual National Disability and Absence Management Conference in Orlando, Fla.

But while about 8% of the U.S. population have an alcohol problem, fewer than 1% of health plan members are di-

See ALCOHOLISM / page 22

Gallagher freezes pension plan

Brokerage joins exodus from defined benefit plans to 401(k)

By JERRY GEISEL

ITASCA, Ill.—Another major employer is phasing out its defined benefit pension plan in favor of an enriched 401(k) plan.

Arthur J. Gallagher & Co. froze its \$137 million pension plan last month, with employees no longer earning new benefits. Effective Jan. 1, 2006, Gallagher will sweeten its 401(k) plan, with the company matching 100% of employees' salary deferrals, up to the first 5% of pay. Gallagher now matches 50% of

employees' pretax contributions, also up to the first 5% of pay.

A spokesman for Itasca, Ill.-based Gallagher, the world's fourth-largest insurance broker, said the move was driven by several factors, including cost savings and a desire to end its exposure to defined benefit plan contribution volatility.

In a defined benefit plan, contributions can swing wildly, due to changes in interest rates and investment results.

By contrast, in a defined contribution plan, where company con-

tributions are tied to employees' contributions and salaries, corporate contributions are more stable and easier to predict. However, employees bear all the investment risk.

Gallagher is one of several large employers to phase out a defined benefit plan in the last couple of years. Others include Aon Corp. of Chicago; Hewlett-Packard Co. of Palo Alto, Calif.; IBM Corp. of Armonk, N.Y.; Sears Holdings Corp. of Hoffman Estates, Ill.; NCR Corp. of Dayton, Ohio; and Motorola Inc. of Schaumburg, Ill.

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PAUL WINSTON

Editorial Director

Traits of the insurance field

Have you ever opened your e-mail inbox to find that you are the recipient of a "You know you are from..." message? Such messages, which alternately list inside jokes and poke fun at locals, are forwarded over and over, spreading like a benign virus across the Internet.

If you didn't instantly delete the e-mail, having seen it dozens of times before, you might have found such pearls of wisdom as: You know you're from Chicago if you've argued, at length, about whether or not Mrs. O'Leary's cow did it; you know you're from New Jersey if you know where Jimmy Hoffa is buried; and you know you're from Connecticut if your mom works at Aetna or Travelers and your dad works at Pratt & Whitney.

There are dozens of these sorts of lists floating around the Internet, and if you are from one of these places, you no doubt have seen the list make multiple appearances in your inbox. I've found that there's even a Web site that hosts dozens of these lists. If you are wondering whether there's one about your state or town, visit the Web log feature at www.blogthings.com/where-from.html.

In the spirit of the twisted, creative people who make these geography-based lists, I have decided to create one for the insurance industry, which can always stand to poke fun at itself.

You know you're in the insurance industry if:

You know that M&M is not just a candy.

You know that not all captives require hostage negotiators.

You read the emergency preparedness cards and note all the exits on airplanes.

You know at least five actuary jokes—and you find all of them funny.

When you say "cats," you aren't talking about the animal or the musical.

You complain about how many times you've gone to Bermuda on business.

You complain about how many times you've gone to Monte Carlo on business.

You complain about how many times you've gone to Switzerland on business.

You watch the Weather Channel with dread from June through November.

You know the Bornhuetter-Ferguson method has nothing to do with birth control.

You know that Hartford, Conn., is no longer the insurance capital of the United States.

You wish the RIMS conference would end on Wednesday.

You know that Hank Greenberg is not just a baseball player.

You stop to fix bumps in the carpeting of public places.

You know that a net loss is not a catastrophe that befalls fishermen.

You know that a follow-the-fortunes clause has nothing to do with seeking the advice of a soothsayer.

You don't complain that homeowners rates in Florida are too high.

You know that A&E is not just a cable television network.

You know what famous insurer was founded in the 17th century equivalent of a Starbucks.

You've complained about the high cost of a bottle of Perrier at the Cafe de Paris.

You don't think of swimming or billiards when you hear the word pool.

You've remarked that the Chinese symbol for "risk" also is used to represent "opportunity," or have heard it said at least half a dozen times.

You know where the National Union Fire Insurance Co. of Pittsburgh, Pa., is actually based.

You would never name your child Andrew, Georges, Hugo or Camille.

You can carry on a 15-minute conversation using nothing but acronyms.

You know an alien insurer or two, and they are not from beyond our solar system.

Editorial Director Paul Winston's is on vacation.

This Commentary is from the BI archives and was originally published Jan. 1, 2001.

"After Dempsey, Myers helped us settle the loss that 'wasn't covered' for \$2 million, my boss recommended a \$10,000 performance bonus."

H I G H F I V E

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Editorial

Medicare shows promise

AS MEDICARE IS marking its 40th anniversary, it's hard not to be ambivalent about the huge federal health insurance program.

On the positive side, the creation of Medicare in one fell stroke ensured basic health insurance coverage for millions of Americans, generally those age 65 and older.

Last year, 42 million people received coverage through Medicare, which spent nearly \$300 billion to cover those individuals. Medicare beneficiaries almost never have to worry that they will lose coverage—regardless of the size of their health care bills—and the direct cost of that health care coverage security is relatively modest.

On the other hand, Medicare, for the most part, is a medical dinosaur. Just under 90% of enrollees are in old-fashioned fee-for-service plans, where providers have little, if any, incentive to deliver services in a cost-efficient way, with enrollees also lacking incentives to use services carefully.

Despite its enormous purchasing clout, Medicare costs have been soaring, nearly doubling in a decade. Costs are rising so rapidly that the program—largely funded through payroll taxes paid by employers and employees—is on its way to insolven-

cy in about a decade, according to a Medicare trustees' report.

But the outlook isn't, by any means, without hope. Indeed, there is good reason to be optimistic about the program's future.

For example, responding to substantially higher government payment rates, managed care plans have been returning to the program in a big way. Next year, a record 428 private health plans—mostly HMOs and PPOs—will be competing to enroll Medicare beneficiaries by offering much richer benefits than the traditional Medicare program provides. Those plans, we are convinced, will do a much better job of controlling costs than Medicare itself has done.

Medicare beneficiaries also are beginning to put more trust in these plans—known as Medicare Advantage plans—with enrollment in them rising by about 50,000 members a month.

Medicare itself is dramatically changing with the addition next year of a prescription drug benefit. That change in design that could save Medicare a lot of money if an increased use of prescription drugs, especially those of a preventive nature, leads to a reduction in costly hospital stays.

In sum, we believe one can be, if Medicare continues to modernize, optimistic about the future of the program.

Bias has no place at work

EMPLOYERS OFTEN MUST walk a fine line between accommodating employees' needs while maintaining productivity. As we report on page 1, a rise in religious discrimination claims makes this a case in point.

An increasingly diverse workforce in the United States, helped by immigration and civil rights laws, is bringing different cultures and religions into the workplace. We think this trend presents both a challenge and an opportunity for employers.

In an era of rhetoric purportedly based on "religious" values, it's all too easy to mistrust co-workers who are overt about their religious practices, either through dress or other observance. We shouldn't allow trust and respect to become casualties of these uncertain times. Nor should work-

ers regard religious beliefs as excuses for avoiding professional obligations.

Bias has no place in the workplace, whether it's for or against gender, race, ethnicity or religious background. Employers have an important role to play in helping promote civility and mutual respect, qualities that sometimes are in short supply.

Having a policy barring discrimination is a good first step, but employers must go further to educate employees about their legal rights and help create a culture of respect and mutual cooperation in the workplace.

We hope that as employers answer this challenge, the number of discrimination claims will shrink and that our society will become a better place in which to work and live.

Schillerstrom



Letters

Finite deals designed to circumvent GAAP

To the editor: Because I generally agree with your opinions on the editorial page, I was quite surprised at how much I disagree with your July 25 opinion "Finite risk has a place when deals are legit."

Although I have been involved in property and liability insurance company accounting matters since well before the late 1970s, when finite risk coverage first came into vogue, I am sure there are several variations I have not yet seen. In my experience, though, finite risk agreements are designed to get around GAAP accounting rules, either by effectively discounting loss reserves or by smoothing earnings over a period of time.

Your statement that "one of the often-cited

criticisms of finite risk products is that they are used to mask financial problems" is true. Your proposed solution of simply improving disclosure, though, is tantamount to suggesting that it's OK to flout the accounting rules as long as you disclose that you're flouting them. If you truly believe the accounting results associated with finite risk agreements are appropriate, why not just suggest that the accounting rules be changed so that such results can be achieved without insurers having to pay the hefty fees charged by the finite risk reinsurers?

Loren Kramer
President
Kramer Consulting
Highland Park, Ill.

Write Us

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AMERICAN BUSINESS MEDIA



By Lori A. Brassell-Cicchini

Perspectives

Firms assist in catastrophe planning

A catastrophe is never planned, but the response to it should be. Companies that develop effective catastrophe plans are able to focus on executing the plan instead of inventing it when the unexpected happens.

Today, many forward-looking companies prepare for a catastrophe by engaging the services of a specialized organization to implement a comprehensive crisis readiness and response program. Such an organization can help your company put forth a coordinated effort, supported by vital services essential to a successful outcome. You should expect fast response, efficient claims handling to control loss costs, and the preservation of your vital reputation.

Think of a catastrophe as any single event that affects multiple third parties and has the potential to impact the public image, reputation and profitability of your company.

Also, remember that the event you expect may not be the one you get. For example, a food manufacturer might prepare for a product contamination or product-tampering situation, but instead might ex-

perience a chemical spray from a ruptured supply line that destroys the finish of every car in a parking lot adjacent to the manufacturing plant.

In selecting a crisis response company, the number one objective must be to find a partner that will help you achieve your desired goals. Cooperative planning and preparation will ensure a highly orchestrated response. Important outcomes you want to achieve include loss dollar management, superior customer service and preservation of your image and reputation.

The company you choose should assist in developing a crisis response plan or improving your existing plan, taking into account third party exposures that could result from your operations or products. A comprehensive plan should address individual facilities and define notification systems in case of an event. The plan should detail internal and external emergency response assets, and deployment scenarios. Decision-makers should be designated and their roles defined. Logistical planning is key for maintaining appropriate lines of supply. Claims protocols should be clearly defined. Media impact and communications issues, including designation of a company spokesperson, should be

Companies that develop effective catastrophe plans are able to focus on executing the plan instead of inventing it when the unexpected happens.

addressed.

Once the plan is accepted, the company you are working with can help you develop drills and implement schedules to maintain readiness.

Your crisis response partner, insurer and broker should be notified immediately when there is a loss. Your crisis response partner should deploy claims professionals with experience specific to the nature of your catastrophe. You will want to implement the protocols in your plan as soon as possible to maintain consistency and equity in claims handling.

Your catastrophe management vendor should provide operational and customer support from an established crisis response center. Any service subcontractors who are assisting with the response or clean-up need to be managed as well.

The claims intake process must be seamless by quick establishment of a dedicated toll-free reporting hotline. Customized data management and reporting will help manage claims and litigation as well as their resolution. Reporting to your excess insurance and reinsurance carriers should be incorporated into the process.

If the event extends beyond your perimeter, you may have to provide community relations assistance and support to affected neighbors. Many companies today make critical incident counseling available for affected parties, particularly to employees.

This is also the time to put your crisis communications plan into action. Your public relations, risk management and legal departments must coordinate a consistent media response.

From the moment the response starts, you should take notes and record observations. This is your opportunity to learn and improve, because there may be a next time.

Scheduling in-depth debriefings with key responders and managers to specifically identify opportunities for improvement is an important next step. Your legal department should help secure privileged status for participants in these discussions. This is also your chance to develop and incorporate claim scenarios to solidify roles and responsibilities in future drills.

Remember to address first things first with a thorough review and update of your current plan. Select a catastrophe management vendor and begin to work together to design a plan that takes advantage of their expertise. By incorporating their roles and responsibilities into your plan, you will be sure to meet your company's unique goals and objectives and experience greater peace of mind should an event occur. The work you do today will help ensure perfect execution if and when catastrophe strikes.

Lori A. Brassell-Cicchini is assistant vp at ACE USA's ESIS Catastrophe Services in Philadelphia.

Faulty workmanship isn't property damage, court says

Two commercial general liability insurance policies did not cover a manufacturer's defective or faulty workmanship in constructing oven line feed systems, which did not constitute "property damage" within the policies' coverage, according to the Court of Appeals of North Carolina.

Product Systems Inc. designs and manufactures industrial equipment. In 1996, PSI contracted with Rubatex Inc. to design, construct and install oven line feed systems at Rubatex's plant. The job was completed and turned over to Rubatex in 1996.

Rubatex experienced problems with each of the lines almost immediately after they were put into operation because of improper installation. Rubatex refused to pay the fee it owed PSI. PSI sued Rubatex seeking recovery of \$200,000. Rubatex countersued for breach of contract and breach of warranty and sought damages for the cost of repairing the two lines and for loss of use of them.

PSI was covered under two CGL insurance policies issued by Amerisure Insurance Co. and Union Insurance Co. Both policies included coverage for "property damage." PSI sought coverage from the insurers for Rubatex's claim. The insurers denied coverage. PSI sued both insurers seeking a declaration from the court that the insurers were obligated to defend and indemnify PSI for Rubatex's claim.

The trial court ruled against PSI and PSI appealed.

The appellate court said that "property damage" in an insurance policy has been interpreted to mean damage to property that was previously undamaged, and not the expense of repairing property or completing a project that was not done correctly or according to contract in the first instance. The court concluded that there was no "property damage" to the oven feed line systems because the only "damage" was repair of design defects in, or caused by, the faulty workmanship in the initial construction. Thus, the court agreed with the trial court that the policies here did not provide coverage. The trial court decision was affirmed.

Production Systems vs. Amerisure Insurance Co., Court of Appeals of North Carolina, Dec. 21, 2004 (BI/02/A.-\$10)

Failure to dispute claim leads to additional benefits

The Supreme Judicial Court of Maine awarded workers compensation benefits to a claimant for the employer's failure to timely dispute the claim.

Oreta Bridgeman filed petitions for award for several work-related injuries while employed by S.D. Warren Co. The hearing officer granted some, but not all, of the petitions and concluded that Mr. Bridgeman was entitled to compen-

Legal Briefs

sation for partial incapacity. The hearing officer further found that the employer and its insurer received notice of two of the compensable claims in May 2001. The hearing officer concluded that the insurer violated a board rule by failing to file the required notice of controversy within 14 days of the employee's notice of claim.

Moreover, the employer did not pay past due benefits at the time the notice of controversy was finally filed. As a result, the hearing officer awarded Mr. Bridgeman continuing total incapacity compensation. The employer appealed.

On appeal, the employer argued that the notice of controversy rule conflicted with statutory language and, therefore, was invalid. But the court said that although the rule in question attaches a greater penalty for an employer or insurer's failure to file a timely notice of controversy than provided in statutory law, that did not compel a conclusion that the board exceeded its authority to promulgate the rule in question to implement the statute and carry out the purposes of the Workers Compensation Act.

Thus, the court upheld the validity of the rule and awarded Mr. Bridgeman benefits from the date of incapacity.

Bridgeman vs. S.D. Warren Co.,

Supreme Judicial Court of Maine, March 16, 2005 (BI/02/S.-\$10)

Workers comp case hinges on 'loss'

A workers compensation claimant was entitled to total and permanent disability benefits for the loss of his leg, even though the leg did not need amputation, according to the Supreme Court of Michigan.

Scott M. Cain worked as a truck driver and trash collector for Waste Management Inc. In 1988, he was standing behind his vehicle emptying a rubbish container when he was struck by an automobile that crashed into the back of his truck. Both of his legs were crushed. His right leg was amputated above the knee. His left leg was saved with extensive surgery and bracing. In 1990, Mr. Cain was fitted with a right leg prosthesis and he was able to begin walking. He returned to work in a clerical capacity. However, his left leg deteriorated, resulting in a stress fracture caused by preexisting weakness from the original injury. He had further surgery and physical therapy that allowed him to return to work as a dispatcher and in the sales department. Mr. Cain received benefits for the specific loss of his right leg. However, there was disagreement as to whether he was entitled to specific loss benefits for the injury to his left leg. After considerable litigation, Mr. Cain was awarded total and

permanent disability benefits for the loss of his left leg. The employer appealed.

The appellate court said that the issue here was whether a limb, crushed but not severed, is to be treated as lost, thus entitling the injured worker to specific loss benefits. The employer argued that "loss" unambiguously means "amputation." The court reviewed the definition of "loss" in various dictionaries from the era of the original workers compensation legislation and concluded that the definition of "loss" was fairly broad.

From those definitions, the court said, amputation is but one way a loss may occur; loss also occurs when something is destroyed, ruined or when it disappears from use. Thus, the court concluded that amputation was not required in order for a person to have suffered the loss of a specified body part. The decision to award Mr. Cain additional benefits was affirmed.

Cain vs. Waste Management Inc., Supreme Court of Michigan, May 3, 2005 (BI/05/S.-\$10)

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

BENEFITS MANAGEMENT

Global Benefit Trends

Italy reforms rules
on state, private pensions / 20

Private health cash plans
find a market in the U.K. / 20



Flexible benefit plans grow popular among Canadian employers

By **GLORIA GONZALEZ**

Canadian employers are turning to flexible benefit plans in an effort to resolve two key problems: rising health care costs and a skilled labor shortage.

Consultants say that flexible benefit plans have proven to be an effective tool in combating the escalating cost of health care in Canada, being driven by double-digit increases in the cost of prescription drugs. Canadian companies, particularly those in highly competitive

industries, have also successfully used flexible benefit plans as a way to attract and retain skilled employees, they say.

But there are drawbacks to flexible benefit plans that may limit their adoption in Canada—namely, administrative and communication costs that may actually increase overall plan expenses.

Canadian employers are introducing flexible benefit plans to help them achieve important corporate

See **CANADA** / page 18

Strategies help produce worldwide benefits equity

By **JOANNE WOJCIK**

Government-provided benefits, government-mandated benefits, varying tax treatment of benefits and even cultural differences all work together to prevent U.S. multinationals from offering a uniform package of employee benefits worldwide, according to experts in international human resource issues.

But while it is virtually impossible for U.S. multinationals to achieve uniformity in their employee benefit programs worldwide, many employers are adopting glob-

al benefits strategies to maintain a consistent global identity and approach to doing business.

Adopting a global benefits strategy is particularly helpful to publicly traded companies seeking to comply with the internal control requirements of the Sarbanes-Oxley Act, experts say (see story, page 16).

"If you look at how health benefits are delivered to people and compare the United States with the rest of the world, you see a dramatic difference," said Giles Archibald, worldwide partner at Mercer Human Resource Consulting in New York.

"Because social security functions differently in each country, you cannot simply clone your U.S. benefits package in other countries and get the results you want," said Don Wienen, director of international marketing at Globex International Group, a human resource consulting firm in Mountain Lakes, N.J.

Mr. Wienen pointed out some examples. While most U.S. companies consider health insurance their top priority, for instance, pension benefits and life insurance are No. 1 in the United Kingdom, because the

See **EQUITY** / next page

International Benefit Networks / 14

Coming Sept. 19: Benefit Financing Strategies

Equity: Global strategies can ensure uniform benefits programs worldwide

Continued from previous page

U.K. government provides health care.

"We certainly see more and more companies trying to equalize their programs in one fashion or another so they can stand in front of their employees with hand on heart and say, 'We have internal equity in this area,'" noted Kent Klaus, a partner in the global employee solutions practice at Deloitte Consulting L.L.P. in Chicago.

"But it's difficult when you have social systems and government-mandated benefits that take you in different directions," Mr. Klaus said. He pointed to the "acquired

rights" principle that many countries have adopted as a particularly onerous reason why U.S. multinationals should avoid a cookie-cutter approach to benefits worldwide.

Under the acquired rights principle, "once you have offered an employee something, it's theirs forever," he explained.

Helen Darling, president of the National Business Group on Health, said she encountered the notion of acquired rights while arranging benefits for Xerox Corp. employees in South America in 1997.

"At Xerox in the U.S., we had flexible benefits. We gave employees 120% of the cost of health bene-

fits so that they could use the leftover to buy dental benefits, add to life or disability package, etc., something that's richer than what was provided," she said.

"The trouble is, if I did that in Brazil, everything in the flex package would become a mandate forever. So you can't even give them flexibility, because you're required in Brazil to give them everything in the flex package," said Ms. Darling, formerly head of benefits at the Stamford, Conn.-based document firm.

"The governments are very powerful and controlling. It's very different from the U.S.," she said.

Severance indemnity provisions, which—like COBRA rules—dictate what benefits an employee is entitled to after termination, also are different outside of the United States.

"While in the U.S. employees pay for COBRA benefits, in many other countries employers must continue to pay even after termination, depending on the reason for termination," Mr. Klaus said.

The European Union Data Protection Directive, which imposes additional employer requirements for personal data protection, also can impede U.S. multinationals from having uniform benefit

programs.

"We have to physically go there instead of sending information back and forth electronically" to administer benefits programs, said Barry Coleman, vp-human resources at Platinum Equity L.L.C., a private equity firm based in Beverly Hills, Calif. Mr. Coleman manages benefits for 50,000 employees, 35,000 of whom work outside the United States.

Because other countries do not have the same nondiscrimination rules as the United States, U.S. multinationals are expected to provide richer benefit packages for executives than for lower-level employees, another obstacle to uniformity.

"There are more class systems outside the U.S.," said Dennis Fitzgerald, a former human resource manager and now managing partner at Acquisition Works Inc., a Waltham, Mass.-based consulting firm that specializes in integrating workforces after mergers. "In some countries, it's expected. That's just the way the world is."

"In certain countries that have more-progressive tax rules, it is very customary to provide other forms of benefits, such as a chauffeured car in Asia."

Ryan Kennedy
Liberty Benefit Insurance Services

In many cases, these additional perks are provided to executives in lieu of additional compensation because of higher income taxes in certain countries, according to Ryan Kennedy, chief executive officer of San Jose, Calif.-based Liberty Benefit Insurance Services.

"In certain countries that have more-progressive tax rules, it is very customary to provide other forms of benefits, such as a chauffeured car in Asia," Mr. Kennedy said.

Though many health care systems outside of the U.S. are administered by governments and paid for through taxation, in some countries, most U.S. multinationals still offer supplemental health benefits.

"The national health systems in many countries are cutting back, and there are more waiting lines. And in those cases, it behooves the U.S. multinational to provide some level of supplemental benefits," said Richard Polak, president and CEO of Polak International Consultants in Los Angeles. "But these are not expensive compared to the U.S., usually costing about one-third of health benefits in the U.S."

Despite such obstacles to uniform benefits worldwide, many U.S. multinationals are adopting global benefits strategies to create a single global identity and approach to doing business worldwide.

"Companies have to have a phi-

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Source: BI survey

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Equity: Strategies ensure uniform benefits

Continued from page 12

losophy, a foundation of what they're about and what they want to be," said Mr. Polak. "No matter where you are in the world, people die, they become disabled, they need health care and they retire. At what percentile do we want to fit in the market—highest, average market? This philosophy generally applies to benefits as well."

"You can have some guiding principles and say, for example, that our employees will be at 75%

of competitive benchmarking," said Ms. Darling. "And then you'd have to do virtually a country-by-country assessment of what you have in each market," making changes where the benefits don't meet that standard.

For example, in China, where the government provides health benefits, "you might decide to do something else in lieu of the company giving employer-sponsored health benefits, such as higher wages, feed people or partially subsidize hous-

ing, targeting the benefits to what's missing in that country," Ms. Darling said.

"You want to develop a philosophy of benefits internationally. Define what you are trying to achieve. Your benefits have to be in line with that," concurred Mr. Coleman. "Maybe the goal is to cut costs, improve retention or reduce long-term liabilities from a pension standpoint. You can't answer those things unless you have a philosophy."

Sarbanes-Oxley drives concern for consistency

Developing a global benefits strategy is becoming especially important for publicly traded companies since the 2002 enactment of the federal Sarbanes-Oxley legislation on corporate governance, experts say.

"With Sarbanes-Oxley and the need for controls, we're seeing more U.S. management involvement (in employee benefits) so that cost and risk are managed," said Steve Rimmer, a principal at PricewaterhouseCoopers in New York.

"While they cannot achieve one global program, they can have some principles globally that they can apply," he said.

U.S. multinationals increasingly are using "uniform and consistent ways of analyzing plans around the world and uniform governance and applying a lot more analysis than they used to," agreed Giles Archibald, worldwide partner at Mercer Human Resource Consulting in New York.

When Barry Coleman was in charge of human resources at Camarillo, Calif.-based Technicolor,

"we went through an entire process to get our benefits 'Sarboxed,'" he recalled. Technicolor is a division of Thomson, a Paris-based provider of technology, systems and services to the media and entertainment industries.

"It makes you define the processes, break down every piece from a process standpoint so there are no compliance problems," explained Mr. Coleman, who now works as vp-human resources at Platinum Equity L.L.C., a private equity firm based in Beverly Hills, Calif.

"If you add up the total benefit dollars of any (public) company, it's a large number. And so, as part of internal control over that expense, having somebody in corporate who is responsible for ensuring that this is consistent with the various strategies and controls that are in place is appropriate," concluded Kent Klaus, a partner in the global employee solutions practice at Deloitte Consulting L.L.P. in Chicago.

—By Joanne Wojcik

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Canada: Flexible benefit plans gain in popularity

Continued from page 11

goals, consultants say. "I think, generally, it's been a soft trend," said Jean-Guy Gauthier, a partner in the benefits consulting practice of Morneau Sobeco, based in Montreal. "It's nothing major, but it's a trend we'll see continuing."

More than half of Canadian employers—52%—currently offer or plan to offer flexible benefit plans in the next two years, while another 33% anticipate offering them in the future, according to a Hewitt Associates survey released last month.

Most of the Canadian flexible benefit plans take one of two formats: allowing employees to choose from a range of options in several benefit areas or to choose among packages that have preset layers of medical and dental coverage and life and disability insurance. These plans are often combined with health spending accounts that permit employees to receive tax-free reimbursement for their health care expenses.

"Canadian employers are viewing flexible benefits as a real win-win strategy."

Sarah Beach
Hewitt Associates

For example, Toronto-based Proctor & Gamble Canada, which implemented a flexible benefits plan in 1997, offers three options for medical care, ranging from 60% to 100% of coverage, and three options for dental care, ranging from 80% to 100% of coverage, a spokeswoman said. Employees direct their credits—the number of which is determined based on their annual earnings—toward the level of coverage they wish to select.

P&G Canada employees can also apply credits to other benefits, such as disability or life insurance, or to their health spending accounts. In addition, the flex plan allows credits to be used to purchase company stock, contribute to an employee's retirement plan or purchase additional vacation days.

"It really depends on what the employees need or what they want to do with their credits," said a spokeswoman for the company, which has all its 2,000 Canadian employees enrolled in the flex plan.

The two main reasons cited by employers that choose flex plans are containing rising benefit costs while offering employees benefit options and improving employee recruitment and retention, said Sarah Beech, benefits practice leader for Hewitt based in Toronto. "Canadian employers are viewing flexible benefits as a real win-win strategy," Ms. Beech said.

The link between flexible benefit plans and cost containment has been proven, with about 71% of the employers that implement these plans achieving cost containment,

she said.

Desjardins General Insurance Group implemented a flexible benefits plan for its 3,000 employees in an effort to attract and retain employees and position itself favorably against its competitors, said Louis Chantal, senior executive vp, administration, finance and human resources, for the Levis, Québec-based company. "There's a challenge in Canada, particularly in Québec: the scarcity of manpower," Mr. Chantal said.

The most popular benefit options that companies offer through flex plans are medical, offered by 83.5% of companies that offer plans, and

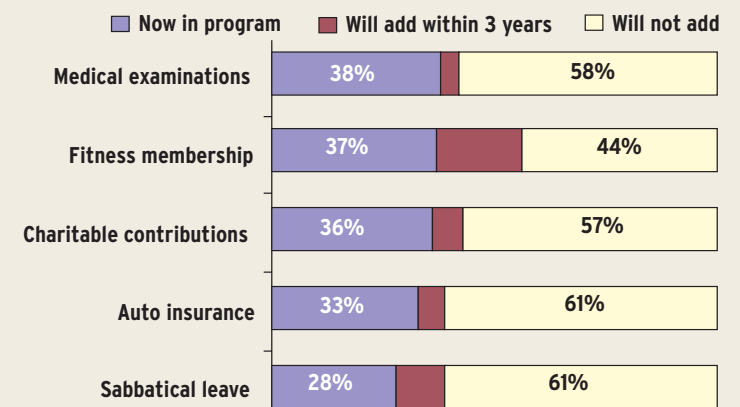
dental benefits, provided by 85.6%. Eighty-five percent of Canadian employers also provide health spending accounts.

Employers, though, are constantly tweaking their flexible benefit plans to offer more choices to their employees. For example, the Hewitt study found that while only 17% of organizations currently offer critical illness coverage, which provides funds for employees if they are diagnosed with grave illnesses such as cancer, another 30% said they expect to add critical illness coverage to their plans within the next three

Continued on next page

What's in your flex program?

Canadian employers were asked to indicate if the following benefits are currently available and, if not, whether they expect to add them.



Source: Hewitt Associates



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194 Canadian employers were asked to choose the statement that most closely describes their current interest in flex plans.

	Employers with 1,000 or fewer employees	Employers with more than 1,000 employees
We have implemented a flex plan	35%	46%
We are currently implementing a flex plan	2%	7%
We anticipate implementing a flex plan within the next two years	6%	10%
We anticipate implementing a flex plan but don't know when	37%	29%
We have never had a flex plan and are not interested in developing one	19%	8%
We had a flex plan and have reverted back to a traditional plan	1%	0%

Source: Hewitt Associates

Continued from previous page years.

Making a link between benefits and retirement, 38% of companies are now including retirement options in their flex plans, allowing employees to divert some of their flex benefits credits into their pension plans, according to the Hewitt study. This represents a 10% increase from 2002.

Desjardins is exploring a possible future expansion of its flex plan to help employees manage their personal lives by incorporating such benefits as day care and dry cleaning options. "We think if our employees are happier, they will work better," Mr. Chantal said. "Then it will be easier to attract more talent

and retain them."

Despite the many advantages of flexible benefit plans, they also have significant drawbacks that may affect how many employers choose to adopt them, consultants note.

Flex plans, because they offer so many options, can be more difficult and costly to administer. "Even if a plan sponsor's objective is to maintain costs or share costs, they will generally assume a higher cost of administration and communication than they would have," said Greg Durant, group and health care practice leader for central Canada for Watson Wyatt Worldwide in Toronto.

According to the Hewitt study,

the two main obstacles to introducing flexible benefit plans are administrative and communication challenges, cited by 33% and 21% of the respondents respectively.

There is also the risk of improper selection if employees choose low-level options and then lack sufficient coverage to meet their needs. "The onus is on the employee to make the right choices for coverage," which highlights the need for ample education and communication, said Denis Plouffe, benefit consultant for PricewaterhouseCoopers L.L.P. based in New York.

To a certain extent, the socialized health care system in Canada also steers attention away from health care issues, because Canadian companies, while dealing with rising health care costs, do not share as much responsibility for those costs as U.S. companies do. "We don't have the same number of (cost) drivers as in the States," Mr. Durant said, adding that many Canadian companies are preoccupied with other issues, such as complying with corporate governance standards.

All of these factors may work against any future increase in the number of employers adopting flexible benefit plans. "I think we'll see a pretty steady 25% to 30% of employers providing flex plans," Mr. Durant said. "I don't think it's going to leapfrog much beyond that."

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Italy stiffens state pension rules, permits private plan competition

By SARAH VEYSEY

Employers in Italy are being warned to ready themselves for changes to the country's pension system that will come into force next year.

The Italian parliament in July passed a series of reforms that will affect both occupational and state-backed pension provisions.

Experts say the government's reforms are aimed at increasing employer-sponsored—or so-called "sec-

ond-pillar"—pension provisions in order to decrease the burden on the country's state-backed pension benefits.

Supplementary pensions, provided by employers, have not been common in Italy because state pension benefits have been considered generous, according to Mark Sullivan, head of international consulting at Mercer Human Resource Consulting in London.

But the Italian government has

recently been under pressure from organizations such as the European Central Bank and the World Bank to address certain fiscal problems, Mr. Sullivan said, noting that the retirement provision is one obvious way to do so.

Increased longevity and a decreasing working population have necessitated changes to the state's pension benefit provision, said Gui-

Continued on next page

Health cash plans find market as a lower-cost benefit in U.K.

By BARBARA COCKBURN

Employers in the United Kingdom are turning to lower-cost health benefits as they seek to fight off medical inflation and, at the same time, offer valued benefits to employees.

While traditional private medical insurance remains a key health benefit provided to employees, lower-cost products such as health care cash plans and flexible benefit programs are becoming increasingly popular.

Although all U.K. employees have access to the state-run National Health Service, employers frequently offer private health coverage to employees. The long NHS waiting lists for some nonurgent procedures and the limited coverage for others—such as dental and vision care—mean that employees have come to value private health coverage, observers say.

The health insurance industry is well established in the United Kingdom. At the start of 2005, 5.56 million people—or 9.25% of the population—were covered by employer-funded private medical insurance, according to London-based health care analysts Laing & Buisson.

Senior economist Philip Blackburn at Laing & Buisson said that 60% of these policies are paid for entirely by the company and a further 10% are company-sponsored, with the employees making contributions at a group rate.

Mr. Blackburn added that though some employers provide private medical insurance for all staff, most reserve it for senior executives.

Dudley Lusted, head of corporate development at Tunbridge Wells, England-based AXA PPP healthcare Ltd., said that private medical insurance "complements" the work of the NHS.

Mr. Lusted acknowledged that conditions such as asthma, pregnancy and cancer treatment are dealt with "very well" by the NHS and most prescription drugs are covered by the NHS. But one of the main benefits of private medical in-

surance coverage for employers is that it can be used to help get employees back to work when they need to undergo procedures for which there is usually a long waiting list on the NHS, such as hip surgery or treatment for musculoskeletal conditions like back pain, he said.

Private medical insurance offers coverage for treatment received in the hospital, with its providers settling the charges directly with the hospital. It also offers coverage for outpatient treatment, such as when a doctor refers a patient to a specialist for a consultation. Typically, providers also include a 24-hour health information service.

Multinational companies providing benefits to their U.K. employees consider health care a priority for staff, but employees generally consider pensions more important, according to Alan Frei, director of the employee benefits consulting unit of Windsor, England-based brokerage Tenon.

U.S. employers often are surprised at how inexpensive medical insurance is in the United Kingdom, "and most do not realize how much we rely on the NHS. PMI is used as a way of queue jumping," Mr. Frei said.

The cost of private medical insurance in the United Kingdom is now increasing due to medical inflation, though, and many companies are facing premium increases of about 7% to 10% a year, said Naomi Saragoussi, a senior consultant with London-based consultant Watson Wyatt Worldwide.

A typical private medical insurance premium is currently about £500 (\$890) a year for each employee covered, said Mr. Lusted.

As a result, employers are looking for lower-cost alternatives and often turn to health cash plans, for which the premiums are much lower and which help with the cost of "everyday health care" such as dental and vision care.

Cash plan providers offer weekly premium options starting at about £1.70 (\$3.03) and ranging up to £10 (\$17.80), which can be paid directly or through payroll deduc-

tion. The plans typically cover 50% of the cost of various treatments, up to a set limit.

The plans, which gained popularity in the early 1990s, also provide coverage for other nonurgent health care procedures, such as podiatry, physiotherapy and chiropractic treatment.

Des Benjamin, chief executive of the Andover, England-based cash plan provider HSA Group Ltd., said that the government launched its Choosing Health consultation initiative to improve the health of the nation due to increasing levels of stress-related absence from work and childhood obesity, among other things.

The Choosing Health white paper, launched in November 2004, encourages employers to promote "health and wellbeing in the workplace...something that individual employees cannot achieve for themselves but need assistance from employers, government and trades unions."

"The government wants to give individuals greater choice and responsibility with regard to health and sees the workplace as an ideal platform to promote this initiative," Mr. Benjamin said.

Jim Aitken, marketing director at London-based broker Chase De Vere Employee Benefits, said that flexible benefits also are being used by more employers now than five years ago.

"It is more attractive to employers because of the cost and the ease of use with technology," Mr. Aitken said.

At some companies, all staff are given 10% of their salary to spend on a range of benefits, including pensions, private medical insurance, extra vacation days and child care benefits.

Flexible benefits are also attractive to employees because they can pick and choose how much of each benefit they want and also can include their families in the coverage.

"The costs for the employer are fixed. They pay 10% of each member's salary, and if premiums rise, the employer is not affected," Mr. Aitken said.

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August 15, 2005

Continued from previous page
do Blasco, a consultant at Hewitt Associates in Milan, Italy.

In order to address this issue, the government is trying to encourage companies to set up occupational pension plans, Mr. Sullivan said.

Among other reforms, the government in 2007 will make changes to its retirement rules for employees.

Currently, an employee age 57 who has made at least 35 years of social security contributions may retire early on a full state pension, and an employee of any age who has made 38 years of social security payments may retire early on a full pension. In 2006 and 2007, though, an employee will need to make annual social security contributions for 39 years to be eligible for early retirement on a full pension.

Starting in 2008, the early retirement age will increase to 60, and

retirement funds will automatically be invested into pension funds.

While the costs to employers of providing the termination indemnity benefit will not change, they will be redistributed, said Mercer's Mr. Sullivan.

And such a redistribution could have an adverse effect on employers' cash flow, according to Hewitt's Mr. Blasco.

The changes to the treatment of termination indemnities means that employers will have to embark upon education and communication programs to explain to their employees the options they have for investing their benefits, according to Livio Mocenigo, a consultant at Watson Wyatt Worldwide in Milan.

Employers must begin such efforts now, Mr. Mocenigo said, in order to be ready for the advent of the new rules in January.

Experts note that another important reform introduced by the government is the opening up of the second-pillar pension provision to competition.

This will enable employers in industries previously covered by industrywide pension arrangements to design their own occupational pension plans as a tool to attract and retain staff, Mr. Mocenigo said.

Employers may incur additional administration costs in setting up and running company-specific occupational pension plans, Mr. Blasco said.

But Mr. Mocenigo pointed out

that employers will be able to design plans that better suit their companies than do the industrywide arrangements. He noted, for example, that companies will be able to set employer and employee contribution rates for these occupational pension plans. Currently, for industrywide arrangements, the contribution rates are set at a national level after negotiations between labor unions and employer federations.

Mr. Mocenigo said that this increased competition will give employers greater freedom to design pension plans to suit their business models.

"We are trying to convince our clients to do that because it will give them the freedom to design pension plans with the contribution

rate depending on their policy of attracting and retaining employees, evaluating performance or seniority," he said.

The current system of industrywide pension plans is "one size fits all" and may not suit all employers, he said.

"There is no obligation for an employer to set up his own fund, but it should be seen as an opportunity in terms of designing the pension fund and, therefore, improving their benefit offer," Mr. Mocenigo noted.

While many large multinational companies operating in Italy already have occupational pension plans in place, more midsize companies will now likely explore the possibility of setting up work-based plans, he predicted.

PHOTO: EPA/GIUSEPPE GIGLIA



Italian workers and retirees march on Rome in April 2004 to protest the government's plans to reform its generous pension system. Last month, the Italian parliament passed its long-awaited bill to raise the minimum requirements for retirement with full pension benefits.

the minimum age will increase again to 61 for workers retiring from 2010 through 2013.

Such changes to the state pension system will likely prompt more employee interest in employer-sponsored occupational pension plans, said David West, senior international benefits consultant at Aon Consulting in London.

Another change passed by parliament this year will enable employees to invest their termination indemnities into retirement funds.

All employers in Italy must, by law, provide termination indemnities, said Mr. Sullivan. This benefit—usually equal to one month's salary for each year of service—is currently given to an employee in a lump sum payment when he or she leaves an employer, whatever the reason for the departure.

Under the reforms that come into force in 2006, employees may opt to invest their termination indemnity payments into pension funds instead of receiving the lump sum payments.

And, to encourage the take-up of this option, the payments of those employees who have not informed their employers as to whether or not they wish to have their termination indemnity benefits paid into

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Alcoholism affects the workplace

Problem drinkers and people with alcoholism are more likely than other workers to have:

- Had three or more employers during the past year.
- Missed work more than two days in the past month due to illness or injury.
- Skipped work more than two days in the past month.
- Used twice as much sick leave as other employees.
- Caused injuries to themselves or others while on the job.

In addition:

- Problem drinkers are five times more likely to file workers comp claims.
- 20% of workers say they have been injured or needed to work harder because of other employees' drinking.
- More than half of working family members of alcoholics report that their own ability to function at work and at home was negatively impacted by a family member's drinking.

Source: Ensuring Solutions to Alcohol Problems

Alcoholism: A problem for employers, workers

Continued from page 4

agnosed with such a problem, Mr. Goplerud said. Only 45% of those plan members identified with a drinking problem receive any additional services within 14 days of diagnosis and only 16% receive services three or more times with 30 days.

Three or more appointments with a doctor or counselor are considered necessary treatment, Mr. Goplerud said. Follow up care for health plan members is also lacking, he said.

Only 17% of health plan members identified with alcohol problems receive phone calls reminding

"Not surprisingly, if you are not reaching out to patients, you don't get many of them into treatment."

Eric Goplerud
Ensuring Solutions to Alcohol Problems

them of missed doctor appointments, while only 30% receive reminders based of the health risks

they face, and 44% receive related care management calls, Ensuring Solutions found

"Not surprisingly, if you are not reaching out to patients, you don't get many of them into treatment," Mr. Goplerud said.

Ensuring Solutions has also found that only 50% of health plans recommend that their primary care givers use clinical guidelines for screening and treating alcohol-related disorders, Mr. Goplerud said. Organizations such as the National Institute on Alcohol Abuse and Alcoholism, the American Psychiatric Assn., and the Veterans Administration have developed such guidelines.

Ensuring Solutions' findings are based on data submitted to eValue8, an electronic survey tool developed by NBCH, which captures voluntarily reported data from more than 250 health plans nationwide.

To address the failure to identify and treat employees with mental health and alcohol problems, employers, health plans and physicians need to ensure that those issues are treated in the same manner as disease such as diabetes, heart disease, and asthma, Mr. Goplerud said.

DMEC meeting draws 500 to Orlando

ORLANDO, Fla.—At least eight of the 29 sessions presented at the 10th annual National Disability & Absence Management Conference addressed employee behavioral and mental health issues such as depression, substance abuse and personality disorders.



Employers are increasingly interested in the impact of mental health on employee productivity, according to leaders of the San Diego-based Disability Management Employer Coalition, which sponsored the conference held July 31-Aug. 3 in Orlando. DMEC is a nonprofit professional association.

Other conference topics included linking disease management to disability, identifying employees at risk for disability, integrating benefit vendors and addressing the challenges of an aging workforce.

About 500 people registered for the conference in Orlando, which drew nearly 40 exhibitors. In 2006, DMEC will host the event July 16-19 at the Sheraton Harbor Island Hotel & Marina in San Diego. For more information, visit www.dmec.org.

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Borderline personality disorder presents disability challenge

By **ROBERTO CENICEROS**

ORLANDO, Fla.—Understanding borderline personality disorder can help employers manage disability claims to ensure appropriate return to work outcomes, speakers told the Disability Management Employer Coalition.

A BPD claim warrants particular attention by employers and case managers because it can be tough to discern whether a claimant is really disabled or merely causing problems that affect his or her job performance and require action by the human resource department, said Katie Dodge. Ms. Dodge is manager of health services for Xcel Energy, a Minneapolis-based electricity and natural gas company with nearly 11,000 employees.

Understanding BPD

Borderline personality disorder is a serious mental illness that affects 2% of adults, mostly young women.

Characteristics include:

- A pervasive instability of mood, interpersonal relationships, self-image and behavior.
- Episodes of impulsive aggression, self-injury, drug and alcohol abuse.
- Instability that disrupts family and work life, long-term planning and the individual's sense of self-identity.

Source: National Institute of Mental Health

Additionally, people with BPD tend to use manipulative tactics and can work to turn their supervisors, case managers, and care providers against one other. Meanwhile, their medical providers may, without adequate questioning, accept their patients' claim that disability benefits are warranted, the speakers said.

BPD occurs in about 2% of the general population and is the most frequent personality disorder employers must confront, Ms. Dodge said.

People with BPD often have failing relationships and difficulties getting along with others, including co-workers, said Dean Knudson, a psychiatrist for Behavioral Medical Interventions, a disability management and workplace intervention company in Minneapolis.

They are prone to depression and abrupt anger and can engage in vicious personal attacks, Dr. Knudson added. They often create chaotic environments, doing so in the workplace by pitting supervisors and workers against each other. Their self-identity and beliefs fluctuate frequently, and they can lack empathy for others or fail to feel remorse for their misdeeds.

They fall apart quickly, yet also compose themselves just as quickly, and their relationships tend to begin and end with great intensity, Ms. Dodge added. "People who are

borderline are simply very, very difficult to live with, to speak with, to work with," Ms. Dodge told DMEC's 10th annual National Disability & Absence Management Conference.

The behavior exhibited by an individual with BPD might make it seem as though a disability award is appropriate. But, in general, BPD is not disabling, although 60% of people with BPD also suffer from other problems, such as anxiety disorders and mood disorders, that can be disabling, Ms. Dodge said.

Health care providers, though, sometimes approve disability bene-

fits and time away from work when it is not warranted, the speakers said. A clinician may sign a disability request form just to be rid of a very difficult patient capable of wearing him or her down, Dr. Knudson said.

Or clinicians may have an agenda that includes seeing disability benefits applied as a form of social justice insurance, the speakers said.

A medical provider or therapist can take an improper advocacy position, they added. In doing so, he or she may have a "blind spot," preventing that individual from providing objective information

about a patient's status while basing his or her diagnosis on issues such as whether their patient has a good working situation, Ms. Dodge said.

"To be disabling, functionality must be impaired, so it's not about what your diagnosis is; it's about what you can or cannot do," Ms. Dodge said.

Dr. Knudson agreed. To help a claimant's doctor discern whether time away from work is really warranted, Dr. Knudson said he often asks a doctor whether the employee would be capable of working at that specific moment if he or she

really wanted to. Otherwise, he said, the health provider may base a decision to recommend a disability award on symptoms the patient might experience in the future.

Dr. Knudson also said he might remind a doctor that the employer has a broader picture of the patient's behavior than does the doctor, who may be basing his or her decision solely on information provided by the patient.

Employers need to watch out for "secondary gains," Ms. Dodge said. Such gains can include a claimant's desire to miss work just to escape difficulties with a supervisor.



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Managers chew over employee health care problems

By **ROBERTO CENICEROS**

ORLANDO, Fla.—Long chats over home-cooked meals play an important part in two employers' efforts to curb absenteeism and reduce health care costs.

By gathering together in separate informal settings, managers at a European unit of General Electric Co. and Volkswagen A.G. are able to devise solutions to problems that are increasing as workers age and health care costs increase, physicians at the companies say.

The doctors were both speaking at the Disability Management Em-

ployer Coalition's 10th Annual National Disability and Absence Management Conference held earlier this month in Orlando, Fla.

GE Advanced Materials in Bergen op Zoom, Netherlands, hosts monthly "living room talks" where company supervisors discuss stress, diet, employee morale and other issues over a meal the managers help prepare.

The meetings are held in a cottage without telephone or Internet distractions, on



park grounds adjacent to the GE plastics factory, said Dr. Henri Hendrickx, occupational physician for GE Advanced Materials.

The supervisor discussions are a part of a leadership development program that includes efforts to reduce factory absenteeism, Dr. Hendrickx said. Absenteeism at the plastics factory is frequently measured and is used to evaluate manager performance, he said.

Supervisors for Volkswagen A.G. also prepare their

meals together as part of a two-day health coaching program, said Dr. Silke Mahlstedt-Holker, doctor for occupational and internal medicine at Volkswagen in Braunschweig, Germany.

The health-coaching program is part of Volkswagen's efforts to reduce disabilities, absenteeism, and health-related costs while meeting the auto manufacturer's social obligation to protect and improve employee health, Dr. Mahlstedt-Holker said.

Such measures are increasingly important as workers age, health care costs rise, stress-inducing work pressures increase, and recent laws hold employers increasingly accountable for wages paid to disabled employees, the speakers told a DMEC conference session on the state of disability management in Europe.

Volkswagen also surveys employees to determine their health status, identify risk factors, and implement early intervention strategies along with offering worker wellness and fitness programs. It also has an elaborate re-integration process that helps return disabled employees to work, Dr. Mahlstedt-Holker said. They can be gradually reintroduced to employment with their duties increasing only as their abilities improve. Visits with a company doctor, treatment at an in-house rehabilitation center, work retraining, and restructuring of their duties are all part of available solutions for an early return to work, she said.

Volkswagen has seen positive results from its efforts, Dr. Mahlstedt-Holker said. For example, a year after implementing the supervisor health-coaching program, the company not only found that managers' health improved, as intended, but employees the managers supervise also experienced improved health, according to survey results.

The surprise results happened because supervisors grew more likely to suggest employees receive treatment when they first spotted a potential problem. The managers were also more likely to discuss issues such as stress management with their workers, Dr. Mahlstedt-Holker said.

General Electric's living room talks are also part of its overall strategy to prevent disabilities. GE's efforts include recently implemented lifestyle programs that focus on exercise, body fat reduction and smoking cessation.

GE too has a reintegration program to help disabled employees return to work, Dr. Hendrickx said. Such efforts are increasingly important and even required because in 2004 the Dutch government increased employers' responsibility for paying the salary of disabled employees from one year to two years, regardless of whether the disability stems from a work injury, he said.

To address a rapid rise in citizens collecting a disability pensions, which reached 9% of the Netherlands' total working population in 2002, the 2004 law also required that employers and employees take part in return to work programs.

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COMINGS & GOINGS - BUYERS

Dennis Rounds has been appointed executive director of the South Dakota Office of Risk Management and Public Entity Pool for Liability Fund and litigation services manager for South Dakota Gov. Mike Rounds.

Mr. Rounds is responsible for managing claims and litigation, as well as overseeing the state's risk management staff. In addition, he works with each state agency to establish risk management guidelines and provide training. He also continues to serve as the executive director of the South Dakota Petroleum Release Compensation Fund.

He replaces Judith Payne, who was named the secretary of the South Dakota Department of Transportation. Ms. Payne, who has served as the state's risk manager since 1987, was a member of the *Business Insurance* Risk Management Honor Roll in 1995.

Mr. Rounds holds a bachelor's degree in environmental engineering technology from Western Kentucky University in Bowling Green and a master of science degree in civil engineering from the South Dakota School of Mines & Technology in Rapid City.

Susan L. Menzel has been named executive vp, human resources, for Conseo Inc., a Carmel, Ind.-based provider of supplemental



Ms. Menzel

health insurance, life insurance and annuities.

Ms. Menzel's responsibilities include employee benefits, compensation, staffing, and employee relations and development. She is responsible for human resources across the enterprise, consisting of corporate operations as well as the company's subsidiaries.

She replaces Dewey Ingham, who retired earlier this year.

Prior to joining the company, Ms. Menzel served as senior vp, human resources, for APAC Customer Services Inc. in Deerfield, Ill.

She holds a bachelor's degree in business administration and economics from Augustana College in Rock Island, Ill.

Donna L. Pearcy has been named director of risk management, insurance and loss prevention for the University of Iowa in Iowa City. In addition, she will coordinate risk management activities with Iowa State University in Ames and the University of Northern Iowa in Cedar Falls.

Ms. Pearcy will administer insurance and self-insurance programs

covering property and liability risks, including buildings, equipment, vehicles, fine art and liability claims.

She replaces Andrew M. Ives, who was the interim UI risk management director. Mr. Ives will return to his previous position as business manager.

Prior to her appointment, Ms. Pearcy served as director of risk management for the Dallas County Community College District in Dallas.

Ms. Pearcy holds a bachelor's degree in business administration and a master's degree in business ad-

ministration from Southeast Missouri University in Cape Girardeau.

Andrea Cabrelli has been appointed director of human resources at The American College, a Bryn Mawr, Pa.-based nonprofit educator of professionals in the insurance and financial services industries.

Ms. Cabrelli oversees employee benefits, recruitment, human resources information systems, employee relations and coaching, and college policies and procedures. During her multiyear assignment with The American College, she

will also be employed by HR Impact, a Newtown Square, Pa.-based firm that provides companies with human resource assistance, as a human resources business partner.



Ms. Cabrelli

She earned a bachelor's degree in business management from Philadelphia University and a master of business administration degree from Eastern University in St. Davids, Pa.

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PRODUCTS & SERVICES



Program targets sexual harassment

ATLANTA—Employment Learning Innovations Inc., a provider of interactive classroom and online learning programs to help organizations minimize risks and maintain legal and ethical work environments, has added a sexual harassment prevention program to its Civil Treatment series.

"*CT Impact: Focus on Sexual Harassment Prevention*," is designed to help managers understand the business risks of sexual harassment. Some of the programs features are: learning how to identify and define sexually harassing behavior; determining when, where and how to get help when problems emerge; and implementing steps to prevent harassing behavior in their departments.

The two-hour modular program is available in classroom, online and interactive Webcast versions. The classroom and Webcast versions are conducted by ELI instructors,

and the online version is delivered via CD-ROM, intranet or Internet.

For more information, contact Atlanta-based ELI at 800-497-7654 or visit www.eliinc.com.

Navigators Pro launches lawyers liability policy

NEW YORK—Navigators Pro, a division of Navigators Management Co., is offering an employed lawyers professional liability policy.

The policy, called GCscape, provides professional liability coverage for the general counsel, chief legal counsel, in-house counsel and lawyers employed by corporations. It provides protection for the covered loss of nonindemnifiable claims that employed lawyers are legally obligated to pay for failure to perform their duties as lawyers to the organization. It intends to respond to the covered loss excess of any directors and officers policy the client may already hold. Up to \$10 million in limits are available.

For more information, contact Chris Duca, president of Navigators Pro, in the New York office at 212-613-4305.

Kaplan offers online risk management study

DAVENPORT, Iowa—Kaplan University's School of Continuing & Professional Studies is offering an online certificate program for risk management.

The Risk Management Certificate is targeted at individuals with backgrounds in insurance, human re-

sources, accounting, business and finance. It is a self-study program and can be completed in 12 months. Students of this program learn to assess risks and evaluate risk management techniques, and how to use enterprise risk management techniques.

The risk management certificate was developed by James W. Kallman, owner of Austin, Texas-based Kallman Consulting Services.

For more information, visit Kaplan's business and finance sector Web site at www.kaplan.edu/bf.

St. Paul introduces real estate E&O policy

ST. PAUL, Minn.—St. Paul Travelers Cos. Inc. is offering a policy for real estate agents and brokers that protects against possible errors and omissions.

The 1st Choice for Real Estate Agents & Brokers Professional Liability Protection policy provides coverage for real estate agents and brokers, notaries public and property managers. The policyholder's employees, independent contractors and employees of the independent contractors also are covered. Some of the policy's features include protection from fair housing discrimination claims and from failure by the agent or broker to reveal to buyers or sellers pollution at properties.

In addition to this policy, St. Paul, Minn.-based St. Paul Travelers is also offering the 1st Choice for Real Estate Professionals Services Liability Protection policy. This policy

offers the same coverage features as the other but is available to more real estate professionals, including auctioneers, real estate appraisers, title searchers, escrow agents and title opinion lawyers.

The available limits for each policy are \$5 million.

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



Venture expands program for golf, country clubs

WEST CHESTER, Pa.—Venture Insurance Programs has expanded its program for golf and country clubs by forming an alliance with Worcester, Mass.-based The Hanover Insurance Co.

The Preferred Club Program expansion will offer coverage to daily fee courses, semi-private clubs and country clubs with lower property values than those covered in the existing program which is covered by Chubb Group of Insurance Cos. in Warren, N.J.

West Chester, Pa.-based Venture's Preferred Club Program provides coverage for workers compensation, property, general liability and liquor liability, among others.

Hanover will use the program's proprietary form.

For more information, contact

Annamarie Keen, director-corporate sales, at 800-282-6247, ext. 278, or visit the company's Web site at www.ventureprograms.com.

McNeary offering ERM consulting

CHARLOTTE, N.C.—McNeary Risk Management, a division of McNeary Inc., is now offering enterprise risk management consulting services.

The ERM service is designed to help businesses minimize risk from uncertainty and exposure and develop an ongoing risk monitoring environment. McNeary's ROADMAP methodology is used in analyzing the risks a company may face. It incorporates best practices associated with the identification of risks and risk mitigation strategies.

More information on the ERM services can be obtained by contacting the Charlotte, N.C.-based company at 877-729-4149 or by visiting www.mcneary.com.

Assurant introduces dental program

KANSAS CITY, Mo.—Assurant Employee Benefits has introduced a dental program intended to be a more affordable preferred provider organization dental plan for employers and employees.

The PPO Choice+ dental benefit plan features access to Kansas City, Mo.-based Dental Health Alliance's PPO network of more than 49,500 dentists nationwide, without in-network deductibles or referrals for in-network specialists. Child orthodontia is available at 50% co-insurance.

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

OnlineBenefits updates Benergy program

UNIONDALE, N.Y.—OnlineBenefits Inc. has enhanced the enrollment process of Benergy, its benefits communication software.


The enrollment tool, Ready...Enroll Express, is an online open enrollment system integrated with OnlineBenefits' Benergy product. It allows employees to review and update personal and dependent data, along with choosing the appropriate benefit selections. When the process is complete, the employee can view and print a confirmation statement. Employers can manage the enrollment database and have full access to the data to analyze enrollments and create reports.

More information can be obtained by contacting the company at 877-476-6932 or by visiting www.onlinebenefits.com.

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

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COMMENTARY

Senior Editor Dave Lenckus

Security guards help in terrorism battle

Terrorism is an escalating threat to defenseless civilians and unfortified property. The recent bombings and failed attacks in London clearly demonstrate this risk.

Yet, amazingly, many organizations do not pay enough—if any—attention to this threat.

And, with recent governmental intelligence reports warning that terrorists are shifting their focus to “soft” targets, or public gathering places, many more risk managers—in title or function—have to start doing a better job of guarding against this risk.

We reported last week how some risk managers have turned to bomb blast modeling so they could better analyze their facilities’ vulnerabilities to terrorist bombings and see where to implement security and loss control measures.

Only a few large organizations are using this technology, though. Bomb blast modeling and property loss control experts explain that because most risk managers do not believe that their organizations are likely terrorist targets, they don’t see the need to invest in that risk identification tool.

Those risk managers are only half right. True, the risk is small that any single entity would be targeted by a terrorist. But logic tells you that those odds move in the wrong direction when security is subpar. After all, terrorism is just another form of crime, and all criminals have one thing in common: They are opportunists who prey on the weak and the complacent.

That is why property loss control experts and even bomb blast modelers who would like to see blast modeling used more extensively readily point out that the tool and various loss reduction measures alone cannot prevent terrorism losses. The first line of defense is an effective security system, they stress.

Indeed, many large organizations have ratcheted up their security in recent years. For example, they have installed key card doors and closed-circuit monitoring at their facilities, routed all traffic into their campuses through one or two security checkpoints, discontinued parking privileges for visitors in underground garages and arranged escorts for all guests and package deliverers.

Some of those measures are sound not only because they can stop and snare would-be wrongdoers in the act but also because they

are highly visible and deliver a strong message to the bad guys: We’re waiting and watching for you, so don’t even try anything.

Risk managers at the top of their game also mix up security measures so that bad guys cannot tell what measures they would have to subvert on any given day.

Still, there are many organizations at which security is dangerously weak.

I’ve personally visited large corporate headquarters where security personnel was cavalier in assessing why visitors were attempting to gain access. Those same feeble-looking security guards obviously were in no shape to chase down and subdue anyone with criminal intent.

Now, given what recent intelligence reports tell us about likely new targets, security should be stepped up at businesses such as supermarkets, restaurants and theaters, as well as at schools.

By design, those entities attract heavy foot and vehicular traffic, so bomb blast modeling would be pointless in most cases. Exceptions would be those operations that are neighbors of high-risk targets. In those cases, they may benefit from analyzing their collateral blast-damage risks.

But, in general, just trotting out some highly visible and fit security personnel would be a great first step in preventing terrorism losses—with the emphasis on first step.

I’m not talking about patting down shoppers as they push their carts through the automatic doors at the grocery store or interrogating all visitors at a school.

I’m suggesting a pair or two of steely, inquisitive eyes that silently convey the message: We’re not complacent; we are on watch.

Obviously, a guard or two is not the end-all and be-all in security. But how many potential soft targets have taken even that step?

Maybe company headquarters located outside of the nation’s largest cities and local multiscreen cinemas are not at the top of any terrorist’s hit list. But who can say how a golden opportunity might influence a terrorist’s prioritization of targets?

And why would risk managers or senior management gamble they are not a target? Isn’t the potential loss of lives and business worth the expense of at least a security guard or two who look like they mean business?

Broker wins restraining order against five former employees

By DOUGLAS McLEOD

MINNEAPOLIS—Guy Carpenter & Co. Inc. has won a temporary restraining order against five former members of its Minneapolis-based medical malpractice reinsurance team, all of whom left to join competitor John B. Collins Associates Inc. last month.

Guy Carpenter, the New York-based reinsurance unit of Marsh & McLennan Cos. Inc., sued Collins and the five executives last week in U.S. District Court in Minneapolis for alleged breaches of contract, misappropriation of trade secrets and interference with Guy Carpenter’s business relationships.

Named in the suit along with Collins are:

- Stephen Underdal and Todd Mockler, both former senior executives with Guy Carpenter and now

senior vps with Collins. Mr. Underdal was a Guy Carpenter managing director and national health care practice leader.

- Randy Floden, Robert Roehrig and Hannah Kuhn, all former Guy Carpenter malpractice specialists who reported to Mr. Mockler. Mr. Floden is now a Collins senior vp and Mr. Roehrig and Ms. Kuhn are vps.

The complaint and accompanying documents charge that the five executives, Guy Carpenter’s entire Minneapolis-based medical liability team, submitted resignations by phone or in writing to Terrance K. Russell, head of the Minneapolis office, after Mr. Russell had left the office for the day on July 14.

Collins announced hiring the team on July 18, and within days three former Guy Carpenter

clients, representing “several million dollars in brokerage revenue,” moved their business to Collins, Guy Carpenter court filings allege.

The three clients are Phoenix-based Mutual Insurance Co. of Arizona; Des Moines, Iowa-based NCMIC Insurance Co.; and Oklahoma City-based Physicians Liability Insurance Co., according to court filings.

Guy Carpenter charges that Mr. Underdal and Mr. Mockler violated noncompetition and nondisclosure of trade secret provisions in their employment contracts, while Mr. Floden, Mr. Roehrig and Ms. Kuhn allegedly violated less comprehensive confidentiality provisions in their contracts.

The suit also accuses the five executives of violating a Minnesota statute protecting trade secrets and charges Collins with interfering with Guy Carpenter’s business relationships.

A federal judge last Thursday granted a temporary restraining order barring Mr. Underdal and Mr. Mockler from soliciting Guy Carpenter clients that have not already moved their business to Collins and barring all five executives from using or disclosing confidential information.

Guy Carpenter is also seeking injunctions requiring the five to comply with their employment contracts, along with an unspecified amount of compensatory damages.

A hearing on the enforceability of Mr. Underdal’s and Mr. Mockler’s noncompete provisions is scheduled for Thursday.

A Collins spokesman declined to comment on the litigation.

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Computer virus damage covered: Court

By SARAH VEYSEY

LONDON—A company that lost vital software source code because of a computer virus can claim from its insurers for business interruption losses, the U.K. Court of Appeal has ruled.

Exclusionary language in the insurance policy does not explicitly cover computer viruses and, therefore, the policy wording should be interpreted in favor of the policyholder, the court ruled.

Despite the pro-policyholder ruling, companies that rely heavily on computer software should ensure that their business interruption policies explicitly include computer viruses if they want comprehensive coverage, legal observers say.

In a ruling last month, the court held that Tektrol Ltd., a manufacturer of energy safety devices for industrial motors, should be able to recover business interruption losses under an "all-risks" policy for losses arising from a computer virus and a subsequent burglary. The company's coverage was underwritten by International Insurance Co. of Hanover Ltd. and Great Lakes Reinsurance (U.K.) Ltd.

One of Tektrol's principal products, the "PowerMiser," relied on certain computer software, the source code of which enabled the product to

be tailored to individual customers' needs.

Tektrol's source code for the product was stored in five different places: on two computers at its premises; on a laptop computer owned by the managing director; on a computer at a remote site operated by an independent company; and on a paper printout at the company's headquarters.

In December 2001, the laptop containing the

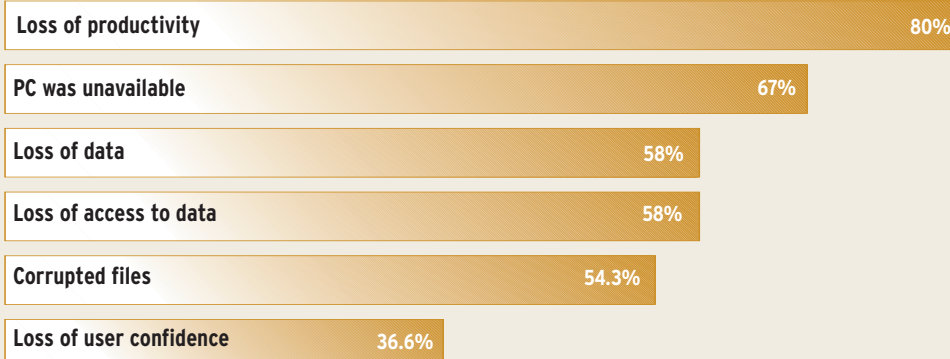
code was infected by a virus that deleted the source code. While attempting to repair the computer, Tektrol's managing director inadvertently infected the computer at the remote site, and the source code was also deleted from that computer, according to the July 21 ruling.

Then, in January 2002, Tektrol's main premises

See **VIRUS** / next page

Effects of viruses

Survey participants were asked what effects the latest virus attack had on their company.



Source: ICSA Labs



PHOTO: ZUMA PRESS

Officials examine the wreckage of an Air France jet that crashed while landing in Toronto Aug. 2.

Class-action suits filed over Air France crash in Toronto

TORONTO—Two lawsuits seeking class-action status have been filed seeking damages for passengers on the Air France jet that skidded off the runway on landing and burst into flames at Toronto's Pearson International Airport earlier this month.

All 297 passengers on the Airbus A340 survived the incident, though approximately 40 people were injured, some of whom had to be hospitalized.

On Aug. 5, Toronto-based Will Barristers: Morin & Miller and Mount Pleasant, S.C.-based law firm Motley Rice L.L.C filed a suit on behalf of all 297 passengers with the Ontario Superior Court.

The action charges negligence on the part of Airbus, Air France, the Greater Toronto Airports Authority and NavCanada, which is the Ottawa-based private corporation that owns and operates Canada's civil air navigation service. The suit is

seeking \$325 million Canadian (\$273.9 million) in damages, according to Paul Miller, a partner with Will Barristers.

A second suit, also seeking class-action status, was filed in the Superior Court in Toronto last week, sources say.

A spokeswoman for Air France said that the prospective lawsuits would not affect the compensation that is being paid to passengers.

And she said that the financial implications of the suits, which have not yet been certified, would be covered by the airline's insurance.

Hull and liability insurance for the jet was led by the French aviation insurance pool La Réunion Aérienne.

A spokeswoman for the GTAA said she could not comment on the possible class-action lawsuits while they are being considered by the court.

—By Sarah Veysey

FINITE UNDER FIRE

Berkshire fires CEO of London unit Faraday

LONDON—Berkshire Hathaway Inc. has fired Milan Vukelic, the chief executive officer of its London-based unit Faraday Group, following investigations by regulatory authorities into finite reinsurance deals he was involved in while head of General Reinsurance Corp.'s international finite business unit.

In filings with the U.S. Securities and Exchange Commission, Berkshire Hathaway said the London-based Financial Services Authority had informed it in December 2004 of an investigation of Mr. Vukelic with respect to transactions between General Reinsurance Australia Ltd. and affiliates of Australian insurer FAI Insurance Ltd. in 1998.

In April 2005, Berkshire Hathaway said in its filings, the FSA informed the company that it was investigating Mr. Vukelic and a former employee of General Re's Irish subsidiary Cologne Reinsurance Co. (Dublin) Ltd., also with respect to finite risk transactions.

Mr. Vukelic was placed on administrative leave in May, and Berkshire Hathaway terminated his employment in July, according to the filings.

Henry Ashton, formerly chief operating officer of Faraday, has been appointed chief executive officer of the unit subject to FSA and Lloyd's of London approval.

Faraday Group comprises Faraday Reinsurance Co. Ltd. and multiline Lloyd's syndicate 435.

Berkshire Hathaway said it was cooperating with the ongoing FSA investigation and said the regulator had requested information relating to the transactions in the probe, including transactions with American International Group Inc.

In addition, Berkshire Hathaway noted it was cooperating with several other insurance regulatory body probes into finite reinsurance transactions. These include investigations by regulators in Australia, Canada, Germany and Ireland.

—By Sarah Veysey

Updates

China ends suspension for Willis

The China Insurance Regulatory Commission has lifted its license suspension on Willis Pudong Insurance Brokers Co. Ltd., Willis Group Holdings Ltd. The CIRC suspended the brokerage from conducting business in the Chinese province of Guangdong in April, after it allegedly obstructed regulators from making an inspection. The suspension related to a misunderstanding, Willis said in a statement. Willis has been fined RMB 100,000 (\$12,200) and has put in place procedures to ensure that there will be no recurrence of the incident.

Converium reports first-half profit

Converium Holding Ltd. reported a \$9.0 million profit for the first six months of 2005, up from a \$594.3 million loss for the comparable period last year. The first-half loss for 2004 was caused, in large part, by a \$385 million reserve boost needed to address worsening claims trends for U.S. liability business written between 1997 and 2001. Terry Clarke, chief executive officer of Converium, said results for the first six months of 2005 had been boosted by improved underwriting performance and investment income for the second quarter of 2005.

U.K. defined benefit pension deficit falls

The overall defined benefit pension deficit of 92 of the United Kingdom's largest companies fell to £37 billion (\$65.09 billion) in July, down from £42 billion (\$76.37 billion) a year previously, according to a study by accounting firm Lane Clark & Peacock L.L.P. The firm studied financial statements made by the 92 FTSE100 companies that operate defined benefit pension plans. LCP said the companies studied cited longer life expectancy and price inflation, among other factors, as reasons why deficits had not decreased substantially, despite higher contributions and increased investment returns.

PPF to assess insolvency risks

The Pension Protection Fund has appointed a credit risk company to assess the insolvency risk of companies paying into the fund. The London-based PPF, which is loosely modeled on the U.S. Pension Benefit Guaranty Corp., has appointed the High Wycombe, England-based arm of Dun & Bradstreet Inc. to help it set the risk-based levy that contributors to the fund will have to pay beginning in April 2006.

Virus: Business interruption policy covers losses caused by computer hacker

Continued from previous page

ers were robbed, and the two computers there that contained the source code, as well as the paper printout of the code, were among the items stolen.

All copies of the source code were, therefore, lost.

Tektrol sought to recover business interruption losses from its insurers.

But in a Commercial Court decision in November 2004, Mr. Justice Langley ruled that while the policy covered business interruption following loss, damage or destruction of property, it excluded: "erasure, loss, distortion or corruption of information on computer systems or other records programs or software caused deliberately by rioters, strik-

ers, locked-out workers, persons taking part in labor disturbances or civil commotion or malicious persons."

The judge ruled that the virus was the work of "malicious persons" and, therefore, excluded under the policy. He also ruled that the loss had been caused by two separate events and that, had there been no virus, the theft would not have resulted in the loss of the source code.

The appeals court, however, overturned the lower court's decision, ruling that the exclusions were intended to exclude damage to information caused by rioters or strikers at Tektrol's premises.

"If the insurer wished to exclude all damage caused, however indi-

rectly, by a computer hacker, he needed to place that exclusion in a

Courts "have increasing sympathy for insureds when terms are ambiguous."

**Kate Tregidgo
CMS Cameron McKenna L.L.P.**

separate clause, and not refer to malicious persons in the same terms as rioters or locked-out workers," Lord Justice Buxton said in the ruling.

Kate Tregidgo, a solicitor at London-based law firm CMS Cameron McKenna L.L.P., said that the case reflected, in part, "the courts' increasing need to be involved in determining computer software issues as claims based on losses suffered by companies due to the failure of software—or, as in this case, the erasure by e-mail virus and theft of a source code—are becoming more and more common."

She noted that the judges' decision indicates that courts "have increasing sympathy for insureds who believe that they are covered by their policies when in fact the terms are ambiguous."

John Salmon, a partner in the Glasgow, Scotland, office of law firm Pinsent Masons, said that al-

though this ruling was favorable to the insurance buyer, companies should check the wordings and terms of their insurance policies rather than assuming they will be insured. This is particularly relevant to information technology companies, he said, who tend to be innovative and whose products may be new or unique. Insurance buyers must ensure that whatever method they have for storing vital information is covered by insurance, he added.

England & Wales Court of Appeal; Civ 845, Case No. A3/2004/2435 Tektrol Ltd. and International Insurance Co. of Hanover Ltd. and another, July 21, 2005.

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AND IN THE MATTER OF THE COMPANIES ACT 1985 of Great Britain

NOTICE IS HEREBY GIVEN THAT, by an order dated 2 August 2005 made in the High Court of Justice in England and Wales in the above matters, 37 separate but concurrent meetings (the "Scheme Meetings") were ordered to be convened of the Scheme Creditors (as defined in the Schemes of Arrangement referred to below) of each of the above named companies (the "Scheme Companies") for the purpose of considering and, if thought fit, approving (with or without modification) the Schemes of Arrangement proposed to be made between each of the Scheme Companies and their respective Scheme Creditors pursuant to section 425 of the Companies Act 1985 (the "Scheme"). Since DAP Holding N.V.'s ("DAP") Scheme Creditors fall into three separate categories, each of which are treated differently under the Scheme, there will be separate concurrent meetings for each class of DAP's Scheme Creditors. Each of the remaining Scheme Companies' Scheme Creditors fall into two separate categories, and accordingly there will be separate (concurrent) meetings for each class of Scheme Creditors of the remaining Scheme Companies.

Such Scheme Meetings will be held at the offices of CMS Cameron McKenna LLP, Mitre House, 160 Aldersgate Street, London, ECTA 4DD, United Kingdom commencing at 11 am on 15 September 2005, at which place and time all the Scheme Creditors of the respective Scheme Companies are requested to attend. Registration will start at 10:30 a.m. on the appointed day of the Scheme Meetings. Hermanus Johannes Touw, or failing him, Peter John Michael Fidler, failing which any partner in CMS Cameron McKenna LLP, will be appointed chairman of the said meetings.

Each Scheme Company is proposing a Scheme to terminate the run-off of its Scheme Business (as defined in the Schemes) and in the case of DAP to discharge all its liabilities (except for one bank creditor). In relation to each of the Scheme Companies other than DAP, its Scheme Business is the insurance contracts entered into on or before 31 December 1996 either in the name of DAP alone as manager of the pool of insurers on whose behalf aviation insurance contracts were effected by DAP or in the name of all the members of that pool but excluding claims in respect of direct insurance contracts.

Scheme Creditors will shortly be receiving (if they have not already received), a copy of the Scheme and the statement required to be provided to Scheme Creditors pursuant to section 426 of the Companies Act 1985 (the "Explanatory Statement"), together with a composite form of proxy and voting form to be used at the Scheme Meetings. The composite form can be used for all claims against the Scheme Companies.

Scheme Creditors may vote in person at the Scheme Meetings or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. Voting in respect of each class of each Scheme Company will be conducted separately.

If required, additional copies of the Scheme and the Explanatory Statement, as well as the composite form of proxy and voting form, may be obtained free of charge from the offices of the under mentioned solicitors at the address below or from the General Manager at DAP at email: dapscheme@assurpools.nl telephone: +31 (0)20 312 83 93 in both cases during usual business hours on any business day prior to the day appointed for the Scheme Meetings.

Any Scheme Creditor completing and returning a form of proxy (without a completed voting form) will have the value of its claims determined for voting purposes by the Chairman of the Scheme Meetings on the basis of the information available to DAP in respect of such claims.

Completed voting and proxy forms should be returned as soon as possible, and in any event so as to be received by 4 p.m. on 12 September 2005 by DAP Holding N.V., c/o Claims Management Group Limited, Ibeex House, 42-47 Minorities, London, EC3N 1TH, United Kingdom, although if not so returned may be handed in at the registration desk at the Scheme Meetings before the start. Further information on the Scheme and guidance on how to complete and return the voting/proxy form can be found in the Explanatory Statement and the form itself.

A scheme of arrangement, such as those proposed here, will only become legally binding on a company and all its creditors or any class of them if:

(a) a majority in number representing not less than 75 per cent. in value of the creditors, or any class of creditors, present and voting in person or by proxy, vote in favour of the scheme of arrangement at a meeting specially convened with the leave of the court; and

(b) the court subsequently sanctions the scheme of arrangement and an office copy of the court order to that effect be delivered for registration to the registrar of companies in England and Wales.

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August 15, 2005

Ambassador: Delayed verdict

Continued from page 3
house in 1998.

PwC plans to challenge the verdict, which it considers "inconsistent with the facts and the law," and to appeal if necessary, according to a company statement.

However, the stakes may rise for PwC depending upon how U.S. District Judge Harold A. Ackerman decides two key issues.

The first issue concerns New Jersey's joint and several liability laws, which changed since the beginning of the case.

Ambassador's insolvency "gave the industry a black eye and led to...the first and only (surplus lines) guaranty fund."

Richard Bouhan
National Assn. of Professional
Surplus Lines Offices Ltd.

If the judge upholds laws in effect in 1985 when the suit was filed, PwC faces liability for the full amount of the verdict, although the jury found it to be only 40% at fault. The jury found the late Arnold Chait, Ambassador's former president, to be 60% at fault, but his estate is unable to pay, sources said.

In 1995, New Jersey modified its law so that a plaintiff would have to be at least 60% at fault before it could be held liable for 100% of damages, according to the Washington-based American Tort Reform Assn.

"I anticipate that the judge will find that joint and several liability will apply," said Richard B. Whitney of Cleveland-based Jones Day law firm, who represents the Vermont Department of Banking, Insurance, Securities & Health Care Administration, which is the liquidator for Ambassador.

In addition, the judge also must decide plaintiffs' request for an additional \$55 million in prejudgment interest, which would increase the verdict to about \$175 million.

Ambassador wrote nearly one-quarter of its commercial, public entity and medical malpractice liability coverages on a surplus lines basis in New Jersey, according to George K. Bernstein, a Washington-based attorney. He has been the court appointed agent for the seven Vermont insurance commissioners who have served as liquidator.

Ambassador's insolvency "gave the industry a black eye and led to the establishment of the first and only (surplus lines) guaranty fund in the nation," said Richard Bouhan, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd.

In addition, the insolvency caused NAPSLO to establish its own program to review surplus lines insurers' financial standings in a timely manner, without the time lag that rating agencies then allowed, he said. That program operated for about 20 years, until members felt that rating agency data was sufficiently timely, he said.

"It is also unusual that policyholders of a defunct surplus lines insurer would receive as much as they have this far," said Dale Stephenson, president and chief executive officer of the National Conference of Insurance Guaranty Funds in Indianapolis.

Most Ambassador policyholder claimants have received 90 cents on the dollar, compared with the average 60 cents paid to guaranty funds by all types of property/casualty insurers in liquidation, he said. Guaranty funds use their assets to make claimants whole, subject to limits imposed by states' law.

In Ambassador's case, most New Jersey policyholders have already received 100 cents on the dollar because of the surplus lines guaranty fund, said Joseph DellaFera, executive director of the New Jersey Surplus Lines Insurance Guaranty Fund in Basking Ridge, N.J.

If the verdict is paid, the money will be used to complete payments to all policyholders and may also allow reimbursement of some lower-priority claimants such as reinsurers and Ambassador claimants, Mr. Bernstein said.

In addition, other liquidators may be encouraged by the Ambassador verdict, said Peter F. Young, assistant general counsel at the Vermont department. "I think many regulators may take heart in pursuing any similar claims they may have," he said.

The Ambassador's legal proceedings were lengthened because they became part of a multi-district litigation process that sent it and other related cases to the Eastern District of New York for nearly 10 years, Mr. Whitney said.

PwC declined to comment on its insurance coverage, however, London sources say that the coverage was spread among many insurers and would not have a significant impact on any single one.

Two plead guilty in Spitzer probe

NEW YORK—A former executive of Liberty International Underwriters and another former broker from Marsh Inc. have pleaded guilty to restraint of trade charges in New York Attorney General Eliot Spitzer's investigation of bid rigging at Marsh.

Kevin Bott, a former assistant vp with Liberty International's excess casualty division in New York, pleaded guilty on Monday to a misdemeanor restraint of trade charge. Mr. Bott admitted

providing Marsh with inflated quotes that Marsh then used to steer renewal business to incumbent insurers.

Last Friday, Jason Monteforte, a former Marsh broker, pleaded guilty to a similar charge. Mr. Monteforte was part of a team in Marsh's Global Broking unit dedicated to placements with American International Group Inc.

Both men face up to a year in prison as a result of the charges. Lawyers for the two could not be

reached, and a spokeswoman for Marsh declined to comment. A spokesman for Liberty Mutual Group Inc., Liberty International's parent, said the insurer is "enormously disappointed" by Mr. Bott's actions and that "to our knowledge no one else (at Liberty) is under investigation."

Mr. Spitzer's investigation has produced 16 guilty pleas to date, including seven from former Marsh officials.

—By Douglas McLeod

CDHP: Traditional plans trying consumerism

Continued from page 3

Definity Health. "The strategies and principles of consumer engagement should be driven across everything we do," Ms. Baratz said.

Aetna is also seeking to integrate a consumerist approach into its traditional products and has made its own consumer information Web site, known as the Aetna Navigator, available to all its members, regardless of the type of health insurance plans in which they are enrolled.

"Consumerism is much bigger than CDHP products," said Robin Downey, head of product development for Aetna. "The lines become much more blurred between these products."

Bloomfield, Conn.-based CIGNA HealthCare, which began marketing its health reimbursement and health savings accounts to middle-market and national employers in 2002, also offers its Web-based consumer information tools to all its members. "It's driving aspects of consumerism across 100% of our book of business," said Tom Richards, senior vp, product, for CIGNA.

Mr. Richards noted that while CIGNA does not view consumerism as being restricted to fund-based products, the financial inducements in CDHP products makes those members more engaged than those members in traditional plans. That is because the cost of services comes directly from their accounts, he said.

The use of CIGNA's Web-based tools is about 50% to 60% among members in CIGNA's CDHPs, compared with the low 20% range for members in traditional plans.

"You can get consumerism through good plan design, good tools and good people resources on any product, but to really maximize it, a CDHP is the way to go," Mr.

Richards said.

While insurers are beginning to make consumer tools available to all members, the next step in spreading consumerism is the widespread adoption of financial incentives across all product lines, observers say.

CIGNA HealthCare said a pro-

"You can get consumerism through good plan design, good tools and good people resources...but to really maximize it, a CDHP is the way to go."

Tom Richards
CIGNA HealthCare

gram that offers financial incentives—in the form of lower copayments and coinsurance levels to consumers of all products who select specialists who meet or exceed certain health care quality and efficiency measures—will be expanded into several new geographical regions beginning Jan. 1, 2006.

Aetna has its own network of specialists who receive its "Aexcel" designation by meeting thresholds for clinical performance and cost efficiency. Employers with CDHPs and some traditional products, in certain markets, can offer employees financial incentives for choosing the Aexcel-designated specialists, and most of them do, said Don Liss, regional medical director based in King of Prussia, Pa.

Financial incentives for completing health risk assessments or par-

ticipating in smoking cessation programs have been offered previously in traditional products, but the use of such incentives has increased due to the emphasis on consumer-directed health care, said Michael Taylor, a principal with Towers Perrin in Boston. That's because such incentives "fit very neatly under the banner of consumerism," Mr. Taylor said.

Mr. Richards noted that a small but growing number of employers are already giving premium discounts and other incentives to employees in traditional plans for completing health risk assessments. "That is something that we would recommend: employers provide an incentive to employees to take a HRA," he said.

Hartmarx Corp., which offers traditional HMO and PPO plans, considered a plan to give premium discounts to employees who were nonsmokers but abandoned the idea after determining that it would be difficult to weed out smokers who claim to be nonsmokers to collect the discounts. "We considered it, but we just decided it wasn't totally workable," said Mike Pikely, employee benefits manager for the Chicago-based clothing manufacturer.

The increased focus on consumer-driven health plans by the major insurers has not affected the company's ability to obtain PPO and HMO coverage, he said. Hartmarx has explored CDHPs but has not taken steps to adopt them, Mr. Pikely said, because he wants to be convinced that employees will have the necessary tools to be good health care consumers.

"I think some people don't believe in the concept," said Scott Keyes, senior consultant with Watson Wyatt in Stamford, Conn.

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Religion: Employers strive to avoid worker complaints of discrimination

Continued from page 1

that has broad bipartisan support—would increase employers' burden, say many observers (see story, page 33).

A growing problem

The issue in the workplace is governed by Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against individuals because of their religion and requires them to "reasonably accommodate" workers' religious beliefs, unless an employer can show that doing so would create an undue hardship.

According to the EEOC, although religious discrimination charges still account for only a small percentage of the total number of complaints filed with the agency, their number rose 77.7% between fiscal year 1992 and 2004, from 1,388 to 2,466 complaints.

Employers must make sure not only that employees' own religious rights are protected but also that workers do not attempt to impose their beliefs on others. Observers say problems often revolve around issues of religious accommodation, including questions of religious garb and time off.

For example, last month, the Center for Constitutional Rights and the Sikh Coalition, both based in New York, filed a lawsuit in U.S.

district court in Brooklyn on behalf of a New York Metropolitan Transit Authority train conductor, Kevin Harrington, who charged that a policy requiring him to brand his turban with an MTA logo amounts to religious discrimination. Five Sikh station agents, who are seeking to join his suit, filed a complaint with the EEOC as the first step in that process, said a CCR spokeswoman.

In addition, employers must deal with employees' contentions that some employment activities violate their religious beliefs, such as hospital workers who may object to the performance of abortions by their facilities.

Adding to the controversy is the ongoing national debate on the role of religion, say several observers, who predict that the number of complaints and the level of litigation will continue to grow.

Richard Lehr, a labor and employment attorney at Lehr Middlebrooks Price & Vreeland P.C. in Birmingham, Ala., noted that when there is "a very strong, defined religious belief in terms of policy" that comes from the White House as well as from some members of Congress and when "specific religious beliefs are given a kind of paramount treatment," whether it involves the issue of stem cell research, school prayer, abortion or the fate of Terry Schiavo, then reli-

gion "becomes a continuing issue of national discourse" that leads to more claims.

Charles Warner, an attorney with Porter Wright Morris & Arthur in Columbus, Ohio, said it is regrettable that, in today's increasingly pluralistic society, "more and more people are saying, 'It's my religion or the door,' basically."

"That is a form of intolerance that is going to create more friction and tension in the workplace," Mr. Warner said.

In one recent case, the Montreal-based Bombardier Aerospace Corp. in April agreed to pay a former em-

ployee \$159,000 in connection with a religious discrimination suit brought by the EEOC.

The EEOC had charged that the company discriminated against one of Bombardier's regional sales directors because of his Mormon religion and then fired him for complaining about the discrimination.

"There's a growing divide among the general populace" on the issue of religion, "and I think organizations that represent both sides are increasingly attempting to make their positions win out, if you will, and, at the same time, exhorting their members to make their voices

heard," all of which leads to litigation, said David Barton, a Phoenix-based attorney with Quarles & Brady.

Religion in the workplace "used to be a taboo topic," and it was assumed employees left their religious beliefs and practices at the door when they came in, explained Michelle Weber, a program associate for the New York-based Tanenbaum Center's Religious Diversity in the Workplace program.

But religion is a major factor in the lives of a great many people, and "more people are trying to figure out how they can bring it with them," said Ms. Weber.

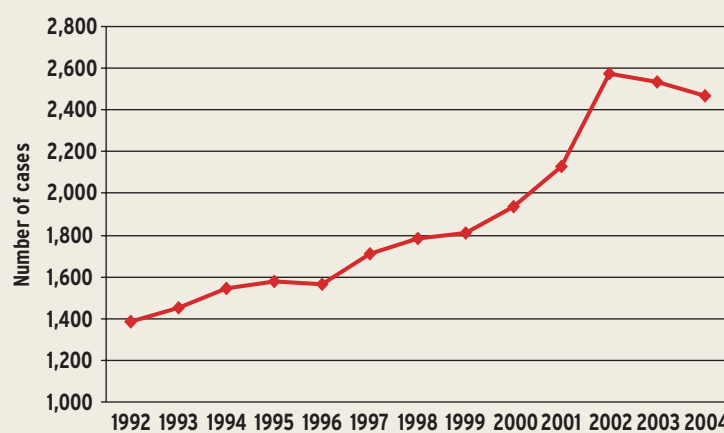
Management, though, is sometimes either not prepared for these requests or holds "to the idea that it is not something that belongs in the workplace," she said.

Another major contributing factor is a backlash against Muslims—or those perceived to be Muslim—following the Sept. 11, 2001, terrorist attacks.

Fifty years ago, U.S. employers generally "weren't dealing with people needing breaks to pray frequently during the day," and, even with the best of intentions, many "simply don't know how to deal with those issues, and they're not getting good guidance on how to do it," said Bret A. Cohen, an attorney.

More workers charging faith-based bias

Numbers of religious discrimination claims received by the EEOC, 1992-2004



Source: U.S. Equal Employment Opportunity Commission

Continued on next page

Replicating Asheville

By DAVE LENCKUS

Through a disease management program that first showed promise in curbing diabetics' health care costs eight years ago in Asheville, N.C., five employer-sponsored health plans realized some cost savings after one year.

With the aid of a grant from Aventis Pharmaceuticals Inc., the Washington-based American Pharmacists Assn. Foundation organized five pilot projects in 2003 to determine whether the substantial health care cost savings produced in The Asheville Project could be replicated elsewhere.

"It was Asheville all over again," said John Miall, Asheville's former director of risk management and now president of Miall Consulting in Asheville. Mr. Miall is the APhAF's consultant for the five-city project.

Under the Asheville model, health plan sponsors waive their employee copayment requirement for prescription diabetes medication as long as those employees follow certain disease management rules and regularly visit pharmacists who are trained to assess the health of diabetics.

The employers participating in the project designed to test the model are Kroger Co. and Ohio State University in Colum-

bus, Ohio; the Lakeshore Business Coalition in Manitowoc, Wis.; Mohawk Industries Inc. in Dublin, Ga.; and VF Corp. in Greensboro and Wilson, N.C.

In 2003, the first year of the five-year project, the average health care costs per patient were \$918 lower than projected, according to results published in the March/April issue of the *Journal of the American Pharmacists Assn.*

In addition, 95.7% of patients reported they were satisfied or very satisfied with the care their pharmacist provided, the report stated.

At VF subsidiary VF Jeanswear L.P. in Greensboro, for example, total company health care costs for its 227 program participants fell 9.8% to \$221,335, according to Barbara Pender, manager-health and workers compensation.

Noting that VF also waived copayment requirements for program participants who consult a nutritionist about their eating habits, Ms. Pender said the program "operates more like a health promotion program, because you give people the tools to make decisions on their personal lifestyle."

Some of those five employers now are expanding their programs to include employees with other chronic illnesses, according to Mr. Miall.

City Challenge: A disease management project

Continued from page 4

N.C.-based Miall Consulting, and the Washington-based American Pharmacists Assn. Foundation, a nonprofit affiliate of the APhA.

The premise of the projects was first tested and demonstrated its validity several years ago in Asheville's health plan under the direction of Mr. Miall, who then was the city's director of risk management.

In 1997, Mr. Miall launched a disease management plan called "The Asheville Project" (*BI*, April 28, 2003). Under the plan, designed initially to promote wellness among the city's 42 employees with diabetes, Asheville waived all co-payment requirements for prescription diabetes medication for employees who agreed to follow certain rules for managing their illness.

Those employees had to routinely keep track of their blood sugar levels and submit to other blood tests. They also regularly had to visit pharmacists who were trained to examine diabetics for health problems. The pharmacists immediately arranged physician visits for patients with emerging problems.

Along with the prescription medicine costs, Asheville picked up the pharmacists' training costs and patient examination fees.

Employees who did not adhere to the program's rules immediately lost their free medications.

The year before the program's inception, the city's average aggregate claim cost per diabetic patient was \$6,127, according to Mr. Miall.

After the first full year of the program, the city's claim costs—includ-

ing the additional medication and pharmacist expenses—dropped 42% to \$3,554, he said. Over the next four years, Asheville's costs ranged from about \$3,900 to about \$5,000 per patient.

The city since has expanded the program to include employees with asthma, hypertension and high cholesterol.

Mr. Miall, who retired from his Asheville risk management position in May, said he believes the program also would be effective for employees who suffer from depression.

Other employers also have reported cost savings after implementing the Asheville disease management plan (see related story.)

The Cities' Challenge project will focus only on employees with diabetes, because that will produce the fastest results to show whether the disease management plan is effective, Mr. Miall said. Still, since diabetics often suffer from hypertension and high cholesterol, "they'll get treatment for other things presently not being treated," as was the case in the earlier project, Mr. Miall said.

For the Cities' Challenge, the APhAF and GSK are looking for cities with populations of at least 500,000. Each participating employer, including the cities themselves, must have at least 5,000 covered lives in its plan.

Lining up pharmacist consultants, training them and coordinating the program with patients' physicians likely will take a few months, according to Daniel G. Garrett, senior director-medication adherence programs at APhAF. As a result, the project likely will officially kick off late this

year or in early 2006, Mr. Garrett said.

While GSK is covering the cost of gathering and analyzing project data, participating employers may pay for and employees may use prescription medicine produced by any pharmaceutical company, said Andrew Perry, a Philadelphia-based product manager for the drugmaker.

Mr. Perry, who would not disclose the exact amount of GSK's grant, said the company is obligated to help fund such research as a leading provider of diabetes medication. But he also acknowledged the profit motive behind helping the disease management program catch on widely among health plan sponsors.

And that could create a problem in recruiting participants for the project, even though the project's promoters say the project already is generating interest, said Bruce Kelly, a senior consultant with Watson Wyatt Worldwide in Minneapolis.

Although the project would allow employers to cover generic prescription medications, many employers may be troubled about participating in a project partially sponsored by a drug company that sells more expensive name-brand medications and that could benefit from the project's results in the long term, Mr. Kelley said.

Employers interested in the project may contact either Mr. Miall or Mr. Garrett. Mr. Miall can be reached by telephone at 838-777-8873 or by e-mail at jpmiall@charter.net. Mr. Garrett can be contacted by telephone at 336-327-4000 or by e-mail at dgarrett@aphanet.org.

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Continued from previous page

ney with Mintz, Levin, Cohn, Ferris, Glovsky & Popeo in Boston.

In an Aug. 4 decision in *Davis vs. Mothers Work Inc.*, for example, a federal judge in Philadelphia ruled that the plaintiff, a Muslim woman who had been terminated from her position, had presented substantial evidence that she was routinely treated differently than other employees because of her religious attire. The judge denied the defendant's motion for summary judgment on the claims of religious and racial discrimination.

Employers "need to promote an environment where there is an understanding and respect of views with which employers may not only differ but find absurd but (that) may very well be legally protected," said Mr. Lehr.

There is a distinct line between religious expression in the workplace and proselytizing, stressed Michelle Phillips, an attorney with Jackson Lewis in White Plains, N.Y.

"Everyone has the right to their own sincerely held religious beliefs, but no one has the right to impose those beliefs on someone else," Ms. Phillips said.

A matter of policy

Establishing the right policy helps, say observers.

"A good diversity policy, in con-

junction with a very well drafted nondiscrimination and nonharassment policy—which defines those words broadly to include concepts such as one person harassing another person about their religion—can go a very long way to developing a very tolerant and inclusive workforce that also has the benefit of, hopefully, avoiding punitive damages should anybody ever sue over what some manager has unfortunately done that may be discrimination," said Mr. Warner.

An employer's best defense in litigation is to make sure it has a policy forbidding discrimination, that it is well known to its employees and that it carefully considers and analyzes all requests for religious accommodation, said Jennifer Walt, an employer attorney with Littler Mendelsohn in San Francisco.

Do not be rigid, observers say. If someone asks for a day off for religious reasons, "my advice to the employer is, don't get annoyed with it. It's a day; give it to him," said Aaron Maduff, a plaintiff attorney with Maduff, Medina & Maduff in Chicago who also counsels employers in this area.

Mr. Maduff acknowledged that an employer may be justified in its objection to the time off, but he noted that the company could wind up spending \$100,000 to defend a subsequent suit. "You just swallow it and go on," he advised.

Greater accommodation proposed

A federal bill would set a higher standard for employer tolerance

By JUDY GREENWALD

Proposed federal legislation that has broad bipartisan support could lead to additional litigation against employers on charges of religious discrimination, say many observers.

The law under which employers now operate, Title VII of the Civil Rights Act of 1964, says an employer is not required to accommodate an employee's religious beliefs if doing so would impose "undue hardship," such as requiring more than ordinary administrative costs or diminishing efficiency in other jobs, according to the Equal Employment Opportunity Commission, which administers the law.

The proposed Workplace Religious Freedom Act of 2005 requires employers to make reasonable accommodations for an employee's religious practice or observance unless it creates undue hardship requiring "significant difficulty or expense."

The bill sets a much higher standard of accommodation for employers and is comparable to the

standard in the Americans with Disabilities Act of 1990, said James A. Sonne, associate professor of law at Ave Maria School of Law in Ann Arbor, Mich.

The legislation, S.677—which has been referred to the Senate Committee on Health, Education, Labor and Pensions and is co-sponsored by Sen. Rick Santorum, R-Pa., and Sen. John Kerry, D-Mass.—has a House counterpart, H.R. 1445. It has received broad bipartisan support from members of Congress and many religious organizations.

The bill has been submitted several times previously, and its chances for passage this year are unclear. Supporter Richard T. Foltin, legislative director and counsel in the Office of Government & International Affairs of the American Jewish Committee in Washington, said he is optimistic about its passage, though, because of the strong bipartisan support it has attracted and because of the companion House bill.

Mr. Foltin said the legislation "would set the groundwork for better consultation between the employer and employee" and would likely result in less litigation and fewer complaints filed with the EEOC.

But others say the law would increase the burden on employers. Richard Lehr, a labor and employment attorney at Lehr Middlebrooks Price & Vreeland P.C. in Birmingham, Ala., said, "The legal standard is fairly settled right now. The proposed law would increase the burden on employers, and when the standard changes, there tends to be more litigation as an outcome so that people can ultimately get an understanding of what the new principles require," he said. "For employers, the current state of the law is most favorable."

The bill "sounds good on paper, but I think it would be a headache for business," said Mr. Sonne.

Right now, the employer is required to make only "de minimis" accommodation to employees, he explained. The bill would expand that to make it significantly more difficult or expensive for employers, though, by setting a much higher standard of accommodation, said Mr. Sonne.

An employer would not only have to analyze the religious practice involved but determine whether it would require accommodation "in an arena where there's a lot of discussion, a lot of uncertainty as to what is someone's belief."

Results: Loss of contingent commission income takes bite out of revenues

Continued from page 1

quarter. Gallagher reported a 10.1% rise in brokerage revenues to \$653.3 million for the six months, the largest percentage increase among the four. Unlike Marsh & McLennan Cos. Inc., Aon and Willis Group Holdings Ltd., Gallagher reported a 10.1% rise in contingent commission income for the six months to \$26.1 million, which the company attributed to acquisitions made in 2004.

All contingent commissions earned by the brokerages in 2005 relate to 2004 contracts. One of the competitive challenges for the four largest brokerages is that most other brokers continue to accept contingent compensation, creating, in effect, a two-tiered market.

As the four brokerages continue to focus on expense control and to negotiate higher up-front commission structures with underwriters, Marsh, in particular, also continues to struggle with new business production.

Marsh & McLennan

During a conference call to analysts discussing New York-based MMC's results earlier this month, Michael G. Cherkasky, president and chief executive officer, noted that new and expanded business did not improve as much as the company had hoped in the second quarter. "Reputational issues" and distractions associated with a "tremendous number" of requests for proposals stymied new business growth, he said.

On a positive note, though, re-

tention rates are improving and are almost at the same level as they were in the second quarter of 2004, Mr. Cherkasky said. He noted that, in addition to its large competitors, Marsh has lost "some substantial pieces of business" to more-regional and national players.

For the first six months of 2005, MMC's risk and insurance services division, Marsh Inc., reported a 19% decline in revenues to \$2.1 billion. During the first six months, Marsh collected \$71 million in contingent commission income, compared to \$422 million collected in the comparable period last year.

Overall, MMC reported a 3% rise in brokerage revenues to \$5.6 billion for the first six months of 2005, buoyed by triple-digit revenue increases from its risk consulting and technology division, which includes Kroll Inc.

Restructuring charges of \$198 million taken in the two quarters contributed to a 64.1% drop in profits in the first six months to \$300 million. In January, MMC agreed to pay \$850 million to settle civil charges filed by New York Attorney General Eliot Spitzer.

"We continue to believe that market share losses will be less than anticipated...and that Marsh continues to have the pre-eminent global insurance broking franchise," Brian R. Meredith, an analyst with Banc of America Securities in New York, wrote in a report. "The story does require some patience as many of the catalysts, including a pick-up in new business, price increases and the full impact of the expense reductions, we believe, will not occur until the beginning of 2006."

Brokers' 2005 six-month results

In millions of dollars

Brokerage	Brokerage revenues ¹	% change from 2004	Net income (loss)	% change from 2004	Contingent commission income	% change from 2004
Marsh & McLennan Cos. Inc.	\$5,596.0	3.0%	\$300.0	-64.1%	\$71.0	-83.2
Aon Corp.	3,419.0	-2.4	391.0	14.0	16.0	-79.5
Willis Group Holdings Ltd.	1,181.0	1.5	191.0	-21.7	11.0	-69.4
Arthur J. Gallagher & Co.	653.3	10.1	(22.2)	NM	26.1	10.1
Jardine Lloyd Thompson Group P.L.C. ²	449.5	2.0	60.4	-23.4	5.1	-36.3
Brown & Brown Inc.	393.1	22.4	80.1	16.9	31.8	8.5
Hilb, Rogal & Hobbs Co.	338.7	12.1	43.5	-2.7	44.7	27.4

¹ Brokerage revenues exclude revenues not related to brokerage and consulting services as well as all corporate and fiduciary investment income.

² British pound = \$1.793 (6/30/2005); British pound = \$1.8126 (6/30/2004) NM Not meaningful

Source: Company reports

Aon

Aon reported better-than-expected risk and insurance brokerage revenues and earnings for the second quarter.

Risk and insurance brokerage revenues were down 2.5% to \$1.4 billion for the quarter, largely reflecting the loss of \$39 million in contingent commission income. Net income for the quarter was up 10.4% to \$191.0 million, reflecting improved retention in its U.S. retail business and a 4% reduction in expenses largely reflecting the exit of the claims services business, among other issues, the brokerage said.

In the first quarter, Aon agreed to pay \$190 million to settle civil lawsuits brought by authorities in New

York, Connecticut and Illinois.

"We would not call the second-quarter results stellar, but, given the low expectations for the company, they were better than expected due to an upside surprise" in Aon's risk and insurance brokerage services segment, Merrill Lynch analyst Jay A. Cohen wrote in a report. Mr. Cohen had expected a 5% decline in brokerage revenues.

For the first six months, Aon's brokerage revenues, comprising revenues from its risk and insurance brokerage and consulting units, fell 2.4% to \$3.4 billion, while profits were up 14% to \$391.0 million.

While Aon is "clearly making progress," the company is strategically reviewing each of its businesses and anticipates restructuring ini-

tiatives that will lead to a \$200 million to \$300 million third-quarter charge, Greg Case, Aon's president and CEO, said in a statement.

The restructuring will include staff cuts, particularly in Aon's United Kingdom brokerage operations, executives said on a conference call to analysts. The brokerage also will look for ways to cut its information technology costs and reduce real estate expenses by consolidating operations.

"I don't think it was shocking, given that Aon was one of the brokers that lost contingent commissions and really didn't take more-aggressive actions to reduce expenses," said Mark Lane, a research analyst with William Blair & Co. in

See RESULTS / next page

MBIA: Spitzer, SEC may charge bond insurer

Continued from page 1

have accounted for the \$70 million as a deposit, and the insurer restated its results for 1998 and subsequent years, reducing 1998 net income by \$47 million.

In March, the U.S. attorney's office in New York also subpoenaed records of the AHERF contracts, and MBIA has since been served with several additional subpoenas and requests for information by the SEC and Mr. Spitzer, the insurer reported in its latest 10-Q filing.

One subject of the requests has been MBIA's 17.4% stake in Channel Reinsurance Ltd., a financial guarantee reinsurer formed in Bermuda last year and headed by former MBIA executives. Other shareholders in Channel Re are Bermuda-based RenaissanceRe Holdings Ltd. and Partner Re Ltd., both of which have also been subpoenaed for information about Channel Re; and Koch Financial Corp. of Scottsdale, Ariz.

Shareholder lawsuits filed against MBIA in April charge that the bond insurer manipulated its financial results by dumping potentially loss-producing policies on Channel Re. The suits also accuse MBIA of a

number of other accounting improprieties, including its treatment of the AHERF reinsurance contracts with Zurich.

The shareholder actions were consolidated in federal court in New York last month, and an amended complaint is expected to be filed later this year. MBIA has not yet responded to the suits.

A civil complaint against MBIA by federal or New York regulators would be only the latest action to come out of inquiries into insurer accounting for finite risk and other transactions.

Mr. Spitzer sued American International Group Inc. in May, charging that the insurer manipulated its books in a variety of ways, including with an allegedly sham loss-portfolio reinsurance deal with General Reinsurance Corp. AIG earlier this year restated five years worth of results, accounting for the loss-portfolio deal as a loan rather than reinsurance.

Earlier this month, Gen Re's parent, Berkshire Hathaway Inc., terminated Milan Vukelic, the chief executive of its London-based unit Faraday Group, following investigations by regulatory authorities into

finite reinsurance deals (see story, page 29).

Last month, the SEC warned RenaissanceRe Chairman and Chief Executive Officer James N. Stanard and another former RenRe officer that they may face civil charges arising from an investigation into the reinsurer's earnings restatement.

RenaissanceRe restated earnings for 2001 to 2003 to correct improper accounting of transactions with finite risk reinsurer Inter-Ocean Holdings Ltd., in which RenRe was a shareholder.

Other insurers subpoenaed for records on finite deals have also restated earnings in recent months.

ACE Ltd. is revising financial reports from 2000 to 2005 to correct improper accounting for eight finite risk deals. The restatement will have a relatively small financial impact on the company, according to ACE, which has delayed filing its second quarter 2005 10-Q report pending completion of the revisions.

CNA Financial Corp. restated its 2004 results earlier this year to correct improper accounting of reinsurance transactions with a Bermuda-based affiliate, Accord Re Ltd.

Air caterer to resume health care subsidies

RESTON, Va.—Gate Gourmet Inc. will resume providing subsidies it had been giving to employees enrolled in the company's health plans beginning Sept. 1 under an agreement reached between the company and its U.S.-based labor unions earlier this week.

The agreement also calls for all other unresolved contract issues to be decided in binding arbitration, which could result in a new four-year labor agreement by the end of the year.

Reston, Va.-based Gate Gourmet, hit hard by financial turmoil in the airline industry since the Sept. 11, 2001, terrorist attacks, was forced to drop the subsidies it had been providing for employee health care coverage on July 1, according to a company spokesman.

Gate Gourmet had been paying about 70% of the cost of both individual and family health care coverage.

As a result, when the subsidy was stopped, employees who wanted to continue receiving health care coverage through their employer-sponsored plan saw their premium contributions surge to \$390.57 per month for single coverage, from \$119.07 previously, and to \$1,148.27 per month for family coverage, from \$362.61 previously.

Under the new four-year pact, the rates will revert to what they were previously, the Gate Gourmet spokesman said. He said, though, that he was uncertain how future premium increases would be handled.

Gate Gourmet is a leading global supplier of airline catering and logistics, with 22,000 employees in 109 flight kitchens in 30 countries.

The new pact applies to approximately 3,000 unionized employees in the United States.

—By Joanne Wojcik

TRIA survey: Researchers query fairness of backstop structure, call for changes

Continued from page 3

written most of the existing terrorism coverage to date—would bear the brunt of terrorism losses below \$100 billion.

Under TRIA, an insurer's deductible is determined as a percentage of its total direct commercial property/casualty earned premiums of the preceding year for TRIA-related lines. Those deductibles can be substantial. For example, in 2005 the TRIA deductibles for American International Group Inc. and for St. Paul Travelers Cos. Inc. would be \$3.6 billion and \$2.5 billion respectively, according to the report.

In contrast, captives and other insurers with relatively low ratios based on their previous year's premi-

ums, can "play a game" by taking on large concentrated risks during the current year and then pass on their losses to the government in event of relatively small terrorist losses, Mr. Kunreuther said. The federal government would likely pay a significant portion of any of their losses then recoup much or all of the money from policyholders or taxpayers, under TRIA arrangements.

"The public-private partnership established by TRIA should be modified so it is more equitable and efficient than the current program," states the report, which focuses mostly on commercial insurance coverage.

That is why the report favors increasing the lowest TRIA trigger

from \$5 million to \$500 million. Doing so would "reduce the likelihood that captives and other insurers with very low deductible/surplus ratios will pass on their losses after a terrorist attack to all commercial policyholders and/or U.S. taxpayers," the report states.

To reach their conclusions, the Wharton researchers simulated the impact on deductible/surplus ratios from 5-ton truck bombs striking high-rise buildings in several large U.S. cities.

Under TRIA, should a loss suffered by an insurer fall below its deductible, the insurer would not receive any government reimbursement.

Conversely, when an insured loss

stemming from a certified terrorism act falls above an insurer's deductible, the government reimburses 90% of that loss, then recoups the money from policyholders and taxpayers.

The Wharton study was financed by insurers, but that did not influence its outcome, Mr. Kunreuther said. Additionally, some insureds and government agencies provided input.

The report also reviews potential prospects for long-term solutions that it says are not mutually exclusive and that include allowing insurers and reinsurers to accumulate tax-deferred reserves, federal backing for mutual insurance pools, and facilitating terrorism catastrophe bonds.

TRIA, enacted in late 2002 to create a federal backstop for insurers paying losses from future terrorist attacks, is slated to expire Dec. 31. Lawmakers are examining ways to continue a coverage backstop beyond that point, but the Bush administration has said it would oppose the extension of TRIA in its present form, holding that it is hindering the creation of a private terrorism insurance market.

In part, the administration supports raising the coverage trigger for the backstop. Under TRIA, a qualifying terrorist attack causing as little as \$5 million in insured damage could trigger coverage under certain circumstances.

Results: Broker profits dragged down by probe settlements

Continued from previous page

Chicago, referring to the restructuring. "We see that as a positive sign that Greg Case is willing to make some changes and maybe sooner than most people would think relative to prior management." Mr. Lane noted that prior management "was very adamant about not taking another charge given all the stress they put the organization under going back the last two to three years."

Willis Group Holdings

Willis recorded brokerage revenues of \$1.2 billion in the first half of 2005, up 1.5% over the year-earlier period, though costs related to regulatory settlements and other factors dragged profits down 21.7% to \$191.0 million.

In the second quarter, the Lon-

don-based brokerage recorded profits of \$119.0 million, up 24% over the second quarter of 2004, due in part to gains related to the sale of wholesaler Stewart Smith Group. Brokerage revenues in the quarter rose 2.7% to \$530 million.

In the first quarter, though, Willis paid \$51 million to resolve contingent commission probes by attorneys general in New York and Minnesota. Additionally, Willis set aside \$20 million to resolve further potential legal claims and took a \$28 million severance charge related to the elimination of roughly 500 positions.

Willis has hired more than 250 new "client-facing" employees since the middle of last October. New hires are beginning to pay off with strong organic revenue growth, beating expectations for the quarter, Banc of America's Mr.

Meredith said in a report on Willis.

Organic revenues, excluding contingent commissions, grew 4% in the quarter and reflected roughly 6% net new business and a negative 2% impact from declining insurance rates, Willis said.

Arthur J. Gallagher

Although net income was up 12.4% to \$51.8 million in the second quarter, it was not enough to offset the more than \$160 million in special charges Gallagher took in the first quarter relating to various litigation matters, including the \$35 million reserve taken to settle investigations into its compensation practices.

Gallagher reported a \$22.2 million loss for the first half of 2005 compared with an \$85 million profit in the same period last year.

"Given the significant demands facing Gallagher related to the industry-wide issues surrounding contingent commissions, I couldn't be more pleased with our results," J. Patrick Gallagher Jr., president and CEO, said in a statement. He noted, however, that despite its \$27 million settlement with Illinois authorities in May, ongoing investigations and class action lawsuits are "distractive and consume our energies."

Nevertheless, Gallagher's 2% organic revenue growth in the second quarter beat at least one analyst's expectations.

"In the second quarter, we saw the first sign that they're going to use their recruiting history to take some share from other brokers," said Nik Fiskin, an analyst with Stephens Inc. in Little Rock, Ark.

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Court lets fired manager sue L'Oreal

State law protects refusal to follow order considered discriminatory

By JUDY GREENWALD

SAN FRANCISCO—A regional sales manager for a cosmetics firm who felt forced to leave her job after she refused to fire a worker for not being attractive enough can sue her former employer for retaliation under the state's anti-discrimination statute, the California Supreme Court ruled in a divided opinion.

According to the Aug. 11 decision in *Yanowitz vs. L'Oreal USA Inc.*, Elysa J. Yanowitz had received a sales-manager-of-the-year award from New York-based L'Oreal in early 1997.

Later, that year, though, the general manager of the firm's designer fragrance division ordered her to fire a dark-skinned female sales associate, telling her to "get me somebody hot," court papers show.

On another occasion, he passed a "young, attractive blond girl, very sexy" and told Ms. Yanowitz, "... damn it, get me one that looks like that," the opinion states.

Ms. Yanowitz's supervisor reiterated his request several times, and on each occasion she asked him to provide adequate justification. Ultimately, she refused to carry out the order but never explicitly told the supervisor she believed his order was discriminatory, according to the opinion.

Subsequently, her immediate supervisor began soliciting negative information about Ms. Yanowitz from her subordinates and prepared a memo criticizing her, court papers show. The general manager also screamed at her in front of her staff, according to the document.

She departed the job on a disability leave due to stress and did not return.

ity leave due to stress and did not return.

In the 4-2 opinion, the court held that Ms. Yanowitz could proceed with her suit under the California Fair Employment and Housing Act.

The opinion said the court concludes "that an employee's refusal to follow a supervisor's order that she reasonably believes to be discriminatory constitutes protected activity under the FEHA, and that an employer may not retaliate against an employee on the basis of such conduct" when it knows the employee believes the order to be discriminatory, even if the employee does not state this.

The decision upholds an appellate court ruling, which overturned a trial court ruling that dismissed the case.

Late News

Continued from page 1 N.D. hailstorm claims put above \$100 million

A severe hailstorm that hit parts of North Dakota late last month caused more than \$100 million in damage to insured property, according to North Dakota Insurance Commissioner Jim Poolman. Insurers in North Dakota have received more than 20,000 claims—including those for auto, homeowners and commercial losses—from the storm, which struck the Bismarck and Hettinger areas, the commissioner said in a statement.

Willis North America president departs

George P. Reeth Jr., former chief executive officer of Willis Re U.S. and, most recently, president of Willis North America Inc., has left the company. A spokesman for Willis declined to elaborate on the reasons for Mr. Reeth's departure. Mr. Reeth, who joined Willis in 1992, was named president of Willis North America in February upon the appointment of Peter C. Hearn as CEO of Willis Re U.S.

AIG shareholders retain board, PwC

American International Group Inc.'s shareholders expressed confidence in the company's current oversight on Thursday, voting at their annual meeting to re-elect all 15 directors on the insurer's board and to retain AIG's longtime outside auditing firm, PricewaterhouseCoopers L.L.P., in the wake of regulatory probes and litigation over AIG's accounting. The insurer last week posted net income of \$7.68 billion in the first half, up 47.4% from its restated profits for the year-earlier period. Net premiums written, meanwhile, rose 5.9% to \$21.43 billion.

Union sues Boeing over retiree benefits

The Society of Professional Engineering Employees in Aerospace is suing Boeing Corp. to force it to reinstate early retirees' medical and pension benefits for hundreds of union members that were lost when the Chicago-based aircraft manufacturer sold its commercial aircraft division in Wichita, Kan., to Canadian investment firm Onex Corp. The lawsuit, filed Aug. 8 in U.S. District Court in Wichita, charges that Boeing broke its contracts with the employees by denying them early

retirement benefits after they lost their jobs as a result of the sale.

OSHA to inspect high-hazard sites

The U.S. Occupational Safety and Health Administration plans to target about 4,400 high-hazard worksites for unannounced comprehensive inspections during the coming year. Using its traditional site-specific targeting approach, inspectors will first visit worksites that in 2003 reported 12 or more injuries or illnesses resulting in days away from work, restricted work activity or job transfer for every 100 full-time workers. Inspectors also will randomly select and examine about 400 workplaces with 75 or more employees that reported low injury and illness rates despite operating in high-hazard industries.

Calif. comp rates continue to fall

California Insurance Commissioner John Garamendi said last week that workers compensation insurer rate filings fell 14.6%, on average, for policies incepting after July 1, and have fallen 26.5% since state-implemented reforms began in 2003. However, Mr. Garamendi said insurer premium reductions still lag the 36.5% cumulative pure premium rate decreases he has recommended since the reforms went into effect. He noted that the reforms have helped insurer loss ratios drop from 87% in 2002 to just 41% in 2005.

RMS opening Bermuda office

Catastrophe modeling firm Risk Management Solutions Inc. is setting up an office in Bermuda. Cherrill Campbell, formerly a catastrophe reinsurance analyst for XL Re Ltd., will lead client service activities in Bermuda from the office in Hamilton, slated to open next month.

Cooper Gay expands U.S. operations

Insurance and reinsurance broker Cooper Gay Group has launched a joint venture with Michael W. Cashman in Minneapolis. Mr. Cashman, formerly an executive vp of Aon Corp. and vice chairman of Aon Re Global, will be chairman and chief executive officer of Cooper Gay & Cashman. In a statement, Toby Esser, chief executive of London-based Cooper Gay, said the joint venture was part of the company's strategy to become a major domestic treaty broker in the United States.

Captive premium growth slows

As conditions improve in the commercial market, domestic captive premium growth is slowing, according to a new report.

An A.M. Best Co. report found that net written premiums in captives increased by just 3.6%, to \$9.2 billion. That's down from premium growth of 4.7% in 2003, 16.9% in 2002 and 9.4% in 2001, the peak years of the hard

market, according to the report, which is based on financial reports filed by captives domiciled in the United States.

The report also found that, in the 15-month period ending June 30, 23 domestic captives have received a ratings change from Best, with 17 assigned a lower rating and six receiving a ratings upgrade.

The leading cause of a ratings downgrade was adverse loss-reserve development, Best said.

Copies of the report are available free to BestWeek subscribers. Nonsubscribers can obtain a PDF copy of the report for \$55 or a PDF copy plus the spreadsheet of the report data for \$140 at www.ambest.com.

—By Jerry Geisel


BI Stock Index [8/8 - 8/12]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.businessinsurance.com.

Percentage change of BI Stock Index vs. key indicators

BI Stock Index 
2641.98 **0.92**

Dow Jones 
10600.31 **0.40**

S&P 500 
1230.39 **0.32**

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

Largest gains

Humana Inc.	8.85%
Health Net Inc.	6.36%
Aetna Inc.	5.20%
Navigators Group	4.11%
AXA-UAP Group	3.93%

Largest losses

Vesta Insurance Co.	-10.59%
PMA Capital Corp.	-7.95%
Harleysville Group	-3.86%
Meadowbrook Insurance	-3.53%
Endurance Specialty	-3.33%

Weekly change by market segment

Brokers	-0.05%
Insurers/Reinsurers	-0.33%
Managed Care Organizations	2.60%



Leadership in Specialty

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At BusinessInsurance.com

New Online Poll: Has the issue of discrimination based on religious beliefs or national origin become a bigger concern for your organization over the past five years?

Items in the Late News column originally appeared in BI's Daily News feature on www.businessinsurance.com. Visit the BI Web site to sign up to receive BI's Daily News by e-mail.