

VERIZON CUTS DEAL WITH UNIONS CAPPING RETIREE HEALTH COSTS FOR NEW WORKERS / PAGE 3

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COURT REINSTATES D&O SUIT FILED AGAINST DRUG COMPANY / PAGE 3



In Brief

Smoking illness cuts asbestos claim

Connecticut's Supreme Court has ruled in an asbestos case that an employer is not responsible for the portion of a workers compensation claimant's lung damage that is attributable to smoking. Overturning an earlier ruling, the court found that apportionment of permanent partial disability benefits is appropriate when an employer proves a disability resulted from two concurrently developing diseases—one occupational and the other not—and the claimant's work did not influence the nonoccupational disease's development.

ConAgra gets initial OK for captive benefits plan

ConAgra Foods Inc. has received tentative approval from the Labor Department to fund

See **IN BRIEF** page 25



PHOTO: AP PHOTOS

General Motors will target ineligible dependents in a drive to cut health costs.

GM expands audits of its health plans

Automaker seeks to trim dependent care costs

By **JUDY GREENWALD**

DETROIT—General Motors Corp. is one of a growing number of employers that has launched dependent health care audits as a relatively painless effort to reduce health care costs.

GM said last week it is auditing its 80,700 hourly workers and 345,000 retirees in an effort to reduce the \$4.6 billion it spent on health care last year.

This follows a just-completed audit of its 36,600 salaried workers and 97,400 retirees.

Dependent audits are "very much a hot topic," said Mark Rucci, a Princeton, N.J.-based consultant with Gallagher Benefit Services Inc. "The employers are at least dis-

cussing it. If they're not doing one now, many of them are planning to do it within the next couple of months."

A survey released in March by Arlington, Va.-based Watson Wyatt

Worldwide found that 55% of 453 large employers plan to conduct a dependent audit this year, and 74% said they plan to do so next year. This compares with the 42% that conducted audits in 2007.

Observers say dependent audits discover that, on average, about 2% to 12% of dependents on health care roles are ineligible. Depending on the generosity of the plan, and the average age of the employee

See **AUDITS** page 24

55%

OF LARGE EMPLOYERS plan to conduct a dependent health care audit this year.

9th Circuit overturns pro-buyer cover ruling

Flood exclusion bars Katrina storm surge claim

By **JOANNE WOJCIK**

SAN FRANCISCO—A federal appeals court ruling last week rejecting the assertion that a flood exclusion is ambiguous and shouldn't apply to Hurricane Katrina-related storm surge losses marks the third court defeat for policyholders on the issue, insurer attorneys say.

But policyholder attorneys note that the appellate court did not totally reject the possibility that the policy still might provide coverage. Instead, it remanded the case to U.S. District Court in Los Angeles to determine whether another coverage theory that had been asserted by policyholder Northrop Grumman Corp. might apply.

The case, which involves more than \$1 billion in hurricane-related property damage and business interruption losses at Los Angeles-based Northrop Grumman Ship Systems' ship building facility in

Pascagoula, Miss. The damage, which was caused by a 22-foot high storm surge during the 2005 storm, is the largest Katrina-related coverage dispute to go to trial.

Northrop had sought coverage under an all-risk excess policy it purchased from Factory Mutual Insurance Co., which does business as FM Global, that provided \$19.8 billion in blanket limits above \$500 million in primary coverage. FM Global's policy form included boiler and machinery coverage but excluded losses from earthquake and flood damage.

FM Global did pay Northrop \$15 million for its share of the first \$100 million of primary coverage, which had a sublimit for flood, court records show, but the insurer denied coverage under the excess policy, citing its flood exclusion.

Northrop sued in federal court in

See **NORTHROP** page 25

SPOTLIGHT READERS CHOICE

Business Insurance's readers vote their choice for the best companies overall in the

commercial insurance industry. This year's awards comprise 16 categories of service providers in

risk management, insurance and employee benefits. Profiles of the winners in each sector and lists of other top-ranked companies begin on **Page 9**



California comp board advises rate increase

Cost-cutting efforts appear to hit bottom

By **ROBERTO CENICEROS**

SAN FRANCISCO—A California rating bureau's recommendation last week to increase workers compensation rates by at least 16% shows that the price-cutting effects of recent legislative reforms in the state have bottomed out, observers say.

In addition, medical cost inflation continues to rise and claim frequency that had been declining has flattened, they add.

Despite the push for higher comp rates in California, prices continue to fall in most other states, they say.

The reforms California adopted in 2004—which included allowing provider networks for comp, among several other things—resulted in policy price reductions of more than 50% over the past four years, said Richard L. Thomas, senior vp and chief underwriting officer in

the property/casualty division at American International Group Inc. in New York.

"But right now, we don't think there will be any further beneficial impact," Mr. Thomas said. "It has now reached its floor, and what we will see now is the impact of inflation and we will also see whether frequency goes up or down. Frequency will now be a stronger determinant of pricing."

The recommendation last week by the San Francisco-based Workers Compensation Insurance Rating Bureau of California to raise pure premium rates by 16% sets California apart from most other states, at least for now, observers add.

"I haven't seen any real discussion about rate increases for workers compensation in other states," said

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On the Web



BI VIDEO

Video with risk manager looks at New Orleans

In "Protecting New Orleans," leading risk manager Warren Perkins discusses lessons learned from Hurricane Katrina, the city's recovery and how the Crescent City has improved its risk management. Go to www.BusinessInsurance.com/video

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Appeals court ruling no balm for Gilead

9th Circuit reinstates securities suit against drugmaker, eases burden for plaintiffs

By SALLY ROBERTS

SAN FRANCISCO—A federal appeals court's decision last week to reinstate a securities lawsuit may make it easier for certain investor suits to survive motions to dismiss, some attorneys say.

In its Aug. 11 decision in *Rick Hartman et al. vs. Gilead Sciences Inc. et al.*, the 9th U.S. Circuit Court of Appeals in San Francisco ruled that a three-month gap in time between when a misrepresentation is made public and the subsequent drop in stock value occurs does not invalidate a plaintiff's theory of loss causation.

Instead, the court ruled that as long as the plaintiff's complaint alleges enough facts that "plausibly" establish loss causation, a dismissal is inappropriate. Such evidence of loss causation, the court said, is best determined in the discovery process.

The case was remanded to the U.S. District Court for the Northern

District of California, which originally dismissed the proposed class action suit, relying on the U.S. Supreme Court's 2005 decision in *Dura Pharmaceuticals Inc. et al. vs. Michael Broudo et al.*

That decision established a loss-causation standard for securities fraud plaintiffs requiring, among other things, that they prove the share price fell after a corrective disclosure—the revelation of either a company's misrepresentation or omission of information that would have been pertinent to investors—and that there was a link between the disclosure and the price drop (*BI*, April 25, 2005). Several courts have interpreted *Dura* to mean that the share price must fall immediately after a corrective disclosure, attorneys say.

In *Gilead*, investors accused Foster City, Calif.-based Gilead Sciences Inc. of encouraging demand for its popular HIV drug Viread through improper marketing efforts, including the promotion of off-label uses,

as well as false statements made about the drug.

In July 2003, the Food & Drug Administration sent a warning letter to Gilead about its improper marketing efforts and the FDA made the letter public the following month.

While the warning letter did not have an immediate impact on Gilead's share price, demand for the drug decreased, and sales dropped as a result, investors allege. Three months after the warning letter was made public, Gilead publicly reported worse-than-expected third-quarter revenue—which analysts attributed to decreased demand for Viread—and Gilead's stock dropped 12% the following day.

In dismissing the case, the district court said that plaintiffs failed to prove that the alleged decrease in sales was due to the warning letter made public in August 2003 and proximately caused Gilead's stock to decrease in October 2003.

On reversal, the 9th Circuit said



BLOOMBERG/LANDOV
Gilead Sciences must defend charges that improper marketing encouraged demand for its HIV drug Viread.

that immediate market reaction to a misrepresentation is not required to prove loss causation and that the complaint convinced it that the drop in stock price was "plausibly"

See **MARKETING** page 25

Verizon draws line on retiree health care costs

Tentative union agreement calls for annuitized, fixed-dollar payments in retirement

By KRISTIN GUNDERSON HUNT

A tentative contract agreement between Verizon Communications Inc. and its two major unions will limit the company's exposure to big retiree health care costs for future employees.

Verizon, the Communications Workers of America and the International Brotherhood of Electrical Workers last week reached an agreement on a three-year contract in which the New York-based telecommunications company would continue to pay 100% of current workers' and retirees' health care premiums. The pact, which still needs to be ratified by union members, covers 65,000 workers in 10 Northeast and Mid-Atlantic states.

However, for Verizon employees hired after Aug. 2, the company would offer a defined contribution approach for retiree health care. Verizon will contribute a fixed dollar amount, currently \$430, and multiply

that by an employee's years of service at the company.

That amount is to be paid annually to the employee upon retirement to purchase retiree health insurance coverage through Verizon until his or her death, a Verizon spokesman said. The fixed dollar amount will be subject to negotiations at each contract renewal.

Such fixed-dollar approaches in providing health care coverage to retirees have been increasingly popular over the last year or so as employers avoid the extremes of offering benefit-rich plans that are unaffordable over the long run or not offering such coverage at all.

A Verizon spokesman said increasing competition and the rising cost of health care influence the amount of retiree benefits any company can offer. He said Verizon is not

See **VERIZON** page 6



AP PHOTOS
More Verizon employees would be union members under a contract accord that revises retiree benefits for new hires.

S&P says soft market could weaken insurers

Credit market losses also factor in rating agency's decision to revise industry outlook to negative

By JEFF CASALE

Standard & Poor's Ratings Services revised its outlook for the U.S. commercial lines insurance sector to negative from stable, saying that the "ongoing decline in pricing for commercial lines and decreases in investment income" are contributing factors.

Prices continue to decline across all commercial lines, S&P said, adding that second-quarter renewal rates fell by the mid-single digits in most lines and by a low double-digit rate for new business.

The decline in rates will adversely

affect underwriting results over the next 12 to 18 months, John Iten, a credit analyst with New York-based S&P, said in a statement.

"Although some companies and outside observers have suggested that the rate of deterioration might have bottomed out in the second quarter, rates are still declining steadily," he said.

"Absent an extraordinary event, we do not see anything reversing the general downward direction of rates over the next six to 12 months."

Mr. Iten added that S&P expects full-year 2008 underwriting results

for most commercial lines underwriters to remain relatively strong, with U.S. property/casualty insurers' combined ratio still less than 100%, but that underwriting performance will deteriorate through the remainder of this year and much of 2009.

Another factor affecting the sector's outlook is the significant increases in unrealized losses in credit markets.

S&P last revised its outlook for the U.S. commercial lines market in June 2005, upgrading the outlook to stable from negative as the ratings agency's concerns subsided

over the impact of regulatory investigations into bid rigging within the industry. The probes erupted in late 2004, following a civil suit filed by former New York Attorney General Eliot Spitzer.

"At this point, we see few—if any—of our rated insurers as likely upgrade candidates over the next 12 months," Mr. Iten said.

"As underwriting results continue to deteriorate, we expect the commercial lines companies with negative outlooks to increase by year-end 2008 and downgrades to exceed upgrades in 2009," Mr. Iten said.

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Bermuda Monetary Authority adopts solvency legislation

Regulatory standards help ensure Bermuda's alignment with Europe's Solvency II directive

By MARK A. HOFMANN

HAMILTON, Bermuda—Market observers welcome the Bermuda Monetary Authority's action on new solvency standards and other reforms designed to align the island's insurance regulations with Europe's Solvency II directive.

Legislation implementing the reforms received final approval late last month, BMA Chief Executive Officer Matthew Elderfield said in an interview last week. "What we will be doing shortly is issuing some regulations to put the flesh on the bone."

"The adoption of the legislation marked an important milestone in achieving our equivalence under Solvency II and other international standards," Mr. Elderfield said.

"We're at the front of the pack among jurisdictions preparing for Solvency II."

Solvency II is the European Union's framework for a risk-based capital regulatory system for insurers and reinsurers, which it plans to implement in 2012.

The recently adopted changes for Bermuda focus primarily on Class 4 companies—its largest commercial insurers and reinsurers. The Insurance Amendment Act of 2008 instructs the BMA to implement the Bermuda Solvency Capital Requirement.

The president of a group of insurers and reinsurers that will be subject to the regulations welcomed the changes.

"This legislation cements Bermuda's leadership in global solvency

regulation," said Bradley Kading, president of the Hamilton, Bermuda-based Assn. of Bermuda Insurers

and Reinsurers. "It fulfills the commitment that the BMA has made to meet or exceed global insurance solvency standards for the Class

4 companies." One of the group's officers made much the same point.



'The adoption of the legislation marked an important milestone in achieving our equivalence under Solvency II and other international standards.'

Matthew Elderfield, BMA

"This legislation builds on the body of law that already exists in Bermuda around sound regulation of the insurance industry," Patrick Thiele, president and CEO of Partner Re Ltd. and deputy chair of the ABIR, said in an e-mail. "With these additions,

we have as prudent a regulatory structure to operate within as anywhere in the world. Insureds can be confident that they are well-protect-

ed when doing business with Bermuda insurers and reinsurers."

A London observer agreed that the changes are good for Bermuda.

"This is a good step forward for Bermuda, generally, to be recognized as meeting the highest global standards," said Adrian Hammond, executive director of global market security for Willis Group Holdings Ltd. in London.

"We see it as very positive for its reputation," Mr. Hammond said. "Practically, the impact on many of the larger international Class 4 companies will probably be limited because many of them effectively trade well above the existing regulatory requirements, and that's driven by the demands of capital markets,

See **BERMUDA** page 22

THE RISING COST OF TRANSPORTATION

How businesses are assisting employees with the rising cost of transportation

	YES	NO	Plan to
Raising mileage reimbursement to IRS cap	42%	55%	3%
Offering flexible work schedule (e.g. compressed work schedule, flex-time, etc.)	26%	70%	4%
Offering telecommuting	18%	79%	3%
Offering public transportation discounts	14%	83%	3%
Rewarding employees with gas card	14%	79%	7%

Source: SHRM

Travel benefit mandate draws little opposition

Many employers already comply with city's law

By JOANNE WOJCIK

SAN FRANCISCO—A San Francisco ordinance that would require employers to offer "commuter benefits" to workers is unlikely to significantly affect most large and midsize employers because the vast majority already provide those benefits to their employees, observers say.

Unlike a recent mandate requiring employers to spend a certain amount of money on health care coverage that drew the ire of the business community and has triggered a major legal battle, the commuter benefits mandate has the backing of the San Francisco Chamber of Commerce.

However, the ordinance could meet resistance from small businesses, observers say, since it applies to employers with 20 or more employees, regardless of whether they are full-time, part-time, temporary or contract workers.

The ordinance, which the city's Board of Supervisors passed Aug. 12 to help reduce San Francisco's 2012 greenhouse gas emissions by 20% from 1990 levels, would give employers a choice of three options:

- Employers could set up a program under IRS Code 132(f) under which employees could make pretax contributions to pay for mass transit expenses.

- Employers could pay for employees' transportation expenses, such as buying transit passes for employees.

- Employers could furnish transportation by setting up van pools for workers.

"I don't think employers are going to object," said Kathleen Murray, a principal at Mercer L.L.C. in San Francisco.

Unlike the health care mandate the board passed in 2006, the commuter benefit ordinance is not likely to be challenged under the Employee Retirement Income Security Act, the federal law that preempts state and local rules and laws that relate to employee benefit plans, Ms. Murray said.

"This particular benefit is not covered by ERISA," Ms. Murray said. Moreover, if employers choose the pretax account option, they may actually save money, she noted.

See **MANDATE** page 24

State issues coverage requirements

Mass. employers must meet requirements to avoid paying assessments

By KRISTIN GUNDERSON HUNT

BOSTON—Massachusetts Gov. Deval Patrick's administration last week issued a regulation that would tighten the rules employers in the state must meet to avoid paying an assessment to help fund health insurance coverage for the uninsured.

The current "fair share" contribution regulation is part of the state's 2006 health care reform law that created a nearly universal health system in Massachusetts. The current regulation requires businesses with at least 11 full-time employees to pay a penalty if they don't fulfill one of two requirements.

To avoid paying the \$295 per

employee assessment, either 25% of an employer's full-time employees must be enrolled in its health insurance plans, or an employer must pay 33% of the premium for individual coverage for employees within 90 days of their starting work.

The proposed regulation, however, would require employers meet both requirements to avoid the assessment. If adopted, the assessments would generate an estimated \$45 million in revenue in fiscal year 2009, according to documents from the Massachusetts Division of Health Care Finance and Policy. Currently, the assessments draw about \$7 million in revenue, a spokeswoman from the governor's office said.

\$45M

IN REVENUES would be generated by assessments if state coverage proposal is adopted.

That revenue goes toward funding the Commonwealth Care program, which currently subsidizes health insurance premiums for approximately 175,000 previously uninsured lower-income state residents. Commonwealth Care costs have been higher than anticipated because more state residents have enrolled than initially projected.

Employer groups previously expressed concerns about a change in the rules, which they said will impose a hefty financial assessment on employers, such as retailers that have long waiting periods before new employees are eligible for coverage. Under current rules, such companies are exempt from the penalty.

The regulations, if adopted, would go into effect Oct. 1. A public hearing on the issue is scheduled for Sept. 5.

P/C reserves under pressure: Fitch

But industry's reserve redundancy is beginning to decline

By JEFF CASALE

U.S. property/casualty insurers currently have "healthy" loss reserve levels, but that may soon change, according to Fitch Ratings Ltd.

The New York-based ratings agency last week released its report on the property/casualty insurance industry's reserve adequacy, with analysts noting that the industry's loss reserve position has benefited from the past hard market. However, Fitch analysts say that the industry's reserve redundancy is starting to decline as the soft market unfolds.

"A lot of the loss reserves in from the peak of the soft market in the 1990s developed very unfavorably for insurers," said James Auden, a Chicago-based Fitch financial analyst. "Business was way underpriced

and insurance companies didn't anticipate the loss-caused trends. Sept. 11 led to tremendous changes in underwriting and pricing... (insurers') reserve management became more conservative and loss reserves have grown more favorably since then."

Fitch predicts insurers, in the near term, will continue to benefit from favorable reserve development from prior underwriting periods, but accident-year loss ratios are likely to increase materially from prior years as market conditions change.

Reserving challenges are likely to increase as the soft market unfolds, according to the Fitch report. Insurers will likely loosen policy terms and conditions as competition increases, the report states. In addition increased inflation makes it

even more difficult for insurers to estimate loss costs, Mr. Auden said.

"Inflation is a significant challenge to loss reserves," he said. "When unexpected inflation costs go up, (insurers) tend to underestimate loss costs."

For year-end 2007, Fitch projects that the industry's net loss and loss adjustment expense reserves were between \$900 million and \$9.0 billion redundant. Meanwhile, Fitch says that the industry's reserves are deficient in several areas, including asbestos, where reserves were \$4.7 billion to \$9.3 billion deficient at year-end 2007, environmental, \$2.3 billion to \$3.2 billion, and latent liability exposures, \$2.0 billion to \$4.0 billion.

Members of Fitch Ratings can see the report at www.fitchratings.com.

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Verizon: Reaches retiree health care deal

CONTINUED FROM PAGE 3

unique in this struggle, and everyone is feeling the pinch of surging medical costs.

A spokeswoman for the CWA said the agreement, which also addressed issues such as increasing wages, pensions and union membership, was a significant gain for its members.

"It maintains quality benefits for workers and retirees," she said.

Still, concessions were made despite the union's history of fighting for high-quality retiree medical benefits. Ms. Johnson said increased competition makes it difficult for employers to provide such benefits. Those that do end up being at a disadvantage because they have higher costs than those companies offering no health care to their employees.

She said a national health care system is needed to fix the problem, and therefore part of the contract requires Verizon to contribute \$2 million a year to a project in which the company and the two Washington-based unions will work together to achieve national health care

reform. More details of the plan were not available.

"It's an unlevel playing field when it comes to competitors," she said. "We can't continue to have a system where some employers pay nothing and some employers pay their fair share or more."

Verizon has plenty of company in attempting to pare future medical costs.

Last year, the United Auto Workers reached agreements with General Motors Corp., Ford Motor Co. and Chrysler L.L.C. to transfer the automakers' retiree health care benefit liabilities to UAW-controlled voluntary employees' beneficiary associations in exchange for the companies making tens of billions of dollars contributions to the VEBAs.

After making those contributions, the automakers will have no further obligation to provide retiree health care benefits.

Cara Jareb, director of retiree medical consulting for Watson Wyatt Worldwide in Arlington, Va., said she thinks unions are making concessions on retiree medical benefits

hesitantly, but are more willing to do so for new hires than their current members.

"Employers are really trying to move away from taking on that continued risk of paying for the cost of health care as people age and technology advances," Ms. Jareb said.

She said it is not uncommon for companies offering retiree medical benefits to have years-of-service contribution formulas, such as the one in Verizon's agreements with the two unions. In recent years, she said, health savings accounts and health reimbursement arrangements have become popular approaches to funding retiree medical care.

For example, Ford Motor Co. this year began to offer a program for nonunion Medicare-eligible retirees in which the company contributes \$1,800 per year per retiree plus an additional \$1,800 for a retiree's spouse, to an HRA.

"Everybody is aware of the high cost of health care, and it's becoming more difficult to support an open-ended obligation over time," Ms. Jareb said. "It's a big issue that everybody is wrestling with."

Questions & Answers

Munich Re America's Specialty Markets division is an important part of its parent's long-term growth plans. Craig R. Smiddy, president of the Specialty Markets unit in Princeton, N.J., spoke with Business Insurance Editor Regis Coccia about how the unit's appetite for primary specialty commercial and personal lines risks—a combination of alternative market and niche program business—is helping achieve its growth objectives.



A program for growth

Q. What is the business scope of Munich Re America's Specialty Markets?

A. Specialty Markets is responsible for alternative market business within the United States, which would include captives, risk retention groups, pools, large single risk—that's one segment. The other segment we're responsible for is primary insurance business, commercial insurance within the United States. And most of that business that we write is written through a program with a (managing general agent) partner. With respect to alternative market business, we are a substantial player in that segment, particularly in the public entity and scholastic marketplace. Within those areas, we have significant penetration, significant recognition and of course expertise. The area where we have less penetration today is on the insurance program side with our MGAs. So we are working on developing additional capabilities and additional niches within the specialty insurance marketplace to grow our commercial program business with our MGAs.

Q. What program opportunities are particularly attractive?

A. We are currently researching many specialty niches. Our current portfolio of risks includes business that is specialty niche in nature. We believe that developing expertise, products and services within a niche gives us a competitive advantage rather than being a more generic kind of player.

Some of the niches include secular nonprofit, where we have developed a product to work with our MGAs and we have filed that product in all 50 states. Another example would be a religious product that we have developed where we are again working with several partners and several different religious denominations to deploy that product to their members or for our MGAs to potential new insureds.

One of our success factors and differentiators is that we write multiple lines of business. Most of our transactions are multiple lines

and include a package offering.

Q. We're in the middle of what looks like a relatively prolonged soft market. Isn't that a challenging time to grow?

A. Without question, the marketplace is a challenge for Specialty Markets. We fortunately are entering into this soft market cycle with a portfolio that is very healthy. The portfolio is approaching \$1 billion. It has run consistently in mid-90s as far as a combined ratio is concerned. So we're very comfortable that we're in a good place to weather the soft

THE FULL TEXT of this abridged BI interview is online at www.BusinessInsurance.com/Qanda.

market, but without any question the soft market does have some impact on our ability to grow. We're more focused on positioning ourselves so that we're in a good position when the market does inevitably harden again and we're in a healthy position to work with clients and partners to grow.

In short, we remain committed to underwriting discipline and we believe we will deliver stable returns over time if we stay committed to that discipline and risk-adequate pricing.

Q. Are you seeing any signs that the market might be heading for a turn in the next six to 12 months, independent of external factors such as huge losses?

A. Independent of catastrophic kind of losses or any other dramatic market-changing event, our view is the fundamentals would suggest that there can't be a prolonged softening. We're seeing continued increases in loss trend, particularly in the area of workers compensation, which is either at or greater than medical inflation. With the trends continuing to increase and rates having taken a considerable turn down for the last couple of years, the fundamentals would suggest that a protracted or prolonged soft market doesn't seem financially viable. We believe there will be a point where the market will have to turn in the other direction.

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(and we wouldn't recommend it to amateurs)



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Business Insurance OPINIONS

RRGs need protection from bullying by states

DOES FEDERAL LAW ALLOW risk retention groups to provide medical stop-loss coverage to their members?

In a case involving a Montana-licensed RRG set up to provide stop-loss coverage to a group of California auto dealers, California regulators have maintained that RRGs are not authorized to write the coverage.

As a nonchartering state, California's opinion should matter little, if at all. Under the Liability Risk Retention Act, an RRG that meets the licensing requirements of one state is allowed to operate in any state in which it has policyholders with minimal interference from other states' regulators. That is the theory that Congress intended in approving the law, which responded to a crunch in the traditional commercial liability market.

Congress intended to help buyers across state lines to band together to fund their liability exposures without having to meet the rules in any state in which they wanted to do business.

States should not use costly litigation to hobble RRGs.

The reality, though, as California has demonstrated in litigation with the auto dealers, is quite different. First, California tried to shut down the auto dealers' RRG through a cease-and-desist order. After a federal judge blocked that effort, the California Insurance Department then continued fighting the RRG in court. With the certainty of hundreds of thousands of dollars in future legal fees hanging over it, the small RRG had little choice but to throw in the towel and stop writing the coverage in California.

The result of this case should tell Congress that it needs to look at amending the law, lest its intent of preventing RRGs from being hobbled by out-of-state regulators be thwarted.

A better system than the current one of costly, lengthy litigation that can crush a new RRG when disputes with out-of-state regulators erupt clearly is needed.

California comp reforms' cost-cutting days are over

IF THERE IS A LESSON to learn from the proposed workers compensation rate hikes in California, it is that reforms of the system can do only so much.

As we report on page 1, the Workers' Compensation Insurance Rating Bureau of California is calling for a pure premium rate hike of at least 16% for next year. While the recommendation has yet to be formally adopted by the state's insurance department and would not be binding on insurers even if it were, the fact that it has been proposed is a concern for employers in the state.

The workers comp reforms implemented in California in 2004 went a long way to ease the crisis that employers in the state were facing with runaway comp costs.

For example, the use of provider networks has allowed employers to gain greater control of their comp costs and treatment guidelines have helped curb overutilization of medical services. Employers saw comp rates drop significantly—in some cases more than 50%—as a result of the reforms.

But legislative reform can't change everything, as the WCIRB's latest recommendations show.

Medical cost inflation is still a fact of life that remains a challenge that employers throughout country are struggling to address. Although, employers in California have been given some breathing room with the price cuts over the past few years, the battle to reduce costs through improved safety continues and that should now be the focus in the battle against rising costs.



WRITE

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

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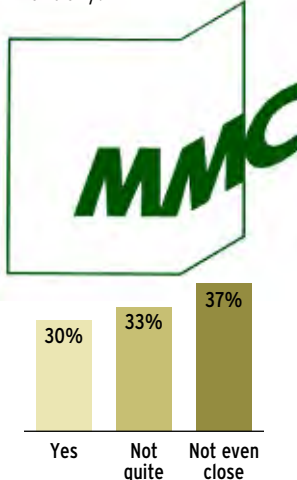
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THIS WEEK'S RESULTS

Has Marsh & McLennan Cos. Inc. turned a corner financially?



NEXT WEEK'S QUESTION

Q: Should employers be allowed to transfer their frozen defined benefit pension plans to a financial services firm?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

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TODD WINTERS

Few victories for employers in latest court term

For its 2007/2008 term, the U.S. Supreme Court decided 10 employment cases, the most in recent years, writes Gerald L. Maatman Jr., a partner at law firm Seyfarth Shaw L.L.P. in Chicago. Despite the high court's pro-business stance on legal issues previously, employers only scored two victories this term. The eight other cases resulted in plaintiff-friendly rulings, tilting the workplace litigation playing field, he says.

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2008 Winners:**COMMERCIAL PROPERTY INSURER**AMERICAN INTERNATIONAL GROUP INC.
PAGE 10**ADMITTED LIABILITY INSURER**AMERICAN INTERNATIONAL GROUP INC.
PAGE 10**SURPLUS LINES INSURER**LEXINGTON INSURANCE CO.
PAGE 10**WORKERS COMPENSATION INSURER**LIBERTY MUTUAL GROUP INC.
PAGE 10**MANAGED CARE ORGANIZATION**CIGNA HEALTHCARE INC.
PAGE 12**RETAIL AGENT/BROKER****(Revenues more than \$250M)**
AON CORP.
PAGE 12**RETAIL AGENT/BROKER****(\$50M to \$250M)**
INTEGRO LTD.
PAGE 13**RETAIL AGENT/BROKER****(\$25M to \$50M)**
WILLIAM GALLAGHER ASSOCIATES
INSURANCE BROKERS INC.
PAGE 14**RETAIL AGENT/BROKER****(Less than \$25M)**
MID AMERICAN GROUP INC.
PAGE 14**RISK MANAGEMENT CONSULTANT**RMI CONSULTING INC.
PAGE 15**EMPLOYEE BENEFIT CONSULTANT**AON CONSULTING WORLDWIDE
PAGE 16**REINSURANCE MARKET ORGANIZATION**LLOYD'S OF LONDON
PAGE 16**REINSURANCE INTERMEDIARY**AON RE GLOBAL
PAGE 17**INSURANCE WHOLESALER/MGA**SWETT & CRAWFORD GROUP
PAGE 18**THIRD-PARTY CLAIMS ADMINISTRATOR**GALLAGHER BASSETT SERVICES INC.
PAGE 18**EAP PROVIDER**CIGNA BEHAVIORAL HEALTH
PAGE 20

Business Insurance readers pick industry's best overall

Business Insurance's annual Readers Choice Awards recognize our readers' picks for the best overall commercial insurance industry companies.

2008 marks the fourth year of this program. *BI* launched the Readers Choice Awards in 2005 to let readers vote for the companies that they believe offer the best combination of service, value, quality and innovation.

The categories are:

- Best admitted commercial property insurer.
- Best admitted liability insurer, encompassing both professional liability and general liability.
- Best employee assistance program provider.
- Best employee benefit consulting firm.
- Best insurance wholesaler/managing general agent/program administrator.
- Best managed care organization.
- Best reinsurance market organization.
- Best reinsurance intermediary.
- Best retail agent/broker. For 2008, *BI* created subcategories by revenue: greater than \$250 million, \$50 million to \$250 million, \$25 million to

\$50 million, and less than \$25 million.

- Best risk management consulting firm.
- Best surplus lines insurer.

• Best third-party claims administrator, encompassing both property/casualty and benefit claims.

- Best workers compensation insurer.

Again this year, *Business Insurance* partnered with Erdos & Morgan Inc., an internationally respected business-to-business market research firm, to devise an electronic ballot and tabulate the

results. *BI* invited readers of the news magazine as well as *BusinessInsurance.com* to cast their votes on confidential ballots. Balloting closed June 23, and the results were tabulated and analyzed to determine the winners as well as the top four runners-up.

Profiles of the winning companies begin on page 10. To view profiles of this year's winners as well as those in the previous Readers Choice Awards competitions, please visit www.BusinessInsurance.com/ReadersChoice.

2008 Readers Choice
Business Insurance

Readers
Choice
Awards

SPOTLIGHT

For searchable data on this year's award winners, visit the online directories of *Business Insurance*:
www.businessinsurance.com/directories



American International Group Inc.
70 Pine St.
New York, N.Y. 10270
212-770-7000
www.aig.com

2007 REVENUES: \$110.1 BILLION

2007 WORLDWIDE EMPLOYEES: 116,000

2008 Readers Choice Business Insurance
Best Commercial Property Insurer

Risk appetite, innovation distinguish AIG

A "broad appetite" for property risks and continual striving to innovate are two hallmarks of American International Group Inc.'s commercial property underwriting, a senior AIG executive says.

Business Insurance readers voted New York-based AIG as the best overall commercial property insurer in the 2008 Readers Choice Awards, reflecting a combination of quality, value, service and innovation.

Most of AIG's property underwriting is concentrated within its Boston-based Lexington Insurance Co. unit and is written on both admitted and nonadmitted paper, offering considerable flexibility, said Shaun Kelly, vp of AIG's Property/Casualty Group as well as president and chief operating officer of Lexington.

"The ability to be nimble bodes well for us," he said. "We provide property coverage for a wide array of risks for just about any commercial industry segment."

Distinctive features of AIG's property business include its ability to offer high limits, even for catastrophe-exposed risks, and to respond globally when claims occur, Mr. Kelly said. "We've made available substantial increases in limits to the marketplace, up to \$1.5 billion, and

it's done in a very managed fashion," he said. Financial strength within AIG and its ability to work with reinsurers "allow us to take on significant catastrophe exposure, which is very much needed by our clients."



'We provide property coverage for a wide array of risks for just about any commercial industry segment.'

Shaun Kelly, AIG

"Recent innovations AIG has introduced in property policies include an Upgrade to Green endorsement, enabling policyholders to repair or replace damaged material with environmentally sustainable materials, and extended coverage for pandemics, Mr. Kelly said.

"We're constantly trying to innovate," he said.

—By Regis Coccia

Business Insurance



Readers Choice 2008

Commercial Property Insurer

1. AMERICAN INTERNATIONAL GROUP INC.
2. ACE LTD.
3. FM GLOBAL
4. CHUBB CORP.
5. TRAVELERS COS. INC.

Creativity, claims skill AIG hallmarks

American International Group Inc.'s underwriting talent, creativity, risk appetite and claims handling are among the factors that distinguish it as an insurer of professional and general liability, AIG executives say.

Those factors are partly why New

York-based AIG has been voted the best admitted liability insurer in *Business Insurance's* 2008 Readers Choice Awards. The category includes both professional liability and general liability lines.

AIG's nearly 40-year history of writing professional liability provides a unique perspective on the market, said Michael Smith, president of AIG Executive Liability.

AIG's approach to writing professional liability coverage involves objective analysis of historical data, industry data and financial metrics, as well as relying on its underwriting experience and talent to assess some of the less objective areas.

'Underwriting these (professional and general liability) lines is both an art and a science.'

Michael Smith, AIG Executive Liability

chairman and chief executive officer of AIG's Risk Management Group.

"Just as you see the business environment change, those are our clients, and we're constantly thinking of ways to innovate to serve their needs," Mr. Iglesias said.

AIG's Executive Liability division offers directors and officers insurance for public, private and non-profit institutions, as well as products and services for more than 100 classes of professionals in industries including financial services, health care, technology and legal.

General liability underwriting is "very industry-focused," with particular expertise in the construction, real estate and staffing industries, for example, Mr. Iglesias said. In addition to providing tailored coverage, a key part of AIG's service to general liability policyholders is loss control, he added.

Among recent innovations for liability risks are AIG Executive Shield, a broad Side A D&O liability policy "designed to have very few exclusions," Mr. Smith said, and reorganization of GL claims handling, where a single claims handler is assigned to those claims that flow through primary and umbrella programs, Mr. Iglesias said.

Because liability claims can be

"difficult," AIG takes a partnership approach to tackle claims issues that "are not always black and white," Mr. Smith said. The claims department works very closely with the underwriting team to understand the concerns of the policyholder, "so when a claim does come in, there are no surprises," he said.

—By Colleen McCarthy



Lexington Insurance Co.
100 Summer St.
Boston, Mass. 02110
617-330-1100
www.lexingtoninsurance.com

2007 GROSS WRITTEN PREMIUMS: \$7.78 BILLION

2007 WORLDWIDE EMPLOYEES: 1,500

2008 Readers Choice Business Insurance
Best Surplus Lines Insurer

Improvement an ongoing Lexington goal

Listening to policyholders and having the resources to deliver the innovative products they want is what wins Lexington Insurance Co. respect year after year, says Kevin H. Kelley, chairman and chief executive officer.

For the fourth year in a row, Boston-based Lexington has been voted the best overall surplus lines insurer in the *Business Insurance* 2008 Readers Choice Awards.

"There is a lot of pride in our performance and a lot of pride in our achievement," Mr. Kelley said of the recognition.

Lexington is a unit American International Group Inc. that offers property, casualty and specialty coverages and programs. It is the largest U.S. surplus lines insurer, according to *BI's* 2007 rankings. The company had \$6.3 billion in non-admitted direct written premiums in 2007, according to Lexington.

Because it is a surplus lines company, Lexington can quickly develop new products that meet emerging needs without first having to obtain regulatory approval.

That makes Lexington enticing for policyholders, wholesalers and retail brokers, Mr. Kelley said.

Its product announcements this year include increasing its capacity for commercial domestic property insurance by \$1 billion to \$1.5 billion, an Upgrade to Green coverage that allows commercial policyholders to rebuild damaged buildings using environmentally friendly construction and a truck broker primary liability policy for brokers that

connect shippers and motor carriers.

Staying on top means frequent meetings with policyholders.

"No. 1," said Mr. Kelley, "we see a lot of clients. We think it is very important to meet with them once a year, if not more; and then most importantly, listen to clients; and then, because of the balance sheet we have, we are able to appropriately respond."

Constantly worrying that the competition might pull ahead also motivates his company. "It's like any winning organization: You are always looking for ways to improve," Mr. Kelley said. "You are always looking for ways to get better. You don't get complacent. We worry a lot. That is a main reason why we continue to perform."

—By Roberto Cenicerros



'You are always looking for ways to get better. You don't get complacent.'

Kevin H. Kelley, Lexington Insurance Co.

Business Insurance



Readers Choice 2008

Surplus Lines Insurer

1. LEXINGTON INSURANCE CO.
2. ACE WESTCHESTER
3. AMERICAN INTERNATIONAL SURPLUS LINES INSURANCE CO.
4. ARCH SPECIALTY
5. ST. PAUL SURPLUS LINES

Liberty Mutual drives safety with analysis

Data prowess and an array of integrated claims services make Liberty Mutual Group Inc. a standout workers compensation insurance provider, says Rich Marko, senior vp and manager of commercial strategic services.

Boston-based Liberty Mutual's workers comp line also stands out because of the company's safety consulting services, research into worker injuries and customers that desire a safe workplace, Mr. Marko said.

The insurer's offerings have made it the No. 1 pick among workers comp insurers in the *Business Insurance* 2008 Readers Choice Awards.

Continued on page 12

Business Insurance



Readers Choice 2008

Liability Insurer

1. AMERICAN INTERNATIONAL GROUP INC.
2. ACE LTD.
3. CHUBB CORP.
4. ZURICH FINANCIAL SERVICES
5. TRAVELERS COS. INC.

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Fortune® Magazine, March 2008

- **Leader in customer service for both members and clients**

UBS Benefit Consultants Survey, May 2008

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athenahealth, Inc. 2008 PayerViewSM Rankings

- **Ranked #1 for providing clear information to doctors**

The Verden Group, April 2008

- **Platinum winner best employer for healthy lifestyles**

National Business Group on Health, May 2008

- **2008 winner for improving asthma health literacy**

Institute for Healthcare Advancement, May 2008



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CONTINUED FROM PAGE 10

Liberty Mutual has more than 41,000 employees working in 900 offices worldwide. Liberty Mutual

about returning people to work through appropriate medical treatment that eliminates payment for unnecessary care, he said.

The insurer has made investments in technology and analytic expertise to study its database of 750,000 workers comp claims. The information helps identify which doctors in a region produce the best outcomes for specific injuries. It has also been used for predictive modeling that provides an early warning when a claimant may need more than standard care to recover.



'We establish our own standards and we manage tightly to those standards.'

Rich Marko, Liberty Mutual

"That are a lot of different resources...and we have absolute control over (their) quality," Mr. Marko said. "We establish our own standards and we manage tightly to those standards."

Liberty Mutual's related services include its Helmsman Management Services L.L.C., a third-party administrator, and the Liberty Mutual Research Institute for Safety, which focuses on occupational safety and disability management.

—By Roberto Ceniceros

Liberty Mutual Group Inc.
175 Berkeley St.
Boston, Mass. 02116
617-357-9500
www.libertymutualgroup.com

2007 REVENUES: \$25.9 BILLION

2007 EMPLOYEES: 41,000 +

2008 Readers Choice Business Insurance
Best Workers Comp Insurer

Group revenues for 2007 were nearly \$26 billion, according to the company.

"Workers comp is our heritage," Mr. Marko said. The company launched in 1912 focusing on workers comp claims. Today that line comprises 21% of its business. Other lines include private auto, commercial property and specialty coverages.

Its workers comp coverage and disability management services impress because of a "measurement-driven culture" and a relentless focus on measurable outcomes, Mr. Marko said. Data is paramount because managing workers comp claims is

Business Insurance

Top 5 Readers Choice 2008

Workers Comp Insurer

1. LIBERTY MUTUAL GROUP
2. ACE LTD.
3. AMERICAN INTERNATIONAL GROUP INC.
4. ZURICH FINANCIAL SERVICES GROUP
5. TRAVELERS COS. INC.

CIGNA isn't content to rest on its laurels

CIGNA Healthcare Inc. is moving from being a sort of lifestyle and wellness pen pal to a roommate for some of its clients.

Stepping away from the practice of bombarding workplaces with pamphlets and Web sites aimed at providing customers with help in the arena of nutrition and weight loss, the company will start in 2009 a new practice, which has already been piloted at several companies, of contracting lifestyles and wellness coaches to work in the offices

CIGNA HealthCare Inc.
900 Cottage Grove Road
Bloomfield, Conn. 06002
(860) 226-6000
www.cigna.com

2007 REVENUES: \$17.6 BILLION

2007 EMPLOYEES: 26,600

2008 Readers Choice Business Insurance
Best Managed Health Care Organization

of some of its larger clients.

The in-house health-coaching program, among others, is making one of the country's largest health insurers stand out among competitors, says President David Cordani.

It also has been selected as the best managed care organization in *Business Insurance's* 2008 Readers Choice awards.

"We view (this) as a very important validation of the path that we are on and the progress that we are making," Mr. Cordani said. "By no means does it cause us to rest on our laurels. We plan to push forward."

The managed care organization's latest plunge into the wellness and disease prevention movement helps expand its role as an entity that handles more than just insurance claims, he said.

"We believe very passionately that our role is not as an insurer alone; we define our role as a health service company to make sure we are constantly addressing the needs" of customers, Mr. Cordani said.

Meeting the various needs, aligned into four distinct categories of customers—healthy people, healthy people with risks, those with chronic health conditions and those with acute health problems—are what help drive CIGNA's programs, he said.

Heavily tied to its subsidiary CIGNA Behavioral Health Inc., the program provides a single point of contact and entry for customers regardless of need and connects them to an expert, in some instances their own case manager, who can help them navigate the health care system, said Mr. Cordani.

"The people want one person

who knows them and can get them to the expert," he said. "In the event that you are in a major health situation, you would have a designated case manager for that individual. (For example,) with cancer, that would be an oncology nurse."

"Our focus is to make sure we have the right programs for everyone," said Mr. Cordani.

—By Louise Esola

Business Insurance

Top 5 Readers Choice 2008

Managed Health Care organization

1. CIGNA HEALTHCARE INC.
2. AETNA INC.
3. UNITEDHEALTH GROUP
4. KAISER PERMANENTE
5. COVENTRY HEALTH CARE
5. HUMANA INC.

Aon Corp.
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Chicago, Ill. 60601
312-381-1000
www.aon.com

2007 BROKERAGE REVENUES: \$7.74 BILLION

2007 EMPLOYEES: 35,900

2008 Readers Choice Business Insurance
Best Retail Agent/Broker >\$250M

Talented team underpins Aon's strength

A combination of talented people working together to help clients and a focus on delivering global capabilities is part of what makes Aon Corp. distinctive, top executives of Aon's retail brokerage operations say.

In this year's *Business Insurance* Readers Choice Awards, Aon was voted the best overall retail brokerage among firms with revenues of more than \$250 million, reflecting quality, value, service and innovation.

The honor is a reflection of how Aon operates day to day, said Steve McGill, chairman and chief executive officer of Aon Risk Services.

Continued on next page

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CONTINUED FROM PREVIOUS PAGE

Five months ago, Chicago-based Aon formed Aon Risk Services as a single, global platform for advising clients and placing risks, noted Mr. McGill.

Three key components of ARS are what Mr. McGill calls "client excellence, broking excellence and unmatched talent." Those encompass Aon's breadth of resources, global network of wholly owned offices and investments in technology and people, he explained. "All of this gives us an ability to think about and deliver maximum impact to clients," he said.

Aon's internal leadership model is based on five elements, Mr. McGill said: client value, teamwork, innovation, stewardship of resources and living Aon's values. Employee training and advancement are designed around these, he said.

"Underpinning all of that, our real strength at Aon is our people working as a team. Our people are our real strength," said Ted Devine, president of ARS. Another strength is Aon's investments in technologies and client-facing staff, he said.

Aon's commitment to innovation is evident not just in the "dozens of new product solutions" developed over the last few years but also in an ongoing program called the "Innovation Olympics," regional contests judged by local steering committees that compete for funding, Mr. Devine said.

"Our best innovation comes from our field organization listening to

our clients. You don't do innovation from the top down," Mr. Devine said.

Some examples are the Aon Green Building Property Program, which enables clients to upgrade properties to be more environmentally friendly; Aon Advantage, a multiyear coverage program through Zurich Financial Services Group that aims to reduce volatility for middle-market clients; and SafeFleet certification for trucking fleets.

"We always think about improving," said Mr. McGill. "We're honored to be awarded (the Readers Choice Award), but we think being the best is about always improving."

—By Regis Coccia



'Our real strength at Aon is our people working as a team.'

Ted Devine,
Aon Corp.

Business Insurance®



**Readers
Choice
2008**

Retail Agent/Broker >\$250M

1. AON CORP.
2. MARSH & McLENNAN COS. INC.
3. WILLIS GROUP HOLDINGS INC.
4. LOCKTON COS. L.L.C.
5. ARTHUR J. GALLAGHER & CO.

Integro's size helps broker remain nimble

Smaller can be better when it enables a firm to quickly respond to clients' needs and offer consistently high-quality service, the chief executive officer of Integro Ltd. says.

New York-based Integro was named as the best retail brokerage among firms with revenues of \$50 million to \$250 million in this year's *Business Insurance* Readers

Continued on next page

INTEGRO
INSURANCE BROKERS

Integro Ltd.
1 State St.
New York, NY 10004
212-295-8000
www.integrogroup.com

2007 REVENUE: \$58 MILLION

2007 EMPLOYEES: 375

**2008 Readers Choice
Business Insurance**

Best Retail Agent/Broker
\$50M to \$250M

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**2008 Readers Choice
Business Insurance**
Best Reinsurance Market Organization

CONTINUED FROM PREVIOUS PAGE

Choice Awards, reflecting a combination of quality, value, service and innovation.

"We're a small organization, very flat and nimble. Everyone is involved with clients in a meaningful way, day to day," said Roger E. Egan. "Our minimal hierarchy means we act like a partnership, and that structure maximizes collaboration and helps keep people focused on serving clients' needs."

Strengths of Integro, which was founded only three years ago by Mr. Egan, a former Marsh Inc. president, Peter Garvey, who was co-president at Marsh, and founder and former CEO of MMC Capital Inc. Robert Clements, include "our

service model, knowledge and analytics," Mr. Egan said.

"Part of our service is old-fashioned standards, such as returning phone calls on the same day, for example. That kind of service can get lost sometimes in a larger organization," he said.

Integro now has more than 360 employees and 10 offices throughout North America, Bermuda and London and "we're growing nicely organically," Mr. Egan said. While he doesn't rule out an acquisition, Integro has access to the major markets its clients need so it currently has no plans to expand its footprint, he said.

"Our mantra is to be in the complex risk business. We emphasized large risks when we started, but we've really changed it to complex risks," and while many of Integro's clients are in the Fortune 1000, the brokerage firm is able to serve smaller clients as well, Mr. Egan said.

Innovation is important to Integro, and two recent examples Mr. Egan cited are XS PLUS, a modeling product that "goes way beyond benchmarking" to test the effectiveness of layered excess liability cover-

age programs, and Hedge Shield, a product that protects investors in hedge funds from losses due to fraud or asset seizure.

"We get great ideas from clients on how to provide more value," he said.

"We define value in a very simple way: value is better coverage, better claims results, better pricing, more responsive service, more knowledge. All of those things delivered to the client create that value," Mr. Egan said.

—By Regis Coccia



'We're a small organization, very flat and nimble. Everyone is involved with clients in a meaningful way, day to day.'

Roger E. Egan, Integro Ltd.

Business Insurance



Readers Choice 2008

Retail Agent/Broker \$50-\$250M

1. INTEGRO LTD.
2. BEECHER CARLSON HOLDINGS INC.
3. HAYS GROUP INC.
- HYLANT GROUP
4. FRANK CRYSTAL & CO. INC.
- JOHN L. WORTHAM & SONS L.P.
5. ALLIANT INSURANCE SERVICES INC.
- ALLIED NORTH AMERICA



William Gallagher Associates Insurance Brokers Inc.
470 Atlantic Ave.
Boston, Mass. 02210
617-261-6700
www.wgains.com

2007 BROKERAGE REVENUE: \$47.8 MILLION

2007 EMPLOYEES: 200



Expertise in key areas sets broker apart

Targeting niche clients and tailoring products to fit those clients' needs differentiates Boston-based William Gallagher Associates Insurance Brokers Inc. from its competitors, said Philip Edmundson, the firm's chairman and chief executive officer.

That distinction might explain why the firm was voted the best retail broker with revenues between \$25 million and \$50 million for *Business Insurance's* 2008 Readers Choice Awards.

"We have a reputation for innovation and expertise in fast growth industries," Mr. Edmundson said. "We are not a generalist firm."

William Gallagher provides brokerage services to a handful of "vertical industries" that require deep understanding and expertise, he said. The firm focuses on industries such as information technology, life sciences, renewable energy, aviation and health care.

Despite being a small firm, Mr. Edmundson said clients are attracted to the fact that its brokers comprehend and appreciate their dynamic and challenging industries. He said brokers receive continuing education to keep them up to speed on the various industries they serve.

"Clients are impressed that within a small firm we have a variety of core capabilities that are well-suited to dynamic companies," he said.

To ensure clients receive the best possible service, Mr. Edmundson said the company creates service teams whereby team members are selected based on a client's needs, and the expertise they can offer the client. The company takes this approach to avoid standalone



'We have a reputation for innovation and expertise in fast growth industries. We are not a generalist firm.'

Philip Edmundson, William Gallagher Associates

work in a more collegial fashion with clients that are challenging."

—By Kristin Gunderson Hunt

departments operating in silos.

The service team structure also is popular with employees, who feel their contributions are valued and not limited by their placement or status in the organization, he said. Overall, this helps with employee retention, he added.

"Our open team structure," Mr. Edmundson said, "really allows professionals to work in a more collegial fashion with clients that are challenging."

MID AMERICAN GROUP INC.
Mid American Group Inc.
760 Pasquinelli Drive, Suite 358
Westmont, Ill. 60559
630-789-9508
www.midamgroup.com

2007 BROKERAGE REVENUE: \$5.58 MILLION

2007 EMPLOYEES: 13

2008 Readers Choice Business Insurance
Best Retail Agent/Broker <\$25M

ance in navigating the benefits territory, Mr. Lill said.

Today, Mid American offers services ranging from flexible spending account administration to



'Instead of periodic meetings, we're actually in the trenches with our customers day-to-day.'

Jim Lill, Mid American Group Inc.

Health Insurance Portability and Accountability Act compliance training to employee assistance programs in addition to brokerage services. Customers seem to appreciate Mid American's offerings, as it was voted best retail brokerage with less than \$25 million in revenues in the *Business Insurance* 2008 Readers Choice Awards.

"I think the customers we've attracted really appreciate the fact we're able to provide these additional services," Mr. Lill said. "Since our focus is on the middle market, a lot of these customers need the help."

Focusing on customer service is another way Mid American distinguishes itself from competitors and

Continued on next page



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Business Insurance

Top 5 Readers Choice 2008

Retail Agent/Broker \$25-\$50M

1. WILLIAM GALLAGHER ASSOC. INS. BROKERS INC.
2. RIGGS, COUNSELMAN, MICHAELS & DOWNES INC.
3. DEWITT STERN GROUP INC.
- NORTH AMERICAN GROUP
- PARKER SMITH & FEEK INC.
- TRUENORTH COS.
4. BARNEY & BARNEY L.L.C.
- R.C. KNOX & CO. INC.

Mid American offers clients wide choice

Officials at Mid American Group Inc. recognized early in its 20-year existence that providing traditional brokerage services wasn't enough to earn new clients, Chief Executive Officer Jim Lill says.

Consequently, Mid American decided to go a step further and provide administrative services to middle-market clients that had minimal human resources and benefits personnel and were looking for guid-

Business Insurance

Top 5 Readers Choice 2008

Retail Agent/Broker <\$25M

1. MID AMERICAN GROUP INC.
2. ALPER SERVICES
- BANKERS INSURANCE L.L.C.
- PRITCHARD & JERDEN INC.
3. MCGRAW WENTWORTH
- THE CAMPBELL GROUP

CONTINUED FROM PREVIOUS PAGE

the larger brokers. Mr. Lill said his client service representatives are all former human resources executives from commercial firms with experience and an understanding of the business.

"We try to engage our customers frequently," Mr. Lill said. "Instead of periodic meetings, we're actually in the trenches with our customers on a day-to-day basis."

He said the broker and consultant's dedication to organic growth and long-term relationships is another draw for customers. The company does not intend to merge with or be acquired by any other company, he said. Instead, the firm prides itself on brokers servicing their clients for extended periods of time.

"Merger and acquisition activity has taken over our industry as a major focus of growth," Mr. Lill said. "We're in it for the long haul."

—By Kristin Gunderson Hunt



'We bring an unbiased point of view...unencumbered by the inherent conflict of interest a broker or agent faces.'

MaryAnn Sackman,
RMI Consulting Inc.

transfer risk, using insurance as the last resort."

That, along with other aspects of RMI's business profile, has helped the 28-year-old company gain recognition for three consecutive years as the best risk management consulting firm in *Business Insurance's* Readers Choice Awards, including this year.

to their needs. We have employees; we don't rely on consultants."

The company's model leans heavily on teamwork, she said, and pooling of knowledge among its team of 45 experts. "That team approach offers our clients a level of continuity of services. They always feel that their team is knowing and able to work on their account."

"When I look at ourselves as independent risk managers, we really operate a little differently," she said. "We have a niche that works for us. We utilize a business plan that we feel offers a risk manager plans that cater

Enhancing the firm's expertise, this year RMI added an attorney to its office to provide guidance to clients in several growing areas, including directors and officers liability renewals and a tightening insurance market, said Ms. Sackman.

Enterprise risk management is another area RMI plans to expand further, based on current marketplace needs. Already providing ERM strategies for larger companies, RMI plans to offer services to smaller firms.

"(ERM) is a hot-button issue right now," Ms. Sackman said. "When I look at the need, I look at this enterprise risk management to improve their overall business plan."

—By Louise Esola

Business Insurance®



**Readers
Choice
2008**

Risk Management Consultant

1. RMI CONSULTING INC.
2. RISK INTERNATIONAL SERVICES INC.
3. J.H. ALBERT INTERNATIONAL INSURANCE ADVISORS INC.
4. ROBERT HUGHES ASSOC.
5. INSURANCE BUYER'S COUNCIL INC. & FIRST RISK MANAGEMENT/IBC INC.



RMI Consulting Inc.
20 Soundview Marketplace
Port Washington, N.Y. 11050
516-767-7373
www.rmiconsulting.com

2007 GROSS REVENUES: \$12,700,000

2007 EMPLOYEES: 45

2008 Readers Choice Business Insurance
Best Risk Management Consultant

Independent RMI ascends on teamwork

With no stake in the insurance market, RMI Consulting Inc. provides its customers with an approach to risk management that is not riddled with conflicts of interests and insurance sales quotas, according to MaryAnn Sackman, company president.

The independent risk management consulting firm provides risk management services for small to large companies seeking outside guidance on how to manage and curtail risks.

While competitors often are tied to brokerage firms and insurers, RMI's approach provides customers with sound, unbiased plans for managing risk, said Ms. Sackman.

"We bring an unbiased point of view in favor of our clients; (we are) unencumbered by the inherent conflict of interest a broker or agent faces," she said. "We work with our clients to identify risk and look for ways to avoid or contractually

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Aon Consulting keeps focus on staff, clients



'I think (this award) is a recognition that we are serving our clients well.'

Kathryn Hayley, Aon Consulting Worldwide

For Aon Consulting Worldwide, it is its breadth of talent that helps make the difference between a run-of-the-mill benefits consulting firm and one that earns high marks from clients.

For the third consecutive year, the benefits consulting firm earned

a top spot in *Business Insurance's* Readers Choice Awards, selected mainly, according to its two co-chief executive officers, because of the people it hires.

"I just think we have a pretty broad base of consulting expertise.

of benefits including retirement, health care and workforce management. To earn clients and their accolades, Aon Consulting maintains a keen focus on their people, she said.

"Retention is high among key

We cover the whole gamut," said Co-Chief Executive Officer Kathryn Hayley.

Aon Consulting Worldwide employs more than 6,300 consultants in 117 offices around the globe, specializing in most facets

staff and we are very successful in bringing in new talent," she said. "We are working on being a destination for talent. I think we really enhanced our focus on developing our professionals in the organization (and) training our people to really consult."

According to Co-CEO Baljit Dail, Aon Consulting's focus on clients, in addition to its own people, also makes the difference.

"Our strategy, one of the core areas for us, has been serving clients and delivering value to clients," he said. "I think (this award) is a recognition that we are serving our

AON

Aon Consulting Worldwide
200 E. Randolph St., 10th floor
Chicago, Ill. 60601
312-381-4844
www.aon.com/hhc

2007 OVERALL REVENUE: \$1.32 BILLION

2007 EMPLOYEES: 6,335

2008 Readers Choice Business Insurance

Best Employee Benefit Consulting Firm

September 15-17, 2008

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CEO, RI3K



John Lupica
President & CEO, ACE USA



Mario P. Vitale
Deputy CEO, Zurich Global Corporate

clients well."

Both executives said the company will focus more on innovation and data collection. Ms. Hayley said Aon Consulting is now investing in creating more health care data for clients seeking ways to curb escalating costs in that area. As for innovation, Aon Consulting in mid-2007 held a contest among employees to see who could come up with new ideas for doing business. Ms. Hayley said there were more than 1,200 entries and that the ideas are still being combed through.

"It's been tough to choose," she said. "We just have so much creativity on staff."

—By Louise Esola

Business Insurance



Readers Choice 2008

Employee Benefit Consulting Firm

1. AON CONSULTING WORLDWIDE
2. MERCER L.L.C.
3. TOWERS PERRIN
4. HEWITT ASSOCIATES
5. GALLAGHER BENEFIT SERVICES INC.

Innovation helps Lloyd's stay ahead

Global reach and vast experience in understanding the most difficult risks are key qualities that Lloyd's of London brings to insuring and reinsuring risk, the head of its North American business says.

Founded more than 320 years ago, Lloyd's is the world's oldest insurance marketplace and comprises more than 75 individual syn-

Continued on next page



Business Insurance

www.BusinessInsurance.com

Microsoft

Safeco Insurance

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LLOYD'S

Lloyd's of London
1 Lime St.
London EC3M 7HA, England
44-207-327-1000
www.lloyds.com

**2007 GROSS WRITTEN
PREMIUMS: £16.37 BILLION**

**2008 Readers Choice
Business Insurance**
Best Reinsurance Market Organization

£16.37 billion (\$32.59 billion) in gross premiums in 2007. "You have to think globally but execute locally, and Lloyd's has representatives all over the world," she noted. "We now conduct business in more than 200 countries."

Improvements in technology to streamline underwriting and claims processes are "one of the cornerstones of building our way forward," Ms. Lowery said.

"Lloyd's businesses are led by strong entrepreneurs and underwriters who thrive on underwriting risk," Ms. Lowery said. The franchise structure of Lloyd's helps create autonomy and flexibility to drive innovation, she said.

During its long history, Lloyd's has responded with innovative cov-

erages to challenges ranging from terrorism to climate change to weather catastrophe risks, Ms. Lowery said. "We've been able to change and modify our vision, and we've transformed ourselves over the past 320-plus years. As the world continues to evolve, we'll evolve with it."

—By Regis Coccia

Business Insurance

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Global reach, teamwork set Aon Re apart

Reinsurance has become a very data-driven business of managing capital, and the ability to offer integrated solutions worldwide is one of the qualities that sets Aon Re Global apart, its top executives say.

Aon Re, a unit of Chicago-based Aon Corp., was named as the best reinsurance intermediary in the 2008 *Business Insurance* Readers Choice Awards.

Continued on next page

AON

Aon Re Global
200 E. Randolph St.
Chicago, Ill. 60601
312-381-5300
www.aon.com

2007 REVENUE: \$902 MILLION**2007 EMPLOYEES: 2,220**

**2008 Readers Choice
Business Insurance**
Best Reinsurance Intermediary

dicates that collectively represent one of the world's largest reinsurance organizations. Lloyd's was voted as the best overall reinsurance market organization in this year's *Business Insurance* Readers Choice Awards, reflecting a combination of

quality, value, service and innovation.

"We are the world's leading specialist insurance market. We pride ourselves on being creative and out-of-the-box thinkers," said LoriAnn Lowery, president of Lloyd's America Inc. in New York. The United States, in addition to being the world's

largest market for reinsurance, is also Lloyd's largest single market, generating about 40% of its annual revenue.

International reinsurance accounted for about 33% of Lloyd's



'We've been able to change and modify our vision, and we've transformed ourselves over the past 320-plus years.'

LoriAnn Lowery,
Lloyd's America Inc.

Swett called back for fourth encore!

For the 4th year, the readers of *Business Insurance* have named Swett & Crawford their choice for Best Wholesaler in the business.

We are most grateful to our industry colleagues for acknowledging our hard work in this extraordinary way.

Day in and day out, our staff of 800 insurance professionals makes sure that Everything We Know Goes Into Everything We Do.™ We put the accumulated knowledge gathered over 94 years of brokering and underwriting specialty risks to work on each submission. Our independent agents and clients get easy access to the best problem solving through our Practice Group specialists.

Every broker and underwriter in your local Swett Office can tap into the resources and market relationships of our entire organization to deliver the best coverage possible. We've built the team and technology to make that happen, and continue to educate our people and enhance our tools to assure you get superlative counsel and support every time you call us.

The **PEOPLE** of Swett have won this award for the 4th year in a row. This award is a reflection of their dedication, professionalism, and commitment to being the best. We thank each of them for their contribution.

Neal Abernathy
President and Chief Executive Officer

Steve Sadler
Chief Operating Officer and
Executive Vice President, Sales

Business Insurance

**Readers
Choice
2008**

Reinsurance Market Organization

1. LLOYD'S OF LONDON
2. SWISS RE GROUP
3. BERKSHIRE HATHAWAY/
GEN RE GROUP
4. MUNICH RE GROUP
5. ACE TEMPEST REINSURANCE
LTD.
5. XL RE

**Swett & Crawford**

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www.swett.com

CONTINUED FROM PREVIOUS PAGE

“Our strength is our people. There are no ‘I’s’ in our organization, only ‘we’s.’ We work together as a team,” said Michael O’Halloran, Aon Re’s executive chairman. A



‘Our best ideas start with how we serve clients, their need for capital solutions and protection.’

Andrew Appel, Aon Global Re

capital markets, he said. “We have powerful capabilities to work globally, regionally or locally; it doesn’t make a difference.”

Andrew Appel, chief executive officer of Aon Re Global, said the reinsurance brokerage produces innovative solutions by starting with clients’ needs. “Most of our best ideas start with how we serve clients, their need for capital solutions and protection. We combine that with our deep expertise in all areas,” he said.

Examples of Aon Re’s recent innovations include developing analytics to better understand volatility in markets and cost of capital as well as structuring a \$1.2 billion catastrophe bond on behalf of State Farm Group.

Even though ceding insurers have been taking higher retentions and buying somewhat less reinsurance, some are purchasing higher limits, Mr. Appel said. “The ultimate measure of our value is that our clients are successful” in growing their businesses. “At its core, we measure the value of what we do by getting clients the best structures, the best pricing and the best protection that the market is able to offer,” he said.

“We’re in the business of protecting value and creating value for our clients,” Mr. O’Halloran said. “The traditional word ‘reinsurance’ in the vocabulary of Aon is not appropriate anymore. We’re in the capital solutions business.”

—By Regis Coccia

client-centric focus “from start to finish enables us to think outside the box.”

Being part of Aon also “allows us to invest in technology and people” to deliver integrated capital and service solutions, whether they’re in treaty or facultative reinsurance or

Business Insurance

Top 5

Readers Choice 2008

Reinsurance Intermediary

1. AON RE GLOBAL
2. GUY CARPENTER & CO. L.L.C.
3. WILLIS RE
4. TOWERS PERRIN
5. BENFIELD GROUP LTD.

Swett & Crawford
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Swett & Crawford Group
3715 Northside Parkway N.W.,
Building 200, Suite 800
Atlanta, Ga. 30327
404-240-5200
www.swett.com

2007 GROSS REVENUES: \$222.1 MILLION

2007 EMPLOYEES: 825

2008 Readers Choice Business Insurance
Best Wholesaler/MGA Program Administrator

Teamwork key for success of wholesaler

Cutting-edge organization and teamwork have helped Swett & Crawford Group earn a high grade in wholesale insurance sales, according to J. Neal Abernathy, the company’s president and chief executive officer.

“People usually don’t share a lot of information in this business,” he said. “There’s often this ‘I’m the best’ mentality and people think they have to have all the answers

individually in the industry. I’m a big advocate of sharing information. (Many insurance wholesalers) don’t have the infrastructure to share information.”

After the wholesaler several years ago organized the company into six practice groups, covering property, casualty, energy, professional services, transportation and underwriting, it created an intranet to help its producers. IntraSwett is where its 260 producers within each practice group can keep their colleagues informed of their progress with clients. This way, according to Mr. Abernathy, clients are better served because numerous experts are weighing in on their accounts and products.



‘One of the things we try to do is make sure we bring the best products to the retailers without individual agendas getting in the way.’

J. Neal Abernathy, Swett & Crawford

This sort of organization and pooling of knowledge have helped better serve clients’ needs, he said. It also helped Swett & Crawford shine among *Business Insurance* readers, who voted the company the best insurance wholesaler in *Business Insurance’s* Readers Choice Awards four years in a row, he added.

“One of the things that we try to do is make sure we bring the best products to the retailers without individual agendas getting in the way of that,” he said.

“These (producers) are sharing information and it gives us a huge leg up on our competitors,” Mr. Abernathy said.

Another star in the company’s business profile, according to Mr. Abernathy, is its longevity.

“We’ve been around for 95 years and, in and of itself, that isn’t that valuable but if you have that as a base, that’s a part of (the accolades). It’s service, it’s practice groups, it’s being around for a long, long time, and it’s this culture of us working together that makes a difference.”

—By Louise Esola

Gallagher Bassett Services Inc.
The Gallagher Centre,
2 Pierce Place
Itasca, Ill. 60143
630-773-3800
www.gallagherbassett.com

2007 GROSS REVENUE: \$443.5 MILLION

2007 EMPLOYEES: 3,890

2008 Readers Choice Business Insurance
Best Third-Party Claims Administrator

TPA offers stable service amid changes

Offering stability in a turbulent market has been the key to Gallagher Bassett Services Inc.’s popularity among third-party administrator clients, according to Rich McKenna, president of the 46-year-old company.

While a wave of mergers, acquisitions and executives on the move has been a feature of the TPA market, Gallagher Bassett’s management team has stayed intact for more than 20 years, he said.

Among the largest multiline property/casualty TPAs, Mr. McKenna pegs the company’s longevity and continuity in service, in a time of upheaval for the industry, as one of the reasons it was named best TPA in the *Business Insurance* 2008 Readers Choice Awards.

“We just believe that the marketplace is in turmoil (and) we are a stable force in that turmoil,” he said. “Over the last two to three years there has been a lot of ownership changes within the TPA world, a lot of consolidation that breeds a certain amount of instability. Clients don’t know where they stand from day to day with their TPA.”



‘Our clients recognize and appreciate three things: our stability, our reliability and our flexibility.’

Rich McKenna, Gallagher Bassett

A first for Gallagher Bassett, which won a second-place mention in last year’s issue, Mr. McKenna said the award brings to light the

Rewalk the red carpet.

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Top 5

Readers Choice 2008

Wholesaler/MGA Program Administrator

1. SWETT & CRAWFORD
2. AMWINS
3. CRC INSURANCE SERVICES
4. CRUMP INSURANCE SERVICES
5. ARC EXCESS & SURPLUS

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company's core strengths.

"We believe that our clients recognize and appreciate three things: our stability, our reliability and our flexibility," he said.

While the company, which employs nearly 4,000 claims experts, boasts no new products or services in the pipeline, according to Mr. McKenna, it does promise one thing to clients: continuation of a high level of service.

"Our stability and our continuity are the things clients have a right to expect us to continue to provide," he said. "Our clients like that and they appreciate that, as we can see."

—By Louise Esola

Business Insurance



Readers Choice 2008

Thrid-Party Claims Administrator

1. GALLAGHER BASSETT SERVICES INC.
2. SEDGWICK CLAIMS MANAGEMENT SERVICES INC.
3. ESIS INC.
4. CAMBRIDGE INTEGRATED SERVICES GROUP INC.
5. BROADSPIRE SERVICES INC.

High-quality help is focus of CIGNA unit

Forgoing labels is what has helped CIGNA Behavioral Health Inc. stand out among its employee assistance program competitors, accord-



CIGNA

CIGNA Behavioral Health Inc.
11095 Viking Drive, Suite 350
Eden Prairie, Minn. 55344
952-996-2426
www.cignabehavioral.com

2007 REVENUES: \$525 MILLION

2007 EMPLOYEES: 1,241



ing to CIGNA Behavioral President and Chief Executive Officer Keith Dixon.

"We are not hung up on what an EAP is, as a lot of organizations are," he said. "There is no such thing as a misdirected call. People who have these kinds of problems don't care about programs and labels; they just want help." Instead of staying true to the traditional EAP model, which leans heavily on providing assistance for issues such as mental health and substance abuse, CIGNA Behavioral has spent more than a year expanding its offerings to serve customers with a



'People who have these kinds of problems don't care about programs and labels; they just want help.'

Keith Dixon, CIGNA Behavioral Health

single nurse hotline available around the clock so they can speak to trained health technicians about any need or issue, he said.

The new business model, CIGNA's Integrated Personal Health Team, is one of the reasons Mr. Dixon said it has managed to score the top slot for best EAP provider in Business Insurance's Readers Choice Awards four years in a row.

Mr. Dixon said a second reason is that CIGNA Behavioral is not a boutique EAP. Its connection to a larger health organization, CIGNA Healthcare Inc., has opened doors for programs, capabilities and better service.

Thirdly, he said, the company expects much from the people it hires. He categorizes CIGNA Behavioral as a demanding place to work.

"We are pretty strict about who we hire (and) we try to hire the very best people in this field," Mr. Dixon said. "I, as a leader, and the managers that work for me are very focused on developing a high-quality work environment. (There's) a high level of teamwork and responsiveness: the culture is, 'What more can we do and how can we do this better?' If you want to work here, the standards are really high."

—By Louise Esola

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International NEWS

Block exemption benefits insurance buyers: AIRMIC

Other organizations also support extension

By **STUART COLLINS**

LONDON—The U.K. insurance buyers association, the Assn. of Insurance & Risk Managers, has told the European Commission that it supports the continuation of the block exemption to certain European competition rules enjoyed by the region's insurers.

The insurance industry's block exemption is due to expire in 2010, and by March 2009 the commission must present to the European Parliament and Council of Ministers a report on—and any amendments

would otherwise have less choice," Kip Berkeley-Herring, chair of AIRMIC's Insurance Steering Group, said in a statement. "Allowing suppliers to cooperate in a few well-defined areas actually increases the amount of competition out there," he added.

There is an area where U.K. insurance buyers would like to see changes in the subscription market, however. "The association does, however, support proposals to allow the following market to compete on price, rather than automatically following the rate set by the lead underwriter," AIRMIC said.

London market insurers have also responded to the commission's consultation on the future of the block exemption.

In its submission, the London-based International Underwriting Assn. argued that if the block exemption were not renewed, the loss of efficiency and a lack of certainty would be to the detriment of policyholders. "IUA members are anxious that the regulation is maintained since it has helped provide insurers and reinsurers with a relatively clear framework of competition law for the production of legal wordings that are clear to all," the IUA said in a statement.

In particular, the association defended the application of the block exemption to the use of standard policy wordings and clauses.

The Lloyd's Market Assn., the body that represents Lloyd's of London insurers, also submitted its response to the commission on the future of the block exemption. "The LMA has submitted a detailed response to the commission seeking renewal of the insurance block exemption, specifically as regards the production of model policy wordings," said Rob Gillies, head of market processes at the LMA.



BIE

'Allowing suppliers to cooperate in a few well-defined areas actually increases the amount of competition out there.'

Kip Berkeley-Herring,
AIRMIC

to—the block exemption regulation. Industry stakeholders originally had until July 17 to provide comments to the commission before it makes its decision, although it was extended until August.

AIRMIC has made a submission to the commission's Directorate General for Competition that supports continuing the block exemption. AIRMIC described the current arrangements as "pro-competitive," saying that the exemption allows insurers to share policy wordings and some administrative arrangements when co-writing large risks.

"The exemption encourages competition by making it easier for new players to enter the market when they might otherwise lack the resources to participate in very large insurance programs," AIRMIC said in a statement.

"We believe that the block exemption acts in the interests of commercial insurance buyers, who

U.K. truncates liability claims reform

Risk managers, insurers decry removal of employer, public liability cases

By **TONY DOWDING**

LONDON—Risk managers and insurers have expressed disappointment over the U.K. government's change of direction on liability claims reform.

In a controversial move last month, the government excluded employers liability and public liability claims from a new streamlined claims process. The process provides for early notification to the defendant or insurer of personal injury compensation claims valued between £1,000 (\$1,981) and £10,000 (\$19,809), and an increased fast-track limit of £25,000 (\$49,523). The process will now cover only traffic accident cases.

The move came after a lengthy consultation period—the original consultation paper "Case Track Limits and the Claims Process for Personal Injury Claims" was published April 20, 2007. The consultation paper originally proposed that a streamlined claims process apply to all claims except those for clinical negligence.

But in its response to the consultation, the government said traffic accident cases tend by their nature to involve fewer complexities than employer and public liability cases, and therefore better lend themselves to the new claims process.

Under the latest government proposals, the defendant or insurer must respond—and admit or deny liability—to a compensation claim arising from a traffic accident within 15 working days.

The government considers that



The U.K. government's decision to limit liability claims reform to traffic accidents is a "lost opportunity," said David Southwell of Zurich Financial Services Group.

employers liability cases in particular involve a different dynamic in terms of the economic and power relationship that exists between an injured employee making a personal injury claim against his or her employer and two parties contesting a traffic accident.

The insurance industry is unhappy about excluding employer and public liability claims from the process, especially since the government had said in the initial consultation that "the current system cannot continue."

John Bell, head of claims at Aon Risk Services, the London-based unit of Chicago-based Aon Corp., said that when the consultation paper was originally put out, it was to look at the whole claims process.

"An awful lot of time and effort went into commenting on the employers and public liability process. It does seem a bit disingenuous

to then suddenly exclude those claims," Mr. Bell said. "The response said that road traffic accident injuries comprise 75% of personal injury claims, which means that employers and public liability comprise 25%, so surely it was worth not excluding them."

David Southwell, U.K. personal injury claims manager at Zurich Financial Services Group in London, said, "We are very disappointed with the response. It is a lost opportunity. Why should there be a two-tier system for compensation? I think the person on the street is worse off than he was before."

He said Zurich pays about 75% of employers' liability claims without any arguments. He also said he believed the government was wrong to focus on complexity.

"There is a myth that high value

See **LIABILITY** next page

U.K. rejects call to change safety rules

But government does agree to accrediting of professionals

By **TONY DOWDING**

The U.K. government has rejected calls by Parliament's Work and Pensions Committee to review the "reasonable practicability" test and how it applies to the Health and Safety at Work Act 1974.

Section 2 of the act states: "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees."

But the government, in its written response to the committee's "Third Report of Session 2007-08,"

said it does not believe there would be value in a further review of the "reasonable practicability" test.

It added that recent reviews have concluded that the current regulatory regime for health and safety is "proportionate and generally fit for purpose."

"The majority of occupational health and safety legislation is goal-setting not prescriptive and provides businesses with the flexibility to manage risks in a manner which is both proportionate and reasonable, taking account of particular circumstances and changes in technology," the government said in its

response.

The government did agree with another issue raised by the committee report—that there is a case for accreditation of health and safety professionals. The government response stated that it is for the professional bodies themselves to come together to address this issue. The government said it is facilitating a meeting of the relevant professional bodies to discuss an accreditation system, who would run it and how it might be financed.

The committee report also rec-

See **SAFETY** next page

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Bermuda: Solvency legislation adopted

CONTINUED FROM PAGE 4

rating agencies and trading partners. A greater impact may yet be seen in some of the smaller or more specialized companies."

The regulations will establish risk-based capital adequacy standards for large insurers, said Mr. Elderfield. The approach "is where you take the different activities" of insurers and "place them into buckets" depending on the nature of the risk. Each bucket would have a different solvency charge, he said. "The detail of exactly what the charges will be will be set in our regulations," he said.

"This will allow for a more risk-sensitive approach to setting solvency requirements for Bermuda's insurers, in line with international developments regarding capital adequacy such as Solvency II," he said in a statement announcing the changes.

The standard will permit insurers and reinsurers to use internal economic capital models to determine proper capital levels, Mr. Elderfield said. "If your own risk models are so sophisticated and accurate that they present a better picture of what you are doing than our risk buckets, then (you) can apply to use those

internal models," he said.

He stressed, though, that the models would be subject to BMA review and approval. "It's not a blank check," Mr. Elderfield said.

He said the BMA is analyzing a survey of the modeling practices of all 40 Class 4 companies, as well as conducting follow-up visits and onsite interviews to get a good picture of the companies' modeling capabilities, he said.

For example, the quality of data used in the models will be examined, he said.

"We will be publishing a document in November giving the results of the analysis, and then or shortly after we will set up what our entry criteria are," Mr. Elderfield said.

The regulations will require Class 4 companies to publish financial statements using generally accepted accounting principles, he said. Class 4 companies are not currently required to do so.

The BMA also will implement previously proposed changes to the regulation of Class 3 companies, which will be broken into subcategories according to size (*BI*, June 30).

Under the changes, Class 3 would include only captive insurers that have unrelated business that makes up between 20% and 50%

of net premiums written, said Mr. Elderfield.

Class 3A would include small commercial insurers that write unrelated business that exceeds 50% of net premiums written, as long as that business does not exceed \$50 million. Class 3B would include commercial insurers with unrelated premiums that are greater than 50% of net premiums written and have business in excess of \$50 million, he said.

The new regulations also establish a new "special-purpose insurer" category. Mr. Elderfield said special-purpose vehicles already exist in Bermuda, "but they've had to shoehorn themselves into the existing classifications," such as Class 3. But "if you have a structure that is fully collateralized like a SPV or sidecar, you can have your special category and don't have to have the same minimum capital requirement," he said, adding that the change would make establishing special-purpose vehicles less expensive in Bermuda.

Mr. Elderfield said none of the changes will affect Class 1—which consists largely of single-parent captives—or Class 2 companies, which is comprised mainly of captives with multiple owners.

"The captive sector is unchanged by the solvency rule," he said.

Liability: U.K. government limits reforms

CONTINUED FROM PREVIOUS PAGE

means complex. And you can have some fairly complicated liability arguments in a road traffic accident scenario. You can also have some fairly straightforward road traffic accidents. And you can have incredibly straightforward employers liability claims," Mr. Southwell said.

Gary Marshall, group risk manager for Dunstable, England-based printing company Polestar Co. Ltd., said the latest government response means that "nothing much has changed, we are in the status quo."

Cost and time spent on such claims are problems for risk managers, he said. "Those are the things that cause my management the most aggravation—the time it takes to deal with these things and the costs that go with that, and we have not moved those forward at all," Mr. Marshall said. "There is a palpable sense of disappointment."

Paul Hopkin, technical director of

the U.K. Assn. of Insurance & Risk Managers, said an opportunity to reform, simplify and reduce costs of the entire process failed to be delivered.

'We are very disappointed with the response. It is a lost opportunity.'

David Southwell,
Zurich Financial Services Group

He said AIRMIC had submitted a detailed response to the consultation paper with recommendations that the association would have liked to have seen, "and very, very few of those have been accepted."

The government response does not discuss the issue of rehabilitation, despite it appearing in the

original consultation paper.

Mr. Bell said the issue "underlines how disappointing the response is, because they have chosen to ignore certain activities such as rehabilitation, mediation, which quite clearly do have a benefit in the process."

Mr. Southwell, who wrote the Zurich and Assn. of British Insurers' responses to the consultation paper, said, "We put a lot of effort into rehabilitation, and it is not mentioned anywhere in the government response." He added that the issue was not controversial. "There is no issue between the Assn. of Personal Injury Lawyers and insurers about rehabilitation."

As for the future, Mr. Bell said it is up to the industry to try to tackle the so-called compensation culture and the "spiral of increasing costs incurred by the various elements of the claims process. Swift reporting, investigation and settlement of claims has got to be one of the ways to resolve it," he said.

Safety: Call to change rules rejected

CONTINUED FROM PREVIOUS PAGE

ommended that there should be a link between employers' liability insurance premiums and standards of health and safety. The government pointed to a number of reviews of employers' liability in recent years. "These showed that under normal market conditions, the pricing of employers' liability insurance is more influenced by other insurance products sold to

employers, rather than the degree of risk accepted by insurers," it said.

The government added that it is "always interested in new initiatives to incentivize improved health and safety performance and is looking with interest" at the London-based Engineering Employers' Federation's risk management benchmarking system, "which directly links insurance premiums to an employer's investment in health and safety and loss prevention."

The U.K. manufacturers' organization set up an insurance arrangement that uses a benchmarking system, a risk management scorecard and a group of insurers—Allianz Insurance P.L.C., part of Allianz S.E.; AXA U.K. P.L.C., part of AXA S.A.; Norwich Union, a unit of Aviva P.L.C.; and Travelers Insurance Co. Ltd., a part of Travelers Cos. Inc.—that link a company's investment in health and safety and loss prevention to insurance premiums.

UP Comings & Goings CLOSE



TOM O'CONNELL

NEW JOB TITLE: President of the Chicago office of Hylant Group Inc.

PREVIOUS POSITION: Senior vp at Aon Risk Services in Chicago.

GOALS FOR NEW POSITION: We want to introduce the Hylant brand to the Chicago market and then we want to build a diverse organization and...focus on the specific industries that we feel will benefit from our business model.

CHALLENGES FACING THE INDUSTRY, COMPANY: Among challenges facing the industry is the ability to identify and attract good young talent. At our company, we have an intern program that we use to grow our own future employees to learn about our industry. I think the other challenge that we face is getting into the Chicago market. It's a business market we want to be in and Hylant isn't a household name here.

FIRST INDUSTRY JOB EXPERIENCE: My first job was

working as a producer for Arthur J. Gallagher & Co. At that time, 30 years ago, there wasn't the use and value in technology that we have today. People worked together and supported each other differently.

ROLE MODELS: Two people that really had a lot of influence on my career were John and Bob Gallagher, the principals at Arthur J. Gallagher & Co. They were great leaders, they were creative and they looked at the business in a nontraditional way. The other person that was influential was (Aon Corp. founder) Pat Ryan, watching him build the organization over the last 20 years and the ability to pull people together. That was pretty exciting.

OUTSIDE THE INDUSTRY, A DREAM JOB: I've always wanted to teach at the college level. I'd love to teach business ethics.

Comings & Goings ONLINE

VISIT www.BusinessInsurance.com/ComingsandGoings for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings.



Rona Finkelstein,
Injured Workers'
Insurance Fund



Donna Wilson,
Injured Workers'
Insurance Fund

POSTING THIS WEEK

INSURERS:

- Injured Workers' Insurance Fund
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TO SUBMIT ITEMS

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- Guy Carpenter & Co. L.L.C.

MANAGED CARE:

- Aetna Inc.
- Magellan Health Services Inc.

Market Moves

America First opens Oklahoma City office

OKLAHOMA CITY—America First Insurance Co., a Liberty Mutual Agency Markets regional company based in Richardson, Texas, announced the opening of an Oklahoma City office.

The new office is located at 14000 Quail Springs Parkway, Suite 310, Oklahoma City, 73134, and will primarily serve as an underwriting operation with a staff of 12.

America First said it expects to add staff to the office in the near future.

Mike Hughes, regional vp, will lead the office, which can be contacted by phone at 866-454-6575 or 405-749-5740 and by fax at 405-749-5741.

Insurance, benefits firm changes name

NANUET, N.Y.—Commercial insurance and employee benefits program provider CLG Financial has changed its name to CLG Insurance as part of a rebranding effort.

Additionally, the company has developed a new logo, implemented new customer service initiatives and launched a new Web site, www.clginsurance.com.

CLG Insurance has offices in Nanuet, N.Y. and Clifton, N.J.

PMA acquires Connecticut TPA

WATERBURY, Conn.—PMA Capital Corp. said it has acquired a Waterbury, Conn.-based provider of third-party administration services from Webster Financial Corp. for \$5.9 million in cash, which included certain price adjustments at closing.

Webster Risk Services has been renamed PMA Management Corp.

of New England Inc., following the acquisition.

"The acquisition of PMA Management Corp. of New England is a natural extension of our fee-based business segment and expands the geographic reach of our expertise in providing TPA and risk services," said Vincent T. Donnelly, president and chief executive officer of PMA Capital Corp.

PMA Capital is based in Blue Bell, Pa., and is a holding company with operating subsidiaries providing insurance and fee-based services, such as workers compensation and other commercial property/casualty lines of insurance, as well as TPA, managing general agent and program administrator services.

BB&T acquires South Carolina firm

MYRTLE BEACH, S.C.—Raleigh, N.C.-based brokerage BB&T Insurance Services Inc. has acquired Puckett, Scheetz & Hogan Insurance Agency Inc., a Myrtle Beach, S.C.-based coastal property insurance specialty agency providing risk management services for businesses and individuals.

Terms of the deal that closed Aug. 1 were not disclosed.

The acquired firm's 50 employees in its Myrtle Beach and Pawleys Island, S.C. offices will remain with BB&T-Puckett, Scheetz & Hogan.

The firm's management team will also stay on as managers.

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TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while new product offerings appear in Products & Services. Please send Market Moves news to: Kristin Gunderson Hunt, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; khunt@businessinsurance.com. P&S items should be sent to Colleen McCarthy at cmccarthy@businessinsurance.com and C&G items should be mailed to Allison Martinat at the above address or e-mailed to amartinat@businessinsurance.com.

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Audits: GM expands care cost scrutiny

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population, among other factors, culling ineligible dependents from the rolls can save an average of \$2,000 to \$5,000 annually per employee, observers say.

Ineligible dependents are generally on the rolls because of ignorance or negligence rather than deliberate fraud, observers say. Ineligible dependents are often ex-spouses and children who have either "aged out" or have dropped out of college, and are therefore no longer eligible to receive benefits (see story).

Observers stress the importance of employers introducing follow-up procedures after an audit to prevent ineligible dependents from slipping back onto their health care rolls.

The audits are becoming increasingly popular. The GM spokeswoman said this is its first full-scale audit, after conducting others on a much smaller scale in the past.

"We have seen, probably, a 500% increase just in inquiries and proposal requests from 2007 to 2008," said Brennan L. Clipp, senior vp of sales and marketing with Dallas-based HRAdvance Enterprises L.P., which provides audits.

Keith Bird, vp of sales for Suwanee, Ga.-based Impact Interactive, which conducts audits, said he attributes the increased demand to better educated employers. "Plus, obviously, health care costs are continuing to increase," he said.

John Fazio, a Cleveland-based senior consultant with Towers Perrin, said driving the trend is employers' "need to make sure they

have explored every area to manage their plans as efficiently as possible" and to exercise their fiduciary responsibility.

Under the Employee Retirement Income Security Act's exclusive benefit rule, an employer's health plan must be for the exclusive benefit of a firm's employees or their beneficiaries. This means employers have a fiduciary responsibility to remove ineligible dependents, said Wayne K. Soud Jr., executive vp with Lockton Cos. L.L.C. in Atlanta.

Furthermore, the Sarbanes-Oxley Act requires that companies maintain controls to ensure appropriate use of company funds, said Joel Carter, vp of client services at Newport Beach, Calif.-based Secova Inc., a human resources and benefits administration outsourcing company.

Ineligible percentage steady

Observers say the percentage of ineligible dependents on employers' health care rolls has remained fairly consistent over time, despite rising health care costs. It will vary from firm to firm, though, depending on factors that include the plan's generosity and how much of the premiums are paid by employers.

GM employees and retirees will have until Aug. 20 to self-report ineligible dependents, who will be removed from the company's health care rolls with no repercussions. In the next phase, employees and retirees will be asked to provide documentation—such as tax returns or school transcripts—to prove their dependents' eligibility

for coverage.

The GM spokeswoman said employees may be asked to compensate the company for coverage provided to ineligible dependents discovered during this second phase.

Employers generally follow the same route of offering employees an amnesty period followed by a request for supporting documentation, say observers.

However, employers that seek reimbursement or terminate employees who are discovered to have ineligible dependents, is still relatively rare, observers say.

The vast majority of employers "simply want to remove the ineligibles," said Ms. Clipp.

In some cases, employers plan to seek reimbursement, but in the interest of employee retention and attraction they do not communicate it, said Mr. Rucci. "Why alienate everyone?" he asked.

Follow-up is critical, say observers. "If you do a one-time audit and do nothing else, our studies show in three years you're right back where you started," said Mr. Carter.

In some cases, the very same people whose ineligible dependents were removed from the health care rolls will try to get back on again during the next open enrollment period, said Mr. Rucci.

"Employers need to put in place procedures to keep track of dependents that are already disqualified and not let them back on the rolls unless they can prove a change of circumstances," he said.

Why ineligible stay on rolls

The reasons ineligible dependents wind up on employers' health care rolls vary, say observers.

A spokeswoman for General Motors Corp., which has just completed an audit of its salaried workers and retirees, found that children who have "aged out" because they are no longer attending school constitute the majority of ineligible dependents.

Joel Carter, vp of client services at Newport Beach, Calif.-based Secova Inc., a human resources and benefits administration outsourcing company, said audits that Secova has conducted found "an awful lot of people didn't tell their parents they were actually not in school that semester."

In other cases, employees neglect to inform their employers once a student graduates, said Marilyn Klein, a Lincolnshire, Ill.-based health and welfare domain leader for Hewitt Associates Inc.

The definition of who is considered a family member is an issue as well, say observers.

Mark Rucci, a Princeton, N.J.-based consultant with Gallagher Benefit Services Inc., said there is "a lot of misunderstanding" on the part of immigrants as to how U.S. benefits only cover spouses and chil-

dren and not other family members who may be living with the worker.

Another factor is workers who respond to court decrees requiring they provide health care coverage to their ex-spouses by putting them under their employer's plan, say observers. Workers do not realize they may have agreed to provide health care to their former spouses, "but that doesn't mean they can have group coverage once you divorce," said David Sabo, Cleveland-based senior vp with Willis of Ohio Inc.

In some cases, also, the employer's health care benefit plans may disqualify spouses who can obtain coverage from their own employers, say observers.

Fraud is relatively rare, though, say most observers. A majority of employees who have listed ineligible dependents are "people who just don't stop to consider," said Mr. Carter.

But Brennan L. Clipp, senior vp of sales and marketing with Dallas-based HRAdvance Enterprises L.P., disagreed. Her firm's audits have found that more than 12% of dependents are ineligible, and "unfortunately, a good 8% to 10% know exactly what they're doing," she said.

—By Judy Greenwald

Comp: Board recommends rate increase

CONTINUED FROM PAGE 1

Eric A. Silverstein, managing director for national casualty practices at broker Beecher Carlson in Atlanta. "There may be a few things out there but certainly nothing so dramatic."

Renewing workers comp risks nationwide continue to see price drops averaging about 7% to 10% in a soft market, Mr. Silverstein said.

In general, the national workers comp market is stable, but medical cost inflation will likely push claims severity higher, Mr. Thomas said. Additionally, a decline in nationwide claims frequency may also be bottoming out, as appears to be happening in California, he said.

California is unique in seeking a 16% rate increase, agreed Debbie Michel, chief underwriting officer for Liberty Mutual Group's business markets section in Boston. Across the nation prices are leveling out, although the market remains competitive, because insurers' profit margins are thinning after four years of rate declines, she said.

Factors affecting profits include ongoing medical cost inflation that began to accelerate at the end of last year and into this year, she said.

The size of the WCIRB's recommended pure premium rate increase surprised observers.

Some rate increase was expected

for Jan. 1, 2009, California renewals because workers comp costs have been rising and insurers have been holding firmer on their pricing, said Steve Paulin, senior vp at broker SullivanCurtisMonroe Insurance Services L.L.C. in Irvine, Calif.

But "it really surprised me in regards to how big of an increase

'It really surprised me how big of an increase they are looking for....We were thinking maybe 5% or 6%.'

Steve Paulin, SullivanCurtisMonroe Insurance Services L.L.C.

they are looking for," he said. "Our sense was that the market was justified to have some rate increase just to keep exposure and premium in balance. (But) we were thinking maybe 5% or 6%."

As recently as May, Deborah Shulman, director of risk management and insurance for Scan Health Plan in Long Beach, Calif., received a 10% decrease when she renewed workers comp coverage, she said.

The WCIRB said rising medical

costs account for 10.8% of the rise it is recommending, 2.8% is due to increased loss adjustment expenses and 1.8% is due to other costs.

The recommended 16% increase would raise average rates to \$1.95 per \$100 of payroll. In contrast, rates were \$4.81 before California launched a series of reforms, the WCIRB said.

In general, self-insured employers are not seeing medical cost inflation rise by as much as the WCIRB suggests, because of various cost containment measures, said Darrell Brown, national workers comp practice leader and vp in the Long Beach, Calif., office of Sedgwick Claims Management Services Inc.

For insured employers, California's Department of Insurance can approve or reject the WCIRB's rate increase recommendation after holding a hearing scheduled for Sept. 16. Any increase, though, would not be binding on insurers.

The WCIRB said it could still recommend an additional 3.7% rate increase on top of its request for a 16% increase for January renewals should California adopt a current Division of Workers' Compensation proposal to change the state's permanent disability rating schedule.

The changes would affect the amount of benefits paid to claimants by considering their age and injury type.

Mandate: San Francisco requires transit benefits

CONTINUED FROM PAGE 4

Whenever employees can reduce their taxable income, employers also benefit by not having to pay Social Security and other taxes on those earnings, Ms. Murray said.

A spokesman for law firm Heller Ehrman L.L.P. in San Francisco said the commuter benefit ordinance likely will have little effect because "a lot of employers already do subsidize and help people in their commutes, both for environmental reasons and because of costs."

Heller Ehrman, for example, lets employees set aside pretax funds to pay for mass transit passes and subsidizes the cost, the spokesman said.

Indeed, employers nationwide have been adding and improving commuter benefits both in response to rising gas prices and concerns about the environment, said Larry Filler, president and chief executive officer of TransitCenter Inc., a New York-based nonprofit that has been administering commuter benefits since 1987.

The 2007 TransitCenter Commuter Impact survey found 44% of employers in major metropolitan areas offer tax-free commuter benefits, he said. But the vast majority of employers that provide this benefit are midsize or larger, he said.

"What San Francisco has done here is unusual in the size company to which it applies. That's a pretty meaningful step. That means they'll be able to bring this benefit to a greater number of employees," Mr. Filler said.

The National Federation of Independent Businesses, though, is concerned about the ordinance's potential effect on small businesses, which make up the majority of its members, said Michael Shaw, assistant state director for the NFIB based in Sacramento, Calif.

"Mandates cut into wages and job opportunities," Mr. Shaw said. "San Francisco has mandated health benefits, paid sick leave and now transportation benefits. The question employers have is, where does it end?"

Even if the cost of offering the new benefit is minimal, "this adds to employers' administrative burden, increasing their cost of doing business. At the end of the day, cash flow is a major issue" for small employers, Mr. Shaw said.

Violating the ordinance would carry a fine that would start at \$100 and top out at \$500 per violation.

If San Francisco Mayor Gavin Newsom approves the transportation benefit program, as expected, it would take effect on Dec. 22.

News In Brief

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employee benefit risks through its Arizona captive. The food manufacturer wants to use its captive to reinsure life insurance and accidental death and dismemberment policies covering about 22,800 employees written by Prudential Insurance Co. of America. If approved by regulators, ConAgra would be the third employer this year to obtain Labor Department approval to fund benefit risks through a captive.

New York comp trusts plan to dissolve

Trustees for 11 group workers compensation self-insurance trusts administered by First Cardinal L.L.C. have concluded that following recent New York legislative changes, it would be prudent to dissolve. The law strengthens the New York State Workers' Compensation Board's ability to assess all trusts to pay worker benefits owed by financially troubled trusts that default on their workers comp obligations.

Double-digit rise seen for health plan costs

Employers' health care costs are expected to increase by more than 10% in 2009, according to research from Aon Consulting Worldwide. The survey of more than 70 leading health care insurers, representing more than 100 million insured individuals, forecasts an average 10.6% increase in health care costs for the 12 month periods beginning from April to September. The increases are slightly lower than those projected a year ago and are the lowest since the study began in 2001.

NCQA to review physician-rating program

The National Consumer-Purchaser Disclosure Project has selected the National Committee for Quality Assurance as its first independent reviewer of insurers' physician-rating programs. The Disclosure Project, a collaboration of employers, consumers, labor organizations, insurers and providers, said in April that it would appoint an independent reviewer to enforce and develop standards for its Patient Charter for Physician Performance Measurement, Reporting and Tiering Programs.

Alabama commissioner plans to resign

Alabama Insurance Commissioner Walter A. Bell plans to resign from his post at the end of August. Mr. Bell, who served as president of the National Assn. of Insurance Commissioners in 2007, is leaving the Alabama office for a new position, according an insurance department spokesman. No further details were available. Mr. Bell was named Alabama's chief insurance regulator by Gov. Bob Riley in January 2003.

Northrop: Coverage ruling overturned

CONTINUED FROM PAGE 1

Los Angeles, and that court decided in August 2007 that the excess policy's flood exclusion was ambiguous because it was not worded similarly to that in the primary policy and granted coverage to Northrop. But FM Global appealed, and the 9th U.S. Circuit Court of Appeals in San Francisco reversed the lower court ruling on Aug. 14, finding that the flood exclusion was not ambiguous and did apply to water damage caused by the storm surge.

The decision in *Northrop vs. FM Global* "adds further weight to the conclusion that the flood exclusion is not ambiguous because it's added to the other two decisions on that issue," said Randy Maniloff, a partner at White and Williams L.L.P., a Philadelphia-based firm that regularly represents insurers in coverage disputes.

In April 2008, the Louisiana Supreme Court upheld the flood exclusion in *Joseph Sher vs. Lafayette Insurance Co. et al.*, and in February 2008 the U.S. Supreme Court declined to hear the *Katrina Canal Breaches Consolidated Litigation* in which a federal appeals court had ruled that property insurance policies did not cover flood damage caused by the failure of levees.

In response to the decision, an

FM Global spokesman said in an e-mail that the company was "pleased that the appellate court found that the flood exclusion in the FM Global policy encompasses the water damage to Northrop's shipyards, as we have maintained. We are hopeful that any issues that remain in the litigation will also be resolved in FM Global's favor."



Although attorneys representing Northrop would not comment on the case, other policyholder attorneys still were hopeful that California's "efficient proximate cause" legal theory would result in the claims being paid, despite the contract language. The doctrine provides that if a covered peril causes an excluded peril, coverage is still available even for damage caused by the excluded peril.

Though both parties had filed briefs regarding the proximate cause argument on appeal, the appeals court said it would not consider that argument because it involves factual considerations that the lower court must make.

"This could be one of those 'lose the battle, win the war' cases," said Ed Joyce, a partner at Heller Ehrman L.L.P. in New York. "The test is, what set the whole thing in motion? The fact that there was a hurricane could work in their favor. These are issues of fact that will have to be determined by the factfinder, which in this case will probably be the jury."

While agreeing that proximate cause cases must be decided based on the facts specific to each case, insurer attorney Mr. Maniloff said "you'd be reading too much into the court's last two sentences of the opinion to say this is going to be a win for the policyholder."

In its conclusion, Mr. Maniloff noted, the appellate court alluded to another California case involving the doctrine of efficient proximate cause that was actually won by the insurer: *Julian vs. Hartford Underwriters Insurance Co.*

"It's extremely fact-specific. Facts are extremely relevant in these efficient proximate cause cases," he said.

Northrop Grumman Corp. vs. Factory Mutual Insurance Co., 9th U.S. Circuit Court of Appeals, Aug. 14, 2008, No. 07-56760; U.S. District Court Central District of California, Aug. 16, 2007, CV-05-08444-DDP.

Marketing: Drugmaker suit reinstated

CONTINUED FROM PAGE 3

caused by the FDA's warning letter.

In terms of the time gap, the appeals court said it is not "unreasonable" that physicians—the targets of the off-label marketing—would respond to the warning letter while the public failed to appreciate the significance of it. It noted that Gilead did nothing to correct the public's misunderstanding of the letter's significance.

"Importantly, the drop occurred immediately after Gilead disclosed less-than-expected revenues resulting from the reduction in wholesalers' Viread inventories, which analysts ascribed to lower end-user demand," the court said. "That lower end-user demand, in turn, is expressly alleged to have been caused by the warning letter."

"So long as the complaint alleges facts that, if taken as true, plausibly establish loss causation, a...dismissal is inappropriate," the court said. "This is not a probability requirement...it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of loss causation."

Susan K. Alexander, special counsel at Lerach, Coughlin, Stoia, Geller, Rudman & Robbins L.L.P. in San Francisco, who represents the plaintiffs in the case said in an e-mail: "The 9th Circuit recognized that what is relevant to investors—and therefore relevant for loss-causation pleading—is the impact of defendants' fraud on the company's true financial condition."

Other securities attorneys, however, say the court went too far.

The three-month lag time between the FDA's corrective disclosure and Gilead's stock drop "is pretty compelling evidence" that the loss-causation action is eliminated, said William F. Sullivan, a partner and chair of the national securities practice group of Paul Hastings, Janofsky & Walker L.L.P. in Los Angeles. Mr. Sullivan represented Dura Pharmaceuticals in the Supreme Court case.

It is "emblematic of the court not really coming to grips with the efficient market theory," where it is assumed that the marketplace picks up on all relevant information regarding a stock and such information is reflective in the market price of that stock, he said. "So when someone says it takes three months for that to happen, I think it's a weak analysis."

But John Stigi, an attorney with Sheppard Mullin Richter & Hampton L.L.P. in Los Angeles, said that he doesn't view *Gilead* as negating the efficient market theory.

"The decision seems to say that Gilead did nothing to correct the misunderstanding, which is to say under an efficient market it's not just that investors have perfect wisdom as to how an FDA warning letter would affect a company's business, it seems to imply that Gilead had an affirmative responsibility to explain that to investors so they have all the information."

Dan A. Bailey, a partner with Bailey Cavalieri L.L.C. in Columbus, Ohio, called "troubling" the court's standard "in reviewing the loss-causation argument in the motion to dismiss context." The appeals court

basically said the district court should "bend over backward in giving credence to the plaintiff's allegations and plaintiff's theory." It even suggested that the loss causation should not be argued in a motion to dismiss, he said.

There have been quite a few cases since *Dura* that have been thrown out in the motion to dismiss based on loss causation, Mr. Bailey added. "Those cases typically don't have the direct stock drop immediately following the corrective disclosure, but the standard the court is articulating here in the deference the court ought to give to the allegations in the complaint...is troubling."

"It arguably gives the plaintiffs a better shot at surviving the motion to dismiss," he said.

Indeed, the decision is "good news" for plaintiffs, said Jacob H. Zamansky, an attorney with Zamansky & Associates in New York. The 9th Circuit made it clear that the legal standard in proving loss causation requires only that plaintiff's theory or proof of loss causation be "plausible."

That standard appears to be "much lower" than the standard required for intent, established by the Supreme Court in *Tellabs Inc. et al. vs. Makor Issues & Rights Ltd. et al.*, Mr. Zamansky said. In that case, the high court required a "strong inference" of intent to commit fraud, meaning that the theory of proof of intent must be equal to the defense position that there was no intent or that there are other reasons explaining the conduct, he said.

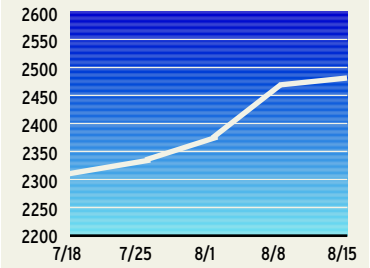
Gilead and Gilead's attorney could not be reached.

Stock Index

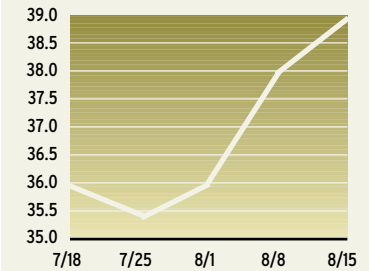
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.IndustryFocus.com.

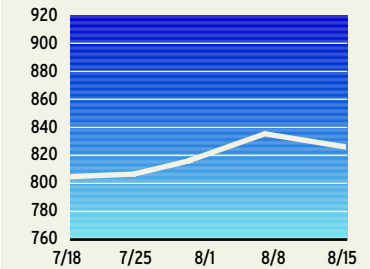
BI STOCK INDEX



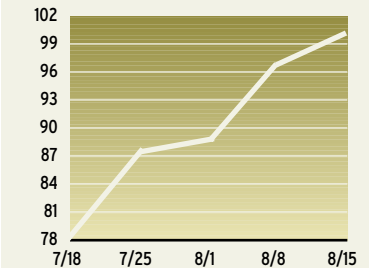
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	▲
2454.75	0.05%
DOW JONES	▼
11659.90	-0.63%
S&P 500	▲
1298.20	0.15%

LARGEST GAINS

Ambac Financial Group	31.18%
MBIA Inc.	30.92%
CNA Surety Corp	7.39%
UnitedHealth Group Inc.	6.48%
United Fire & Casualty Co.	5.89%

LARGEST LOSSES

Gainsco Inc.	-10.77%
AIG	-7.56%
AXA	-4.46%
Citigroup Inc.	-4.33%
ING Group N.V.	-3.76%

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

Blogging docs raise concerns about harm to patient privacy

Your medical information may not be as confidential as you think after your next doctor's visit.

Researchers analyzed 271 blogs written by medical professionals and found that 56.8% provided enough information to identify the author, which may inadvertently reveal patient identity, according to a study conducted by Dr. Tara Lagu, Robert Wood Foundation Clinical Scholar at the University of Pennsylvania in Philadelphia. In some instances, images have been posted that can be identified by the patient, their family or friends.

The study appeared in the *Journal of General Internal Medicine*.

"While many medical blogs provide valuable information to the public, are respectful in tone and are written anonymously, others pose a threat to patient privacy and have the potential to threaten the integrity of the medical profession," Dr. Lagu said in a journal news release.

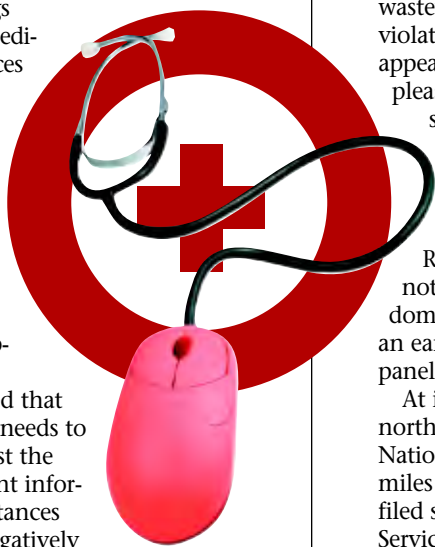
The Health Insurance Portability and Accountability Act, passed by Congress in 1996, protects an individual's identifiable health information in any form or media. Violations may result in civil and criminal penalties.

The blog-happy doctors may also run into ethical trouble as well. The study found that 11.4% of the blogs explicitly promoted medical products and services within their text. This may violate American Medical Assn. "conflict of interest" codes, whereby standards of the profession assert that doctors should disclose conflicts when giving a speech or publishing papers.

The study concluded that the health profession needs to assume liability against the risk of revealing patient information and avoid instances where blogs reflect negatively upon its authors.

Although bloggers have tried to set norms for the new medium, medical educators have yet to establish rules that ensure patient privacy and maintain professional standards.

"It's time for us to take some responsibility and really think how we can maintain the integrity of this process," Dr. Lagu said.



Business Insurance END PAGE



AP PHOTO

A ski resort in Arizona has won a legal battle with several Indian tribes over the resort's ability to use recycled wastewater to produce artificial snow.

Waste-based snow gets icy reception

Making artificial snow on the highest peak in Arizona using recycled wastewater from Flagstaff does not violate religious freedom law, an appeals court has ruled in rejecting pleas from Indian tribes who consider the mountain sacred.

The 9th U.S. Circuit Court of Appeals ruled recently that the wastewater-to-snow plan by Arizona Snowbowl Resort Ltd. Partnership does not violate the Religious Freedom Restoration Act, overturning an earlier ruling by a three-judge panel of the appeals court.

At issue is Humphrey's Peak in northern Arizona's Coconino National Forest, located about 11 miles from Flagstaff. Thirteen tribes filed suit claiming the U.S. Forest Service's June 2005 approval of using the artificial snow violated the RFRA.

"The tribes believe the peaks are a living entity" and conduct religious ceremonies on them, said the majority opinion in the en banc court's 8-3 ruling in *Navajo Nation vs. United States Forest Service*. "The

only effect of the proposed upgrades is on the plaintiff's subjective, emotional religious experience.

"That is, the presence of recycled wastewater on the peaks is offensive to the plaintiffs' religious sensibilities" and will "decrease the spiritual fulfillment they get from practicing their religions on the mountain," according to the opinion.

But this is not a "substantial burden" on their free exercise of religion in violation of the RFRA, the majority ruled.

But the dissenting opinion said the majority "misunderstands the very nature of religion" in holding "that spraying 1.5 million gallons per day of treated sewage effluent on the most sacred mountain of Southwestern Indian tribes" does not violate the RFRA.

Tribal leaders said the court fight may not be over.

"The Navajo people will continue to pray," Navajo Nation President Joe Shirley Jr. said in a statement. "We will pray that this decision is reversed by the Supreme Court."

Contributing: Jeff Casale, Judy Greenwald, Mark A. Hofmann, Mike Tsikoudakis

Trump files what will be biggest, best lawsuit ever

If you're going to use Donald Trump's name in advertising, it's best to ask the Donald and, most importantly, pay the Donald.

Mr. Trump's former attorneys at New York-based Morrison Cohen L.L.P. used his likeness in promoting the firm on its Web site, claims a lawsuit that Mr. Trump filed earlier this month in New York State Court. The suit claims unjust enrichment and violation of privacy in using Mr. Trump's name and image without his consent for "advertising purposes," according to reports.

The real estate mogul and star of "The Apprentice" TV series is seeking \$5 million, according to Reuters.

"Defendants, without Trump's consent, have used—really commercially exploited—Mr. Trump's name and reputation and continue to do so, on Morrison Cohen's Web site," the suit says.

However, David Scharf, a partner with Morrison Cohen, last week described Mr. Trump's claim as "frivolous" and told reporters that Mr. Trump owes \$600,000 in overdue legal fees.

"We are pursuing a collections claim. We are adamant that we get paid for services rendered," Mr. Scharf said, according to reports.

Mr. Scharf said he and the law firm represented Mr. Trump and his organization from 2001 to 2006, including winning a judgment for Mr. Trump against a golf course contractor Mr. Trump had accused of overcharging him, according to news reports.

Mr. Scharf reportedly said the law firm's attempt to collect its fee in the golf course case is what prompted Mr. Trump's recent suit.



REUTERS

Donald Trump charges in a recent lawsuit that a New York law firm used his likeness without permission on its Web site.



GETTY IMAGES

Lord, I was born a suin' man...

Some members of a legendary rock band who famously sang of "tryin' to make a livin' and doin' the best I can" are going after a record label they say is threatening their ability to do so.

Four members of the classic Southern rock band the Allman Brothers Band have filed suit against UMG Recordings Inc. over royalties from the sales of compact discs and digital downloads, according to press reports.

The plaintiffs claim UMG, which is

part of Vivendi SA's Universal Group, owes them more \$10 million in royalties for songs that the band recorded for its original label, Capricorn Records, between 1969 and 1980.

Capricorn, an independent label, distributed its records through a series of larger companies, including Polygram Records. Universal subsequently acquired Polygram.

According to Reuters, an agreement between the band and Polygram held that the band would get

half the profits from the sale of records by third parties, which now include things such as digital downloads and ringtones that were unimaginable when the Allmans began playing.

The plaintiffs hold that UMG has paid them only a fraction of the royalties they are due. As the song says, even though you "Can't Lose What You Never Had," the surviving Allman members probably hope their lawsuit is more than "Wasted Words."



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