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UNINSURED NUMBERS FALL AS GOVERNMENT PROGRAMS COVER MORE / PAGE 4

In Brief

Modelers see Gustav as serious threat to U.S.

Energy companies late last week prepared to evacuate workers from oil rigs in the Gulf of Mexico as Hurricane Gustav appeared headed toward the U.S. coast. The storm, which passed over Jamaica late last week, developed into a hurricane as it headed toward the Gulf.

Insurers must defend cell phone maker: Court

Insurers have a duty to defend Nokia Inc. against several class action lawsuits filed nationwide alleging that radio frequency radiation from wireless phones caused biological injury, the Texas Supreme Court ruled last week. In *Zurich American Insurance Co., Federal Insurance Co., and National Union Fire Insurance Co. vs. Nokia Inc.*, insurers argued they did not

See **IN BRIEF** page 29



MCT/LANDOV

Sen. Barack Obama, D-Ill., has vowed to reform health care, if elected president. Observers say any changes will be more modest than earlier Democratic efforts.

Democrats pledge universal coverage

Plan sparse on details, but job-based coverage likely key component

By **JERRY GEISEL**

DENVER—Amid the soaring rhetoric at the Democratic National Convention last week, in which presidential nominee Sen. Barack Obama, D-Ill., promised to fight for universal health care coverage if elected, observers expect his initial health care agenda to be much more modest.

In his acceptance speech, Sen. Obama said, "Now is the time to finally keep the promise of affordable, accessible health care for every single American."

That pledge made to a huge crowd in Denver came after the adoption of a party platform saying that Democrats are "united behind a

commitment" of universal coverage. The platform also said health care is a shared responsibility between employers, employees, insurers, providers and the government. Indeed, the platform decisively rejected a single-payer health care system, adding that employers should have incentives to offer coverage.

But, echoing what Sen. Obama already had endorsed, the platform calls for a public health care plan. Details on how such a plan would work weren't provided, but Sen. Obama has said such a plan, funded by employers that don't make a meaningful contribution toward their own health care plans, would be available to individuals not covered by employer plans.

Additionally and following an idea Sen. Obama has advocated, the platform backs a new federal health

See **DEMOCRATS** page 29

Firms use private eyes to track FMLA abuse

Experts urge caution as privacy concerns rise

By **JUDY GREENWALD**

A growing number of employers are turning to surveillance to catch employees suspected of abusing the Family Medical Leave Act, some observers say.

The trend may be encouraged by a recent federal appeals court decision in *Vail vs. Raybestos*, which said that evidence provided by employer-paid surveillance established that a worker was working at another job while on intermittent FMLA leave (see story, page 28).

Surveillance of individuals in public places is legal, although state laws vary on allowing non-law enforcement personnel to record audio or video. Observers stress that

surveillance should always be a last resort, and employers should first use other ways to catch abusers, such as medical certification.

Pitfalls to be avoided in conducting surveillance are similar to those in workers compensation cases.

Under FMLA, employees at organizations with at least 50 workers can take up to 12 weeks of unpaid, job-protected leave annually to care for a newborn, a newly adopted child or a seriously ill family member or to recover from a medical condition.

Observers note that even though it is unpaid, FMLA leave does attract abusers, in some cases because they

See **FMLA** page 28

SPOTLIGHT GLOBAL REINSURANCE MARKETS

European cedents enjoy buyers' market as most rates continue to fall; broker talks on global trends; full effect of Solvency II still unclear; foreign reinsurers jump in quickly to claim place in huge potential market after Brazil drops barriers to entry. **Page 10**



Vanpools cut costs, increase some risks

Commuting aid adds to liability exposures

By **NICK WHITFIELD**

As more businesses help their workers find lower-cost commuting options, employers need to be aware of the risks such programs can raise.

An employer's risk can depend on the option chosen. One option that a significant number of employers are using is an employee vanpool. A variant on carpooling, a vanpool allows up to 15 people to share their commute, with a designated member or members doing the driving.

In 2007, 11% of U.S. employers sponsored or operated a vanpooling program, according to the TransitCenter Commuter Impact Survey, a

poll of 245 employers sponsored by TransitCenter, a New York-based nonprofit that administers commuter benefits.

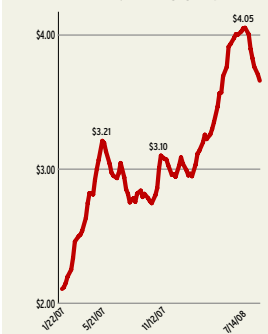
A vanpool can be run in a number of ways, each presenting different risk scenarios: the employer may own the van and operate the program itself; employees may own and operate the program, usually with employer subsidies; or the program may be run by a third-party contractor, which owns and maintains the vehicle and administers the vanpool program.

Anytime people take to the road, vanpools can involve risk—including

See **VAN POOLS** page 27

PRICES RISE

18 months of rising gas prices



Source: Energy Information Administration

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On the Web



BI VIDEO

Video looks at lessons New Orleans learned

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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Podcast takes you behind the *BI* headlines

"This Week in Business Insurance" is a weekly podcast that reviews the headlines in each new issue of *Business Insurance* and interviews reporters for in-depth insights to the top stories of the week. To listen to these audio reports and interviews online, go to www.BusinessInsurance.com/thisweek or subscribe to this free podcast on iTunes.

Workers reject changes to Boeing pensions

Fight with union over move to DC plan may influence others

By ROBERTO CENICEROS

CHICAGO—Boeing Co.'s failure last week to convince labor negotiators to allow the aerospace giant to phase out a defined benefit pension plan for union employees doesn't bode well for other employers wanting to do the same, observers say.

In its negotiations with the International Assn. of Machinists & Aerospace Workers, Boeing sought to phase out the plan and replace it with a defined contribution plan. The potential change—watched closely by employers and unions—would have applied only to new hires.

"If the union had been willing to do this for Boeing, it would have given some confidence or incentive for other employers to try and do the same," said Sheldon Gamzon, a

principal at PricewaterhouseCoopers L.L.P. in New York.

Employers "were looking at Boeing and, obviously, they didn't get the answer they wanted," Mr. Gamzon said.

Boeing sought to phase out the defined contribution plan, along with eliminating early retiree medical coverage for new employees, during early proposals for a three-year contract that expires this week.

The machinists union represents 27,000 Boeing employees in Kansas, Oregon and Washington, or about 17% of Boeing's global workforce.

The union quickly rejected the proposed pension change, which Boeing did not include in a "best and final" contract proposal it offered the machinists later in the week. Boeing also withdrew its proposal to discontinue early retiree medical benefits for new hires.

Boeing's final offer included \$34,000 per employee in incentives to ratify the contract, which includes wage increases over the contract's life.



REUTERS

The International Assn. of Machinists and Aerospace Workers rallied last week in Everett, Wash., before union leaders said they would recommend a strike.

On Friday, union negotiators said they had rejected the contract offer and that they would recommend that union members go on strike.

Along with pay increases, the union wanted the company to

See **BOEING** page 28

Reinsurers not neutral on Swiss advantages

String of Bermuda-based companies move for favorable taxes and European market access

By COLLEEN MCCARTHY

MARTIGNY, Switzerland—Flagstone Reinsurance Holdings Ltd.'s decision to merge its operating units in Bermuda and Switzerland into one Swiss-based company highlights Switzerland's growing appeal and more companies may follow suit, observers say.

A well-established tax treaty with the United States, increased U.S. political concerns over tax-free domiciles and access to European markets could all influence the trend, they say.

Hamilton, Bermuda-based Flagstone Re announced last month that it will merge Flagstone Reinsurance Ltd. of Bermuda with Flagstone Reassurance Suisse S.A. in Martigny, Switzerland, where the merged company will operate with

a Bermuda branch. Flagstone's holding company will remain in Bermuda.

The move allows the company to "maximize our capital efficiency and creditworthiness," Mark Bryne, Flagstone's chairman, said in a statement. The merged company will have an estimated \$1.6 billion in total underwriting capital as of Sept. 30.

The reorganization makes it the latest company with Bermuda-based operations to move, at least some of its operations to Switzerland. Recently, Bermuda-based ACE Ltd. redomesticated its holding company to Zurich, Switzerland (*BI*, July 21). In the past few years, Bermuda-based companies Endurance Specialty Insurance Ltd., Montpelier Re, Aspen Re and Arch Reinsurance Ltd. have all either



NEWSCOM

Various Bermuda companies, including ACE, have moved to or opened offices in Switzerland.

launched subsidiaries or opened offices there.

Over the past two decades, Bermuda has flourished as a jurisdiction for insurance and reinsurance companies. However, a variety of factors may be contributing to Switzerland's growing appeal, observers say.

Switzerland offers a favorable tax environment, opportunity of growth and access to European markets, said Marc Murray, senior financial analyst with A.M. Best Co. Inc. in Oldwick, N.J. The rating agency said Flagstone's ratings remain unchanged following the corporate restructuring.

"I wouldn't be surprised to see more companies set up operations in Switzerland," he said.

See **FLAGSTONE** page 26

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Ladbury named general manager of *BI Europe*

LONDON—*Business Insurance Europe* Editor Adrian Ladbury has been named general manager of the biweekly newspaper, with increased responsibility for overseeing sales, marketing and online operations.

Mr. Ladbury's promotion was announced by Martin J. Ross III, publisher of *BI Europe* and *Business Insurance*, following the resignation of Nick White, advertising director and associate publisher of *BI Europe*.

"Adrian has done a great job as editor of *BI Europe*, leading a team dedicated to producing quality news coverage of European risk management," Mr. Ross said. "His

past experience in insurance and risk management publishing will serve him well in his new responsibilities."

Business Insurance Europe is a London-based publication serving the information needs of the European risk management community with the biweekly newspaper, online news and events and awards. It is a publication of Crain Communications Inc., the parent company of



Mr. Ladbury

Business Insurance.

In his new role, Mr. Ladbury will continue to direct editorial and online operations, and will oversee day-to-day operations of *BI Europe's* sales, marketing and circulation staff.

He will work closely with members of the *BI Europe* team as well as Paul Winston, editorial director of *BI Europe*, to broaden the strategy for *BI Europe's* continued growth and success.

Mr. Ladbury, who joined *BI Europe* at the publication's launch in 2006, has covered the risk and insurance markets for nearly 20 years. He has worked as a journalist on several international risk and insurance publications and served as publisher of a portfolio of financial risk, banking and technology publications, books and newsletters. He joined *Business Insurance* in London in 1993, leaving in 1995 to join Lloyd's List as part of the launch team for the Insurance Day newspaper.

Mr. Ladbury can be reached at aladbury@bieurope.com and 44-207-457-1414.

Uninsured toll falls despite dip in job-based coverage

Increase in people covered by government programs offsets other trends

By JERRY GEISEL

WASHINGTON—Fewer U.S. residents lacked health insurance in 2007 than in 2006, as an increase in coverage through government programs offset a decline in employment-based coverage, according to the U.S. Census Bureau.

The number of residents without health insurance declined to 45.7 million last year, down from 47 million in the previous year. During the same period, the percentage of the U.S. population without health coverage dropped to 15.3% from 15.8%.

That decline is attributable to the growth in government programs, such as Medicaid, which more than

offset the drop in employment-based coverage.

Those who had health care insurance through government programs rose to 27.8% in 2007 from 27% in 2006.

On the other hand, the percentage of the population receiving employment-based coverage fell to its lowest point since 1993. Last year, 59.3% of the U.S. population had employment-based coverage, down from 59.7% in 2006. Employment-based coverage peaked at 64.2% in 2000 and has been falling ever since, according to the Census report, which was released last week.

Employment-based coverage has declined as group health care costs

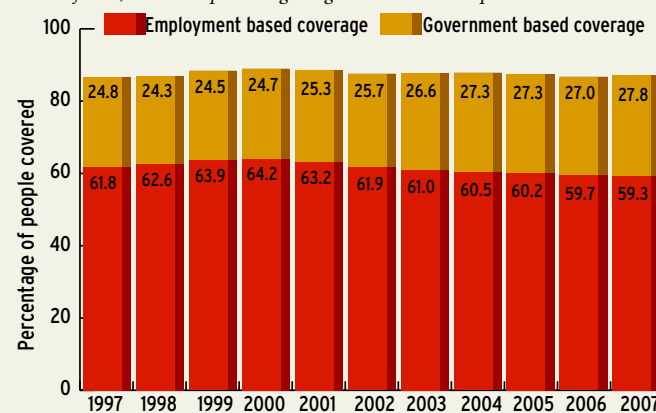
have increased, resulting in more employers, largely smaller ones, dropping health coverage on cost grounds. Last year, for example, group health care costs averaged \$7,983 per employee, according to a Mercer L.L.C. survey. That's a 28.4% increase in just four years, a rise far in excess of the overall inflation rate from 2003 through 2007.

Showing the influence of a 2006 law intended to gradually move the state close to universal coverage, the Census Bureau survey found that Massachusetts recorded a sharp decline in the percentage of state residents without health insurance coverage.

See **CENSUS** page 27

EMPLOYER-BASED HEALTH CARE COVERAGE DECLINING

Over the past 10 years, the percentage of the population in employer-based health plans has fallen, while the percentage in government-based plans has risen.



Source: U.S. Census Bureau

MANAGED CARE RESULTS FIRST-HALF 2008

Major managed care organizations ranked by net income (in millions of dollars)

| | 2008 Net Income | % Change | 2008 Revenue | % Change |
|---------------------------|-----------------|----------|--------------|----------|
| WellPoint Inc. | \$1,338.6 | -17.3% | \$31,220.5 | 2.8% |
| UnitedHealth Group Inc. | \$1,331.0 | -38.2% | \$40,576.0 | 6.6% |
| Aetna Inc. | \$912.1 | 3.0% | \$15,566.8 | 15.4% |
| Kaiser Permanente | \$601.0 | -66.6% | \$20,200.0 | 7.4% |
| CIGNA Corp. | \$330.0 | -32.2% | \$9,432.0 | 7.7% |
| Humana Inc. | \$290.1 | 0.7% | \$14,310.6 | 13.3% |
| Coventry Health Care Inc. | \$208.2 | -23.7% | \$5,918.5 | 29.5% |
| Health Net Inc. | \$41.0 | -77.3% | \$7,678.3 | 11.4% |

Source: Company reports

Market conditions thin managed care margins

Shrinking enrollment, economy hit results

By KRISTIN GUNDERSON HUNT

Major U.S. managed care companies were profitable in the second half of 2008, but earnings margins generally were far smaller than the first half of 2007 as commercial enrollments continued to shrink.

Eight of the largest managed care companies all reported higher first-half 2008 revenues, but only two—Aetna Inc. and Humana Inc.—also had higher net income, 3.0% and 0.7%, respectively (see chart).

Analysts said they expected the managed care companies to report compressed pricing margins and stagnant or declining membership after a difficult first quarter, a bout of extremely competitive pricing, along with weakening economic conditions.

Stephen Zaharuk, vp and senior

analyst for Moody's Investor Services Inc. in New York, said earnings margins may have hit bottom in the second quarter.

"Overall it was more of a stable follow-up from the first quarter," Mr. Zaharuk said. "There were no new surprises."

Bradley Ellis, a director at Fitch Ratings in Chicago, said managed care companies have become accustomed to high margins, making this year's average margins of 6% to 6.5% for the 10 largest companies covering about 140 million enrollees difficult to accept. In the first half of last year, average earnings margins were about 8%, he said.

"Although margins are down, they really still aren't bad," Mr. Ellis

See **RESULTS** page 26

Errors & Omissions

Due to an editing error, an Aug. 25 story on a federal appellate ruling upholding a pollution exclusion in a policy written by James River Insurance Co. omitted a quote: "Obviously we are pleased. It indicates our position about the breadth of this absolute pollution exclusion" and negates the lower court's claim "that we were somehow unconscionable in trying to apply it in the professional liability context," said James River's attorney, Carol A. Gart with Gardon Hargrove & James P.A. in Fort Lauderdale, Fla.

Pollution exclusion upheld in dispute

Employer not shielded under FELA, 5th Circuit rules

By SALLY ROBERTS

NEW ORLEANS—A liability policyholder does not have coverage for Federal Employers Liability Act violations arising from the inhalation of pollution despite policy language that implies the opposite, a federal appeals court ruled Monday.

In *Columbia Casualty Co. vs. Georgia & Florida Railnet Inc.*, the 5th U.S. Circuit Court of Appeals ruled that despite two exceptions expressly stating that coverage is provided in FELA bodily injury claims, a pollution exclusion applies because those claims arose out of the release of pollutants.

Georgia & Florida Railnet argued that the two FELA inclusions should trump the pollution exclusion. Texas law, it argued, counsels that policy language that is susceptible to two or more constructions should be construed against the insurer.

The 5th Circuit disagreed.

In upholding a Texas district court ruling, the appeals court said that while it is the case that exceptions and limitations in insurance policies are strictly construed

against the insurer, GFR "wrongly equates an exception to an exclusion to (be) an affirmation of coverage."

While an exclusion subtracts from coverage, "nothing gives the exception the affirmative status of being covered by the policy," the court said.



The railroad would have the court add an exception to the pollution exclusion for claims brought under FELA "simply because two other exclusions have FELA exceptions," the court ruled. "We conclude the opposite. If FELA claims were meant to be excepted from the exclusion, the drafters of the policy showed a recurring ability to write such an exception."

The case centers on claims brought by Ray Shiver, a former GFR locomotive engineer who alleged he contracted severe and

irreversible respiratory damage, including chronic obstructive pulmonary disease and reactive airways dysfunction, as a result of being exposed to high levels of exhaust fumes. He alleged that defective and poorly maintained locomotives that he operated caused high levels of diesel exhaust fumes and hazardous dusts to accumulate in the locomotive cab. He sought damages from GFR under FELA, the federal law that protects railroad workers injured on the job who are not otherwise covered by workers compensation laws.

While a Georgia trial court dismissed Mr. Shiver's FELA claims against GFR in 2006, the 5th Circuit noted that the issue was still relevant due to the expense claims associated with the pollution claim.

Columbia Casualty, a Chicago subsidiary of CNA Insurance, had no comment about the case.

GFR was not immediately available for comment.

Columbia Casualty Co. vs. Georgia & Florida Railnet Inc., 5th U.S. Circuit Court of Appeals, August 25, 2008. No. 06-10887.

Archived ERM webinar available

Expert panel discusses how to eliminate obstacles to success

An archived version of *Business Insurance's* Online Executive Forum on "Enterprise Risk Management" Eliminating Obstacles to Success" is now available at www.BusinessInsurance.com/webinars.

This free 60-minute webcast, conducted live Aug. 26, features a panel of ERM experts: Laura L. Brooks, vp-risk management and chief risk officer of PSEG Group in Newark, N.J.; Steven J. Dreyer,



managing director of U.S. infrastructure and utilities ratings at Standard & Poor's Corp. in New

York; and John J. Hampton, KPMG professor of business and dean of the school of continuing studies and graduate business programs at St. Peter's College in Jersey City, N.J. *BI* Editor Regis Coccia moderated the interactive discussion.

To view the ERM webinar as well as other archived Online Executive Forums, please visit www.BusinessInsurance.com/webinars.

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Business Insurance adds N.Y. reporter

NEW YORK—*Business Insurance* has added to its editorial staff in New York.

Zack Phillips has joined the magazine as an associate editor. He succeeds New York Bureau Chief Gloria Gonzalez, who resigned to pursue other professional opportunities.

Previously, Mr. Phillips was a reporter for Government Executive magazine in Washington, covering homeland security issues. Prior to that, he wrote for Congressional Quarterly and worked as a reporter on various topics for several publications in the District of Columbia area.

At *BI*, Mr. Phillips will report

on a variety of news and features relating to risk and benefits management for the weekly magazine and Web site. He will

work closely with New York-based colleagues Associate Editor Colleen McCarthy and Senior Editor Douglas McLeod.

"New York is a key office for business in general, as well as the commercial insurance industry in particular. We are excited to have talented

and energetic reporters covering the news in the Northeast," said Regis Coccia, *BI*'s editor.

Mr. Phillips can be reached at 212-210-0143 or at zphillips@businessinsurance.com.



Mr. Phillips

Commentary

Today's reserve releases may spell t-r-o-u-b-l-e

Property/casualty insurance market conditions continue to be very favorable for buyers, but that's not in buyers' interest over the long term.

While insurers are competing aggressively on price, and sometimes relaxing terms and conditions, coverage is easier to afford. Some insurers are even increasing the capacity they offer to win more business in the soft market. More coverage at lower cost? What's the problem, you ask.

Let me explain. The problem is not that it's easier to get coverage; it's that the easier it is to get coverage now, the harder it will be to find later. Insurers in general are notorious for entering markets during soft cycles and abandoning them when the tide turns. That is hardly in buyers' best interest, when the reason for purchasing insurance is to provide certainty and stability.

Business Insurance has asked a lot of sources since January for their opinions on when the market might harden, and nobody truly knows. Many think it hasn't hit bottom yet and most agree it will take years—barring a major loss event—to turn.

A look at the recent first-half results of 13 major U.S. property/casualty insurers shows some disturbing signs (*BI*, Aug. 25). Profitability is down, and what profits the companies are posting today have been helped

by releases of prior-year reserves. Policyholder surplus for this group grew a scant 0.4% for the first half. The combined ratio, which expresses insurers' losses and expenses relative to their earned premium, deteriorated to 94.2% in the first half of 2008 from 89.9% a year earlier. Investment income is more difficult to grow in the current economy, with rising fuel and commodity prices and credit woes. Any way you slice it, it spells tough times for the insurance business.

What's wrong with releasing redundant reserves? Little, if the actuarial projections and the loss picks are accurate. Trouble is, the P/C industry has a poor track record and only a few years ago battled significant reserving deficiencies. Some analysts suggest the currently adequate reserves could again be a problem if losses begin to accumulate.

Losses lurking

Make no mistake, losses still lurk out there. Insurers received a gift in 2006 and 2007 when few catastrophes occurred while rates went through the roof and stayed there until insurers built up a healthy cash position, a typical sign that a market softening is about to occur. But already this year, cat experience is up,



REGIS COCCIA

Editor Regis Coccia's commentary appears periodically.

He can be reached at:

rcoccia@businessinsurance.com

three Atlantic hurricanes have formed and one, Bertha, was considered major, a Category 3.

Tropical Storm Fay has dumped volumes of rain on Florida, causing flooding. Late last week, Gustav was looking to threaten the Gulf, and Hanna became the eighth named storm of the season.

Insurers know that windstorm losses largely depend on where the storms make landfall. But coastal development over the past few decades has left very few areas

**The easier it is to get coverage now,
the harder it will be to find later.**

uninhabited and without significant property values. In other words, if you underwrite coastal property risk from Maine to Texas, it's much harder to remain lucky.

Three years ago last week, Hurricane Katrina struck the Gulf Coast and triggered massive flooding that devastated New Orleans, not to mention causing havoc with offshore oil rigs. Insurers paid out more than \$40 billion in claims, making Katrina the single largest insured event in history—so far. A similar storm could happen again. There is no reason to expect that one won't happen.

The Army Corps of Engineers, which built New Orleans' levees, has been much maligned over the Katrina flooding and the subsequent reinforcing of the city's flood protections. But New Orleans and the Corps have learned important lessons. For insights from a local risk manager who has worked closely with the Corps, see the *BI* video "Protecting New Orleans" at www.BusinessInsurance.com/video.

In the meantime, the storm season continues. Who will be the next unwelcome visitor? Others on this year's list of tropical storm names include Ike, Josephine, Laura and Marco. Whichever ones hit our shores, let's hope they tread lightly.

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Business Insurance OPINIONS

Encourage employers to offer health cover

IS THE GLASS half-empty or half-full when considering the latest Census Bureau figures on the percentage of the U.S. population without health insurance?

On the positive side, the report shows the percentage of the population without coverage fell in 2007 from the prior year to 15.3%.

Also a positive finding, if only a small one, is that the annual decrease in the percentage of the population with employment-based coverage has slowed. In 2007, 59.3% of the population received coverage from employers, compared with 59.7% in 2006. That nearly half-point decline is substantially lower compared with the first couple of years of the decade, when coverage rates were dropping about one percentage point a year.

Still, current trends are not sustainable. As employment-based coverage has shrunk, coverage provided through government programs such as Medicaid has increased.

Obviously, it isn't desirable—or for that matter affordable, lest taxes needed to support such programs skyrocket—for an ever-growing share of the population to be enrolled in government plans.

While there is a role for the government in health care programs—the creation of the Medicare program was the only real-world way to ensure coverage for the elderly—frankly, government never has been a leader in the design and operation of health care plans. That has been a role best left to employers, which have a more powerful incentive—keeping costs under control—than the government in designing affordable plans.

Government policy, in fact, should be skewed to encourage more employers to offer coverage. A 2003 change to the Tax Code that allows employers to offer cost-efficient, high-deductible health insurance plans linked to health savings accounts was one such change in that direction.

We hope the next U.S. president, working with Congress, will develop others.

Government policy should be skewed to encourage more employers to offer coverage.

Risk managers can steer safe commuting options

COMMUTERS everywhere are facing higher transportation costs. Fueled by an interest in reducing the financial pinch of soaring gasoline prices, some employers are arranging or directing workers to vanpool arrangements—a good means of cutting commuting costs but not without risks.

As we report on page 1, liability and workers compensation exposures must be considered. A variety of vanpool arrangements and the patchwork quilt of state workers comp laws require employers to look at such programs carefully.

Transporting up to 15 people in a single vehicle presents a concentration of risk, regardless of whether the employer or a third party owns and operates the vehicle. In some arrangements, employees lease and drive the vans used. Who's responsible when an accident occurs? Are injuries to the vans' occupants covered under the workers comp system? Who pays for third-party injuries and damage if the accident involves another vehicle?

These are questions risk managers must ask, to protect their employees and organizations and enable a sensible commuting option to continue.



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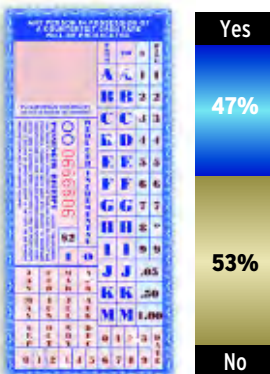
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THIS WEEK'S RESULTS

Does your organization provide a program in which employees can make pretax contributions to pay for mass transit commuting expenses?



NEXT WEEK'S QUESTION

Q: Which major party presidential nominee is most likely to cut the number of uninsured?

BI Online Poll tool is sponsored by Wausau Insurance Cos.

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Key questions to evaluate PBM manager

Employers can utilize a pharmacy network manager to improve employee satisfaction, health outcomes and work productivity, writes Richard Adams, director of pharmacy network services at MedImpact Healthcare Systems Inc. in San Diego. To evaluate a pharmacy network manager, employers should ask key questions to help identify employee-focused programs that can improve patient safety measurers and quality, he says.



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Global Reinsurance Markets

Reinsurers flush with capacity



Buyers' market looks to extend its run

Despite property losses and the credit crunch, some say only a storm will alter the tide

By **STUART COLLINS**

Despite above-average catastrophe losses and lower investment gains, reinsurers' still-strong results and plentiful capacity suggest that European reinsurance buyers will see prices fall further, experts say.

While investment losses stemming from the global credit crunch may increase insurers' demand for reinsurance, that likely will not be enough to turn the market, they say.

But rates are not expected to tumble dramatically as the world's largest reinsurers, at least, appear willing to let business go rather than cut rates to retain market share.

Announcing their 2008 first-half results, Munich Reinsurance Co. and Swiss Reinsurance Co. said they had reduced their exposures. Munich Re declined to renew 21% of the €1.1 billion (\$1.72 billion) of business up for renewal in July, saying the premiums were not com-

mensurate with the risk. Swiss Re said it cut 8% of its business, due mainly to reducing its U.S. casualty exposure.

For the first half of 2008, both reinsurers reported lower profits compared with the same period last year, but both also reported combined ratios of less than 100%.

"During renewals this year, reinsurers have by and large tried to be as disciplined as possible, given that there has been plenty of capacity around," said Michael Zboron, managing senior financial analyst based in London at rating agency A.M. Best Co. Inc.

Higher property losses affected some reinsurers' first-half results, Mr. Zboron said. "Munich Re was hit by higher losses in the first half, but the portfolio Munich Re writes was more exposed (to certain losses) than other reinsurers. There has not been a significant major event to hit the whole industry, but this may still come before renewals in January."

Ron Whyte, co-leader of Integro Ltd.'s facultative reinsurance division in London, said the mood in the property market is one of "real depression" following major losses this year that include a series of losses in Australia,

RETENTION LEVELS RISE: European cedents spending less on reinsurance, more on aggregate and excess-of-loss coverage. **Page 16**

the Universal Studios fire in California and the Imperial Sugar Co. explosion at Port Wentworth, Ga.

"But that said, these losses were not big enough to turn the market," Mr. Whyte said. "In the longer-term, investment impairments will have to affect the market," he said, noting that recent write-downs by American International Group Inc. and XL Capital Ltd. reflected their credit exposures.

"Insurers and reinsurers are looking for an excuse to push rates up. It has not happened yet, but a medi-

um-sized storm may be enough," Mr. Whyte said. "If nothing happens, we will see things change anyway as investment losses come to bear, but this will take about 12 months."

Lower-than-expected investment returns and equity and bond investment write-downs affected first-half results for insurers and reinsurers.

"When looking at the three largest European reinsurers' first-half results, Swiss Re suffered write-downs from structured credit products while Munich Re, and to a lesser extent Hannover Re, suffered write-downs on equity and bond investments," Mr. Zboron said.

Some reinsurers and brokers see the capital markets turmoil as a possible stimulus for a change in reinsurance pricing.

"We believe that the reduced capital and earnings of direct and reinsurers will have a positive influence on renewals in the future," Torsten

See **TRENDS** page 14

SPOTLIGHT

BI RANKING OF THE WORLD'S LARGEST REINSURERS
PAGE 12

Q&A WITH GUY CARPENTER EXECUTIVE ON GLOBAL TRENDS, OPPORTUNITIES
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SOLVENCY II WILL AFFECT BUYING, BUT PRECISE EFFECT NOT YET KNOWN
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BRAZIL OPENS THE DOOR AND REINSURERS QUICKLY SET UP SHOP
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MOST REINSURERS ENTERING BRAZIL SEEK ADMITTED STATUS
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BUYERS IN BRAZIL GAIN EXPERTISE, FLEXIBILITY, POSSIBLY LOWER PRICES
PAGE 22

OVER AND UNDER

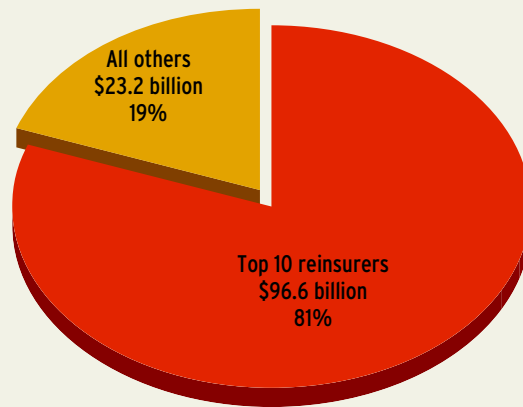
Ranked by combined ratio in 2007

| HIGHEST | | LOWEST | |
|-----------------------------|--------|-----------------------------------|-------|
| Arab Insurance Group B.S.C. | 101.3% | RenaissanceRe Holdings Ltd. | 44.8% |
| Argo Group | 99.4% | Flagstone Re | 57.6% |
| SCOR | 99.3% | Labuan Reinsurance (L) Ltd. | 71.7% |
| Korean Re | 99.0% | Endurance Specialty Holdings Ltd. | 76.4% |
| Hannover Re Group | 98.8% | Greenlight Capital Re Ltd. | 80.0% |
| XL Re | 98.1% | Ace Tempest Re | 80.0% |

Source: BI survey

SHARE OF MARKET

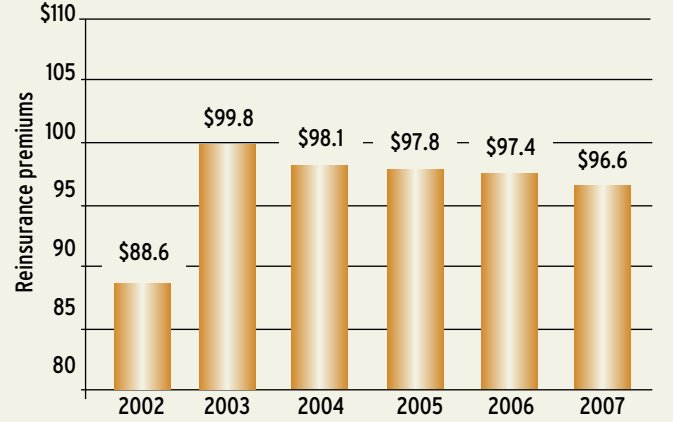
Market share of top 10 reinsurers by net premium written in 2007.



Source: BI survey

PREMIUM DECLINE

Net reinsurance premiums written by the top reinsurers, in billions of dollars



Source: BI survey

World's largest reinsurers*

Ranked by 2007 net premiums written

| Rank | Company/Address | Phone/Web site | 2007 net premiums written | % change | 2007 net premiums earned | % change | Combined ratio | Principal officer |
|-----------|---|--|--------------------------------|----------|-------------------------------|----------|--------------------|---|
| 1 | Munich Re Group Koniginstrasse 107, Munich, 80802 Germany | 49-89-3891-0 www.munichre.com | \$26,124,939,400 ¹ | 7.9% | \$28,150,054,100 ¹ | 6.3% | 96.4% ² | Nikolaus von Bomhard, chairman-board of management |
| 2 | Swiss Re Group Mythenquai 50/60, Zurich, 8022 Switzerland | 41-43-285-2121 www.swissre.com | \$26,016,247,800 ³ | 12.1% | \$26,388,777,600 ³ | 12.1% | 90.2% | Jacques Aigrain, CEO |
| 3 | Berkshire Hathaway Reinsurance Group/ Gen Re Group ⁴ 100 First Stamford Place, Stamford, Conn. 06902-6745 | 203-363-5200 www.berkshirehathaway.com | \$11,441,000,000 | 103.3% | \$11,902,000,000 | 139.2% | 88.3% | Ajit Jain, president, Berkshire Hathaway Reinsurance Group |
| 4 | Hannover Re Group Karl-Wiechert-Allee 50, Hanover, 30625 Germany | 49-511-5604-0 www.hannover-re.com | \$9,902,017,016 ¹ | 11.2% | \$9,999,336,323 ¹ | 12.2% | 98.8% ² | Wilhelm Zeller, chairman |
| 5 | Lloyd's of London 1 Lime St., London, EC3M 7HA England | 44-207-327-1000 www.lloyds.com | \$8,386,378,000 ⁵ | 5.5% | \$8,632,624,000 ⁵ | 11.9% | 81.7% | Richard Ward, CEO |
| 6 | SCOR ⁶ 1 Ave. Charles de Gaulle, Paris La Defense Cedex, F-92074 France | 33-1-46-98-7000 www.scor.com | \$8,025,048,300 ^{1,7} | 57.5% | \$7,169,481,900 ¹ | 58.2% | 99.3% ² | Denis Kessler, chairman/CEO |
| 7 | Transatlantic Holdings Inc. 80 Pine St., New York, N.Y. 10005 | 212-770-2000 www.transre.com | \$3,952,899,000 | 8.8% | \$3,902,669,000 | 8.3% | 98.0% | Robert F. Orlich, chairman/president/CEO |
| 8 | Everest Re Group Ltd. Wessex House, 45 Reid St., Second Floor, P.O. Box HM 845, Hamilton, HM DX Bermuda | 441-295-0006 www.everestre.com | \$3,919,441,000 | 1.1% | \$3,997,498,000 | 3.7% | 91.6% | Joseph V. Taranto, chairman/CEO |
| 9 | PartnerRe Ltd. 90 Pitts Bay Road Pembroke, HM 08 Bermuda | 441-292-0888 www.partnerre.com | \$3,757,109,000 | 1.8% | \$3,777,471,000 | 3.0% | 80.4% ² | Patrick Thiele, president/CEO |
| 10 | ACE Tempest Reinsurance Ltd. ⁸ The ACE Tempest Re Building, 30 Woodbourne Ave., Hamilton, HM 08 Bermuda | 441-292-2603 www.ancelimited.com | \$3,095,863,000 | -9.1% | \$3,141,026,000 | 1.7% | 80.0% | Erin Anderson, president/CEO |

*Companies writing 100% life reinsurance are not included. 1 Euro=\$1.3711. 2 Ratio is for nonlife business only. 3 Swiss franc=\$0.8334. 4 Combined figures of Berkshire Hathaway Reinsurance Group and General Re Group. 5 British pound=\$2.002. 6 Pro forma combined figures to include SCOR, Reviros Group and Converium Holdings Ltd. 7 Gross written premiums. 8 Includes all reinsurance business performed by subsidiaries of ACE Ltd.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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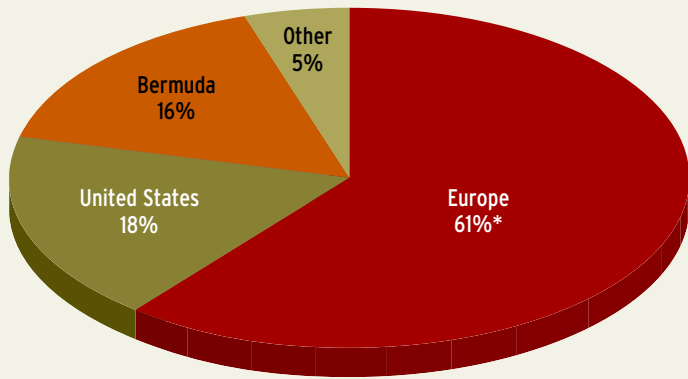
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EUROPEAN-BASED REINSURERS' SHARE OF THE WORLDWIDE MARKET

Based on percentage of total net written premiums from surveyed companies.



*Includes SCOR's gross premiums written
Source: BI survey

Trends: Events that may turn the market

CONTINUED FROM PAGE 11

Jeworrek, chairman of the Munich Re's reinsurance committee, said of the reinsurer's first-half results. "It is possible that the financial market crisis effect on earnings and equity in the insurance business will reduce excess capital, and everyone will focus more on profit generation and will need to focus on underwriting discipline," he said.

Grahame Chilton, chief executive officer of London-based reinsurance brokerage Benfield Group Ltd., said as European insurers are hit by impairments and lower investment returns, they likely will

purchase more reinsurance. "When demand is up, but the capital exposed to it is not rising, we will see prices rise," he said.

Best's Mr. Zboron said the credit crunch could affect insurers' capital availability. "In that sense, the ability of primary insurers is therefore more restricted, so demand for reinsurance could stabilize or increase," he said.

But most expect the pressure on reinsurance rates in Europe to continue.

"Reinsurers are still producing good results, so there is an element of reinsurers talking up the market," said Jason Howard, chief executive

officer at Willis Re International in London. "We continue to see a trend downwards in reinsurance pricing, and there have been no significant losses to change that. The downward trend is likely to continue for a while yet; there is still margin and more for reinsurers to give away."

Fitch Ratings Ltd. also expects continued pressure on reinsurance prices. "Industry capital levels remain strong, underwriting results going into the first half of 2008 were good, earnings were retained and there is continued evidence of underwriting discipline," said David Stephenson, London-based director at the rating agency.

"Nowhere in the world is there a scarcity of capacity," said Munich Re's Mr. Jeworrek. There has been increased competition in areas such as global industrial fire, global marine and casualty, and airline, although auto insurance in the United Kingdom has begun to stabilize, he added.

"It is too early to ask how things will develop (for Jan. 1 renewals) and give figures," Mr. Jeworrek said. "But indications are that if the market continues to develop—with pressure on prices—Munich Re will leave its underwriting strategy unchanged and will, of course, have lower premiums."

Marc Beckers, head of London-based Aon Re Services Europe, Middle East and Africa, part of Chicago-based Aon Corp., said large European reinsurers have shown more discipline than in the past, but other reinsurers are happy to take their place on programs.

"We believe that some programs will have less (participation) of Swiss Reinsurance Co. and Munich Reinsurance Co. Munich and Swiss Re have dominated, and to some extent overdominated, but there are alternatives and we are happy to introduce (insurers) to Bermudian and London-market companies," Mr. Beckers said.

In terms of European reinsurers turning down business, "The human factor should not be forgotten as there is a limit to how far reinsurers will go in reducing market share," Mr. Zboron said.

Reinsurers' risk management has improved in recent years and that could affect the pricing cycle, said Chris Waterman, managing director at Fitch's European insurance team in London "There is a theory that the underwriting cycle may be flatter because of improvements in risk management and modeling, but this has yet to be seen, and it is inevitable that some parts of the reinsurance market will be less disciplined," Mr. Waterman added.

"This cycle is different from past reinsurance cycles," said Willis' Mr. Howard. "The reinsurance market has been more disciplined with the use of analytical tools in pricing and the management of reinsurers have a better understanding of the business and better tools," he said. "And they are under constant pressure from rating agencies, shareholders and regulatory authorities to be accountable for what they are doing."



How was this missed?

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Cost-cutting boosts retention levels

By **STUART COLLINS**

European insurers are increasing their retention levels while turning more often to excess-of-loss cover to mitigate peak exposures, experts say.

"The main overriding theme (for direct insurers' buying patterns) is their increased focus on reducing the reinsurance spend," said Marc Beckers, head of Aon Re Services Europe, Middle East and Africa. "And we see a continuation of this trend."

"They want to get their reinsurance spend down and they want top-line and earnings growth, even if it exposes their capital," Mr. Beckers said of capital that direct European insurers have built from several years of strong results.

If an insurer's underwriting performance remains strong, it is less inclined to buy reinsurance, said David Stephenson, London-based director at Fitch Ratings Ltd. "When levels of capital are good in the primary sector, then primary insurers will be more inclined to retain more, as they have stronger balance sheets that can be exposed to risk."

"We have seen a net increase in

retention due to stronger balance sheets, and we expect to see this going forward," he said.

Michael Zboron, managing senior financial analyst based in London at A.M. Best Co. Inc., said primary insurers continue increasing their retentions due to using internal models and risk management practices. "Primary insurers are now much more sophisticated in understanding their reinsurance requirements. You could say that both buyers and sellers have a more level playing field as both understand the pitfalls and what is considered adequate pricing," he said.

Direct insurers' retentions have climbed in recent years because of consolidation, said Jason Howard, chief executive officer at Willis Re International in London. "As big insurers spread internationally and buy local players, the local insurers' retentions go up."

"I do not see the trend of increasing retentions reversing," said Mr. Howard, noting that even insurers hit by significant U.K. flooding losses last year have not changed their buying patterns.

While retentions have increased, insurers have bought aggregate covers for flood and windstorm exposures as they have looked for ways to mitigate losses, Mr. Howard said.

There is also a trend among European insurers to buy more nonproportional, or excess-of-loss reinsurance, according to Fitch Ratings. "As primary insurers retain more risk, we see a shift from proportional covers to nonproportional," said Chris Waterman, managing director at Fitch's European insurance team in London. "Insurers are maintaining reinsurance protection for peak exposures but retaining more of the attritional exposures. The primary companies are driving this, and while they typically get less cover, it is a cheaper way of buying reinsurance protection."

Grahame Chilton, chief executive officer of London reinsurance brokerage Benfield Group Ltd., said insurers have bought more excess-of-loss and aggregate coverage. As 2007's Windstorm Kyrill increased awareness of risk aggregation in Europe, insurers have bought coverage for 150-year events rather than 100-year events.

Questions Answers



Chris Klein, London-based global head of business intelligence at Guy Carpenter & Co. L.L.C., spoke with Business Insurance Associate Editor Colleen McCarthy about global reinsurance trends and emerging markets in Asia. While the market is still immature, Mr. Klein says the opportunity is enormous and the competition is growing.

Asia opens prospects, but packs competition

Q: Approximately how much of the global reinsurance premiums do emerging markets in Asia currently comprise?

Our estimate is that the global reinsurance premium coming out of Asia is in the low single-digit share, about 1% to 4% out of an estimated \$165 billion spent in 2006. We don't have global data for 2007 yet.

Q: What reinsurance trends are you seeing in these markets?

The market remains very immature, as indicated by insurance penetration rates, which vary widely. For example, if you look at property/casualty insurance premiums as a percentage of gross domestic product, South Korea is at the top with 3.6% and Japan at 2.1%. At the other end of the spectrum, China is 1.1%, India is at 0.06% and Bangladesh is at the bottom with about 0.02%. There is a long way to go in terms of penetration take-up, but as that metric increases in emerging markets, we expect to see a corresponding increase in reinsurance.

However, we are seeing signs that the market is starting to mature and looking for tools to evaluate and quantify risk. For example, there is a growing sophistication with respect to risk management strategies. The recent earthquake in China and the snowstorms earlier this year are certainly prompting many more questions about risk modeling and protection.

We're also seeing an increased interest in credit ratings from both the buyers' and the sellers' perspective. The buyers are taking a much more sophisticated view of reinsurers, demanding higher ratings and certain minimum standards of capital adequacy.

The sellers—insurers who are domiciled in the Asia region—recognize they need ratings in order to broaden their geographical reach outside of Asia and reach external markets.

Q: What difference does it make for local insurers and risk management to have extra capacity and access to the international reinsurance markets?

Very often local capacity tends to be cheaper. One of the most important aspects of access to the international markets is the ability to access a network of support—all of the technical modeling, cat modeling, price modeling, price assessment, risk selection, etc.

Q: What are the biggest challenges the global reinsurance market faces in Asia?

Competition. There's a lot of competition locally.

For example in Singapore, which is emerging quite rapidly as a hub, the insurance and reinsurance operations there want to be established as local



companies and win a bigger slice of the market. There is also the chance that companies may sacrifice a bit of underwriting discipline in order to gain market share and that drives down primary and reinsurance prices—and we see that as a challenge.

The biggest challenge, however, is probably China. There's a lot resting on the growth of China and it needs to grow fast in order to enable companies who have entered the market to recover their investment. We will be watching China very closely.

Q: How significant are the catastrophe risks in Asia?

Catastrophe risks are very significant. These regions are exposed to a number of natural perils including typhoons, tsunamis and, of course, earthquakes are a major risk. However, most catastrophe events in the emerging markets do not result in large insured losses due to the significant levels of underinsured or uninsured.

Japan is really the only Asian market with fully developed catastrophe protection at the moment.

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Solvency II's impact on reinsurance industry uncertain

Small, midsize companies likely to turn to reinsurers to comply with new capital requirements

By **STUART COLLINS**

Solvency II, the European Union's proposed capitalization regulation, is likely to affect the way insurers buy reinsurance in the not-too-distant future, observers say.

It is too early to tell whether insurers will buy more or less reinsurance when the regulations go into effect, but the new standards and requirements to determine capital adequacy are designed to increase direct insurers' awareness and management of risk, enabling them to get more value out of their coverage, experts say.

The European Commission last year adopted the framework for Solvency II, which sets down the principles of the system. Now the European Council and Parliament are discussing the text of the directive, which is to be implemented in 2012.

"Solvency II is quite a...change for the insurance industry across

Europe. It should raise risk awareness and increase analysis around what mitigation measures will be beneficial, including reinsurance purchasing," said Annette Olsen, director at PricewaterhouseCoopers L.L.P. in London.

Many direct insurers have begun to assess their businesses and have established Solvency II projects, participating in data collection exercises known as quantitative impact studies used to refine Solvency II.

Some insurers are more prepared

for Solvency II than others, said Michael Zboron, managing senior financial analyst at A.M. Best Co. Inc. in London.

"The larger insurers have been thinking about (Solvency II), and they have developed sophisticated internal models in the hope that these will be accepted under Solvency II, and have established enterprise risk management frameworks," Mr. Zboron said. "However, Solvency II is more of an issue for smaller insurers who need to prepare in terms of developing capital

models, and (for) the disclosure and risk management requirements," he added.

So far insurers have concentrated on building internal models and ERM frameworks rather than on capital requirements, experts say.

Ms. Olsen noted that important components of Solvency II—such as the calibration of standard formulas and questions about the use of internal models—are yet to be finalized. As more issues are clarified leading up to the 2012 implementation date, insurers increasingly will

look at how Solvency II affects their strategies and capital requirements.

"Reinsurance buying will be affected, but it is too early to say if insurers will buy more or less reinsurance," Ms. Olsen said.

There are indications that some insurers—at least in the short term—will need additional capital to meet Solvency II requirements, and reinsurance may be one option open to them.

The Committee of European

See **SOLVENCY II** next page



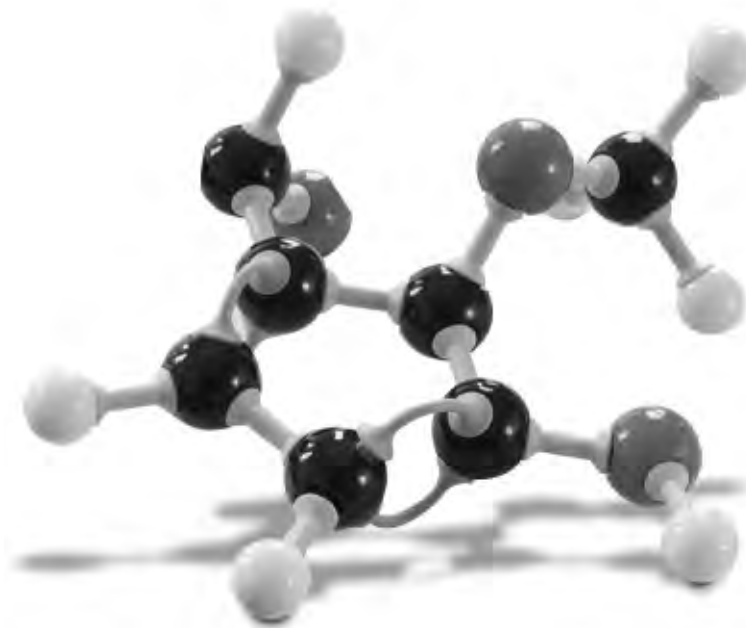
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Solvency II: Regulation will have uncertain impact on reinsurers

CONTINUED FROM PREVIOUS PAGE

Insurance & Occupational Pensions Supervisors, which provides technical advice to the European Commission, said in its third quantitative impact study that around 16% of insurers would have to raise capital to meet their solvency requirements.

"Some companies could see reinsurance as a way of replenishing capital or obtaining capital relief," Mr. Zboron said. "For example, a small mutual trying to fulfill its solvency requirements will turn to reinsurance rather than capital markets as they cannot raise equity and

have only limited ability to issue debt. We will see medium-sized insurers turn to reinsurance for capital relief."

But for European insurance industry overall, CEIOPS said it is unlikely that Solvency II would require extra capital.

"Large insurers, which are already using internal models and advanced risk management, are unlikely to need additional capital under Solvency II. Their insurance buying will depend on risk appetite and volatility of earnings," Mr. Zboron said.

Chris Waterman, managing director of Fitch Ratings Ltd.'s Euro-

pean insurance team in London, said he believes that direct insurers' reinsurance buying will continue to be driven by their own economic capital models and what is best for their businesses.

"Under Solvency II, we do not see a whole raft of companies recapitalizing. Most insurers are well above the Solvency I margin (the current capital regulations) and our expectation is that they will be comfortably above Solvency II," Mr. Waterman said.

Whatever the short-term capital requirements of Europe's direct insurers, Solvency II likely will change reinsurance buying habits

in the long term, experts say.

Solvency II should speed the current trend of more sophisticated risk analysis by Europe's insurers, enabling senior managers to make more informed decisions, said PwC's Ms. Olsen.

The new system will add to existing pressures from peer groups, rating agencies, regulators and shareholders for insurers to be more transparent.

"Overall, there will be improved modeling and generally stronger levels of capital adequacy across the European insurance industry," said David Stephenson, director at Fitch in London. "Given that absolute

levels of capital are a major driver behind reinsurance purchasing, if we see stronger balance sheets, it could mean slightly less reinsurance is purchased. But this will depend on an insurers' business mix and other factors such as earnings and reinsurance prices."

The individual concepts of Solvency II are not new; what is radical is the way in which they have been brought together and formalized, said Jason Howard, chief executive officer of Willis Re International in London. "The major component of the capital charge remains with a company's underwriting and

'Overall, there will be improved modeling and generally stronger levels of capital adequacy across the European insurance industry.'

David Stephenson,
Fitch Ratings Ltd.

reserving operations. But there is now a greater focus on the risk associated with the investment and credit side of the firm."

Solvency II will allow full capital relief for risk mitigation, such as reinsurance or catastrophe bonds, while the Solvency I allows only 50%, Ms. Olsen said. "But when using securitizations or reinsurance, insurers will need to assess the associated risks such as counterparty and credit risks," she added.

Risks involving credit, liquidity and counterparties to contracts—all of which have been highlighted by the recent subprime credit crunch—will receive more focus under Solvency II, Ms. Olsen said.

Best's Mr. Zboron agreed: "It is a question of balance. Reinsurance can help meet solvency requirements, but it will come with a credit risk," he said.

Given the increased focus on credit risk, some observers believe that a reinsurer's rating could play a more important role under Solvency II.

"There may be a (move to higher-rated insurers) as the amount of capital required against an AA-rated reinsurer will be far less than to place business with a BBB-rated reinsurer," Mr. Waterman said.

"Financial strength of a reinsurer may play more of a role in future," Mr. Zboron said. "But there is a lot of discussion on this issue related to subprime, and the reliance on ratings and counterparty risk," he said.

Depending on how the directive shapes up, Solvency II likely will change how insurance companies structure their reinsurance programs, use reinsurance captives and intergroup reinsurance agreements, Ms. Olsen said. Although rules on group supervision are still being debated, these could encourage a more centralized approach to reinsurance buying, she added.

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International reinsurers look to Brazil after end of monopoly

Relative market isolation, absence of large natural catastrophes make South American nation attractive

By **JUDY GREENWALD**

Eager reinsurers are beginning to open their doors in Brazil after a 69-year reinsurance monopoly by Instituto de Resseguros do Brasil S.A. came to an end in April.

About 20 reinsurers have been given approval to write reinsurance so far, and the total is expected to double, observers say, noting that the market's liberalization had been anticipated for more than 10 years.

Reinsurers that have been approved or are awaiting approval to do business in Brazil include Munich Re Group, Swiss Reinsurance Co., Lloyd's of London, Chubb Corp., XL Re, PartnerRe Ltd., Transatlantic Reinsurance Co., MAPFRE Re Companhia de Resseguros S.A., Navigators Group Inc., SCOR S.E., Hannover Re Group and Liberty Mutual Group Inc.

Brazil's nonlife reinsurance premiums totaled an estimated \$1.9 billion in 2007, according to Swiss Re.

\$1.9B

ESTIMATED nonlife reinsurance premiums for Brazil in 2007.

Under Brazilian law, reinsurers must enter the market under at least one of three categories: local, admitted or occasional (see story, page 20). In addition, at least 60% of all reinsurance must initially be offered to a local reinsurer.

Reinsurers are attracted to the Brazilian market because of its relative isolation from the worldwide international market until now, the country's robust economy and the absence of large natural catastrophes, observers say.

Neil Montgomery, a reinsurance attorney with Felsberg Pedretti Mannrich & Aidar Advogados & Consultores Legais in São Paulo, said whenever a market that has been monopolistic for many decades opens up, "there's always a lot of opportunity because private competition tends to be much more efficient than state-owned enterprises."

Brazil also is a "significantly larger" insurance market than others in Latin America, said Franklin Santarelli, senior director with Fitch Ratings Ltd. in New York.

Brazil's property/casualty and life insurance premiums totaled about \$21 billion in 2007, according to Stamford, Conn.-based Towers Perrin.

In addition, the country has a growing economy with large food, steel and petroleum industries that are attracting foreign investments, observers say.

There are "a lot of infrastructure projects and consumer spending is increasing," which increases expectations for the insurance market's growth, said Rodolfo Nobrega, assistant vp at rating agency Moody's Investors Service in São Paulo.

He said the Brazilian insurance market now represents just 3% of the country's gross domestic product, compared with 9% for the United States.

Another major attraction is that Brazil is not prone either to natural catastrophes, including earthquakes and hurricanes, or to major civil upheavals, which makes it "quite a good place to allocate risks in a worldwide portfolio," said Mr. Montgomery.

Although about 20 companies have entered the market to

date, more continue to apply, despite rules that mandate that IRB and other local reinsurers initially have the right of refusal on the majority of insurers' business, say observers.

There will be challenges, said a spokesman for Munich Re, which is entering the market as a local reinsurer. "Just because there's lots of opportunity, so to speak, doesn't mean that opportunity will be profitable," he said. Reinsurers will be dealing with an inexperienced insurance market that is accus-

tomed to relying on IRB to set terms and conditions.

"We don't have a market that is loaded with reinsurance experts, so there's going to be growing pains, and there will be a big, upward, learning curve, I would think," the Munich Re spokesman said.

The domestic Brazilian insurers "all assume it's easy, but reinsurance buying is a specialty all its own," said Edward Moss, London-based director of operations for Catlin Group Ltd.

"The big companies will

undoubtedly be able to staff up and resource themselves and probably already have the capability of doing that. The smaller ones will inevitably continue to rely on someone like the IRB, who held their hand on that," Mr. Moss said.

Although some business is currently being written, many reinsurers are still getting geared up, observers say.

"We are still in the first moves of

See **BRAZIL** next page

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Brazil encourages long-term investment for reinsurers

International reinsurers are entering the Brazilian market under a new law designed to encourage responsible foreign reinsurers, while simultaneously protecting and preserving the local reinsurance market, observers say.

Local reinsurers have first refusal rights on at least 60% of the reinsurance business until Jan. 16, 2010, although most observers do not expect this to have a serious impact on the market.

Under the law that went into effect in April, reinsurers have their choice of entering the Brazilian market under three different categories:

- Local reinsurers, which includes the former monopolistic reinsurer, Rio de Janeiro-based Instituto de Resseguros do Brasil S.A. After January 2010, local reinsurers will have the right of first refusal on at least 40% of all business until Jan. 16, 2013.

In addition to IRB, reinsurers that have applied to become local reinsurers include Munich Re Group; MAPFRE Re Companhia de Resseguros S.A., the reinsurance arm of Madrid, Spain-based MAPFRE S.A.; Curitiba, Brazil-based J. Malucelli Seguradora S.A., which specializes in surety business; and XL Re, a unit of Bermuda-based XL Capital Ltd., according to New York-based Moody's Investors Service.

- Admitted reinsurers, which are foreign insurers that can operate directly in Brazil through a local representative office.

- Occasional reinsurers, which are foreign reinsurers that have a

local proxy or power of attorney but not a local office in Brazil.

Brazil has adopted a model intended to ensure "that every player in Brazil is a company with strong links" to the country and a long-term commitment to the market, said Carlos Caputo, Rio de Janeiro-based regional managing director for XL Re, which has already registered as an admitted reinsurer.

The local reinsurer is "certainly the way the government has chosen to preserve the local market," said Mr. Caputo, adding that, "IRB knows that they have a big task in front of them" in terms of retaining market share.

IRB is now the largest reinsurance company in central and South America, and one of the 20 largest in the world, according to Fitch Ratings Ltd.

Currently, most of the reinsurers are seeking admitted status, said Rodolfo Nobrega, assistant vp at rating agency Moody's Investors Service in São Paulo, Brazil. There are not more seeking to become local reinsurers because "they want to see how the market is going to play out" and operate before committing the minimum capital of about \$40 million required to become local.

But once the market develops, "I think we're going to see more of a transition from admitted to local," he said.

Another factor that has made the admitted category more attractive than the occasional category is that insurers cannot cede more than 10% of their total premium to occasional reinsurers, Mr. Nobrega said.

Also, occasional reinsurers



Although international reinsurers will be allowed to operate in Brazil, local reinsurers will have first right of refusal on 60% of all reinsurance business until 2010.

cannot be headquartered in jurisdictions where the income tax rate is less than 20%, which would include Bermuda, although this does not affect subsidiaries that operate in higher tax-rate jurisdictions, according to Moody's.

The Brazilian reinsurance market will grow despite the requirement that local reinsurers must initially be offered 60% of the business, observers say.

"I don't think these limitations will hinder growth, because we're still going to have strong reinsurance companies," said Mr. Nobrega.

Edward Moss, London-based director of international operations for Catlin Group Ltd., said this will not hinder growth. "What the Brazilians want to achieve is a strong domestic reinsurance market without the monopoly that IRB had on it, but equally they don't, I suspect, want all their reinsurance premiums to disappear abroad, if they

possibly can."

They "want a strong IRB if they can...but without the stranglehold monopoly, with the anticompetitive type issues that surround a monopoly. It's a perfectly reasonable and sensible thing to have a transition plan to allow the IRB to adapt to a commercial environment," Mr. Moss said.

Nicolau Daudt, CEO of JLT Re Brazil, a unit of London-based Jardine Lloyd Thompson Group P.L.C., who is based in Rio de Janeiro, said he does not expect the local reinsurers to take on as much as 60% of the business in many cases.

"It's not something that's going to hurt the international reinsurance company" because a year ago, it was locked out of 100% of the market, said Franklin Santarelli, senior director with Fitch Ratings in New York. Now, reinsurers are "getting at least 40%."

—By Judy Greenwald

Brazil: End of monopoly

CONTINUED FROM PREVIOUS PAGE

this new market," said Carlos Caputo, Rio de Janeiro-based regional managing director for XL Re, a unit of XL Capital Ltd. "People are still handling the more simplistic things, like getting registered and getting the legal requirements in place."

As a result, it may be a "few months or a couple of years before you see all the benefits of all this additional capacity in terms of new products," Mr. Caputo said.

As more reinsurers enter the market, competition is expected to be strong, but not cutthroat, observers say.

Initially, competition will be especially intense, said Mr. Montgomery. As reinsurers try to find their place in the market, they will probably be "more aggressive than in a well-established market."

While there will be some scrambling for market share, it will not be "something that drives price way below cost," said Andrew F. Giffin, a principal with Towers Perrin in New York.

"The last thing you want to do is to build up a book of unprofitable business just to build market share," said the Munich Re spokesman, "and we're not going to play that game."

Mr. Caputo said all three classes of reinsurers permitted under Brazilian law have minimum ratings requirements and all must have a legal representative in the country. Other requirements are designed to encourage entry to companies with a long-term commitment to doing business in the country.

"They want to have a very competitive market, but a very competitive market with people that have long-term plans," Mr. Caputo said. "I don't think this will be a free-for-all. The government is more interested in having stable, and good, solid partners" to help develop the market.

However, to evaluate the level of competition, "we need to wait and see" how many reinsurers ultimately enter the market, Fitch's Mr. Santarelli said.

And observers say the insurance market will continue to grow.

"The market's going to at least double in four, five years in dollar terms," said Paulo Pereira, vp and general manager for Transatlantic Reinsurance Co. in Rio de Janeiro, Brazil.

"I'm not sure" the market is going to double in size in two or three years, said Moody's Mr. Nobrega, "but I think it is feasible that it will grow rather quickly within five years." He noted that the approximately 10% to 15% of the property/casualty premiums that insurers now cede is "the lowest of all the major markets in the region."

"Once the insurance markets understand the possibilities of reinsurance and what it can do...then I think the market is going to grow rapidly," Mr. Nobrega said.

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Buyers gain multiple benefits from opening Brazil's market

New players boost expertise and flexibility; lower rates seen as likely

By **JUDY GREENWALD**

Both insurers and insurance buyers will ultimately benefit from the Brazilian reinsurance market's liberalization, observers say.

Effective April 17, a 69-year reinsurance monopoly by Rio de Janeiro-based Instituto de Resseguros do Brasil S.A. came to an end, permitting international reinsurers to begin to write business in Latin

America's largest insurance market.

The change gives insurers the opportunity of taking "a sophisticated approach to particularly complex risks," said Marco Castro, Rio de Janeiro-based representative of Lloyd's of London.

With an open market, "you can put together a much more flexible package program than you can if you (are) pushed into the straitjacket of a monopoly reinsurer, with

separate, stand-alone reinsurance programs," said Edward Moss, London-based director of international operations for Catlin Group Ltd.

"Primary insurers now have the chance to tap into a lot of expertise that a foreign, or any global reinsurer, can offer them," said a spokesman for Munich Re Group, which has entered the market as a local reinsurer.

"This will give them the ability to

be much more flexible and creative and innovative, to come up with solutions" that will meet the needs of a "growing, dynamic, evolving economy," the Munich Re spokesman said.

The opening of the reinsurance market will also lead to insurers' "better understanding of their own portfolios," said Carlos Caputo, Rio de Janeiro-based regional managing director for XL Re, a unit of Bermuda-based XL Capital Ltd. Working with IRB, insurers were not used to

analyzing their full risk profile and using all the methodologies that companies like XL can provide, he said.

Previously, "the whole game was about getting more capacity from IRB," Mr. Caputo said. Now, insurers "are discovering a new world, where all capacity has a price, and they must buy the right capacity at the right price, rather than just trying to buy capacity for the sake of it."

Henrique Oliveira, office head of Swiss Re Brasil, a São Paulo-based unit of Swiss Reinsurance Co., said the reinsurer wants "to see that this market gets to the conclusion that...reinsurance is not only a way of recovering losses" but a financial resource that can optimize capital in order to obtain more coverage.

Mr. Oliveira said Swiss Re will focus on agriculture, credit and surety and engineering lines of business, among others. With the country growing, "a lot of insurance and reinsurance capacity is required to support the new infrastructure investments, and this comes together in engineering and surety."

Lloyd's Mr. Castro said he anticipates professional liability and energy lines to grow.

Insurers are also likely to pay less for their reinsurance. The removal of the IRB monopoly will mean a premium reduction of 15% to 20% for Brazil insurers, said Paulo Pereira, Rio de Janeiro-based vp and general manager for Transatlantic Reinsurance Co.

"A lot of reinsurers specialize in lines that IRB didn't even work with," Mr. Pereira said. "And with this competition, of course, prices are going down."

The insurance buyer will be helped as well, say observers.

Andrew F. Giffin, a New York-based principal with Towers Perrin, said under the old system, "it was hard to use reinsurance as part of a competitive differentiation and advantage" approach.

But now, working together, primary insurers and reinsurers can develop new ideas leading to "new primary coverage in the marketplace," which will help the insurance buyer "and really kind of open up new markets," said Mr. Giffin.

Margo Black, Rio de Janeiro-based chief executive officer of Willis International Holdings' reinsurance operations in Brazil, said the IRB "used to give pretty much the same terms and conditions as well as the amount of capacity," regardless of an insurer's size and results.

"Now, of course, in an open market, the insurance companies are being assessed in their own right," with the size of their portfolio, results and quality of information "all being taken into consideration," Ms. Black said.

As a result, some insurers will be offered "better terms and conditions than others," she said, which will permit them to "be more competitive and aggressive in the business they write in the first instance." This means "the insurance buyer will probably end up paying less for their insurance than they have been paying up until now," said Ms. Black.

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Market Moves

Health care company expands overseas network

COLUMBIA, S.C.—Companion Global Health Inc. has expanded its network of accredited overseas hospitals by adding CIMA Hospital in San Jose, Costa Rica.

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CIMA is a Joint Commission International-accredited hospital, operated by International Hospital Corp. of Dallas. Companion Global Healthcare's network includes seven other hospitals with facilities in Costa Rica, Thailand, Singapore, Turkey and Ireland.

Two hospitals in India also recently joined the network: Wockhardt Hospitals in Mumbai and Bangalore, which are also accredited by JCI and affiliated with Harvard Medical International.

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Genworth launches wealth management unit

RICHMOND, Va.—Genworth Financial Inc. is launching a new wealth management division, Genworth Financial Wealth Management Inc., which will offer investment management, client relationship management and practice management services.

The division is the result of integrating two Genworth companies, Pleasant Hill, Calif.-based AssetMark Investment Services Inc. and Schaumburg, Ill.-based Genworth Financial Asset Management. Genworth acquired AssetMark in October 2006.

The integrated companies will continue to operate out of their original locations with the same staff and leadership.

Gallagher acquires Dallas brokerage

DALLAS—Arthur J. Gallagher & Co. said it has acquired Dallas-based Wm. W. George & Associates Inc., a retail insurance brokerage.

The firm provides commercial property/casualty, workers compensation and risk management services. It also provides employee benefits consulting, administration and brokerage services to U.S. clients.

Terms of the transaction were not disclosed.

The company's associates, as well

as William George, chief executive officer, and Warren Petersen, president, will continue to operate out of the Dallas location.

Michael Henthorn, South Central regional manager of Itasca, Ill.-based Gallagher's retail P/C brokerage operation, will direct the office.

NovaNet offers workers comp coverage

NORCROSS, Ga.—NovaNet Inc., a preferred provider organization in Norcross, Ga., is now offering workers compensation coverage.

Currently, the company has more than 460,000 physicians and more than 3,400 hospitals enrolled in its PPO program that have signed on for the workers compensation network coverage.

Darwin strengthens lawyers liability practice

CINCINNATI—Darwin Professional Underwriters Inc. has announced it will acquire renewal rights to Cincinnati-based Great American Insurance Co.'s approximately \$20 million of small, standard-market lawyers professional liability insurance business and related assets. Darwin's renewal rights are to commence with policies effective Oct. 1.

Farmington, Conn.-based Darwin already has more than \$20 million of in-force premiums, a mix of sur-

plus lines and lawyers professional liability business.

Ethos Investigative Services acquires Florida provider

SARASOTA, Fla.—Risk mitigation services provider Ethos Investigative Services of St. Petersburg, Fla., has acquired Global Risk Services Inc., a Sarasota, Fla.-based provider of subrogation and field investigative services for self-insured companies and insurers.

Ethos provides corporate due diligence, background checks and pre-employment screening.

Ethos said it will retain Global Risk Services' field adjusters and subrogation specialists.

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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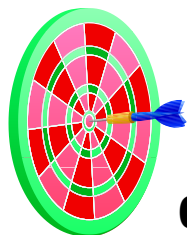
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Executive Life case heads back to trial court

By JUDY GREENWALD

SAN FRANCISCO—The 9th U.S. Circuit Court of Appeals in San Francisco last week affirmed an order that vacated \$700 million in punitive damages awarded to the California Insurance Commissioner in connection with the 1991 sale of now-defunct Executive Life Insurance Co.

The ruling also vacated \$241 million in restitution that had been awarded to the commissioner but also remanded the case to the district court for further proceedings to determine damages.

In 2000, the California Department of Insurance accused French billionaire Francois Pinault's holding company, Artemis S.A., of fraud in connection with the Executive Life sale, adding it as a party to a

pre-existing lawsuit.

In May 2005, a federal jury in Los Angeles found Artemis liable for conspiracy to commit fraud.

The jury subsequently awarded \$700 million in punitive damages, but no compensatory damages, in the lawsuit.

The 9th Circuit Court of Appeals ruling said punitive damages cannot be assessed without compensatory damages.

California law "is well-established and quite clear," said the opinion by the three-judge panel. "Where the jury here explicitly found '\$0' of compensatory damages, the general rule precludes punitive damages."

The court said it is also vacated the restitution award because it remanded the case for a new damages-phase trial.

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International NEWS

Cat risks rising: exec

Swiss Re chief calls for public/private approach

By RICHARD MILLER

DAVOS, Switzerland—New forms of private-public partnerships are needed, particularly for developing nations, to deal with risks and costs related to climate change, Swiss Reinsurance Co.'s chairman said last week.

Speaking at the International Disaster and Risk Conference in Davos, Switzerland, Peter Forstmoser said the impact of hazardous events continues to rise, driven by interacting forces, including global warming, population growth, density of assets and aging infrastructure.

Developing countries likely will bear the highest share of the costs needed to adapt to climate change, he said. By 2030, it is estimated that these costs will amount to 49 billion Swiss francs to 171 billion Swiss francs (\$44.7 billion to \$156.1 billion) a year, of which 28 billion Swiss francs to 67 billion Swiss francs (\$25.6 billion to \$61.2 billion) will be borne by developing countries, according to Swiss Re.

"To cope with the financial consequences of climate-related disaster risks, new forms of private-public risk transfer will allow govern-

ments, development banks or NGOs to leverage their funds through the use of insurance and capital market instruments," Mr. Forstmoser said in a statement.

An example of public-private risk transfer is the Caribbean Catastrophe Risk Insurance Facility, in which Swiss Re plays a lead role. Created in 2007, the facility limits the financial impact of hurricanes and earthquakes on 16 Caribbean governments by providing short-term liquidity when triggered by an event.

"Concern about climate change and extreme weather are motivating governments to assess risks more efficiently to minimize social and economic effects," Mr. Forstmoser said. "Insurance solutions are part of the equation, for example, to fill funding gaps in responding to catastrophes. While they complement risk reduction and risk prevention, they do not substitute the need for good policy and practice. Swiss Re strongly supports the concept of Country Risk Officers to help governments actively manage risks holistically, within the country and even across borders."

Bipolar damages upheld

Canadian court rules worker suffered bias

By KRISTIN GUNDERSON HUNT

OTTAWA—The Ontario Superior Court of Justice's Ottawa Divisional Court upheld an \$80,000 judgment in favor of an information technology specialist dismissed from his job just days after disclosing to his employer that he suffered from bipolar disorder.

decision from 2007, which determined AGDA had violated Mr. Lane's right "to equal treatment and freedom from discrimination on the basis of disability." The divisional court further upheld the tribunal's finding that the employer had not adequately established it could not accommodate Mr. Lane's disability without undue hardship.

The tribunal's judgment required AGDA to pay Mr. Lane nearly \$80,000 in damages. The Ottawa Divisional Court last month affirmed the amount of damages was appropriate. It also ordered the company to hire a qualified consultant at its own expense to provide training to all employees, supervisors and managers on the obligation of employers to accommodate people with disabilities, particularly those with mental health issues, according to the ruling.

ADGA is seeking to appeal the decision to the Ontario Court of Appeal. The right to appeal has yet to be granted.

Adga Group Consultants Inc. v. Lane, 2008 CanLII 39605 (ON S.C.D.C.)

Britain considers bigger role for private health insurance

Change would lift bar on offering private care in conjunction with NHS

By JONATHAN GARDNER

Long the home of publicly funded health care, Britain's health system may be taking on a more private-sector look, with employers potentially picking up more of the tab.

Top government officials are discussing a policy proposal known as "top-ups" for the National Health Service in England and Wales, which would allow insurers to offer NHS patients coverage for treatment, particularly expensive drugs, not covered by the NHS.

Sometimes paid by employers as an employee benefit, private medical insurance supplements NHS services in the United Kingdom. However, current practice requires that once patients seek care outside the NHS, they must continue to receive all care for that condition outside NHS facilities. If authorized, the NHS top-up plan would aim to pay for uncovered treatments while still receiving the remainder of care from the NHS.

"It's a whole new market that hasn't been explored yet," said Philip Blackburn, senior economist at health care consultant Laing & Buisson Ltd. in London. "It will change the landscape."

Mr. Blackburn added: "It remains to be seen how much extra money the consumer has for health care. The market is unlikely to explode overnight. It will be digested gradually."

Alan Johnson, the government minister in charge of health care, has asked Dr. Mike Richards, the Department of Health's national clinical director for cancer, to review the proposal and report back in October.

According to a July report from Laing & Buisson, 4.2 million people in the United Kingdom had purchased health insurance policies or enrolled in self-insured employer plans at the beginning of 2008, a rise of 1.3% over 2007. Those plans covered nearly 7.5 million people, or 12.3% of the U.K. population. Individual policies shrank by 0.5% while corporate demand rose 2.3%, according to the report.

Cancer treatment is at the nexus of the debate over top-ups. Some drugs licensed for marketing within the United Kingdom are barred from NHS use on cost-effectiveness grounds established by the National Institute for Health and Clinical Excellence. The agency evaluates clinical trial data on drugs and other medical technologies and assesses their cost-effectiveness as measured in pounds per quality-adjusted life year, or a year of good health.

Drugs that cost less than £20,000 (\$37,168) per quality-adjusted life year are usually judged as cost-effective. Those that cost £30,000 (\$55,752) or more are unlikely to be approved. Those that fall between require additional evidence and



LANDOV

The U.K. government is considering a proposal that could expand the range of benefits that employers can offer workers. If the change is approved, hospitals run by private insurers, such as BUPA, would be able to offer coverage that complements care provided through the state-run system. Currently, any private care must be exclusive of care by the National Health Service.

scrutiny, according to a NICE spokesman.

Most recently, the agency drafted a decision that proposed barring NHS patients with advanced or metastatic kidney cancer from having access to the Sutent and three other cancer-treatment drugs. Sutent costs more than £3,000 pounds for a six-week cycle; while it increased the length of time some patients survived without any disease progression, it did not meet the cost-effectiveness threshold.

Ignoring current practice, one company has already jumped into the top-up market. Armed with a legal opinion in favor of top-ups that was written by a government attorney, Taunton, England-based Western Provident Assn., a non-profit insurer, in April 2007 began offering a plan covering up to £50,000 of cancer medications. The annual premium is the policyholder's age plus a 5% tax.

Six weeks ago, WPA began offering a more comprehensive plan that covers an array of preventive and routine care costs, including a £200 payment each time a policyholder has a child. An option allows adding cancer drugs to the policy.

"All we're trying to do is complement the gaps in the NHS," a company spokesman said. "Whatever (the government) decides in October, it's an opportunity for us. We're ahead of the curve. We will evolve the policy if we need to."

The spokesman would not disclose how many people purchased such policies.

For employers, the potential change in government policy gives them a chance to re-evaluate the health benefits they provide, restructure how they are provided and how they are financed—whether through employer contributions or salary deductions, especially if top-up coverage costs less than traditional medical insurance.

"If you're effectively self-funding the medical plan, it allows you to say, 'Let's let people get coverage from the NHS for the things that NHS does well, and we'll supply some sort of supplementary coverage for the things people have to wait for,'" said Paul Ashcroft, a principal at Mercer L.L.C. who heads the company's London-based health and benefits office. "It may open up those sorts of discussions."

Structuring a new plan with wider access to benefits also means employee benefit managers need to understand more about the health marketplace and how it affects their programs.

"Be aware of what's out there in the clinical world, what drugs are coming on the market and how they work," said Elliott Hurst, senior consultant for health care and risk consulting with Watson Wyatt Worldwide in London. "From the financial perspective, you've got to keep a close eye on your claims expenses and trends in the demographics of your group.... Try to paint a picture of what the implications are if you take a particular stance on a particular drug."

Benefit managers also need to be aware of how their program structure affects health services.

"The liability to you needs to be clear," said Fiona Harris, Staines, England-based head of personal markets with the British United Provident Assn. "You don't want somebody halfway through the (treatment) process and have a conflict."

Finally, employee benefit plans need to think about how they communicate benefit plan changes, particularly if they choose to jettison or reduce cancer coverage should the NHS supplement become available.

"It's potentially quite a difficult message," Mercer's Mr. Ashcroft said.

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Information technology specialist Paul Lane was fired from his position at ADGA Group Consultants Inc. in October 2001, four days after informing his manager he had Bipolar 1 Disorder and asking the manager to speak with him or contact his wife if she ever noticed any symptoms of a manic or depressive phase. According to the divisional court's judgment, he had been with the company a total of 10 days.

The divisional court upheld the Ontario Human Rights Tribunal's

Flagstone: Switzerland's appeal growing

CONTINUED FROM PAGE 3

In reviewing ACE's redomestication in July, insurance lawyer Geoffrey Etherington, partner with insurance and reinsurance department of Edwards Angell Palmer & Dodge L.L.P. in New York said "it's possible more companies could follow suit, given Switzerland's attractive tax regime and perception that it is a safe and stable jurisdiction," he said.

"With Switzerland, there's a little peace of mind" when it comes to the U.S. tax laws," said Mr. Murray. "You are insulating yourself from a change in the U.S. tax law because premiums are going to be on the books of the operating company in Switzerland, as opposed to Bermuda or another offshore location," he said.

Mr. Murray noted that recent commentary by the Democratic politicians, including the presidential candidate, may indicate that if Sen. Barack Obama, D-Ill., wins the presidency and the Democrats retain control of Congress, there may be a re-evaluation of the tax treatment of companies based in offshore domiciles. "There is a lot of uncertainty in the political climate for the next few months," he said.

"The Bermuda market has noted this move with some interest and will continue to monitor any developments," Bermuda's finance minister, Paula Cox, said in a state-

ment, following the Flagstone announcement, adding that the Bermuda government is "intent on maintaining Bermuda's competitive position in the insurance business."

According to Mr. Etherington, relocating even a portion of business to an onshore jurisdiction may be a good way for an insurance company to "hedge against" any unfavorable political, regulatory or tax developments.

ACE Ltd. Chairman and Chief Executive Officer Evan G. Greenberg cited "the security of a network of tax treaties," when he announced plans to relocate the insurer's holding company from the Cayman Islands to Switzerland in March.

A longstanding tax treaty between the United States and Switzerland exempts Swiss-based companies that reinsure U.S.-based risks from paying a federal excise tax on gross premiums collected, said Scott Nebergall, tax partner and co-chair of the tax department with Edwards, Angell in Providence, R.I.

By comparison, there is no similar tax treaty between the United States and Bermuda, or the Cayman Islands, therefore, companies in these domiciles that reinsure U.S. risks are subject to the premium excise tax, he said.

This scenario, combined with enhanced scrutiny on insurance companies by the Internal Revenue

Service—following a March 2008 ruling affirming its position that excise taxes on insurance and reinsurance purchased from foreign insurers and reinsurers apply each time a risk is ceded (*BI*, March 17)—is a growing concern for some insurance companies, Mr. Nebergall said.

The issue of federal excise tax is "not likely to be the driving factor in motivating a company to relocate, but it's certainly something non-U.S. insurance companies are thinking about," Mr. Nebergall said.

Bermuda also faces a variety of challenges with respect to its infrastructure, which can create obstacles for insurance companies that want to grow, said Steven Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York.

"Bermuda has been very successful, but there are also limitations there," he said. The issues of attracting talent and obtaining work visa's are persistent, he said.

While a larger capital base will support Flagstone's reinsurance business, Best's Mr. Murray said Flagstone's increased investment in Cyprus-based Alliance Re gives them access to the primary market in Europe as well. For Flagstone, a class of 2005 startup, "they are clearly moving out of their start up phase towards a global operating strategy," he said. In this case, "Switzerland offers room to grow that platform," he said.

Results: Managed care margins thinner

CONTINUED FROM PAGE 4

said. "The market is just used to great margins."

Inadequate pricing, analysts said, is a major reason many managed care companies' first- and second-quarter results tumbled this year. Pricing too competitively and not accounting for increasing medical costs pressured results, Mr. Zaharuk said.

"If you're a little too aggressive on your pricing, you can get hurt on the medical cost trend," Mr. Zaharuk said.

Louisville, Ky.-based Humana Inc., for example, initially projected that it would lose about \$300 million on a Medicare Part D program because it had priced the copayment too low, Mr. Zaharuk said. Still, Humana's total first-half net income rose from the year-earlier period, but by less than 1%.

On the other hand, Bethesda, Md.-based Coventry Health Care Inc.'s net earnings fell 23.7% in the first half vs. the year-earlier period. Fitch's Mr. Ellis said Coventry underestimated costs on a private fee-for-service product it introduced, pricing it too low to meet targeted earnings.

Indianapolis-based WellPoint Inc., despite a 17.3% decline in net income, reported the highest first-half profit of the managed care providers, followed closely by Minnetonka, Minn.-based United-Health Group Inc.

Analysts said Hartford, Conn.-based Aetna appears to be the only managed care company that truly avoided pricing missteps as it posted the greatest percentage net income gain of the major managed care providers.

"You have to sit here and scratch your head about how so many companies could have missed on pricing this year, but Aetna has been able to hold it together and maintain their earnings expectations," Mr. Ellis said.

Additionally, Aetna's total membership increased by 32,000 to 17.5 million during the second quarter of 2008, whereas competitors have struggled with flat or declining membership, in part because of the economy, analysts said.

As large employers reduce their workforces or scale back health care coverage and small businesses drop health coverage entirely because of the cost, managed care enrollment suffers, said Joseph Marinucci, a credit analyst with Standard & Poor's Corp. in New York.

For example, Los Angeles-based Health Net Inc. continued to lose members in the second quarter, as it did in the first quarter. Second-half 2008 membership of 2.1 million was 57,000 fewer than in the same period of 2007.

In what analysts called the lone second-quarter surprise, United-Health Group's commercial risk-based membership also dropped, falling by 95,000 from the first

quarter to 10.5 million. Analysts said service issues and faulty pricing help drive the decline.

"A number of issues distracted management from what they needed to do," Moody's Mr. Zaharuk said. "They took their eye off the ball a little."

Going forward, Mr. Zaharuk said managed care companies are realizing they can't sacrifice earnings for membership growth.

"I think all of them are taking a step back and trying to decide what's more important—membership or earnings," Mr. Zaharuk said.

He said, generally, managed care companies have already firmed pricing for midyear renewals or businesses they have acquired. In addition, they are examining pricing for 2009, he said.

In the coming year, Mr. Marinucci said he expects less organic growth at managed care companies and pricing more in line with costs. While he sees continued economic pressure on results, it should ease from recent months.

"We're not as likely to see more of the headwinds of economic conditions, but there are going to be some challenges," Mr. Marinucci said.

Mr. Ellis said managed care companies' compressed net income holds up with historical levels.

"2007 was a great year for the sector," Mr. Ellis said, "and I don't think we'll see a repeat of that for a while."

UP Comings & Goings CLOSE



JOHN HAMILTON

NEW JOB TITLE: Senior vp and division manager of the Atlanta office for Thomas Rutherford Inc.

PREVIOUS POSITION: Chairman of Wachovia Insurance Services for Georgia.

GOALS FOR NEW POSITION: I would like to leverage the tremendous resources that this company has. We've got strengths in construction, surety, international and environmental. I can go on. The goal is to try to leverage those organizations and take advantage of the Atlanta marketplace, which is a very dynamic place to do business.

CHALLENGES FACING THE INDUSTRY: I think technology is a huge challenge both in terms of how we utilize it and how we are more productive in utilizing it, not only that but there's a risk associated with the all the technology we have. I think the whole cyber risk issue continues to be something that is on people's minds and continues to need attention. I think the other one is international issues. The world is becoming more international in terms of business. It is hard to do anything without

some international connectivity. Our firm has done a good job of addressing that for our clients.

FIRST EXPERIENCE IN INDUSTRY: My first job was working in claims, which was actually a great way to learn the business: trial by fire and understand that aspect of insurance. That's why insurance people are here. Interestingly enough, I had my own claim to file (recently). Somebody rear-ended my car and it's been a pain in the neck, but I joked with somebody that it's good. I think every insurance person should have a claim every now and then for them to realize what's involved and to develop a little empathy for the process.

IF YOU COULD CHANGE ANYTHING ABOUT THE INDUSTRY: I think as an industry we don't do a very good job of communicating value as opposed to price and, as a result, some of the conversations that take place in the business tend to focus on premiums and costs and not overall perspective.

ADVICE: Have a good attitude and persevere.

OUTSIDE THE INDUSTRY, A DREAM JOB: A fly-fishing guide in Montana. That would be a dream job.

Comings & Goings ONLINE

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THE BEST AND THE WORST

States with the lowest percentage of residents without health insurance coverage and states with the highest percentage without coverage.

| THE BEST | | THE WORST | |
|---------------|--------------------|-------------|--------------------|
| State | % without coverage | State | % without coverage |
| Massachusetts | 7.9% | Texas | 24.8% |
| Hawaii | 8.2% | New Mexico | 22.7% |
| Wisconsin | 8.5% | Florida | 20.7% |
| Minnesota | 8.8% | Louisiana | 20.2% |
| Maine | 9.1% | Mississippi | 19.8% |

2006-2007 two year average.
Source: U.S. Census Bureau

Census: Number without coverage falls in 2007

CONTINUED FROM PAGE 4

Its uninsured rate—averaged over 2006 and 2007—was 7.9%, the lowest of any state and a sharp decline from 2004-2005 when Massachusetts' uninsured rate averaged 10.3%.

Massachusetts health officials say since enactment of the 2006 legislation, 440,000 residents have obtained health insurance, including about 175,000 from a state program that subsidizes premiums for eligible, lower-income uninsured residents; another 191,000 newly insured have obtained employment-based coverage. The law imposes a \$295 per employee assessment on employers that do not provide health coverage; employees are subject to fines of more than \$900 a year if they do not enroll in a health care plan unless they receive a special state waiver.



'This is one more indicator of the strides Massachusetts is making to reduce the ranks of the uninsured.'

Jon Kingsdale, Health Connector

Health Connector, the state agency that makes available both state-subsidized and non-subsidized health plans. "And we're doing it with a robust combination of government-subsidized and private insurance,"

Mr. Kingsdale said in a statement.

On the other hand, Texas retained its longtime position as the state with the highest uninsured rate. An average of 24.8% of Texans lacked health insurance coverage for the 2006-2007 period, up from 24.4% for 2004-2005.

Other Census Bureau survey findings include:

- Those from ages 18 through 34 years old were most likely to be uninsured. In 2007, 28.1% of individuals 18 to 24 years old were uninsured, while 25.7% of those from 25 to 34 years old lacked coverage.

To try to increase insurance coverage, more than two dozen states have passed legislation in recent years that raised the age in which health plans offered by commercial insurers and purchased by employers must extend coverage to employees' adult children. New Jersey raised the age to 31, but states typically have raised the age to 26.

By contrast, only 1.9% of U.S. residents age 65 and older, who are typically eligible for Medicare, lacked health insurance coverage.

- Geographically, Southern states had the highest uninsured rate last year at 18.4%, followed by Western states at 16.9%. The lowest uninsured rates were in the Midwest and Northeast with an uninsured rate of 11.4% in both regions.

- Those with annual household incomes of less than \$25,000 had the highest uninsured rate at 24.5%, while only 7.8% of those with at least \$75,000 in household income lacked health insurance coverage.

The U.S. Census Bureau report, *Income, Poverty and Health Insurance Coverage in the United States: 2007*, is available at www.census.gov.

Van pools: Add to liability exposures

CONTINUED FROM PAGE 1

ing personal injury, vehicle damage and auto liability. Because of varying state laws, workers compensation risks also may arise, experts say.

Use of contractors to operate vanpools, in which the employer's involvement is "at arm's length," is most common, according to Steve Pederson, vp, fleet and risk management for VPSI Inc., a Troy, Mich.-based vanpool service provider, and has become more common in recent years. "In California in particular, we've seen significant growth in the last six or eight months. I don't know how much of it is attributable to pretext benefits or incentives, or maybe just fuel prices."

Comp considerations

Fewer states are allowing workers comp claims for vanpool accidents, said Carol Kintner, a licensed consultant in New York and Maine who has taught on the subject for the CPCU Society.

"Years ago, states were generous and they would grant the coverage," Ms. Kintner said. "Now they're not so generous, and state by state we see them rolling it back."

While the daily commute is normally exempted from workers comp claims under "coming and going" rules common to most states, that exemption may not apply if the employer has furnished the vehicle, said Mark Kreindler, insurance manager for VPSI.

There are, of course, exceptions. In California, for example, an employer is generally protected from workers comp claims if the vanpool is sponsored or mandated by a government entity. If an employer sponsors a vanpool program to comply with a local trip reduction mandate, for example, "coming and going" in the vanpool would not be subject to workers comp claims. A similar ridesharing law in Florida does not require a government mandate.

Other states have statutes of varying strengths short of a full shield for employers, Mr. Kreindler said, while claims in states without statutes are decided according to case law.

"These ridesharing laws are basically trying to clarify that these vehicles we're using for van sharing are not to be construed as work vehicles," said VPSI's Mr. Pederson.

Ms. Kintner warned, however, that employers should still be cautious. "I feel that it's very precarious, and of course case law can be overturned," she said. "At the very least, the employer's workers comp carrier has to be put on notice that this (vanpool) program is in place."

Getting advice is important, said Pam Ferrandino, executive vp and casualty practice leader for Willis North America Inc. in New York. She recommends that employers arranging commuting programs consult with their broker, and workers comp board or department of insurance.

Auto liability

Another risk factor in vanpooling is auto liability, which would be greatest when employers own and operate the program, experts say.

"If the vehicle is owned by the

employer, that liability would go back to the employer," Ms. Ferrandino said. Outsourced vehicle arrangements can transfer liability risk to the third-party owner/operator.

Most vanpools are, in fact, outsourced, according to Jon Martz, president of the Washington-based Assn. for Commuter Transportation, a transportation interest group. "It's pretty rare now" for employers to own and operate their own vanpools, Mr. Martz said.

Mr. Kreindler said that a third-party contractor can often take on potential auto liability. In addition to owning and maintaining the vehicle, many third-party contrac-

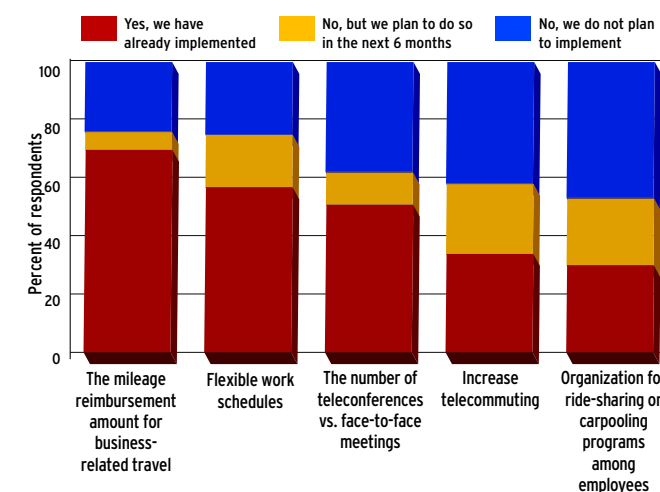
tors will indemnify the employer for auto liability.

Indemnification usually includes a number of safety measures, including vehicle maintenance and an application and screening process for employees who drive the van.

"I think (third-party operation) is an effective way to manage the risk," Ms. Ferrandino said. "If the employer feels they have the critical mass (of employee demand) to manage it professionally, with the expertise of an outside vendor, that's a decision they can make. It's about finding a way to mitigate and manage that risk by having a business partner with best in business practices."

EMPLOYERS MITIGATE THE IMPACT OF HIGHER GAS PRICES

Top five initiatives companies have taken to mitigate higher gas prices



Source: Mercer

Employers offer benefits to offset higher fuel prices

Employers plan to offer a variety of benefits to alleviate the impact of higher gasoline prices on employees, including a compressed work week and increased use of telecommuting, a new study reveals.

Within the next six months, 22% of employers plan to offer at least some of their employees the option of a four-day work week, and 24% plan to allow more employees to telecommute, according to Mercer L.L.C.'s "2008 Gas Price Impact Snapshot Survey."

New York-based Mercer's survey also found that two-thirds of the responding companies plan to increase mileage reimbursement amounts up to 20% for business-related travel, while 41% anticipate raising car allowance provisions up to 20%.

Other findings indicate that organizations are considering creative steps to help employees offset the high cost of gasoline, including organizing carpooling programs and offering company-funded van services from bus and train stations. Some 30% of responding companies offer carpooling programs, while another 23% plan to implement them in the next

six months.

Organizations are also offering prepaid gas cards for perfect attendance and subsidies for public transportation costs. Subsidies for public transportation costs are provided by 20% of the respondents, and another 8% plan to offer this option in the next six months, according to the report.

"These options are more practical than raising salaries to cover high gasoline costs because of the implications associated with increasing pay, such as employer taxes, 401(k) matches based on percentage of pay and bonus payouts that are a percentage of pay," said Mitch Barnes, principal at Mercer in Atlanta.

"Making the most of creative alternatives to help employees save on commuting costs is good management practice, supports attraction and retention concerns, and doesn't add significantly to corporate expenses," he said.

Mercer surveyed more than 300 U.S.-based companies last month. The report will be available online in mid-September and can be accessed at www.imercer.com/snapshot.

—By Colleen McCarthy

ADVERTISER

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FMLA: Surveillance of suspect employees rising, but limits remain

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are holding down other jobs and in others because the appeal of time off outweighs a paycheck.

These are "the same people who call in to take off Friday or a Monday, because they want the three-day weekend," said David B. Ritter, an attorney with Neal Gerber & Eisenberg L.L.P. in Chicago.

"Even if someone's taking leave on a purely unpaid basis, (there) obviously are real costs associated with employee absenteeism," said Nicholas Anaclerio, an attorney with Ungaretti & Harris L.L.P. in Chicago.

Among those saying they have seen increased employer surveillance of employees is Matthew S. Effland, an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Indianapolis who successfully represented the employer in the *Vail* case.

Surveillance of employees is "becoming more prevalent, particularly as more courts are addressing the issue" and approving its use when it is "done within reasonable limits and upon a reasonable basis," Mr. Effland said.

"It is something that we are seeing with increasing frequency and

something that causes us concern on behalf of our clients," said plaintiff attorney Patricia A. Barasch of Schall & Barasch L.L.C. in Moorestown, N.J. "We don't think that is what the FMLA envisioned, and think it is at odds with the rights that are provided for by the FMLA."

Carl C. Bosland, managing director of the Denver-based Bosland Consulting Group, expects employers to resort to surveillance of suspect employees "more frequently than perhaps they have in the past, just as a means to try to hold down costs."

The *Vail* decision also may encourage employers to use surveillance more often, said Merrily S. Archer, an attorney with Fisher & Phillips L.L.P. in Denver.

However, some observers say there has not been an increase in the amount of surveillance by employers.

"I haven't seen a spike in employers using surveillance," with employers focusing instead on validity of the FMLA claim or request, said Ken Cope, Fort Lauderdale, Fla.-based practice leader for absence management delivery programs at Hewitt Associates Inc.

"I think what employers are real-

ly waiting for is the finalization of the provisions to the FMLA regulations that the (Department of Labor) has been promising," said Mary Tavarozzi, Tampa, Fla.-based principal and national practice leader in the absence and disability consulting practice of Towers Perrin. The regulations are expected to add a "lot more clarity" concerning issues that include what is consid-

Employers must be 'mindful they walk a fine line between exercising their rights and being overzealous.'

Francis P. Alvarez, Jackson Lewis L.L.P.

ered a serious medical condition under FMLA, she said (*BI*, Feb. 11).

When using surveillance of employees, observers say it should be used only after other approaches less prone to liability issues are taken first.

"There are options within the (FMLA) process that employers have to be able to identify" the validity of the FMLA leave, including employers' ability to call for second and third medical opinions, said Kevin Curry, San Francisco-based senior associate for Mercer Inc.

It is also important that employ-

ers have well-grounded suspicions before launching an investigation, observers say.

"The employer should be able to easily articulate the suspicion that it has as to why...this employee (is) being surveilled," Mr. Effland said.

"Is it because of comments from other employees, who are tired of doing this person's work and have seen this person out enjoying themselves when they're supposedly out on leave? Is it because of a Friday-Monday migraine, where someone seems to get sick to utilize their FMLA, always around a weekend or holiday?" Or, said Mr. Effland, is it a case where the reason for taking FMLA suddenly disappears after the person runs out of FMLA leave?

Among anti-retaliatory provisions in current FMLA regulations is a prohibition against using aggressive surveillance or treating an employee on FMLA leave differently than other employees said David S. Mohl, an Atlanta-based senior consultant with Willis National Employee Benefits Practice. Employers cannot "use surveillance to try to discourage people from taking FMLA leave," he said.

Francis P. Alvarez, an employment attorney with Jackson Lewis L.L.P. in White Plains, N.Y., said he advises employers "to be mindful they walk a fine line between exercising their rights and being overzealous and overreaching in their invasion of an employee's privacy."

"You would never want a camera

peering into someone's house," Mr. Ritter said.

To avoid violating the law, Mr. Effland recommends that employers hire trained private investigators or off-duty police officers rather than sending out someone from the security department with a video camera.

Interpreting the results of surveillance is another matter.

Mr. Bosland said employees are eligible for FMLA leave if they are unable to perform a particular essential job function. This means they may still meet FMLA's technical requirement even if they are seen engaging in activities that make it "look like they're just malingering," he said.

In addition, surveillance may not provide conclusive evidence of fraud.

"It's rare that surveillance actually will yield evidence that someone is lying about their functional limitations, because most doctors and employees will say the employees have 'good and bad moments,'" Mr. Alvarez said.

Another factor to bear in mind in surveillance is that FMLA leave often runs concurrently with other laws, including workers compensation and the Americans with Disabilities Act, which have their own anti-retaliation provisions that could lead to liability charges against the employer.

"There's a lot of different moving parts and a lot of different layers," Mr. Mohl said.

Boeing: Unions reject pension plan changes

CONTINUED FROM PAGE 3

refrain from layoffs as long as it hired sub-contractors in its factories. Potential delay in manufacturing a new 787 jet Dreamliner has been at stake, should the machinists strike.

While many large employers have moved salaried and other nonunion employees away from defined benefit plans to enhanced defined contribution plans, they have largely failed to convince unions to agree to accept such a change for their members.

Employers had hoped that after salaried employees became acclimated to defined contribution plans, that perhaps unions would willingly accept them, Mr. Gamzon said.

But unions have resisted, especially in the face of recent lackluster stock market returns.

"Plenty of (employers) have tried to move their unionized employees and that is one of the things that unions have historically fought and are continuing to fight," said Stan Goldfarb, managing consultant at Horizon Actuarial Services L.L.C. in Silver Spring, Md. "It's an important benefit. If it weren't important, employers wouldn't be fighting so hard to get (employees) out of it."

Several pension observers said they did not know of any large employers that have succeeded in winning union approval to phase out defined benefit plans covering union members and switch them over to enhanced defined contribution plans.

Phasing out the defined benefit plan is critical for Boeing because its total long-term pension liability stands at about \$46 billion, a Boeing spokesman said. That is nearly the size of Boeing's market cap, which was about \$50 billion last week, he added.

Boeing will have to try again in future contract negotiations to move new hires to a defined contribution plan, the spokesman said.

"That issue, even though we had pulled it off the table for these negotiations, is not finished," the spokesman said. "The reasons we needed to do it are still there, so it's definitely going to be an issue we are going to be bringing up again."

But it's not an issue unions are willing to budge on, said Dan Pedrotty, director of the office of investment for the AFL-CIO in Washington.

"The adequacy of retirement benefits for (union) members is increasingly an important issue for us," Mr. Pedrotty said.

Unions oppose giving up defined benefit plans because they provide superior retirement income over 401(k) plans which may not provide sufficient returns to last throughout retired workers' lives, Mr. Pedrotty said.

Earlier this year, Boeing announced that it would phase out its defined benefit plan covering nonunion employees and enhance its defined contribution plan. That change will apply to nonunion employees hired on or after Jan. 1, 2009.

Appeals court rules twice for employers with 'honest suspicion' of workers on leave

By JUDY GREENWALD

CHICAGO—A federal appeals court in Chicago has twice sided with employers who used surveillance to observe employees suspected of abusing the Family Medical and Leave Act.

According to a July 21 decision by the 7th U.S. Circuit Court of Appeals, Diana L. Vail worked a night shift at the Raybestos Products Co., a car parts manufacturer in Crawfordsville, Ind.

She was approved for 33 days of intermittent medical leave from May through September 2005 because of migraines. Ms. Vail would call just before her evening shift to tell her supervisor she would not be coming in, according to the decision.

As the summer progressed, Ms. Vail's use of her leave became more frequent. Her supervisors became suspicious because they knew her husband had a lawn mowing business and that she would help him.

They knew her husband's customers included several cemeteries, "which generally preferred to have their lawn mowing done at the quiet times during the day throughout the workweek—less

a courtesy to its residents than to those who would come to visit," and that the summer and fall were "prime mowing seasons."

Raybestos hired an off-duty police sergeant to investigate. Ms. Vail took medical leave for her Oct. 6, 2005, evening shift, and the next morning was observed mowing at a cemetery. She was terminated, and then filed suit, claiming, in part, that the termination violated FMLA.

The information gleaned from the reconnaissance was sufficient to give Raybestos an "honest suspicion" that Ms. Vail was not using her leave for its intended purpose, said a three-judge panel in affirming a lower court's decision that dismissed her case.

While conducting surveillance of an employee "may not be preferred employer behavior, employers have certainly gone further" and hired investigators to videotape employees on FMLA leave, the appeals court said in its ruling.

In a 2006 case also before the Chicago appeals court, *Harold Crouch vs. Whirlpool Corp.*, Mr. Crouch had been working at Whirlpool, which is based in Benton Harbor, Mich., since

2000, while his fiancée had been there since 1969. The couple attempted to coordinate their vacation times, which are based on seniority. While his fiancée received all of her requested vacation time, Mr. Crouch was denied most of his.

In both 2002 and 2003, he filed for disability leave for the same periods for which he had unsuccessfully sought vacation time, both times claiming a knee injured during yardwork.

A supervisor noticed this and the company hired a private investigator, who videotaped Mr. Crouch doing yardwork during the period he was out on disability.

Mr. Crouch was terminated and sued, claiming violation of the FMLA. "Whirlpool's honest suspicion forecloses Crouch's FMLA claim," said the three-judge panel, which upheld a lower court ruling dismissing the case.

Diana L. Vail vs. Raybestos Products Co., 7th U.S. Circuit Court of Appeals, No. 07-3621, July 21, 2008; Harold Crouch vs. Whirlpool Corp., 7th U.S. Circuit Court of Appeals, No. 05-3105; April 20, 2006.

News In Brief

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have a duty to defend Nokia because the complaints did not allege bodily injury. But Nokia argued that the plaintiffs seek damages including providing them with headsets, and those would be covered by the policies. The Texas high court agreed and upheld a lower court finding that "because the complaints alleged claims for 'bodily injury' and sought 'damages because of bodily injury...the insurers had a duty to defend Nokia."

MBIA to reinsure competitor's bonds

MBIA Inc., the largest U.S. bond insurer, has agreed to reinsure \$184

billion of municipal bond risk from competitor Financial Guaranty Insurance Co. in a transaction brokered by the New York State Insurance Department. Under the reinsurance agreement, MBIA will receive \$741 million of unearned premiums on FGIC's municipal bond guarantee contracts. In exchange, MBIA will pay FGIC \$197 million in the form of a ceding commission.

Dismissal of charges against KPMG execs upheld

The 2nd U.S. Circuit Court of Appeals unanimously upheld a federal trial judge's decision to dismiss tax fraud charges against 13 current and former KPMG L.L.P. executives because of federal prosecutors' interference in the company-provided defense. In the case, the defendants faced charges of conspiring to create illegal tax shelters that would allow wealthy clients to avoid billions of dollars in U.S. taxes. KPMG intended to cover the legal expenses for the 13 executives, but prosecutors

threatened to "destroy" KPMG by filing a criminal corporate indictment against the firm unless it refused to cover defense fees.

Target settles suit with blind Web site users

Target Corp. has settled a class action lawsuit with the National Federation of the Blind under which it will establish a \$6 million fund for claimants and make its Web site fully accessible to the blind. According to the suit, the blind can access Web sites by using keyboards in conjunction with software that vocalizes visual information on a site. The lawsuit charged that Target.com had barriers that prevented this full access.

CastlePoint to buy Hermitage Insurance

CastlePoint Reinsurance Holdings Ltd., a subsidiary of CastlePoint Holdings Ltd., has agreed to acquire Hermitage Insurance Group for approximately \$135 million.

Hermitage is a specialty property/casualty insurance holding company that offers both admitted and excess and surplus lines products to small commercial buyers. On Aug. 5, Tower Group Inc. acquired Hamilton, Bermuda-based CastlePoint for \$490 million in cash and stock. That deal is expected to close in early December.

N.Y. transit workers sue over diesel fumes

A group of retired New York transit workers filed suit against more than a dozen diesel engine makers, claiming years of exposure to diesel fumes at bus depots caused them to develop severe illnesses, including lung and throat cancer. The suit names 13 diesel engine manufacturers including General Motors Corp., Detroit Diesel Corp. and Northrop Grumman Corp. The suit did not name New York City's Transit Authority, which operated the bus depots. The plaintiffs allege that diesel buses often idled all night in enclosed areas.

Democrats: Push for universal health care coverage

CONTINUED FROM PAGE 1

reinsurance program in which the government would assume liability for catastrophic health care claims, an idea that surfaced 15 years ago as part of a sweeping health care reform package then pushed by the Clinton administration.

While the promise of universal coverage makes for a good sound bite, political observers say the health care reform goals of Sen. Obama, if elected, would be much more modest, at least in his first year or two in office.

"Rhetoric is easy. Policies are much harder to implement," said Grace-Marie Turner, president of the Galen Institute, an Alexandria, Va.-based health policy organization.

"Don't expect big, broad changes in the first year. Comprehensive health care reform takes time and education," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Lessons learned

In fact, Sen. Obama and many members of Congress haven't forgotten the last time a Democrat—Bill Clinton—was elected president and promised to quickly enact a universal health care program.

"Congress has the memory of an elephant. The experience of 1993-94 looms large," Mr. McArdle said, referring to the collapse of the Clinton health care reform plan.

The plan's failure was widely attributed to the political naïveté and arrogance of then-First Lady Hillary Clinton, now a Democratic senator from New York. As chairman of the task force that put the plan together, she largely shut out key legislators in drafting the plan and in trying to build support for it. The plan itself overreached, largely knocking out employers and insurers in favor of regional public health care cooperatives.

Rather than quickly seeking enactment of a universal health

Platform pushes mandatory enrollment for 401(k) plans

DENVER—The Democratic Party's platform would mandate what an increasing number of employers are already voluntarily doing: automatically enrolling employees in their 401(k) and other defined contribution plans.

The platform, adopted last week at the Democratic National Convention in Denver, says every employee should be automatically enrolled in a workplace pension plan, with portable benefits.

In fact, adding an automatic enrollment feature has been one of the biggest recent trends in the defined contribution plan universe. According to a Hewitt Associates Inc. survey, 44% of large employers now offer automatic enrollment in their 401(k) plan, up from just 24% two years ago.

Several factors have been driving employers to add automatic enrollment to their 401(k) plans, with the biggest likely being the corporate move to phase out defined benefit plans in which participation is mandatory and participants who meet vesting requirements are assured of earning a benefit.

By contrast, in 401(k) plans, many employees—often nearly

a third—don't participate, with many not saying either yes or no as to whether they want to enroll. Automatic enrollment tackles employee inertia by telling employees they will be automatically enrolled, with a set percentage of their salary deferred to the plan, unless they specifically object.

By automatically enrolling employees in the plans, employers increase the likelihood that employees will have at least some retirement savings.

Another factor that has propelled growth of automatic enrollment is enactment of federal legislation in 2006 that pre-empted any state laws that could have interfered with the programs.

Aside from mandating automatic enrollment, the Democratic platform, in a rhetorical flourish, says CEOs shouldn't be allowed to "dump workers' pensions with one hand while they line own pockets with the other."

The platform, though, does not provide any examples of this or exactly how such alleged practices would be stopped.

—By Jerry Geisel

care reform plan—a costly and difficult venture, an Obama administration's first steps in the health care arena are likely to focus on expanding coverage through existing popular public programs. These include the State's Children Health Insurance Program and possible expansion

of the federal Medicare program to early retirees, who often find it tough and expensive to obtain coverage in the individual market if they are not covered by their former employers.

"You may see additional options for early retirees—perhaps, some

kind of Medicare buy-in," Mr. McArdle said.

Whatever direction Sen. Obama, if elected, chooses to go in the health care reform arena, his approach in trying to get such legislation passed will be very different than that of the Clintons, especially Sen. Clinton, who excluded legislators in the drafting process and later bashed critics rather than trying to work with them.

"Politicians have learned a valuable lesson since 1993. You don't give Congress a finished product. You don't work behind closed doors and you don't ignore major stakeholders," said James Gelfand, senior health policy manager at the U.S. Chamber of Commerce in Washington.

"The Clinton way was do it 'our way or the highway'; Democratic strategists know that isn't going to work," Ms. Turner said.

Open the process

The approach taken by an Obama administration would be to "set the policy objectives and let Congress fill in the details. As a senator, Sen. Obama has a much better sense of the normal give and take between the legislative and executive branch and that will be a plus" in drafting and trying to get legislation passed, Mr. McArdle said.

With the Clinton plan failure as a lesson, an Obama administration would be careful not to alienate key stakeholders, observers say. In fact, the Clinton plan to kick out commercial health insurers from the health care delivery system led the industry to launch an advertising campaign against the plan. Ultimately, that campaign proved extraordinarily effective in undermining public support, especially among those satisfied with their current coverage.

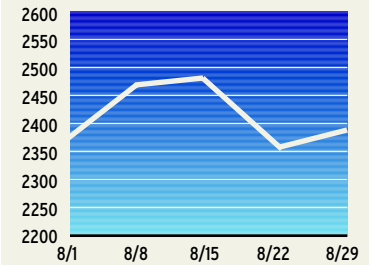
Sen. Obama's aides "have learned. Don't threaten the coverage people currently have," Mr. Gelfand said.

Stock Index

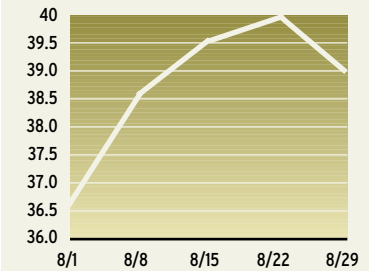
[8/25 - 8/29]

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

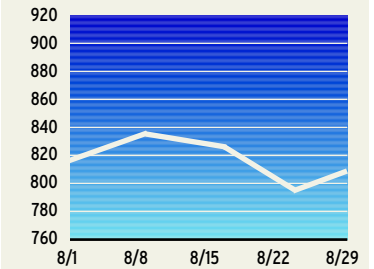
BI STOCK INDEX



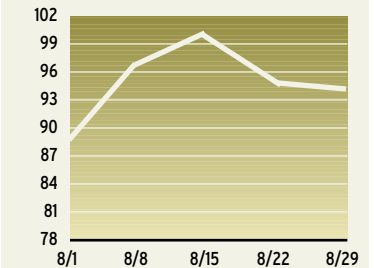
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

| Index | Value | Change |
|----------------|----------|----------|
| BI STOCK INDEX | 2390.16 | ↑ 1.29% |
| DOW JONES | 11543.96 | ↓ -0.72% |
| S&P 500 | 1282.83 | ↓ -0.73% |

LARGEST GAINS

| | |
|----------------------------|--------|
| MBIA Inc. | 59.02% |
| Ambac Financial Group Inc. | 34.84% |
| AIG | 8.15% |
| Baldwin & Lyons Inc. | 7.68% |
| CNA Financial Corp. | 7.56% |

LARGEST LOSSES

| | |
|----------------------------|--------|
| American Safety Insurance | -7.07% |
| Meadowbrook Insurance | -3.60% |
| Fairfax Financial Holdings | -3.20% |
| WellPoint Health Networks | -3.12% |
| Humana Inc. | -2.81% |

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

Contributing: Jeff Casale, Roberto Cenicerros,
Dave Lenckus

State hashes out smoking policy

Employers in California may have the choice of whether to allow medical marijuana users to smoke pot in the workplace under guidelines issued last week by California Attorney General Jerry Brown.

The attorney general drew up the guidelines to clarify California's Compassionate Use Act of 1996, or Proposition 215, which voters approved to allow patients to consume marijuana when a doctor recommends its use.

The guidelines are meant to weed out illegal ganja growers from the legitimate sources; provide greater clarity for law enforcement; and give rules for patients and their caregivers on legally cultivating, transporting and consuming medical marijuana.



Under California's Fair Employment and Housing Act, employers may terminate employees who test positive for marijuana use, the attorney general's guidelines state.

But the guidelines ultimately leave it to employers—who often mitigate workers compensation and other liabilities by testing potential hires for drug use—to decide the matter.

While the guidelines state locations where medical marijuana may not be smoked, workplace guidance is less clear. "The medical use of marijuana need not be accommodated in the workplace," the guidelines state.

At least one California newspaper, the Los Angeles Times, interpreted that to mean patients are prohibited from using cannabis at work unless an employer grants permission.

Disney dreams up fake hurricanes for Fla. tourists

Florida visitors and residents who for some reason want to face a hurricane now can safely get a thrilling sense of Mother Nature's power and learn how to better prepare for it at a new 3-D interactive theme park attraction.

The multimillion-dollar StormStruck: A Tale of Two Homes opened last week at Walt Disney World's Epcot center in Lake Buena Vista, Fla. If it succeeds as its insurance and safety group sponsors hope it will, hurricane losses and homeowners' insurance rates will fall.

Donning their 3-D glasses, visitors get a sense of a hurricane's power. As part of the experience, visitors select, for



example, what type of roof they think would best withstand a hurricane. Then the group sees how its selection fares.

"It's very lifelike," but not too scary for children, said Neill Currie, president and chief executive officer of Bermuda-based RenaissanceRe Holdings Ltd., one of the StormStruck sponsors.

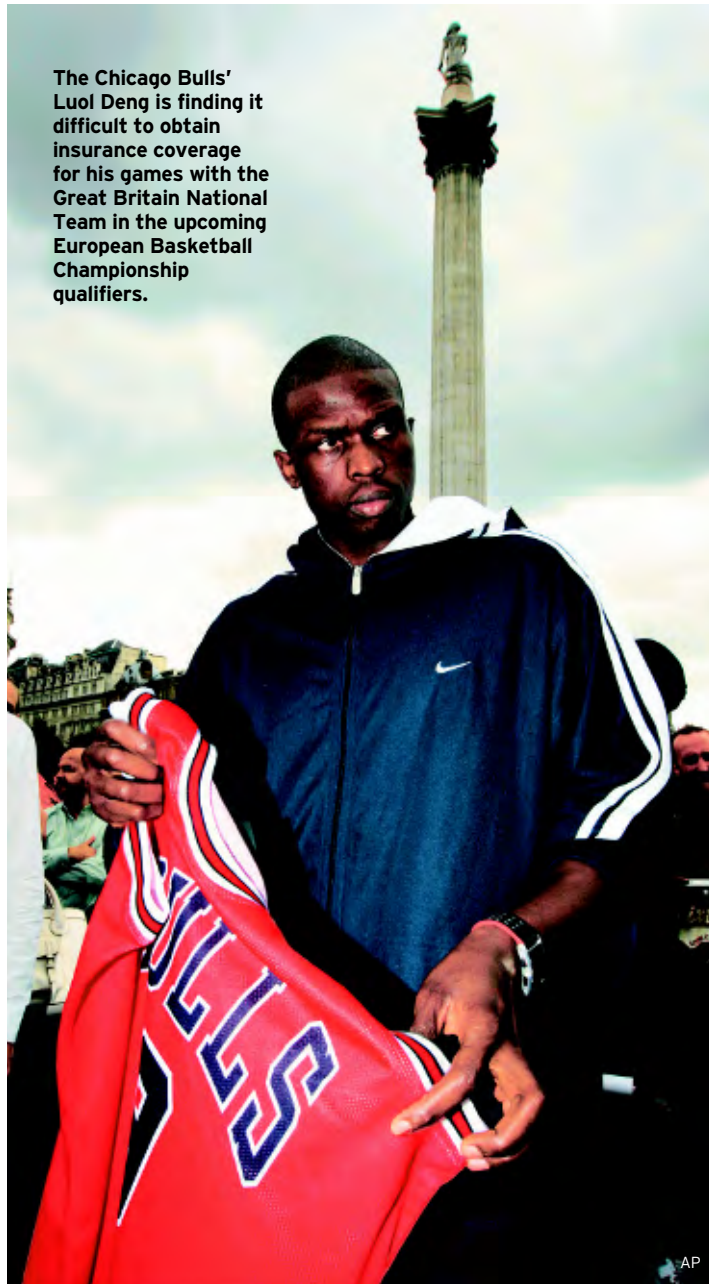
The attraction includes other interactive activities for children and adults. The focus on children is designed to lure in adults, and the sponsors hope kids will pressure their parents to follow up with what they learned, Mr. Currie said.

The attraction's name stems from the real but contrary experiences of neighbors who prepared much differently for a windstorm.

Aside from RenaissanceRe and its WeatherPredict Consulting Inc. unit, other sponsors of StormStruck are the Federal Alliance for Safe Homes Inc., a nonprofit disaster preparedness organization; structural strengthening products maker Simpson Strong-Tie Co. Inc.; and State Farm Mutual Automobile Insurance Co.

Business Insurance END PAGE

The Chicago Bulls' Luol Deng is finding it difficult to obtain insurance coverage for his games with the Great Britain National Team in the upcoming European Basketball Championship qualifiers.



British ballplayer can't get coverage while traveling

Chicago Bulls forward Luol Deng is uninsurable—at least that's what he and the British Basketball Federation have been told.

The reported \$80 million man, Mr. Deng can't find an insurer to cover his recently signed six-year contract with the Bulls while he plays with Great Britain's national team during qualifying for the 2009 European Basketball Championship, according to reports.

As of last week, the British team was looking at possibly self-insuring Mr. Deng, who would be the only NBA player on the squad.

"We have encountered problems with his insurance and are

currently looking at different possible ways of working around that," British Basketball performance manager Ron Wuotila told the Associated Press.

According to reports, insurers were balking about covering the 23-year-old Mr. Deng's back, which he injured during the NBA season last year.

"British Basketball is working with all parties involved to resolve the issue in order that Luol may hit the court as soon as possible," the BBF said on its Web site.

The 6-foot-9 Mr. Deng moved to London as a child to escape the conflict in his homeland of Sudan.

Comp fraud lands jailer in the clink

A former Folsom prison guard will be seeing the other side of the cell door after being sentenced to seven years for fraud in a workers compensation and disability case.

Former guard June Ann Lucena collected workers comp benefits and a disability pension even though she was fit enough to enjoy sun-soaked afternoons at area water parks and beaches, Sacramento County, Calif., prosecutors said. Surveillance tapes showed Ms. Lucena on water slides and a Jet Ski despite claiming to have a disabling back injury.

Her injuries stemmed from a 16- to 20-foot fall from a guard tower in 1999, for which she underwent surgeries in 2000 but complained of chronic back pain that kept her from returning to work.

However, prosecutors said, she was seen a month later at Oakwood Lake Water Park in Manteca, Calif. Two years later, she was spotted at the same water park going down water slides and just one day later riding a Jet Ski at Folsom Lake.

Meanwhile, she collected more than \$300,000 in workers comp and disability payments from the California State Insurance Fund and the California Public Employees' Retirement System.

Ms. Lucena, who was convicted in December 2007 of 14 counts of insurance fraud and making fraud-related statements in her workers comp and industrial disability retirement claims, was sentenced to prison in late August.

The seven-year sentence is the "stiffest penalty" that CalPERS has seen in years, a spokeswoman for the pension agency told reporters.

"This was an extremely egregious fraud and a slap in the face to all those correctional officers who are truly injured in the course of their very dangerous duties," Debbie Glynn, deputy district attorney for Sacramento County, said in a statement.





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