Business Insurance®

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Late News

Ophelia insured losses put at $800 million

Insured losses from Hurricane Ophelia should not exceed $800 million, catastrophe modeler AIR Worldwide estimated late Friday. The hurricane, which never technically made landfall, raked much of the North Carolina coast with winds and heavy rains earlier this week.

Federal health premiums to rise 6.6% in 2006

Premiums for health plans covering federal employees will rise by an average of 6.6% in 2006, the lowest increase in nine years, the Bush administration said. Next year's increase for the Federal Employees Health Benefits Program—the nation's largest, with more than 8 million participants—compares with a 7.9% increase this year, a 10.6% average increase in 2004 and a 11.1% average increase in 2003. The Office of Personnel Management cited several reasons for the moderation,

See **LATE NEWS**/page 35

Inside


PHOTO: BLOOMBERG NEWS/LANDOV

AFTER THE STORM

REINSURANCE MARKET TO TURN

Rate hikes expected at renewals as market absorbs massive loss

By GAVIN SOUTER

MONTE CARLO, Monaco—Losses from Hurricane Katrina will reverse softening in the reinsurance market and lead to significant rate increases across several lines of coverage at year-end renewals, reinsurers and brokers say.

Property catastrophe reinsurance contracts hit by the deadly storm will see some of the largest hikes, but other catastrophe programs, property programs, and marine and energy programs likely will also see sizeable increases, they said at the annual Rendez-Vous de Septembre reinsurance meeting in Monte Carlo, Monaco, last week.

Although casualty reinsurance risks will not face such large increases, the impact of the storm on the whole market likely will at least halt rate declines in that sector, too, as more reinsurers report or revise upward their estimates of losses from the hurricane.

Current estimates of the total insured losses resulting from Katrina run as high as $60 billion, which would make it the largest loss of its kind.

Market-changing event

"Katrina is a market-moving event," said James H. Veghte, president and chief executive officer of XL Reinsurance America Inc., a Stamford, Conn.-based unit of XL Capital Ltd. "I'm quite convinced that we'll see very much firming prices around the world and in many classes."

Already, some facultative proper-

See **REINSURANCE** / page 31

Cleanup liability issues could get messy

By DAVE LENCKUS

After the virulent floodwaters are pumped out of New Orleans, property owners and insurers may have to slog through various state and federal statutes, directives and case law to determine whether insurance will help cover the cost of removing the contaminants left behind.

A lawsuit filed in Louisiana state court in Baton Rouge last Thursday asks the court to rule that flood losses in New Orleans are not excluded by "act of God" provisions in insurance policies. The plaintiffs contend the flood resulted from shoddy levee design, construction and maintenance.

Meanwhile, the massive Gulf Coast reconstruction plan that President Bush announced the same day would direct more than $200 billion of federal funding toward the cost of rebuilding the region's public infrastructure, including roads, water systems and schools.

But if insurers prevail in the lawsuit and the federal aid does not cover cleanup costs—an issue the president did not address—then insurers and policyholders face one coverage issue after another, according to insurance experts.

Insurer representatives say the industry is too early in the claims-assessment process to say how claims will be handled. They say claims will be handled on a case-by-case basis, but they also note that flood and pollution exclusions clearly state the kinds of losses that will not be covered.


PHOTO: GETTY

Workers clean up crude oil from a canal in Port Sulphur, La. The nature of the damage in Louisiana could lead to pollution liability disputes.

Continued coverage

Policyholder advocates expect insurers to invoke flood exclusions whenever possible to deny coverage, including for contaminant cleanup.

For those with flood coverage, advocates expect insurers to deny coverage by citing their pollution

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NEWSPAPER

BENEFITS MANAGEMENT

Inside

Online poll - [9/12 - 9/26]

Does a retail brokerage's ownership of a wholesaler constitute a conflict of interest?

Yes 67.1%

No 27.9%

Don't know 5%

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

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Eight former Marsh execs indicted

Insurers may be next target in industry probe

By SALLY ROBERTS

NEW YORK—After filing criminal charges against eight former Marsh Inc. executives last week for their alleged role in bid rigging at the world's largest brokerage, New York Attorney General Eliot Spitzer may be turning his attention to the insurers that allegedly played a part in the scheme.

In the latest move in his investigation into corruption in the insurance industry, Mr. Spitzer and New York State Insurance Superintendent Howard Mills accused the former Marsh managers of colluding with insurance executives to arrange noncompetitive bids and conveying the bids to clients under false pretenses.

Mr. Spitzer charged in his October 2004 civil suit against Marsh & McLennan Cos. Inc. that employees of its Marsh Global broking unit directed insurers to submit artificially inflated quotes—known as "B-quotes"—to create the appearance of competition while Marsh channeled business to insurers it chose. The insurers provided B quotes knowing that they would be similarly protected on other placements, the suit charged.

Last week's indictment specifically charges that from November 1998 to September 2004, the defendants colluded with executives at American International Group Inc., Zurich American Insurance Co., ACE USA, Liberty International Insurance Co. and others to rig the market for excess casualty insurance.

Seventeen individuals previously pleaded guilty to criminal charges stemming from the bid-rigging investigation, including eight former Marsh employees, four employees from AIG's American Home Assurance Co. unit, three employees from Zurich and one employee each from ACE and Liberty.

PHOTO: GETTY

Spitzer effects

The investigation of Marsh so far has yielded:

- **17** guilty pleas
- **8** indictments

But while MMC agreed in January to pay $850 million in restitution to clients and to change its business practices to settle the civil suit brought by Mr. Spitzer, no action has been taken against the insurers.

Mr. Spitzer, however, implied in a statement announcing the indictments that negotiations between his office and the insurers may be in the works.

"Agreements have not yet been reached with ACE, AIG, Zurich or Liberty," the statement says. At a subsequent press conference Mr. Spitzer declined to elaborate except to say that he expects "additional

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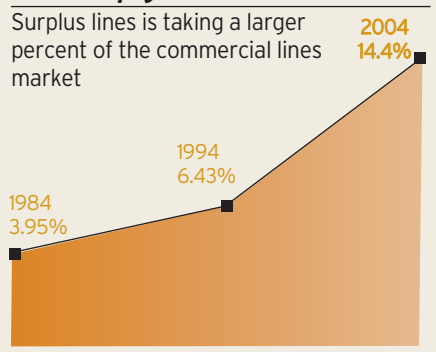
Industry grows

Surplus lines is taking a larger percent of the commercial lines market



Source: AM Best

Surplus lines growth flat in 2004

SAN FRANCISCO—Surplus lines industry market premium volume fell flat in 2004, following three years of significant growth, according to an A.M. Best Co. report released last week.

Overall direct premiums written by the industry last year were $33 billion, representing only a 0.65% increase over 2003, according to Best's 12th Annual Review of the Excess & Surplus Lines Industry. In 2003 and 2002, direct premiums written grew 28% and 62% respectively.

The study also shows the surplus lines industry continues to grow. It represented 14.4% of the commercial lines insurance market in 2004 compared with 6.4% in 1994 and 4.0% in 1984. Despite rising loss costs, low investment yields and expected price decreases going forward, Best said it expects surplus lines insurer results to remain strong.

The report, however, was based on 2004 financial information gathered prior to Hurricane Katrina, the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd. noted in a statement. NAPSLO commissioned the Best report and released it on the opening day of its annual convention in San Francisco.

—By Roberto Ceniceros

GAO urges uniform standards for regulation of RRGs

Report suggests other changes to Liability Risk Retention Act

By MEG FLETCHER

WASHINGTON—Although risk retention groups have played a small but important role in expanding commercial insurance coverage, states and possibly Congress should act to resolve regulatory and operational concerns, a congressionally ordered report says.

The Government Accountability Office report, made public last week, recommends that states and the National Assn. of Insurance Commissioners adopt a set of uniform regulatory standards for RRGs.

After those standards are developed, Congress, the GAO suggests, may want to rewrite the federal Liability Risk Retention Act to limit the special pre-emption RRGs now enjoy from state insurance laws to groups domiciled in states that have adopted the NAIC's standards.

Currently, the RRA allows risk retention groups, which essentially are multiple-owner captives, to provide coverage to policyholders in any state after meeting the licensing requirements of one state.

The report also suggests that Congress may want to consider that all risk retention group policyholders be required to make a financial contribution to the groups' capital and surplus.

Finally, the report suggests that Congress may want to establish minimum governance standards to reduce the potential for conflicts of interests.

For example, one amendment to the act Congress might want to consider is requiring that a majority of an RRG's board not be associated with its management company.

The 120-page report, which was requested by Rep. Mike Oxley, R-Ohio, who chairs the House Financial Services Committee, identifies several major problems associated with RRG regulation, including:

- Widely varying state regulatory standards, including allowing capitalization under less stringent captive laws and financial reporting under more liberal generally accepted accounting principles. Traditional insurers generally must meet higher capitalization standards and use more conservative statutory accounting principles when reporting financial data.

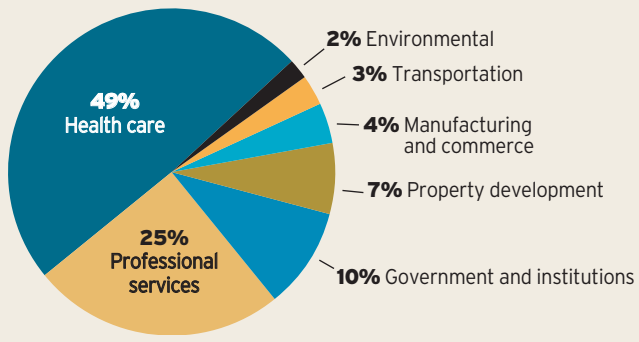
Consequently, nondomiciliary regulators are wary of RRGs because of those variations and the fact that "some domiciliary states may be relaxing chartering or other requirements to attract RRGs" for economic development, the report says.

- Lack of corporate governance safeguards regarding ownership and control that allow

See RRG / page 31

RRG premiums

Estimated percentage of gross premiums RRGs collected in 2004, by business area.



Source: GAO, Risk Retention Reporter

Delta's underfunded plans may land on PBGC

By JERRY GEISEL

WASHINGTON—Even if Congress approves legislation giving commercial airlines pension funding relief, Delta Air Lines Inc. may terminate its pension plans, resulting in a multibillion dollar loss that could be the biggest ever for the federal pension insurance agency.

In a long-expected move, Delta on Wednesday filed for Chapter 11 bankruptcy and will not make its next required contribution to its pension plans.

While Delta said it will continue to press Congress for legislation to make its plans more affordable, the Atlanta-based airline said, "There can be no guarantees—even with pension reform—about the future of Delta's qualified defined benefit plans," because of its growing financial pressures.

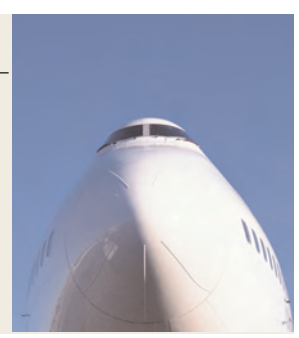
Two Senate committees have passed broad pension funding reform legislation that includes provisions that would allow commercial airlines to stretch out pension plan payments over 14 years, a much slower amortization schedule than other companies would face.

Sky-high PBGC losses

Airline-related terminations. Figures in billions.

Airline	Pension plan underfunding	Cost to PBGC
Delta*	$10.6	$8.4
United	9.8	6.6
Northwest*	5.7	2.8
US Airways	5.0	3.0

*If plans are terminated
Source: Pension Benefit Guaranty Corp.



The three Delta plans, which cover about 106,000 people, have $6.9 billion in assets and $17.5 billion in liabilities, according to PBGC estimates.

Based on preliminary estimates, the PBGC says it would have to guarantee $8.4 billion of the $10.6 billion benefits funding shortfall. The PBGC itself has a $23.3 billion deficit.

If those estimates hold up, a PBGC termination of Delta's plans would exceed the agency's $6.6 billion loss—by far its largest—absorbed through its takeover of United Airlines' pension plans.

Additionally, the PBGC also would be hit with a huge loss if Eagan, Minn.-based Northwest Airlines Corp., which also filed for bankruptcy on Wednesday, terminates its pension plans.

The three Northwest plans, have $5.8 billion in assets and liabilities of $11.5 billion, according to PBGC preliminary estimates.

Of the $5.7 billion funding shortfall, the PBGC estimates it would be liable for $2.8 billion.

Northwest has not disclosed whether it intends to terminate its pension plans, which cover about 70,000 people. The airline, though, did say absent any change in law, it will have to contribute $3.3 billion to the plans between 2006 and 2008.

Panelists consider alternatives to TRIA

By MARK A. HOFMANN

WASHINGTON—Congress should look beyond the issue of extending the Terrorism Risk Insurance Act and consider the creation of a multiperil pool as a long-term solution to insuring against truly catastrophic events, according to the District of Columbia's top insurance regulator.

Lawrence H. Mirel, the district's commissioner of insurance, admitted that he was "blue-skying" when he made that suggestion during a discussion of TRIA sponsored by the Washington Legal Foundation last week. TRIA, which provides a government financial backstop for insurers facing claims from future catastrophic terrorist attacks, is slated to expire at the end of the year. The Bush administration, which backed the initial enactment of TRIA in 2002, has recommended against extending it in its current form.

Mr. Mirel, one of three presenters at the event, also advocated allowing the current program to expire. He said TRIA initially was designed in part to allow insurers to come up with their own long-term solution to insuring against terrorism, but "the industry has done really nothing" to achieve that, he said. In its current form, TRIA allows government financial involvement to begin much too soon in the case of a terrorist attack, discourages the development of private terrorism insurance capacity, and doesn't deal with the wide variations in pricing for terrorism coverage across the county, he said.

"It would be a mistake to extend TRIA," he said. "It's not going to happen."

Instead, said Mr. Mirel, Congress should consider allowing the creation of a privately funded pool to provide terrorism insurance capacity. As the pool grew, it would require an ever-shrinking federal backstop, he said.

And Congress should take the matter a step further and consider the creation of a multirisk catastrophe pool that would respond to a huge catastrophe regardless of whether a terrorist or tsunami caused it, he said. The key should be "the size of the event, not the cause of it," he said. Mr. Mirel said the trigger to activate payments from such a pool should be very high.

Industry wants TRIA

Warren Heck, chairman and chief executive officer of New York-based Greater New York Mutual Insurance Co., said he believes that the insurance industry will eventually come up with its own long-term solution to the issue of terrorism insurance, but that an extension of TRIA in its current form should occur.

He said creating a revamped TRIA as suggested by the Treasury Department, with a much higher trigger and greater industry exposure, would not be acceptable. "We'd be better off without it," he said. He predicted that Congress would address the TRIA issue, but possibly not until the current program has expired.

"It's too close to call," said Travis Plunkett, legislative director for the Consumer Federation of America, which opposes extending TRIA. Before Hurricane Katrina struck, the passage of some sort of TRIA bill seemed likely, he said. "Katrina has thrown a wrench into that process," he said.

Glenn Lammi, the WLF's chief counsel, moderated the session.

Errors & Omissions

Due to a production error, the chart on surplus lines premiums and taxes by state in the Sept. 12 issue incorrectly reported total surplus lines taxes collected for 2002, 2003 and 2004. The correct numbers are $749,122,326 for 2002, $983,668,419 for 2003 and $1,110,632,005 for 2004.

Safety law scares Canadian firms straight

Expansion of criminal liability boosts efforts to protect staff

By GLORIA GONZALEZ

A federal law that expands the scope of criminal liability for workplace accidents has rapidly gained a place on the radar screen of Canadian risk managers.

The amendment to the criminal code, known as Bill C-45, makes it easier to charge supervisors at every level of an organization and the organization itself with a criminal offense for workplace accidents that injure or kill people.

The law became effective in March 2004, and only one individual has been charged with a violation so far. But observers say they believe that more prosecutions are inevitable, and employers are being encouraged to take steps to ensure they are in full compliance with legislative and regulatory requirements.

"I think employers need to be aware of the large risk of undermanaging or poorly managing health and safety issues in the workplace," said Norm Keith, a Toronto-based partner in the employment and labor group of Gowling Lafleur Henderson L.L.P.

The first C-45 case

- On April 19, 2004, an employee was killed while working on a construction project in Ontario. The resulting police investigation led to his supervisor becoming the first individual to be charged under the C-45 amendment with criminal negligence resulting in death.
- Earlier this year, the charge was dropped after the supervisor agreed to plead guilty to violating provincial health and safety laws and pay a $50,000 fine in exchange for avoiding a jail sentence.

Bill C-45 imposed a legal duty on all those who direct work to take reasonable measures to protect employee and public safety. Under Bill C-45, wanton or reckless disregard of this duty that causes death or bodily harm could result in a charge of criminal negligence.

The C-45 amendment was the federal government's response to a 2002 report on workplace safety and corporate liability that was prompted by the Westray mine explosion that killed 26 miners in Plymouth, Nova Scotia. An inquiry into the accident found that management was repeatedly warned of unsafe conditions but willfully ignored them. Due to limitations of the criminal code, the managers supervising the mine operations were never successfully prosecuted for their part in the disaster. This led to calls to amend the criminal code to facilitate criminal prosecutions against organizations and their employees for workplace accidents that kill or injure people.

Prior to Bill C-45, a corporation could only be found guilty of a crime if its "directing mind" committed the prohibited act and intended, at least in part, to benefit the corporation by the crime. The difficulty in reaching this standard of proof meant criminal prosecutions were rare and unsuccessful, lawyers say.

The federal law now makes it easier to affix a corporation with crimi-

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Former Marsh executives charged

The following former Marsh executives were charged with felony fraud in the first degree, felony restraint-of-trade and competition, and various counts of felony grand larceny in the first, second and third degrees. Each faces up to 25 years in prison if convicted of the most serious charge of first-degree grand larceny:


PHOTO: LANDOV

- **William Gilman**, former managing director and executive marketing director.
- **Joseph Peiser**, former managing director and head of Global Broking excess casualty.
- **Edward J. McNenney**, former managing director and global placement director.
- **Greg J. Doherty**, former senior vp and ACE local broking coordinator team leader.
- **Thomas T. Green Jr.**, former senior vp.

The following former Marsh executives face similar charges, but to lesser degrees, and up to 15 years in prison if convicted of second-degree grand larceny:

- **Kathleen M. Drake**, former managing director and local broking coordinator team leader.
- **William L. McBurnie**, former senior vp and coverage and carrier specialist.
- **Edward J. Keane Jr.**, former assistant vp.

Marsh: Insurers could settle

Continued from page3

action" against the insurers involved.

A spokesman for Liberty said the insurer continues to "cooperate with the office of the New York Attorney General and all other authorities."

A spokesman for AIG said the company continues to cooperate with Mr. Spitzer's investigations.

Representatives ACE and Zurich declined to comment.

Some industry observers say Mr. Spitzer likely will reach agreements with the insurers.

"I think it has been an underlying assumption all along that there would be some kind of settlement of these matters" between Mr. Spitzer and the insurers that allegedly participated in the scheme, said Tom Upton, a managing director with Standard & Poor's Corp. in New York.

All of the insurers have done internal reviews and "I think for the most part, they have concluded that these were the actions of some rogue employees and not something that was systemic or encouraged or counseled by management," he said.

That should be reflected in any fine or settlement ultimately reached with Mr. Spitzer, Mr. Upton said.

"I don't think that he's going to indict any of the companies. It would be very surprising to me if he did, although I will say they sure as hell ought to be," said Eugene Anderson, lead partner of the policyholder law firm Anderson, Kill & Olick P.C. in New York. He added that he also expects certain individuals at the insurers to be indicted soon in regard to their roles in the alleged bid-rigging scheme.

In New York state court Thursday, eight former Marsh executives were indicted on felony charges of fraud, restraint-of-trade and competition, and grand larceny (see box).

Among them are Joseph Peiser, former managing director and head of Global Broking excess casualty, and William Gilman, former managing director and executive marketing director, whom Mr. Spitzer described in his civil suit against Marsh as "strictly enforcing" the "A, B, C" quote system within the Global Broking unit.

"Bill Gilman has dedicated his career to the benefit of his clients and to Marsh. He has not violated any laws," said Robert J. Cleary, an attorney with Proskauer Rose L.L.P. who represents Mr. Gilman. "We look forward to establishing his innocence at trial."

Jerry Bernstein, an attorney with Blank Rome L.L.P. in New York who represents Mr. Peiser, said: "Joe Peiser was a loyal Marsh employee who did not do anything wrong. I am confident he will be found not guilty at trial."

In a statement, MMC President and Chief Executive Officer Michael G. Cherkasky stressed that the criminal charges are not against the company but against eight former employees of its excess casualty division of its global placement department, which has since been disbanded.

"This indictment is about the past. MMC today is focused on the future and is committed to excellence and the highest standards of professionalism and services," he said.

More suits coming?

Meanwhile, MMC is in negotiations with Massachusetts Attorney General Thomas F. Reilly to resolve his investigation of the company.

Mr. Reilly's office sent a letter to Mr. Cherkasky on Sept. 8, accusing Marsh Inc. of allegations similar to those leveled by Mr. Spitzer in his October 2004 lawsuit, and threatening to sue MMC.

An MMC spokesman said the company received the letter and responded promptly. "We continue to have discussions and to cooperate with the Massachusetts Attorney General."

MMC disclosed the letter in a Securities and Exchange Commission filing, in which it also said it had recently been contacted by other state officials indicating that they may seek additional monetary or other remedies.

The company continues to cooperate with all inquiries, MMC said.

Editorial

Katrina's consolation: Opportunity to improve

HISTORY HAS SHOWN that opportunity can arise out of crisis and tragedy, and we believe that the aftermath of Hurricane Katrina provides just such an opportunity to help assure that the impact of the next killer storm is not so devastating.

As we noted on this page last week, Hurricane Katrina underscored the importance of the risk management and insurance communities getting involved in the political realm. Two particular areas in which their expertise and involvement could help save lives and mitigate future losses are those of building codes and land use.

Think back to the aftermath of 1992's Hurricane Andrew, which caused more insured damage than any other natural catastrophe in U.S. history until Katrina. One positive development that stemmed from Andrew was the drafting and implementation of more stringent building codes in Florida, which experts agree helped mitigate the damage wrought by successive storms.

A review of building codes along the Gulf Coast should be a priority once human suffering has been addressed. If they need to be tightened—the wreckage left by Katrina strongly suggests that they do—risk managers and insurers should be at the forefront of a chorus demanding change.

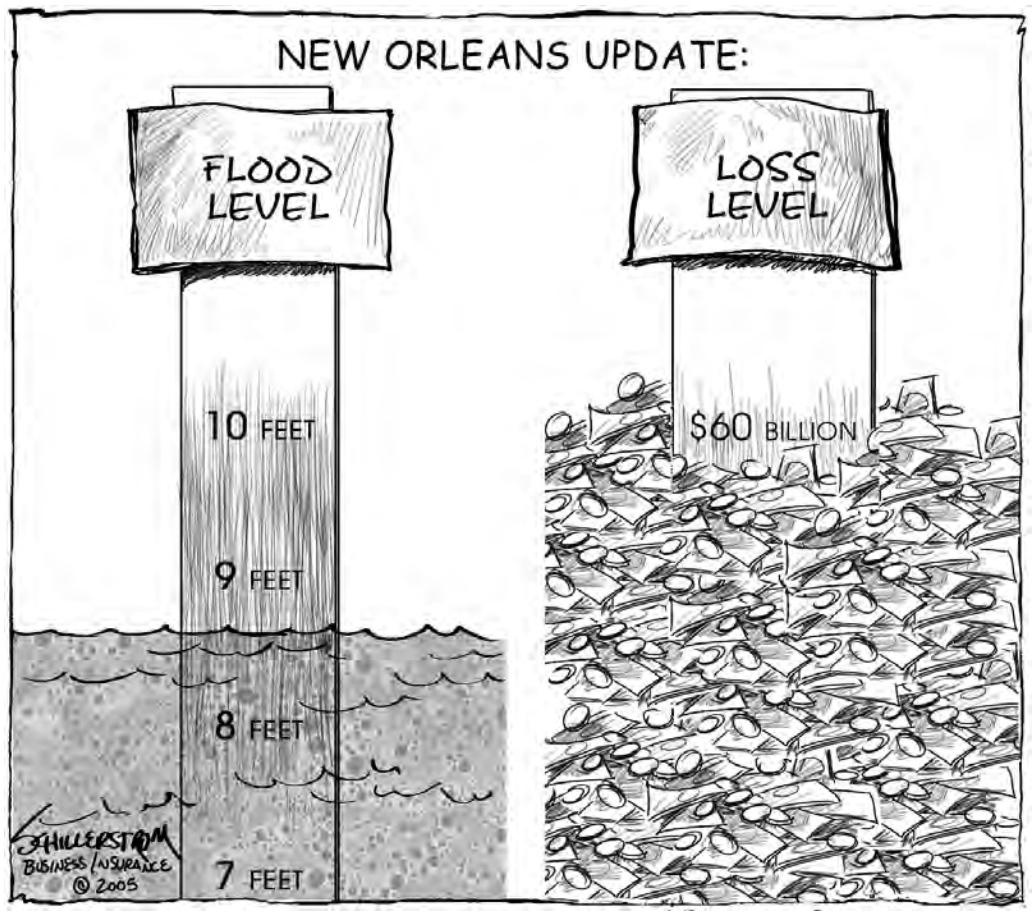
A review of land use practices, particularly where the land in question happens to be below sea level, should also be high on the list of reconstruction actions.

Perhaps building on such vulnerable real estate once made sense, say in 1718, when the French founded New Orleans. Sea level, after all, is not a constant and rises and falls according to climactic conditions. But Hurricane Katrina underscored that what might have made sense in 1718, 1818, or even 1918 doesn't necessarily make sense now.

Adding weeks' worth of toxins soaking into the soil to an area already exposed to flooding makes it even more imperative that great care be taken to prevent repeating land-use mistakes that put people and property in harm's way.

No one should minimize the tragedy that Hurricane Katrina caused. But taking advantage of the opportunities to improve basic building and land-use practices is one of the best ways to help assure that a tragedy of this magnitude is not repeated.

Schillerstrom



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RRG law provides vital, important market

NEARLY 19 YEARS AGO, Congress, acting with unusual alacrity, passed legislation that made it practical for businesses or professionals in the same industry to band together and form with relative ease their own group captive in the United States.

That law was the Liability Risk Retention Act of 1986. In a nutshell, the RRA, in one fell swoop, opened up the captive market to buyers when coverage became too expensive or unavailable in the traditional market.

The RRA did that in a simple but effective way. After a captive—dubbed a risk retention group—met the licensing requirements of one state, it was free to write coverage in all other states in which it had members.

That freedom for a captive to do business nationwide had been blocked by a number of obstacles, such as state laws requiring an insurer to be in business for a certain number of years before it could provide coverage to policyholders within their borders. That obstacle, and numerous other ones states set, were preempted by the federal law.

Buyers, the Government Accountability Office reports, have taken advantage of the ability to better control their insurance destiny by joining risk retention groups.

Today, about 200 risk retention groups are operating, with the groups now generating more than $2 billion in annual premiums. Premium volume doubled between 2002 and 2004, as many new groups were formed and existing groups took on more business as rates increased dramatically in the traditional market.

Regulators, even those with misgivings about the Risk Retention Act, widely agreed that the law expanded the availability and affordability of coverage for buyers, according to the GAO report. And some regulators said, essentially, that RRGs were the only source of coverage for some.

Indeed, we think the GAO report affirms what we have believed for a long time: the RRA has met its objective of giving buyers a new and, at times, vitally important market alternative.

But as the report notes in some detail, implementation of the RRA has not been problem-free. We are troubled, for example, by the ease at which outsiders can control the groups, an area Congress might want to revisit.

But in all, this rare congressional intervention in the insurance market has produced, on balance, a very successful result.

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Perspectives

Good return-to-work plan will cut costs

By Rebecca A. Shafer

An effective return-to-work program can help reduce workers compensation costs dramatically. Employees recover more quickly when they can return to work as soon as they can do some form of productive work. Workers comp costs are high because too many claims last longer than necessary.

Injured employees' morale is higher when they return to work quickly. Employees can become depressed as a result of having an injury, such as carpal tunnel syndrome, which can derail workers' plans and their normal routine. The potential loss of an employee's livelihood can be demoralizing and frightening.

To have an effective return-to-work program, employers should:

- Have a measurable goal. Companies that have reduced their workers comp costs always calculate two measurements: lost workdays and the return-to-work ratio. The number of lost workdays must be counted in the context of a level employee population. If the number of employees or the ratio of part-time to full-time workers changes, or if new business units are acquired, then lost workdays must be measured as a percentage of payroll.

The return-to-work ratio measures the percentage of injured employees who return to work within the first few days after an accident. For example, in states with a four-day waiting period for workers comp eligibility following an injury, an employer would want 95% of injured employees returning to work within one to four days. This ratio measures how well the RTW program is working. Benchmark against your own performance.

- Develop post-injury procedures. Write down exactly what you want employees to do if they are injured. Will they report the injury to their supervisor, to the general manager or employee health services? What kind of transportation to the medical clinic should be used? Will the employee continue to participate in operational and safety meetings?

If there's a union, bring it on board during planning; always ask for the union's involvement.

After all policies and procedures are set, start communicating them. Besides a post-injury procedure, you will need a return-to-work policy that delineates which employees are eligible for the modified-duty program and what the employee must do to maintain eligibility. You may also want a modified duty task bank or job bank that lists as many tasks and jobs as possible. An employee brochure explaining the new RTW policy should be included with paychecks. Sample letters, including an offer letter to employees that includes a signature line requesting a formal acceptance or declination of the modified duty job offer, are helpful tools.

Develop a brochure for doctors who treat your employees that includes a description of the original jobs and several modified duty jobs, plus a statement about the purpose of the RTW program and its importance. All doctors who treat your employees should be familiar with the form your company uses to identify physical restrictions relevant to a modified duty position. Sometimes this is called the "injury treatment form" or "job modification form."

The person responsible for the program will need such tools to implement the new processes.

- Train employees, managers and senior executives. To move the process forward, set up a training program. Small companies can have either individual training by phone or in person; large, multilocation companies will need numerous sessions or a video-based training program with follow-up conference calls to answer questions. A tight time frame should be established for follow-up, and participation should be mandatory for all. Use one or two real-life exercises that allow trainees to practice new activities. For example, if the general manager will hold weekly meetings with injured employees, develop an exercise to let him or her emulate that activity.

- Have adequate personnel to manage the program. You'll need adequate staff, such as a workers comp manager and regional return-to-work coordinators. The program manager can monitor progress by tracking on a spreadsheet all employees who are out of work, identify modified jobs and indicate appropriate follow-up items. The program manager and the business unit manager should know the number of employees who are out of work; that number is as important as the number of machines out of service.

- Use your company proactively. Involve your medical director or a retired physician as a medical consultant early on in the claim. The doctor can verify the duration of disability, discuss estimated recovery time and identify modified tasks within the scope of an employee's medical restrictions. A doctor used in this role can reduce the number of independent medical examinations significantly by contacting the treating physician instead of sending the employee for an IME to get a second opinion on work capability. If an employee is out of work for more than 10 days, the claim should be referred to the medical director.

- Work with the claims administrator. Whether you have a TPA or insurance company, you will want your program included in the account instructions. Documents such as job banks can be appended to the account instructions so they're easily accessible by adjusters. Some insurers will customize their intake questions and include other forms, such as your employee brochures or injury treatment forms, so those can be included when the claims adjuster first makes contact with the injured employee. During file reviews, pay attention to how aggressively the adjuster pursued return to work and how quickly job restrictions were obtained.

Rebecca A. Shafer is a risk consultant/attorney with Arthur J. Gallagher & Co. of New York Inc., specializing in the design and development of workers compensation cost-control programs. Disclaimer: Nothing in this article is intended to constitute legal advice.

Parking lot injury doesn't fall under workers comp

Injuries a claimant sustained when she slipped and fell in a parking lot where her employer leased spaces were not compensable under workers compensation law, according to the Commonwealth Court of Pennsylvania.

Judith Ortt, an employee of PPL Services Corp., parked her car at the Colonial Parking Lot. PPL does not own the Colonial lot but leases about 174 spaces for its employees. PPL gives its employees the option to rent spaces at Colonial at reduced cost, but employees are not required to rent these parking spaces. PPL provides no security patrol for the Colonial lot, and Colonial specifically agreed in the lease to be responsible for maintaining the premises of the lot, which included the removal of snow and ice.

After leaving work one day, Ms. Ortt slipped on snow and ice in the Colonial parking lot, sustaining injuries. She filed for, but was denied, workers compensation benefits for her injuries. She appealed.

The appellate court said that the Colonial lot where Ms. Ortt slipped and fell could not be considered an integral part of PPL's business because parking in the lot was purely optional, not required or integral to Ms. Ortt's employment. According to the court, Ms. Ortt's injuries occurred in a private lot owned and operated by Colonial, which was responsible for the snow and ice removal that resulted in her slip and fall. The court affirmed the decision to deny her workers compensation benefits.

Ortt vs. W.C.A.B. (PPL Services Corp.), Commonwealth Court of Pennsylvania, April 27, 2005, Reargument Denied June 20, 2005 (BI/01/N.-$10)

Injury during screening not compensable

A laid-off employee who injured her back while performing a stress test at the workplace in the course of an application process for other jobs with the employer was not entitled to workers compensation benefits, according to the Supreme Court of Tennessee.

Gatha Blankenship was employed by American Ordnance Systems L.L.C. to assemble ammunition. In February 2002, she was temporarily laid off due to a decrease in the employer's business. While Ms. Blankenship was on layoff status, the employer posted a notice at the facility that medical evaluations for upper body strength would be performed on those employees interested in applying for new jobs being created in the plant. Ms. Blankenship heard about the notice from friends. She took the strength test on the employer's premises but did not pass it. Immediately upon completing the test, she began experiencing weakness in her back. Ultimately, Ms. Blankenship was diagnosed with a bulging disc and was given a permanent physical impairment of 5% to the whole body. She filed for but was denied workers compensation benefits. She appealed.

The appellate court said Ms. Blankenship's injury did not arise out of her employment because the record failed to establish a causal connection between the conditions of her job assembling ammunition and her back injury. Rather than resulting from a danger specific to her work or being caused by a risk inherent in the nature of her work, the court observed, she was injured while undertaking a voluntary test as part of the application process for a job she did not have. The court affirmed the trial court decision denying workers compensation benefits.

Blankenship vs. American Ordnance Systems, Supreme Court of Tennessee, May 12, 2005 (BI/03/N.-$10)

Legal Briefs

Functional evaluation injury arose from work

An employee's back injury sustained during a mandatory functional evaluation relating to a prior compensated injury arose out of his employment, according to the Court of Appeals of Indiana.

Marc Bordner was injured on the job in 2000. He had shoulder surgery and was authorized to return to work without restriction in August 2001. He continued to work until September 2001. In November 2001, Mr. Bordner went to Cameron Hospital for a mandatory functional evaluation related to his September 2000 injury. Pursuant to this evaluation, the therapist directed him to pull on a chair. Mr. Bordner did as he was instructed and felt a pop in his lower back. This injury required surgery in March 2002 and August 2002. Mr. Bordner filed for workers compensation for the November 2001 injury. The compensation board awarded him benefits. The employer appealed.

The appellate court said there was a connection between Mr. Bordner's injury and his work responsibilities because the injury resulted from an act required by the employer and Mr. Bordner had no discretion in performing the act that led to his injury. The court affirmed the award of compensation.

Kehr Mid-West Iron vs. Bordner, Court of Appeals of Indiana, June 15, 2005 (BI/02/N.-$10)

Truck crash not covered under CGL policy

The Court of Appeals of Georgia ruled that a commercial general liability policy issued to a trailer owner did not cover an accident in which a tractor-trailer jackknifed due to defective brakes, killing another truck driver.

Rodney Wayne George was driving his tractor and hauling a trailer owned by SG Transportation Inc. At the time, Mr. George was operating the tractor pursuant to a contractor's operating agreement with SG.

While Mr. George was hauling a load for SG, the tractor-trailer jackknifed due to defective brakes, and the trailer crossed the centerline and collided with another tractor-trailer driven by Dilmus W. Strickland. Mr. Strickland was killed. SG carried both a CGL insurance policy and a separate policy to cover motor vehicle liability exposure. The CGL policy explicitly did not cover motor vehicle collisions. Auto-Owners Insurance Co. issued the CGL policy. Mr. Strickland's heirs filed a wrongful death claim against both Mr. George and SG and sought coverage under the CGL policy. The trial court ruled against the heirs, and they appealed.

On appeal, the Stricklands argued that the accident was not excluded under the Auto-Owners policy with SG because Mr. George's truck was not leased or rented to SG and, as such, the truck was excluded from coverage but not SG's trailer. Thus, they contended that SG was covered under the CGL policy for this accident. However, the court said that under the clear language of the exclusion, the Auto-Owners policy did not provide coverage for motor vehicle accidents at all, even those involving SG's equipment or drivers. The trial court decision was affirmed.

Strickland vs. Auto-Owners Insurance Co., Court of Appeals of Georgia, June 15, 2005 (BI/04/N.-$10)

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

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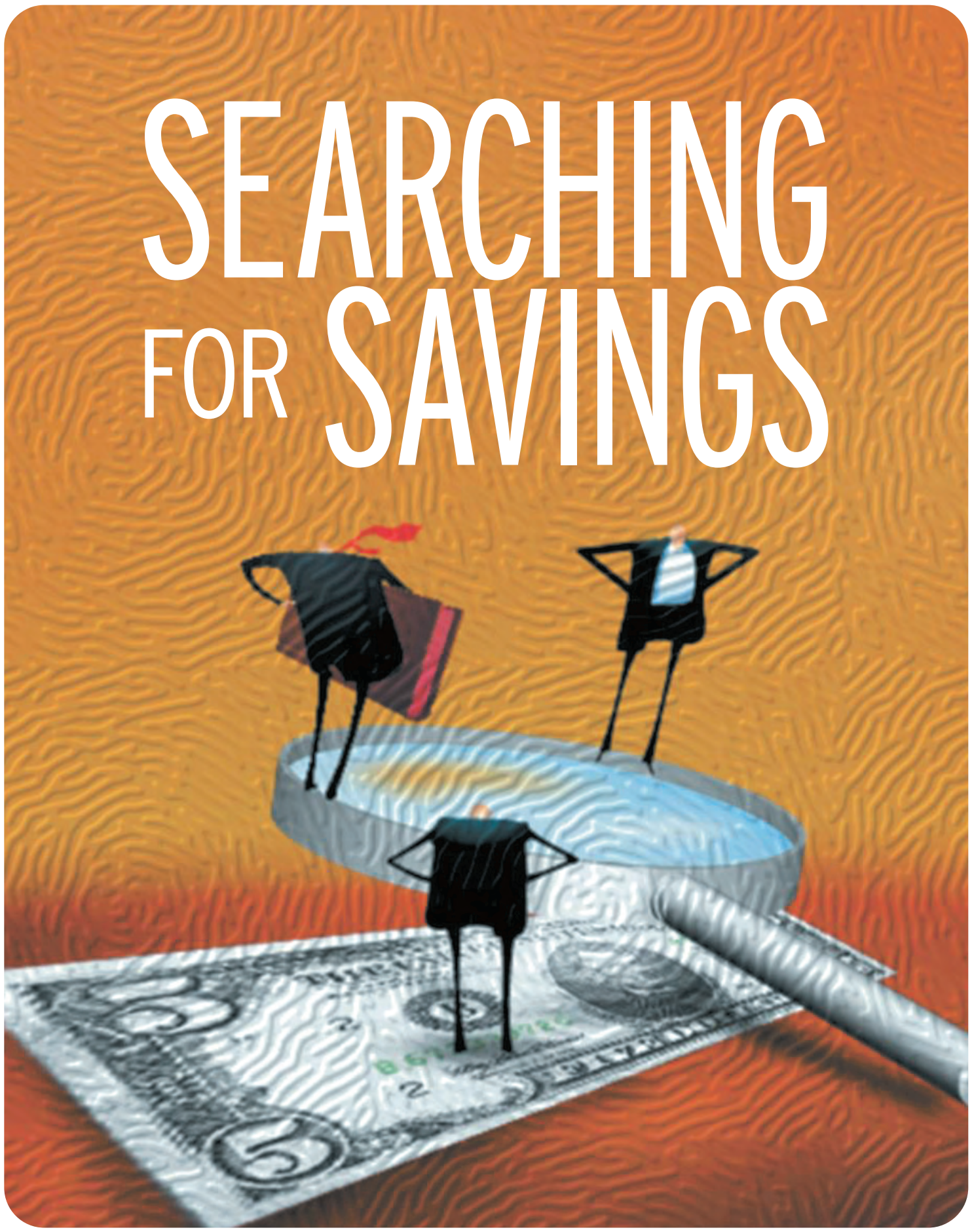

Employers taking aim at selected health costs

Interest growing in targeted cost-shifting

By JOANNE WOJCIK

Faced with a $446 million health plan deficit going into 2005, the state of Georgia's Division of Public Employee Benefits found that even after making several benefit changes it still would have to share some of that increased cost with its 300,000 employees.

But instead of increasing employee contributions across the board, the state was a bit more selective, assessing surcharges on those employees who it determined were costing it proportionately more than others enrolled in the plan.

Among these were smokers and other tobacco users and employees who had enrolled their spouses in the state's plan even though they were eligible to receive coverage from their own employers.

A $30 monthly spousal surcharge for such plan participants generated $8.9 million, and a $40 monthly tobacco surcharge, which applied not only to state employees but also to any dependents enrolled in the state's health plan, was even more lucrative, bringing in $23.9 million.

The state of Georgia is among a growing segment of the employer community that is implementing selective health benefit cost-shifting strategies.

In 2003, Florida Power & Light Co. in Juno Beach, Fla., shaved almost $1 million off its annual health plan costs when it introduced dependent coverage surcharges for employee spouses who could obtain coverage from their own employers.

And, at the beginning of this plan year, employees of Philadelphia-based Independence Blue Cross were assessed a surcharge of $18.50 per biweekly paycheck for any such spouse.

The insurer did not respond to a request for a tally of its savings.

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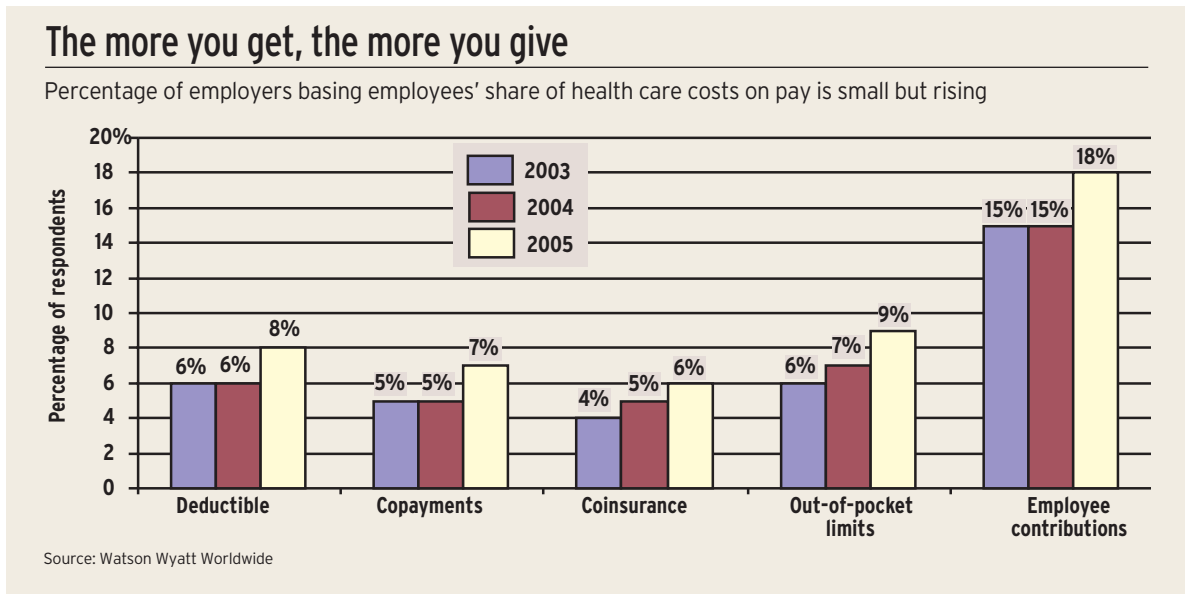

Shift: Employers try targeted cost-shifting approaches

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Getting creative

Spousal and tobacco surcharges are just two of the latest trends in cost-shifting being used by employers who are becoming more creative in the ways they pass rising health care costs on to their employees, benefit experts say.

According to a February 2005 online survey by the Alexandria, Va.-based Society for Human Resource Management, 11% of employers either currently have or plan to implement a spousal surcharge. The extent of use of tobacco surcharges has not yet been surveyed.

Some other targeted cost-shifting solutions employers are adopting as they struggle with high health care costs include using coinsurance instead of copayments in prescription drug coverage, and tiered health plan premiums in which those at the higher end of the wage scale pay more than those who earn less.

A survey by Hewitt Associates Inc. of Lincolnshire, Ill., found that 45% of employers have adopted coinsurance for prescription drugs for 2005, while 31% are considering it.

Hewitt's survey also found that 42% of employers either have adopted or are interested in adopting some kind of pay-based cost-sharing in their health plans.

While employers shifting increases in health plan costs to employees is not new, the way cost-shifting is being applied today is, benefit consultants say.

"Employers have been cost-shifting ever since we've been in double-digit cost increases," said Linda Ruth, a health care strategist at Hewitt. "I looked back at our survey data, and every year since 2000, the response has been that cost-shifting is king."

> Employers say, "'It's not fair for me to be covering a spouse who could have gotten coverage from their employer. Is that really what my plan was intended for?'"
>
> **Joe Lineberry**
> **Aon Consulting**

"I think what they're doing now is, if we're being bludgeoned by cost increases and there's no end in sight, they are asking some philosophical questions, such as: Who are they responsible for? Is it actives or retirees? Is it employees vs. spouses? Spouses vs. children? Two-parent households vs. one-parent households?

"They are really getting down to some basic philosophical questions. That's what has produced this movement toward more targeted cost-shifting," she said.

These days, when Joe Lineberry, a senior vp at Aon Consulting in Winston-Salem, N.C., meets with his clients to discuss their annual health plan cost increases, he asks them how they'd like to share them with their employees.

"More employers are becoming unwilling to just spread it across the board," he said.

"They say, 'It's not fair for me to be covering a spouse who could have gotten coverage from their employer. Is that really what my plan was intended for? No, it was intended to cover employees, and then dependents who need the

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Shift: Employers try targeted approach

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coverage.' That's when you get the spousal surcharge," Mr. Lineberry said.

Indeed, consultants see benefits to employers from spousal and other dependent surcharges (see related story).

Other targets

Another cost-shifting strategy that is gaining in popularity among employers is to find out which employees are generating the most claims and then require them to pay more, such as those whose lifestyle may contribute to higher health care costs.

Hence, the tobacco surcharge.

"The popular media has created two pariah classes: the smokers and the obese," said Blaine Bos, senior health care consultant at Mercer Human Resource Consulting in Minneapolis.

"Those are the groups that are likely to be targeted in the next five to 10 years," he said.

In this regard, Ms. Ruth of Hewitt says she's seeing a lot of interest in tobacco surcharges, "and it's not just limited to smoking; it's any tobacco use at all. It's all about dollars and cents. The occasional smoker will argue they haven't been sick a day in their life, but, on the other hand, they know that smoking is bad for them."

"The other thing that's becoming increasingly interesting is the whole healthy behavior phenomenon, whether it's incentives or surcharges," she added. "Five or 10 years ago, you got flex credits if you didn't smoke or pledged to wear seat belts. Now there's more interest in cost-shifting on a bigger scale."

She cited as an example several Hewitt clients that are assessing higher premium contributions on employees who are found to be suffering from some chronic condition after undergoing a health risk assessment but are unwilling to participate in health improvement programs to address that condition.

Focus on fitness

Smokers and overweight individuals are among the groups employers are expected to increasingly target in cost-shifting efforts.

"The difference in premium could be $500 or $600. This is very, very new. But we think this approach is real close to becoming tremendously more prevalent," Ms. Ruth said.

Employers increasingly are trying to discriminate between employees who use health care services wisely and those who do not, according to Mr. Fontanetta of Towers Perrin.

"I think the willingness to discriminate between wise vs. unwise consumption or behaviors that lead to good health vs. those that don't is something we're seeing more interest in as a way for employers to continue to provide affordable coverage," he said.

Because prescription drug costs have been rising at a faster clip than most other health plan costs, employers have been looking for ways to curb their consumption as well.

After eeking out as much savings as can be had with two-, three- and even four-tiered copayment strategies, employers are turning to percentage-based coinsurance, benefit experts say.

"We expect this to grow, because everybody is talking about consumerism," said Mr. Bos of Mercer. "Drugs are probably the most variable of all of the items in terms of cost. When you talk about the cost of an office visit, from the most expensive to least expensive doctor, you're

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Spousal, dependent charges address health cost drivers

Surcharges for covering spouses eligible for other coverage originated as a localized phenomenon in industrial areas in the Midwest about 10 years ago, according to Blaine Bos, senior health care consultant at Mercer Human Resource Consulting in Minneapolis.

"In those regions, there was a lot of manufacturing and small employers. The small employers essentially said that the easiest way for them to cost-shift was to force employees to get coverage from the large employers," he explained.

Since then, the trend has reversed, and now many of those large employers are passing the buck back toward the employers that had saddled them with their employees' health care costs, he said.

"You lose 80% of spouses with the surcharge strategy," he said.

Another reason employers are targeting spousal coverage is the fact that spouses often incur higher health care costs than employees, benefit experts say.

"Actuarially, it's about 10%," said Joe Lineberry, senior vp at Aon Consulting in Winston-Salem, N.C. "If an employee costs 1.0, the cost of a spouse is 1.1."

"Part of the reason for that is the adverse selection that occurs. You cover spouses that tend to be sicker. The other thing that can drive that higher cost is that spouses who are covered tend to be older," he said.

Ron Fontanetta, a principal in Towers Perrin's Health & Welfare Consulting Practice in New York, is finding that some employers are going beyond just targeting spouses and are making covering other dependents more expensive for employees as well.

Dependent health care costs can account for 55% to 69% of the health care expenses of a given company, he explained.

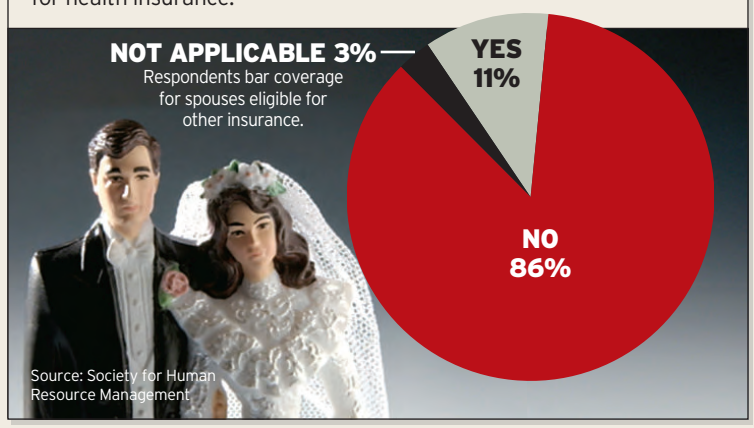
"We're seeing a much more aggressive posture for how they define subsidies for dependents relative to employees," Mr. Fontanetta said. "Some of this is defensive in nature, because employers that are subsidizing dependents more liberally are finding dependent participation is increasing."

While today the average subsidy for employee-only coverage is about 81%-82% of the total premium, subsidies for dependents average around 76% to 77%, he estimated, adding that these percentages have declined on average about a point per year.

—By Joanne Wojcik

Will you cover me?

Companies were asked whether they impose a spousal surcharge for health insurance.



Shift: Employers try targeted approach to shifting health care costs to employees

Continued from page 14

probably talking about a $50 to $75 differential. With drugs, it's hundreds of dollars. Copayments shield employees from drug costs. There's no incentive to ask the doctor for a lower-cost drug."

Some skepticism

While targeted cost-shifting is becoming more popular among employers, not everyone agrees these cost-sharing strategies will be effective in helping employers rein in health care costs.

Tom Billet, a senior consultant at Watson Wyatt Worldwide in Stamford, Conn., said he doesn't favor spousal surcharges because they can be difficult to administer, particularly because they rely on the honesty of employees to be effective.

"What if somebody lies, what kind of action do you take? Do people lose coverage? Do they have to pay back any claims dollars paid? Do they get fired?" he said.

"People's health care coverage situations change every day, not just at annual enrollment. The spouse could get coverage after open enrollment or lose coverage after open enrollment. You have to be able to administer this and make changes on an ongoing basis. It also means you have to constantly communicate it to people," Mr. Billet said.

> "Copayments shield employees from drug costs. There's no incentive to ask the doctor for a lower-cost drug."
>
> **Blaine Bos**
> **Mercer Human Resource Consulting**

Moreover, he says that despite the additional premium contributions documented by the state of Georgia and Florida Power & Light, he has yet to see any definitive studies or research that validates the cost savings.

"The companies do it mostly on faith that they're going to save," Mr. Billet said.

Likewise, salary-based premiums don't really save employers a lot of money, according to Mr. Lineberry of Aon, where such a strategy has been in place since 2004.

"That is more of a communications strategy," he said. "There aren't enough higher paid for that higher premium to generate a huge savings."

Aon Corp., the parent company of Aon Consulting, has six salary tiers for health premiums: Those who make less than $50,000 per year; those who make between $50,000 and $99,999; those who make $100,000 to $149,999; those who make $150,000 to $199,999; those who make $200,000 to $249,999; and those who make $250,000 or more.

While there was some modest savings to the company, salary-based premiums were implemented primarily from a "social-equity standpoint," a spokeswoman for the Chicago-based insurance brokerage explained.

But even a modest savings is better than none, Mr. Lineberry said.

"Employers are looking about anywhere they can to cut costs. Even if it's 1% here or 1% there, it all adds up," he said.

Desire for certainty, savings drives shift from DB plans

By JUDY GREENWALD

Certainty, not just cost, is a key motivating factor driving a growing trend among employers to freeze their defined benefit pension plans in favor of enhanced defined contribution plans, observers say.

Moving to an enhanced defined contribution plan, such as by enriching the employer's 401(k) match, may not necessarily cost employers less than retaining their existing defined benefit plan, particularly in the early stages. But the possibility of being able to accurately budget costs year after year is proving to be a powerful lure, say many observers.

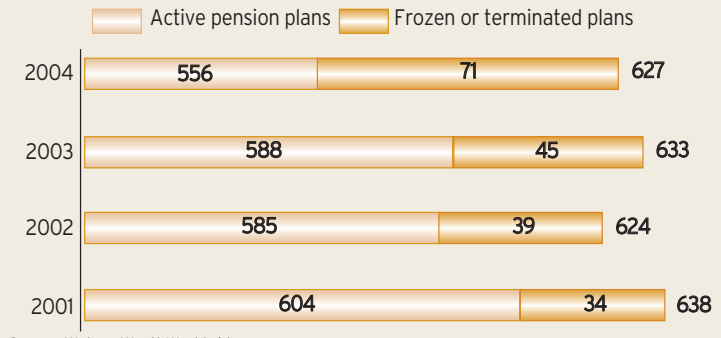
But some caution that freezing defined benefit plans may also eventually hurt employers as they compete for workers in an aging workforce.

The rate at which large companies are freezing or terminating their defined benefit pension plans accelerated sharply last year, according to a study of Fortune 1000 companies by Arlington, Va.-based Watson Wyatt Worldwide. Watson Wyatt found that 71 of Fortune 1000 companies that sponsor defined benefit plans had a frozen or terminated a plan as of 2004. This compares with 45 that had done so as of 2003 and 39 in 2002.

Big employers that have announced in the last year or so that they are phasing out their defined benefit plans include Armonk, N.Y.-based IBM Corp.; Palo Alto, Calif.-based Hewlett-Packard Co.; Hoffman Estates, Ill.-based Sears Holdings Corp.; Dayton, Ohio-based NCR Corp. and Schaumburg, Ill.-based Motorola Inc.

Defined benefit ice age?

Rate at which Fortune 1000 companies freeze or terminate plans rising



Source: Watson Wyatt Worldwide

Approaches vary

Employers use various approaches to move away from defined benefit plans, each with its own cost ramifications. A widely used approach is to close off existing defined benefit plans to new employees.

"It has the least financial benefit, but it also is the least disruptive to your current workforce," said Donald E. Fuerst, a principal in the Denver officer of Mercer Human Resource Consulting.

"Nobody currently working for you will object, because it does not affect them," said Mr. Fuerst. However, "it creates two classes of employees that have two different benefit structures, and that can cause problems," with some employees feeling they are second-class citizens because they have lower benefits.

Other companies funnel employees who have haven't reached a certain age, or achieved a certain length of service, into the defined contribution plan, or allow their employees to choose between the two plans.

Some employers, though, move all employees into beefed-up defined contribution plans, though accrued benefits remain in the defined benefit plan.

Sears, for example, initially shifted employees who were under 40 into an enhanced defined contribution plan more than a year ago. Employees 40 and older had the choice of continuing to earn benefits in the defined benefit plan plus a 401(k), or they could move to an enhanced 401(k) plan. Then, Sears earlier this year announced—effective Jan. 1, 2006—that benefit accruals in the $2.5 billion plan covering the Sears, Roebuck & Co. operating unit would cease, with employees receiving coverage under a revamped 401(k) plan, a spokesman said.

"Pension plans have become competitively unaffordable," creating volatility in the company's earnings and cash-funding requirements, the spokesman said. "Few companies, including very few in the retail sector, continue to offer pension plans due to the cost and the risk associated with them," he said.

Costs remain

Consultants note that the costs associated with defined benefit plans do not disappear even if they are frozen to some degree.

"You've got this big pool of assets that's still sitting there that's obviously subject to whatever the market does, and so the mere fact of even freezing the plan to all employees doesn't make the volatility of pension costs go away. It just means that it caps it, it controls it—it defines the ultimate size of the pot," said Mike Johnston, a practice leader for retirement business at Hewitt Associates Inc. in Lincolnshire, Ill.

"I think one of the things that is most surprising to plan sponsors when they look at this is how long it takes to get financial benefits from curtailing or freezing a pension plan," said Alan Glickstein, a senior consultant in the Dallas office of Watson Wyatt. "In most cases, it takes many, many years before there's any significant impact from a change like this," he said.

But moving away from a defined benefit plan can help put a brake on future costs.

"With market performance, and with the interest rate environment, (plan sponsors') costs have gone up significantly," and by freezing the plan, at worst their costs will stay the same, but generally they will decrease, said Dave Stocklas, a Pittsburgh-based consulting actuary for the Principal Financial Group, a retirement plan provider.

The ability to effectively budget also is a major factor in employers' decisions to freeze their defined benefit plans. Employer contributions to a defined benefit plan can vary "anywhere from zero to a significant percentage of pay annually," said Jack Ross, Chicago-based senior vp with Aon Consulting. With defined contribution plans, the cash contribution is a "known quantity," he said.

"Employers are willing to go down the defined contribution road because they view that as having less volatility," said Michael Archer, a Parsippany, N.J.-based principal with Towers Perrin.

Clients want to "pin down their costs. They want more predictability," said Steve Metz, a principal in the Philadelphia office of PricewaterhouseCoopers HR Services. A chief financial officer would rather have a plan cost a constant amount—even if it is sometimes higher than what a defined benefit plan would cost—than deal with a total that "jumps all over the place" year to year, he said.

Legal unknowns

Another factor is uncertainty as to what Congress will do to strengthen defined benefit funding rules, and how it will address the issue of cash balance plans, which are a type of defined benefit plan. Plan sponsors for some time have been hoping Congress will clarify the legal uncertainty surrounding cash balance plans, particularly after a 2003 ruling by a federal judge in Illinois that IBM's cash balance plan discriminated against older employees. IBM is appealing that decision.

Plan sponsors are "simply fed up with the pension rules, with the volatility of pension costs, with the complications of running pension plans, and with the legal haze that exists around cash balance plans," said Hewitt's Mr. Johnston. "I think that the general sense is that the pain of running a defined benefit plan is not worth the stability of benefits that it provides to employees," he said.

"If Congress finally says cash balance plans are OK, then I suspect that there is still some life in the old defined benefit system, and employers are more likely to change the de-

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Plans: Desire for certainty, savings drives shift

Continued from previous page

sign of their plans somewhat, but at least continue with a defined benefit plan," he said.

On the other hand, said Mercer's Mr. Fuerst, if Congress approves legislation strengthening defined benefit plan funding that "is too stringent and really puts employers in a situation where they don't feel they have many options with regard to how they do that, that could accelerate the trend of people moving" to defined contribution plans.

Return to DB?

Still, long-term demographic trends could rekindle employer interest in defined benefit plans, some say. Mr. Fuerst said over the next five to 10 years, as many baby boomers retire, "many companies are going to be trying to retain workers longer, because there's a dearth of workers in the generation behind the baby boomers to replace them."

As a result, employers are "going to have to develop plans that are more attractive to these workers, but it remains to be seen what that will be. In the recent past, many mobile workers have said they want defined contribution plans," said Mr. Fuerst. But, as people get closer to retirement, they have a greater appreciation for traditional pension plans, he said.

Stewart D. Lawrence, senior vp and national director-corporate practice at The Segal Co. in New York, said that with an aging population, employers must answer an important question: "Are you going to have the right compensation package, in all forms, that will be attractive to an older workforce in a 'war-for-talent' environment?"

> "Are you going to have the right compensation package, in all forms, that will be attractive to an older workforce in a 'war-for-talent' environment?"
>
> **Stewart D. Lawrence**
> **The Segal Co.**

"For the short term, you'll see employers that are reacting to financial pressures" in moving away from defined benefit plans, said Mr. Lawrence. But that is "because the workforce and talent-management pressures haven't fully manifested themselves," he said.

"There are organizations that have never had a defined benefit pension plan who are seriously thinking about it right now" because of concerns over their aging workforce, retirees' income security and the need to compete and be an employer of choice, said Mr. Glickstein.

In a move to attract and retain employees, El Segundo, Calif.-based Aerospace Corp. is restoring its once-frozen traditional pension plan. The company is modifying both its defined benefit plan and its defined contribution plan, and is combining them under a single new program (*BI*, June 27).

Employer concern for employee welfare may also be a factor. The Nebraska Public Employees Retirement System introduced a cash balance plan option in January 2003 for about 25,000 of its employees, after a study revealed that people were retiring with inadequate income, said Lincoln-based Executive Director Anna Sullivan. About 30% of employees decided to move to the cash balance plan from the defined contribution plan.

Employees have little time to manage their own investments, but in a cash balance plan, the investment of plan assets is handled by professionals, said Ms. Sullivan. The system has also saved on mutual fund fees, she said. "The bottom line is that, with the same amount of money, we can provide a better benefit for our employees," she said.

Most with retiree Rx to take Part D subsidy, weigh future options

By SALLY ROBERTS

With the Jan. 1, 2006, plan year nearing, most employers with retiree health care plans have opted to maintain their existing prescription drug plans and take a rich government subsidy created by a 2003 federal law.

That law—the Medicare Prescription Drug, Improvement and Modernization Act of 2003—added a prescription drug benefit to the Medicare program, effective Jan. 1, 2006.

Under the new Medicare law, employers that provide prescription drug coverage to retirees that is at least actuarially equivalent to Medicare Part D are eligible for a 28% tax-free federal subsidy of drug costs between $250 and $5,000 per beneficiary. This amounts to roughly $550 to $600 per member.

But while the tax-free subsidy is expected to reduce qualifying employers' overall retiree health care liabilities by billions of dollars, it may not be the most financially advantageous option down the road.

Indeed, benefit consultants say they expect a gravitational pull away from the subsidy beginning in 2007 as other money-saving options for employers permitted under the law develop further and become more widespread and available in the market.

Such options include coordinating drug coverage with a qualified prescription drug plan, converting existing plans into qualified self-insured PDP plans, or purchasing a fully insured PDP or Medicare Advantage product that provides Part D coverage—so called MA-PDs.

But due to the complexity surrounding such options and timing issues, taking the federal subsidy and keeping existing retiree drug benefit plans intact was the most expedient and least disruptive option for the 2006 plan year, consultants say.

"It was really just timing," said Edward Kaplan, national health care practice leader at The Segal Co. in New York. Employers start plan-

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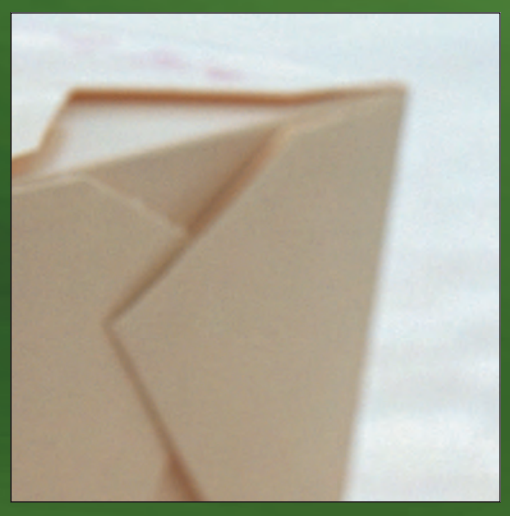

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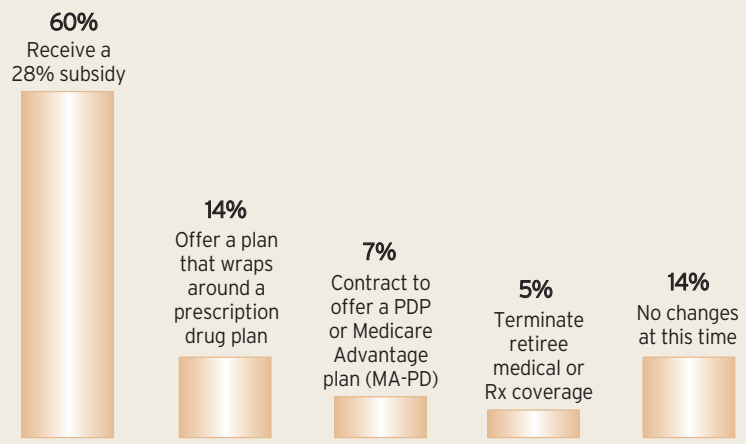
Part D planning: What will employers do?

According to a survey of plan sponsors with at least 500 employees



Source: Mercer Human Resource Consulting

Retiree: Most plan to take subsidy next year

Continued from page 20

ning for enrollment in the summer, and it wasn't until just recently that alternatives such as private Part D or MA-PD plan offerings became available, he said.

"It was the path of least resistance for '06," Mr. Kaplan said.

"We did an extensive review… and we are taking the subsidy," said Janice Pushaw, director of global benefits strategy at Whirlpool Corp. in Benton Harbor, Mich. "The timing of the information coming out—for large organizations that are on a 1-1 calendar year, it just doesn't fit. You can't tell your retirees, 'We're going to send you to this new plan when you really don't know what the new plan is,'" she said. "That was a huge concern for us."

"We'll absolutely look at it again next year, just because we look at all of our benefit costs every year, and if there are any opportunities, we want to evaluate them and make sure we're making the best decision for the retiree, active employee and the company," Ms. Pushaw said.

Whirlpool is not alone.

An internal survey of clients conducted by Watson Wyatt Worldwide, for example, found that 81% of its retiree plan sponsor clients were planning on taking the federal subsidy, at least for the first year.

"What happened this year, because the subsidy became the most administratively viable and feasible and expedient method," most employers went that route, said Cara Jareb, director of the retiree medical consulting practice for Watson Wyatt in Arlington, Va.

"But I think we'll see some more variations going forward, because there are so many alternatives under the law. It just became difficult to utilize and implement some of those alternatives, given the time frame and the unknowns," Ms. Jareb said.

"There will certainly be a movement by some employers away from the subsidy, either to a complete exit from providing direct coverage or to one of the alternative coordination-type approaches," said David Osterndorf, a principal with Towers Perrin in Milwaukee. "The percentages are somewhat of a guess at this point, but it could be as many as one-third of the employers this year taking the subsidy moving away from that for 2007."

> "If there are any opportunities, we want to evaluate them and make sure we're making the best decision for the retiree, active employee and the company."
>
> **Janice Pushaw**
> **Whirlpool Corp.**

Other options

Employers that do not meet the Medicare law's equivalency test or do not want to pay for the required testing, though, may turn to an approach in which direct federal subsidies are not provided.

Under this option, employers can provide prescription drug benefits from a PDP that supplements or wraps around Part D benefits similar to what they might be doing today with wrap-around coverage for Medicare Parts A and B.

In a recent Mercer Human Resource Consulting survey of 257 retiree plan sponsors, 14% said they would offer a plan that wraps around or integrates with a PDP for 2006.

When asked why they were taking this approach, 30% said they would save more money than they would if they accepted the subsidy, while 22% said they wanted to avoid the cost and effort of equivalency testing. Another 22% said they were opting for this approach because they believe their plan will not pass the required test.

Another option for employers wanting to continue offering their current retiree drug benefit would be to convert it to a qualified PDP plan in which Medicare would reimburse—under a schedule—the plans for prescription drug costs.

While very few retiree plan spon-

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Retiree: Most taking subsidy

Continued from page 22

sors opted to do this for 2006 due to the timing and the complex process involved, more will do so in the future because the cost savings could exceed those associated with the 28% subsidy, consultants predict.

"Over the long term, as employers understand their true drug spending and the rules of becoming a PDP become more understandable and the PBMs provide the level of service employers need to become a PDP, some employers may look to that as a more viable option," said Barry Barnett, a principal and health care consultant with PricewaterhouseCoopers HR Services in New York.

But rather than taking on the full prescription drug benefit risk, more employers will transfer those liabilities to a private PDP or MA-PD plan as those plans become more widespread in the market, consultants say.

"Long term, many employers will find out that the subsidy is good but not as advantageous as divesting themselves of the liability entirely—by just paying for their Medicare-eligible retirees to join somebody else's Part D or Medicare Advantage plan," Segal's Mr. Kaplan said.

"The good news is, there are a lot of private plans that are embracing the market. So we're going to be able to look at some very competitive offers that are maybe more attractive to retirees than what the employer has today," he said.

Medicare Advantage plans—generally health maintenance organizations—provide coverage to retirees who opt out of the traditional Medicare indemnity program in favor of richer benefits. Aided by an infusion of more than $1.3 billion in additional funding in 2004 and 2005, Medicare Advantage plans have been expanding their scope, and many are beginning to offer designs that include Part D coverage.

But as Ms. Jareb pointed out, given the history associated with health plans that contracted with Medicare to provide coverage to Medicare beneficiaries, some employers might be hesitant to jump back into the market.

In the past, employers have seen "Medicare HMOs evolve, come into the market, be fairly viable, and then all of the sudden close down and get out of the market or increase rates dramatically," she said.

"I think there is some hesitation from employers to say, 'We're going to jump into this wholeheartedly,' knowing that if the government changes its reimbursement…and that if these plans don't work out…then employers are going to have to figure out some other strategy," Ms. Jareb said.

Employers pushing their PBMs for revenue info, rebate funds

By KAREN PALLARITO

When the University of Minnesota began searching for a pharmacy benefit manager to oversee nearly $35 million in annual prescription drug spending that it had carved out from its health plan administrators, the self-insured institution avoided using the same old boilerplate.

The proposed contract didn't dwell, for instance, on the discount off of average wholesale prices that PBMs pay to the pharmacies. University officials had a bigger goal in mind: They wanted to expose the financial incentives that might cause a PBM to, say, favor one drug over another.

"We wanted to understand every revenue source they have," said Stephen W. Schondelmeyer, head of the university's Department of Pharmaceutical Care and Health Systems in Minneapolis and a member of the pharmacy benefit negotiating team. "Our goal is to make sure that they aren't getting payments that might induce them to engage in behaviors that are adverse to our interests," he said.

Contract negotiations are nearly complete, with a three-year agreement expected to take effect on Jan. 1, 2006. Once an agreement is signed, the as-yet unidentified contractor will have to disclose its money trail, including any manufacturer rebates it receives, and the actual dollar amount for each drug. The PBM must return that income to the university.

> "We wanted to understand every revenue source (PBMs) have."
>
> **Stephen W. Schondelmeyer**
> **University of Minnesota**

The University of Minnesota's contracting standards "probably are a great model for other businesses," said Sharon Treat, a former Maine legislator who now serves as executive director of the National Legislative Assn. on Prescription Drug Prices, a Hallowell, Maine-based forum for state lawmakers interested in lowering drug costs.

Many employers, in fact, are scouring the fine print of their PBM agreements in the quest to lower drug costs. A few, such as New York state, have sued their PBMs for alleged abuses of fiduciary duty, including efforts to conceal rebate revenue. Some are rewriting contracts, requiring drug benefit managers to fully disclose and pass through rebates and other discounts from manufacturers.

Louisiana, for one, switched vendors in July 2004 following an extensive overhaul of contract terms. The new agreement, which covers 180,000 lives and affects $150 million in annual pharmacy expenses, includes fiduciary language borrowed from a controversial Maine law regulating PBMs—a law Ms. Treat sponsored when she was state Senate majority leader.

"We took that language and put it in our (request for proposal) and we said, 'You will act as our fiduciary,'" said A. Kip Wall, chief executive officer of Louisiana's Office of Group Benefits in Baton Rouge.

The contract requires Catalyst Rx, the PBM unit of Rockville, Md.-based HealthExtras Inc., to funnel back all rebates. In turn, the state boosted the fee it pays for adminis-

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PBMs: Employers pushing for revenue info, rebate funds

PBM principles

The HR Policy Assn. has created a set of principles to ensure PBM transparency, including:

- **Complete disclosure** to employers and employees of actual cost of drugs.
- **Competition** among PBMs based on services to the client, not revenue from drug manufacturers.
- **Incentives** in pharmaceutical purchasing that ensure that patients purchase drugs for their value, not their copayment level.

Source: HR Policy Assn.

Continued from page 24

trative services above the level it used to pay its former PBM, AdvancePCS, now part of Nashville, Tenn.-based Caremark Rx Inc.

It's too soon to know whether the trade-off will save money in the long run, Mr. Wall conceded. "But this way," he said, "we feel we have more control over the process, because we're specifying what happens to the rebate."

Seeking disclosure

That's also the thinking behind a set of PBM disclosure requirements unveiled in August by the 52-member Pharmaceutical Purchasing Coalition of the HR Policy Assn., a Washington-based public policy organization representing senior human resource executives at the nation's largest companies. The coalition, whose members cover 5 million lives and collectively spend more than $3.7 billion a year on prescription drugs, identified three PBMs that met all of the stipulated criteria. They are: Aetna Pharmacy Management, a unit of Aetna Inc. in Hartford, Conn.; privately held MedImpact Healthcare Systems Inc. of San Diego; and Walgreens Health Initiatives Inc., a unit of Walgreen Co. in Deerfield, Ill. Certified vendors have agreed, among other things, to disclose and pass on to clients their acquisition costs for retail and mail-order prescriptions as well rebates they receive from drug manufacturers.

The coalition, which worked closely with Hewitt Associates Inc. of Lincolnshire, Ill., in assembling its model, estimates that members collectively could save up to 9% on drug costs by using the certified vendors.

Demanding transparency is a first step toward fostering meaningful discussions between PBMs and employers about which drugs are the best therapies and the most cost-effective, said Marisa L. Milton, associate general counsel and director of health care policy in Washington for the HR Policy Assn. "If you've got significant revenue streams flowing back and forth between the manufacturer and the PBM, that's a big conflict in terms of what the employer and the employee ultimately need," she said.

Dr. Paul Wernick, head of PBM consulting at Watson Wyatt Worldwide in Minneapolis, offered a historical context for employers' latest demands.

Years ago, he said, PBMs would guarantee clients a certain share of manufacturer rebates, say $2 or $4 per prescription. But in the face of stiff competition to get their products on drug formularies, manufacturers began doling out more generous price breaks. Over time, employers got wise and began clamoring for a cut of rebate revenue, sometimes as much as 80 or 90 percent.

"Now," he said, "they're saying, 'Hey, it's our products; we're paying for it. We want 100% of the rebate.'"

Who's pushing for a rebate giveback? "Most employers who are large enough to demand it," said Dr. Wernick, a former chief medical officer at St. Louis-based Express Scripts Inc., a major PBM.

California Public Employees' Retirement System, the nation's third-largest purchaser of health care benefits, is certainly no exception. An RFP issued in May requires the winning bidder for its PPO drug benefit management business to assume a fiduciary role. The PBM it selects must show that its formulary has drugs of the highest quality and value based on clinical findings. It also must fully disclose and pass through manufacturer rebates. The three-year contract, effective July 1, 2006, affects around 296,000 PPO members and more than $320 million in annual drug spending.

"Transparency is our chief goal, but capturing revenues is a close second," a CalPERS spokesman said.

CalPERS' board will begin winnowing the field of seven contenders in October. The actual contract could be announced as early as mid-November.

Meanwhile, some PBMs continue to resist employer efforts to peek behind the veil. The HR Policy Assn.'s purchasing coalition received 19 responses to its RFP. But in the end, only three met the criteria it set out.

"What people really need to be demanding is to see all the inner workings of the black box," said Elizabeth Ready, executive director of United Scripts Administrators, a nonprofit PBM in Lincoln, Vt., launched by the National Legislative Assn. on Prescription Drug Prices, a five-year-old organization directed by state legislators to make prescription drugs more affordable.

The University of Minnesota's Mr. Schondelmeyer agrees. "We don't want any hidden black boxes paying (PBMs) to do something we don't know about that's not in our interest." Oftentimes, he added, that's what rebates become.

Between the Lines

Compiled by Joanne Wojcik

CDHP ads not directed at consumers

Few people outside of employee benefits circles have a clue what "consumer-driven health care" is, yet a Colorado insurer has launched a regional television ad campaign touting its virtues.

But the spots, which appear during evening newscasts in the Denver, St. Louis and Kansas City markets, aren't likely to make things any clearer, because they don't provide any explanation of consumer-driven health care. Instead, they feature archival footage of the construction of Hoover Dam, with a narrator saying: "Planning, ingenuity, and an awful lot of the toil and sweat. That's what it took to build the great West. And realizing the promise of consumer-driven health care demands nothing less. Great-West. New ideas from the frontier of health care."

The ads may be cryptic, said John Aberg, assistant-vp marketing at Great-West Healthcare of Greenwood Village, Colo. But they are not directed toward the average consumer, but rather, toward building brand awareness among agents, brokers and employers, he said.

"We're trying to build an image of grit and courage that plays off the name of Great-West," while comparing how employers develop their health benefit programs with the kind of planning and ingenuity it took to build Hoover Dam, Mr. Aberg said.

Great-West, which introduced its CDHP called "Consumer Advantage" in January 2004, has 84,596 members enrolled in the plan.

The ad can be viewed online at *www.greatwesthealthcare.com/C9/advertisements/default.aspx*. Click on "Hoover Dam, August 2005."

No poltergeist exclusions?

There may be a ghost of a chance that the owners of a Japanese restaurant in Orlando, Fla., will have coverage to help them defend a lawsuit filed against them for refusing to move into an allegedly haunted building.

Christopher and Yoko Chung, owners of Amura Japanese Restaurant, backed out of their lease at the Church Street Station after they said they discovered the disembodied spirits of the previous tenants were still occupying the property. The landlord sued, seeking $2.6 million in damages.

PHOTO: PHOTOGRAPHERS SHOWCASE

Church Street Station

The Chungs also declined an offer from the landlord's attorney to perform an exorcism to evict the ghosts, saying their religion would not permit them to participate in such a ritual. As Jehovah's Witnesses, the Chungs are not permitted to encounter or associate with spirits or demons, according to Lynn Franklin, their attorney.

The Church Street Station entertainment complex is the former site of a brothel where prostitutes allegedly killed their illegitimate children to protect the reputations of their wealthy clients. Among the reported apparitions encountered are wailing babies and a ghoulish piano player.

The Chungs are required to notify their insurer if there are any events that might trigger coverage, such as a lawsuit, but Ms. Franklin said she did not know whether they have done so yet. She also declined to provide coverage details.

"It could become an interesting issue. There aren't a lot of reported (coverage) cases involving hauntings," she said.

Fiery insurance protest

Earlier this month, a man rammed his car into the Nippon Life Insurance Co. headquarters in Osaka, Japan, and then set himself on fire to get the attention of the insurer.

According to news reports, Takumi Okada had sued Nippon Life over a change in the beneficiary on several insurance policies, but he lost his battle in court.

Mr. Okada suffered serious burns before being arrested for "obstructing business."

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

COMINGS & GOINGS - INDUSTRY

Insurers:

Harleysville, Pa.-based Harleysville Group Inc. has named **Robert G. Whitlock Jr.** as senior vp and chief underwriting officer, effective Oct. 1. **Allan R. Becker** will replace Mr. Whitlock as chief actuary. Previously, Mr. Becker was vp and senior actuary at ACE USA.

New York-based Zurich Global Energy has appointed **Chris Barber** as global energy onshore property manager for Asia in Hong Kong. Previously, he was a senior underwriting specialist.

The Citizens & Hanover Insurance Cos. in Worcester, Mass., has named **John C. Robinson** regional president of its Midwest region. Most recently, he was president and chief executive officer for Liberty Mutual Insurance Co.'s regional agency market.

Managed care:

Blue Cross & Blue Shield of Minnesota in Eagan has promoted **Colleen Reitan** to president and chief operating officer. Formerly, Ms. Reitan was executive vp, operations.

Also at BC/BS of Minnesota:

● **Denise McKenna** has been named senior vp, operations. Formerly, she was vp, enterprise service.

● **Roger Kleppe** has been named senior vp. Previously, he was vp, human resources and facilities services.

Reinsurance:

PartnerRe Ltd. has named **Emmanuel Clarke** as head of the property and casualty business unit, effective Jan. 1, 2006, succeeding **Jean-Marie Nessi**, who has decided to pursue other business interests. Currently, Mr. Clarke is deputy head of Pembroke, Bermuda-based PartnerRe's worldwide specialty unit.

Brokers:

Willis Group Holdings Ltd. has named **Roger Wilkinson** as managing director of Asia. Mr. Wilkinson, formerly chairman and CEO of the greater China region for Marsh & McLennan Cos. Inc., will be based in Hong Kong.

And at Willis' San Francisco office:

● **Alan Fine**, formerly senior vp of alternative risk solutions-strategic liabilities and mass torts practice leader at Marsh, has been named managing director of Willis Risk Solutions.

● **Robert Gall**, formerly senior vp of the property claims practice at Marsh, has been named senior vp and risk solutions property team leader.

● **Chip Holden**, formerly senior vp and branch manager at ACE USA, has been named senior vp of Willis Risk Solutions.

And **Tim Kolojay** has been named senior vp in Willis' captive and actuarial practice in Burlington, Vt. Previously, he was president of Insurance Industry Consultants L.L.C.

Other providers:

Paul Braithwaite has been named managing director of the financial services practice of Chicago-based Navigant Consulting Inc. Before joining Navigant, he was president of PB Risk Advisors.

Andrew West has joined New York-based Buck Consultants Inc. as a principal and compensation leader for the technology industry in the San Francisco office. Previously, he was a senior consultant at Towers Perrin.

Also at Buck, **Jeffrey Leonard** has been named principal and office manager for Buck's office in Cincinnati. Previously, he was a retirement practice leader for Mercer Human Resource Consulting.

Undocumented worker eligible for comp

Maryland law not specific on status of such staff: Court

ANNAPOLIS, Md.—An undocumented worker injured in the course of employment is a covered employee eligible for workers compensation benefits under Maryland law, the state's highest court ruled last week.

The Maryland Court of Appeals' ruling in *Design Kitchen & Baths vs. Diego E. Lagos* stems from a claim filed by Mr. Lagos. He was injured in August 2001 while at work operating a saw for Design Kitchen, court records show.

The employer and insurer, Princeton Insurance Co., argued that Mr. Lagos' workers comp benefits must be denied because his illegal alien status prohibited him from entering into an employment contract. The employer and insurer also argued that because Mr. Lagos' claim conflicts with the Immigration Reform and Control Act of 1986, their employment contract is void regardless of whether the employer or employee violated federal law, court records show.

The Maryland Workers Compensation Commission and a trial court both disagreed and ruled in favor of Mr. Lagos.

The Court of Appeals affirmed the ruling. It found that while Maryland's workers comp law does not specifically address undocumented worker status, it does state that any uncertainty is to be resolved in the claimant's favor.

—By Roberto Ceniceros

Equitas to keep lobbying on U.S. asbestos reform

Reinsurer seeks to protect interests

By SARAH VEYSEY

LONDON—Equitas Ltd. will continue to monitor U.S. asbestos reform efforts to try to ensure that any legislation is not potentially harmful to the runoff reinsurer, Equitas' CEO told attendees at its ninth annual open meeting of reinsured names.

London-based Equitas, the runoff reinsurer for the pre-1993 longtail liabilities of Lloyd's of London syndicates, has for some time been lobbying reformers in the United States about fears that a federal asbestos fund could discriminate against Equitas or even require the company to lodge funds that exceed its current reserves.

During the year ending March 31, Equitas boosted its reserves for asbestos by £167 million ($315.6 million), bringing its total gross undiscounted reserves for asbestos to £3.4 billion ($6.42 billion).

"We believe that our reserves for asbestos are appropriate and that a fair-minded commission will seek from Equitas no more, and possibly less, than we have available for such claims," said Scott Moser, chief executive officer of Equitas.

"But despite our belief, we cannot guarantee that the commission will not seek more than we can pay," he added.

He said Equitas would continue its lobbying efforts to protect its interests and those of reinsured names, former individual investors in Lloyd's whose liabilities are now reinsured by Equitas.

Mr. Moser said he considered the chances of federal asbestos reform being enacted before the end of 2005 as "south of 50%."

But he said the progress of the legislation was a "moving picture."

Meanwhile, Mr. Moser said, Equitas will continue to seek global settlements of its asbestos and other liabilities with policyholders.

Since March, Equitas has announced a series of settlements with policyholders that will cost the runoff reinsurer $300 million (*BI*, Sept. 5).

Glenn Brace, claims director of Equitas, said that while the company was encouraged by its ability to reach such deals, asbestos still remains a huge risk to its survival.

"We do not have ultimate control over the size of the assureds' underlying liabilities. We still have many asbestos assureds who have not yet begun to negotiate with us," he said.

"While we have enjoyed good progress in the resolution of direct asbestos claims, there remains much work and many risks," he said.

Mr. Brace said Equitas to date has

See EQUITAS/page 30

Lloyd's post-1993 runoff liabilities climb

The total amount of liabilities of Lloyd's of London syndicates in runoff but not reinsured into Equitas Ltd. now exceeds the liabilities of Equitas, according to a study of the runoff market conducted by KPMG L.L.P. in conjunction with the Assn. of Runoff Companies.

According to the study, the total liabilities of Lloyd's runoff syndicates at the end of 2004 were £7.2 billion ($13.82 billion), compared with the total liabilities of Equitas—the runoff reinsurer for the pre-1993 longtail liabilities of Lloyd's of London syndicates—which stood at £4.6 billion ($8.83 billion).

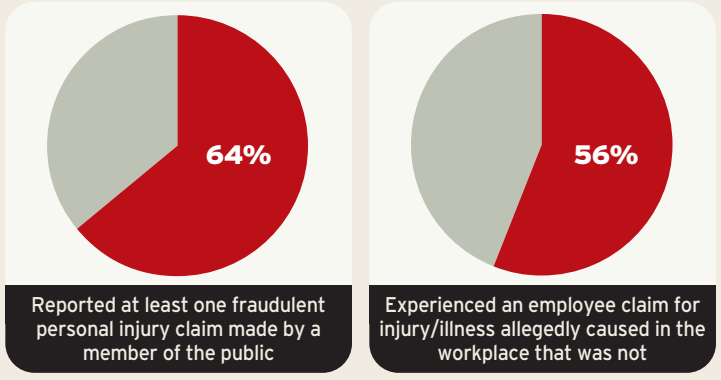
Steve Goodlud, a director in KPMG's corporate recovery insurance solutions unit, said most of the runoff liabilities of Lloyd's syndicates stem from the 2001 year of account, which includes losses from the Sept. 11, 2001, terrorist attacks in the United States.

The total liabilities of the nonlife runoff market in the United Kingdom in 2004 are estimated at about £38.4 billion ($73.72 billion), according to the study, down £2.7 billion ($5.18 billion) from 2003.

—By Sarah Veysey

Big targets

Firms employing more than 500 staff that reported fraudulent claims.



Source: Market & Opinion Research International

Large firms more often victims of claims fraud

By DOUGLAS McLEOD

Commercial insurance claims fraud costs businesses in the United Kingdom roughly $1 billion a year, or about 5% of premiums paid to insurers, a study by a London-based market research firm concludes.

About 15% of claims submitted by businesses to their insurers are exaggerated, the study found. Meanwhile, large companies are themselves more frequently the targets of fraud by employees or members of the public than smaller firms, with nearly two-thirds of large companies reporting that they have been victimized.

The study was conducted by London-based Market & Opinion Research International and commissioned by the Assn. of British Insurers and several insurers and service providers.

MORI conducted phone interviews earlier this year with people responsible for insurance management at 1,102 U.K. companies ranging in size from sole proprietorships to companies with more than 500 employees.

The research firm separately interviewed 323 company employees on fraud issues, and obtained claims data from insurers.

Combining both fraudulent claims by businesses against insurers and fraudulent claims against businesses by their own employees and others—which are passed on to insurers—MORI concluded that the claims total about £550 million annually, or about $1 billion.

Claims that are entirely bogus—those from staged accidents, for example—are the most costly but also less frequent than otherwise legitimate claims that are inflated, the

See FRAUD/page 30

Solvent runoff ruling helps creditors organize

By CAROLYN ALDRED

EDINBURGH, Scotland—U.K. insurers and reinsurers seeking to wind up books of runoff business through solvent schemes of arrangement must provide creditors with contact information on other creditors of the companies, a Scottish court has ruled.

The Sept. 5 ruling by the Court of Session in Edinburgh, Scotland, will enable creditors to organize more effectively in opposition or support of the scheme for defunct insurer Scottish Lion Insurance Co., which went into runoff in 1994, observers say.

The ruling is one of several focusing on solvent schemes of arrangement, which is a runoff mechanism that is becoming increasingly popular in the United Kingdom.

The latest decision, which was contested by Scottish Lion, "may have significant implications for companies proposing such schemes in the future and for the policyholders affected by them," according to a statement issued by London-based Kendall Freeman, the law firm acting for one of the creditors.

Prior to the ruling, only the company proposing a solvent scheme of arrangement was able to contact the creditors affected. As a result, discussion between creditors of a solvent insurer implementing a scheme of arrangement had been denied, Kendall Freeman said.

But Dan Schwarzmann, a partner in the London office of PricewaterhouseCoopers L.L.P. who is advising the Scottish Lion scheme, said the impact of the ruling likely will be limited.

"Creditors already talk to one another," said Mr. Schwarzmann. "There will be creditors who oppose the scheme and those who believe it to be the best way forward so disclosure of all the creditors could work both ways," he said.

Solvent schemes of arrangement have been used in the U.K. insurance market for more than a decade. They are used as a means of winding up insurance companies without going into a protracted liquidation, proponents of the programs say.

The Scottish Lion ruling comes two months after a London Court ruling in which a group of large U.S. policyholders successfully challenged the solvent scheme of arrangement put forward by British Aviation Insurance Co. Ltd. (*BI*, Aug. 1). In that ruling the court held that the solvent scheme was "unfair" because it would transfer back to policyholders unknown liabilities that they had sought to insure.

Supporters of U.K. solvent schemes of arrangement, however, were encouraged by a Scottish court decision on Sept. 1 that sanctioned a solvent scheme of arrangement put forward by M&G Re, now owned by Swiss Re.

The judge in that case said he was influenced by the fact that the creditors of M&G Re were mainly insurance companies with a sophisticated knowledge of the industry and their rights.

Updates

Allianz restructures, buys all of RAS

Munich-based insurance group Allianz A.G. announced it is repositioning itself as a European company under European Union rules that will allow it to be incorporated as a European stock company. As part of the changes, Allianz said it would buy out the minority shareholders in Italian subsidiary Riunione Adriatica di Sicurtà, in which it currently holds a 55.4% stake. In addition, Allianz announced the appointment of Clement Booth, currently chief executive officer of London-based Aon Re International, a division of Aon Corp., to the management board of Allianz A.G. A spokesman for Aon said that no replacement for Mr. Booth had been announced.

Reinsurance prices drop in Latin America

Reinsurance prices have been dropping in the Latin American market, especially for the largest risks, as competition has increased, according to research from Standard & Poor's Corp. So-called "jumbo" risks have seen prices drop by up to 20% for catastrophe programs and facultative property/casualty business, S&P says. However, reinsurer underwriting practices generally have remained prudent, the New York-based ratings agency found. Total ceded premiums in the region were $8.7 billion in 2004. Premiums from nonproportional contracts totaled around $700 million, S&P said.

Another HIH exec barred from industry

The Australian Prudential Regulation Authority has banned Gregory Brown from being a director or a senior manager of a general insurer. Sydney-based APRA found Mr. Brown, formerly group general manager, corporate, at HIH Insurance Co. Ltd., in 1999 and 2000 improperly inflated or manipulated divisional results and therefore presented a misleading picture of the company's financial position. Several other former directors of HIH have been banned by APRA for their roles in the company's collapse.

Catlin profits rise in first six months

Bermuda-based Catlin Group Ltd. announced profits of $111.2 million for the first six months of 2005, up 16% from the comparable period last year. Catlin, which operates a Lloyd's of London syndicate, a Bermuda-based insurer and a U.K. insurer, said the result was due in part to disciplined underwriting. The company said its gross written premiums for the first half of 2005 decreased 16.4% to $781.7 million. The company's expected net loss from Hurricane Katrina is $125 million.

Fraud: Invalid claims hit firms

Continued from page 29

survey found.

Up to 15% of commercial claims are exaggerated, the MORI study concluded.

Surveying attitudes about inflated claims, the research firm found that workers at smaller companies are far more likely than those at larger companies to say the practice is acceptable. Overall, 8% of respondents said the practice is acceptable, citing reasons that included recovering uninsured portions of a loss and recovering premiums paid to the insurer.

Businesses also reported that they have been victims of fraudulent claims by employees and others.

Sixty-four percent of surveyed companies with more than 500 employees said they had been targets of at least one fraudulent personal injury claim. Similarly, 56% of the largest companies reported receiving claims for employee injury or illness that were falsely alleged to have occurred in the workplace, MORI found.

Following up on the MORI study, the ABI said it will work to improve communication among insurers, service providers and government regulators, and will push for fraud prosecutions to be given higher priority by law enforcement officials.

Along with the ABI, the MORI survey's sponsors included consultant Capita Insurance Services; claims manager Cunningham Lindsey UK; London-based law firm Davies Arnold Cooper; and insurers National Insurance and Guarantee Corp. Ltd., Royal & SunAlliance P.L.C. and Zurich Financial Services.

Equitas: Lobbying continues

Continued from page 29

resolved 48 of the largest direct pollution claims pending at the company's inception in 1996.

And the company continues to monitor other potential claims threats such as silica, Mr. Brace said.

He said that while Equitas does not consider silica claims to be "the next asbestos," it continually monitors potential new claims areas that could result in liabilities for syndicates reinsured by Equitas.

The company also faces some claims that are not asbestos, pollution or health claims, such as auto claims, he noted. During the year to March 31, Equitas reduced the volume of such claims against it by 18%, and such claims now represent about 23% of the company's portfolio, Mr. Brace said.

Canada: Law expands responsibility to more levels

Continued from page 4

nal liability for the failure to take reasonable steps to prevent bodily harm, lawyers say. "It codified a duty to protect in the workplace," said Edward T. McDermott, a partner with the labor and employment department of Osler, Hoskin & Harcourt L.L.P. who is based in Toronto.

Now, for an organization to be found guilty of committing a crime of negligence, the government will generally have to show that a representative of the organization committed the act and that a senior officer should have taken reasonable steps to prevent them from doing so, according to guidelines issued by the Department of Justice Canada.

To establish the intent necessary to find the organization guilty, C-45 requires that the senior officer or officers must have "markedly departed" from the standard of care that could be expected. For example, an organization might be convicted if a supervisor failed to give an employee the basic training necessary to perform his or her job and an accident occurred as a result of the inadequate training.

C-45 also expands the scope of individuals who can be held personally responsible for workplace accidents to include everyone from the supervisors who direct employees at the operational level to high-level executives. Because senior-level executives can be held criminally liable, the education of senior managers and directors on matters of health and safety has become a more immediate priority, said Sheikh Azaad, president of Toronto-based Atworkcanada Inc., which provides solutions for managing workplace disability and absenteeism.

The federal law also expands on health and safety rules to require employers to take all reasonable steps to protect any person who enters the workplace or may be affected by workplace activities. In other words, the responsibility is not just for the safety of employees, but also the general public.

Employers are responding by conducting hazard/risk assessments to determine the nature and extent of public access to the workplace and developing policies and procedures on public access to the work site, Mr. Azaad said. Employers are also putting in place physical measures that identify and communicate the risk potential to the public and expanding health and safety training to workers to include protection of the public, he said.

The amended criminal code raised the maximum fine for less serious offenses to $100,000, but it provides no limits on fines that can be imposed for serious, indictable offenses.

Only one prosecution has been bought under C-45 to date (see related story), but more prosecutions are inevitable, lawyers say. "We will see charges in the next six months, if not sooner," said Mr. Keith, who is currently representing two construction companies in Ontario that are being investigated for possible C-45 violations.

Employers, though, will face C-45 prosecutions only in the most extreme circumstances, with most workplace safety violations continuing to be handled within the regulatory environment, said Jason Beeho, an associate in the labor and employment group of Blake, Cassels & Graydon L.L.P. in Toronto. "Criminal prosecutions will remain unusual in the health and safety sphere," he said.

While the legislation has an impact on risk managers, those with good programs and good due diligence already will have taken the necessary steps to protect workers, said Robert Patzelt, group corporate counsel and risk manager for Bedford, Nova Scotia-based Scotia Investments Ltd.

See CANADA / next page

AFTER THE STORM

Reinsurance: Rate increases likely as market absorbs massive loss

Continued from page 1

ty programs that are currently being placed in the market are seeing 25% to 30% rate hikes, he said.

Even though the full extent of losses from the storm was still unclear last week and firm estimates are likely weeks away, "it is clear that it is going to be a market-changing event," said David Priebe, president and CEO Europe of Guy Carpenter & Co. Ltd. in London.

In general, reinsurers are in a strong financial position and will be able to pay claims from the storm, but the huge losses expected from Katrina will inevitably drive up rates in several lines of business, he said.

While the loss will impact largely property lines in the primary insurance market, several areas of the reinsurance market will be affected as, based on an overall loss of about $35 billion, the loss will likely represent a significantly larger proportion of that market, said Patrick Thiele, president and CEO of PartnerRe Ltd. in Bermuda.

Property catastrophe and property per-risk programs will likely face significant rate increases, and casualty and motor reinsurance coverages in the United States may at least stop falling, given the likely magnitude of the loss, he said.

If the market loss it at the higher end of current estimates, then it would have "the potential to, at least partially, change the industry," said Benjamin Gentsch, executive vp responsible for specialty lines at Zug, Switzerland-based Converium Holding Ltd.

"No one is talking about price reductions" anymore, he said. The size of the loss could erode some capital in the industry, and that could lead to a stabilization of the market and rate increases in certain lines, he said.

There is a consensus building that the marketwide insured loss from the hurricane could be in the region of $50 billion to $60 billion, said Hans-Peter Gerhardt, chief executive officer of AXA Re, the reinsurance arm of Paris-based insurance group AXA S.A.

The loss likely will prompt retrocessional reinsurers to substantially increase prices, because many retrocessional programs will be hit by the loss, which in turn will mean that reinsurance rates will rise, he said.

This likely will affect the market globally and across many lines of coverage, since there will be sizeable marine energy, property and also liability losses, he noted.

Indeed, reinsurance rates globally likely will increase as a result of the loss, not just rates for U.S. catastrophe business, said Victor Peignet, managing director of the nonlife operations of Paris-based reinsurer SCOR S.A. The loss will have a worldwide effect, and rates likely will stabilize "across the board," he said.

And as the insured loss picture worsened, the major rating agencies put the financial strength ratings of various insurers and reinsurers under review. In addition, Oldwick, N.J.-based A.M. Best Co. downgraded Olympus Reinsurance Ltd. of Bermuda to B+ from A- (see story, page 35).

> "There's only one way for prices to go. Rates have to go up."
>
> **Jonathan Isherwood**
> **GE Insurance Solutions**

But the reinsurance industry, in general, should be able to withstand the loss, Mr. Thiele said. "We can respond to a $35 billion event…we'll get through this without too much of a hiccup."

Lloyd's of London has modeled various catastrophe scenarios, though none exactly like Katrina, and is confident the market will be able to handle losses stemming from Katrina, said Julian James, head of worldwide markets at Lloyd's. Lloyd's last week estimated its marketwide loss at $2.55 billion.

Gauging the loss

Early last week, the world's second-largest reinsurer, Swiss Reinsurance Co., more than doubled its estimated losses for Hurricane Katrina to $1.2 billion before tax, based on an estimated total loss for the industry of $40 billion.

And the world's largest reinsurer, Munich Reinsurance Co., which had estimated it would face 400 million euros ($489.9 million) in losses shortly after Katrina struck, said it will soon issue revised estimates.

Several other companies announced preliminary loss estimates last week, including:

- ACE Ltd. estimates that losses to the ACE Group from Hurricane Katrina will be approximately $450 million to $550 million after tax.
- Montpelier Re Holdings Ltd., net losses of between $450 million and $675 million.
- Endurance Specialty Holdings Ltd., net losses of between $375 million and $450 million after tax.
- Transatlantic Holdings Inc., pretax net losses of around $270 million.
- PXRE Group Ltd., net losses of $235 million after tax.
- AXA Re of Paris, net losses of about $200 million before tax.

In addition, XL Capital Ltd. said its net losses would be about 1.75% of the industry loss, while Platinum Underwriters Holdings Ltd. put its net losses at around 0.5% to 0.6% of the total and Everest Re Group Ltd. estimated its net share of the industrywide loss at "approximately 1%."

"We felt shortly after the event that this would be the largest (insured) catastrophe in history," said Kenneth LeStrange, CEO of Hamilton, Bermuda-based Endurance.

And the ultimate extent of insured losses could be determined in part by political pressure on the industry. For example, Mississippi Attorney General Jim Hood last week filed a civil suit seeking to invalidate exclusions for flood damage in homeowners policies.

Hannover Reinsurance Co., which writes a diverse book of property and casualty reinsurance worldwide, views Katrina as a likely $30 billion loss, of which reinsurers' share "could be as high as 60%," said Hans Rohlf, managing director and chief underwriting officer in Hannover Re's North American treaty division in Hannover, Germany.

Jonathan Isherwood, president of global property products for GE Insurance Solutions in Munich, Germany, noted that the insurance industry has benefited from a few years of strong rates and "a benign loss environment," but "this year has shown, even without Katrina, that the exposure is clearly still there," he said.

"If we as an industry say we price for exposure and loss experience, where it's relevant, then there's only one way for prices to go. Rates have to go up," Mr. Isherwood said. "It has to be a market-changing event. It's a wake-up call, and there will be lessons learned."

Regis Coccia and Sarah Veysey contributed to this report.

Canada: Law expands risks

Continued from page 4

"Good companies will run their businesses the right way regardless of whether there is a law saying this or that," Mr. Patzelt said. "Those that continue to be lax and casual expose themselves even further."

Risk managers are well aware of the importance of C-45, observers say. The Canadian arm of the Risk & Insurance Management Society Inc. will conduct a session to discuss C-45 issues at its annual conference in Montreal. The session will be conducted in English today from 10:30 to noon and repeated in French at 3:30 p.m.

Nowell Seaman, manager of risk management and insurance services at the University of Saskatchewan, said he believes C-45 has created awareness of occupational health and safety risk issues at the senior levels of many organizations.

"I am not sure that the bill has increased the attention that risk managers devote to OHS risks, because most already treat this area with the highest priority as a key risk category," said Mr. Seaman, who is the former chair of the RIMS Canada Council. "However, I am sure that many risk managers have found that the implementation of C-45 has been positive and has highlighted the importance of managing this area well across the organization."

GAO: Report urges uniform standards for RRG regulation

Continued from page 3

some RRGs to operate "in ways that do not consistently protect the best interests of their insureds," and which have led, in some cases, to RRG failures.

- The lack of full disclosure about certain aspects of RRGs, such as the lack of state guaranty fund protection for the groups .

Rep. Oxley requested the report because "recent shortages of affordable liability insurance have increased RRG formations, but recent failures of several large RRGs also raised question about the adequacy of RRG regulation," the report states.

The report follows a big increase—amid soaring premiums in the traditional market—in the last couple of years in the number of RRGs. For example, it notes that 117 RRGs were formed between 2002 and 2004 alone, more than the total for the prior 15 years, according to the report. Today, about 200 RRGs are operating.

But many RRGs have failed. From 1990 to 2003, 21 RRGs have been liquidated, including the Cayman Islands-based National Warranty Insurance RRG, which reported up to $74 million in losses in 2003, according to the report. RRGs no longer can be established outside the United States.

The report drew praise from regulators but a mixed reaction from RRG supporters.

Nebraska Insurance Director Tim Wagner said: "I think that the authors of the report have done a service to the RRG industry in attempting to define weaknesses in the system and providing recommendations that minimize the gaming the system and its intent." Mr. Wagner also chairs two of the three NAIC subgroups that are expected to review the report and make recommendations regarding it.

> "Good regulation for RRGs is not the same as good regulation for traditional insurers."
>
> **Steve Crim**
> **National Risk Retention Assn.**

Brian C. Donovan, chair-elect of the Minneapolis-based National Risk Retention Assn., which represents the risk retention group industry, said: "I strongly support a strong, consistent regulatory oversight within all domiciliary states." He is also president of Steel Tank Insurance Co., a Vermont-domiciled RRG.

"We are in support of a system that assures that all RRGs are responsibly structured, managed and regulated," according to a statement from Janice M. Abraham, president and CEO of United Educators Insurance, a Reciprocal Risk Retention Group based in Chevy Chase, Md.

While some RRG supporters said they back enhanced corporate governance requirements, several questioned the appropriateness of applying traditional regulatory standards to RRGs.

"Good regulation for RRGs is not the same as good regulation for traditional insurers," according to a statement by NRRA Chairman Steve Crim.

For example, the suggestion that all states require RRGs report their financials using SAP rather than GAAP would be "onerous," said Robert H. Myers Jr., NRRA's general counsel and managing partner with Washington-based Morris, Manning & Martin L.L.P.

Jon Harkavy, vp/general counsel of Arlington, Va.-based Risk Services L.L.C., an RRG and captive manager, questioned the report's reliance on the NAIC—a voluntary association of insurance commissioners—as a standard-setter.

Also questioning the NAIC's role was P. Kevin Brobson, an attorney with Harrisburg, Pa.-based Buchanan Ingersoll P.C. and chair of the NRRA's government affairs committee. In addition, Messrs. Brobson and Donovan said it was unnecessary to add additional wording to policies issued by RRGs to emphasize the lack of state guaranty fund coverage.

A few RRG supporters said they were concerned that the formation of new groups could suffer if federal and state officials adopt unreasonable requirements and their effectiveness in meeting commercial policyholders' needs.

Birny Birnbaum, executive director for the Center for Economic Justice in Austin, Texas, has a different view: "The simple recommendations of the GAO would create a level regulatory playing field and protect consumers."

The report, "Risk Retention Groups: Common Regulatory Standards and Greater Member Protections are Needed," is available at www.gao.gov.

AFTER THE STORM

Municipal bond insurers may rethink pricing after Katrina

Major impact unexpected, but final tally of losses from hurricane is still weeks away

By JUDY GREENWALD

Financial guarantee insurers are unlikely to take a significant hit from Hurricane Katrina, despite the $13.8 billion in public-finance bonds they insure in the region affected by the storm, say observers.

If issuers are unable to make timely payments on their insured bonds, the highly capitalized insurers need only pay principal and interest on them as they come due, observers note.

But Katrina also marks the first time financial guarantee insurers have been seriously affected by a major catastrophe, and it may lead them to rethink their underwriting criteria and ultimately raise rates, say some observers. Financial guaranty insurers basically had no losses related to the Sept. 11, 2001, terrorist attacks.

The AAA-rated insurers confer their rating agency-granted AAA on the bonds they insure, which lets municipalities that buy the insurance pay bondholders lower interest rates, more than offsetting the cost of the coverage.

In the Katrina-hit areas, the $13.8 billion in insured public-finance bonds is spread among a variety of sectors, including general obligation and other tax-supported bonds, as well as more specific types, such as health care and transportation, according to rating agency Standard & Poor's Corp. in New York.

Observers say single-site or enterprise issuers, such as hospitals, are probably more vulnerable to payment disruptions than the general obligation bonds, which have a larger and broader revenue base.

But the financial guarantee insurers are not expected to be significantly impacted by the hurricane, although it could be weeks or months before the final tally is known, observers say.

"The exposure that they might have is very minimal in relation to their investment portfolio and even more minimal than that in relation to their claims-paying ability," said Rick Marrone, Charlotte, N.C.-based director of tax-advantaged investments for Evergreen Investment

Continued on next page

Municipal bond insurer exposure

Major bond insurers' exposure in states affected by Hurricane Katrina in millions of dollars.

Company	Ala.	La.	Miss.	Total	New Orleans*
Ambac	734.6	2,828.5	255.1	3,818.2	1,660.2
FGIC	225.9	3,172.3	748.3	4,146.5	738.6
FSA	184.2	1,432.3	595.3	2,211.8	426.7
MBIA	236.9	2,402.4	248.4	2,887.7	1,127.8
Total	1,463.1	10,373.5	1,971.5	13,808.1	4,113.3

* Included in Louisiana totals.
Source: Standard & Poors

Other cities to learn from New Orleans' cat response problems

By MICHAEL BRADFORD

Hurricane Katrina's impact on disaster planning is being felt far beyond New Orleans and the Gulf Coast.

Officials in major cities who watched as the storm filled New Orleans with water and crippled its ability to evacuate residents are taking a look at their own assumptions about how they would respond to a devastating hurricane or other emergency. They want to make sure their emergency communications systems work better than those in the Louisiana city, and they are concerned that a federal response criticized as slow during Katrina could be repeated in their towns.

City officials and others "will be evaluating this from the bottom up and top down for quite a while," said Gregory Shaw, senior research scientist at George Washington University's Institute for Crisis, Disaster & Risk Management in Washington. "Were we ready? No," he said of the preparedness in place for Hurricane Katrina.

President Bush in a speech late last week called emergency planning a national security priority and ordered the Department of Homeland Security to conduct reviews of preparedness in every major city.

"We must have plans to evacuate large numbers of people in an emergency and to provide food, water and security as needed," the president said.

The widespread devastation wrought by Katrina may be enough to prompt some cities to make changes to disaster plans, experts say.

Improving planning

"Frequently, there's a great deal of talk about how to improve planning" in cities outside of disaster areas struck by hurricanes or other catastrophes, said E.L. Quarantelli, professor emeritus at the University of Delaware's Disaster Research Center in Newark, Del. "But if you follow up as we have, three to five years later, rarely is it the case where any major reorganizing is done."

Katrina was so severe, though, that there "may be a greater chance" that cities outside New Orleans will be spurred to analyze their disaster preparedness and address any deficiencies, Mr. Quarantelli said.

In Boston, the effort is under way to make sure that city can take care of its population in the event of a Katrina-like catastrophe.

The storm that flooded New Orleans uncovered the false assumption that a population can efficiently transport itself from harm's way, said a spokeswoman for Boston's Public Safety Department. "So most of our efforts are looking at that specific issue. Whether it's a few blocks or larger, what kind of plans do we have in place to make an evacuation go as smoothly as possible?"

Boston, like other cities, has a different geography than does New Orleans. Boston would not hold floodwater as did New Orleans, the spokeswoman said, and it has more evacuation routes. But even with those advantages, the city will reevaluate what transportation problems it could encounter from a disastrous hurricane or other catastrophe, she said.

Federal response

Other cities want to make sure that a federal response to disasters such as Katrina comes more quickly.

Criticism and finger-pointing have been rampant since the storm in New Orleans, asking why help from the Federal Emergency Management Agency and other federal sources did not flow faster to the stricken city. Emergency planners in other large cities want to make sure they don't encounter those same delays.

Broward County, Fla., was hit by Katrina's first landfall, suffering $34 million in damage to its infrastructure before the storm entered the Gulf of Mexico. The subsequent devastating landfall along the Gulf Coast and the federal response have given Broward officials cause for concern, according to Carl Fowler, an emergency management trainer and spokesman for the county.

PHOTO: KRT

The thousands of people that were stranded in the New Orleans Superdome made other cities more aware of the problems associated with evacuating a large number of people.

Broward County is prepared to sustain its shelters for at least 72 hours after a major catastrophe, Mr. Fowler said. But for an impact as large as that of Katrina, "we need to know that we can depend on the federal government to bring resources in," he said.

It's an issue county officials will be addressing in weeks to come and one that, "my guess is, a lot of agencies will be looking at," across the United States, Mr. Fowler said.

City and county officials in the Washington, D.C., area also are expressing concern about the federal response to Hurricane Katrina. The Metropolitan Washington Council of Governments decided in a board meeting last week that the municipalities belonging to the organization would begin assessing how they could overcome a slow reaction from the federal government.

"Some of our officials are concerned that if they look to the federal government and the federal government doesn't help, what do you do?" said David Robertson, executive director of the council. It may not be possible to look to each other for help, he said, because each regional government could be affected.

The evacuation problems in New Orleans also sparked concerns among Washington-area municipalities, Mr. Robertson said. Disaster plans will be re-examined to determine whether they adequately address the ability to remove evacuees who do not have the means to transport themselves, he noted.

Plan disregarded

In New Orleans, meanwhile, sources say the city's problems in responding to the storm was not due as much to poor planning as a disregard for the planning that was done.

"New Orleans had some pretty good plans," said Mr. Shaw of George Washington University. "They had thought through this. There was no surprise here; they knew it was going to happen."

While the city "did have their plans on paper, were they communicated to the right people?" Mr. Shaw asked. "The upper social class got in their SUVs and left" when evacuation orders were issued, he said, but those without such means were stuck without clear guidance on how to protect themselves.

"They need to provide for these people," Mr. Shaw said of the city's planners. "Communicating is the key to this thing."

There is evidence that state, local and federal officials have known for some time what a hurricane the size of Katrina could do to the city.

Assumptions were put forth in a July 2004 simulation called the Hurricane Pam exercise. That exercise, which involved FEMA and emergency officials from 50 parish, state, volunteer and other federal agencies, assumed that a hurricane with sustained winds of 120 mph would strike New Orleans and southeast Louisiana, dumping up to 20 inches of rain. The point of the exercise was to allow the agencies to develop joint response plans for catastrophic hurricanes.

Under the scenario, more than 1 million residents evacuated and 500,000 to 600,000 buildings were destroyed.

Among the conclusions was that 1,000 shelters would remain open for 100 days and the resources necessary to support those facilities were identified, according to a FEMA statement issued at the conclusion of the simulation. FEMA also said the agencies decided that "shelterees" would be recruited to help in shelter management.

Reality under Hurricane Katrina saw the New Orleans Superdome fill with tens of thousands of evacuees who were told to bring their own supplies. Any management help the evacuees may have contributed was overshadowed by the work of security forces who were busy trying to prevent looting and other crimes by many of those taking shelter in the stadium.

Mr. Quarantelli agreed that New Orleans certainly knew what to expect from a devastating storm. "Thirty years ago, I told them that a hurricane at a particular angle would deposit Lake Pontchartrain into New Orleans," he said.

"It's one thing to know what's expected," he said, and another to effectively implement a plan to deal with the consequences. "I have the impression that that they planned for the evacuation in the sense that they would be stuck with 100,000 in the city," said Mr. Quarantelli. "My guess is that the implementation failed rather than the planning."

AFTER THE STORM

Continued from previous page
Management Co.

And funds paid out ultimately may be repaid.

"A very large percentage of our exposure there has the full backing of the local government, and as long as that government continues to exist, then we're going to get paid back," said Frank J. Bivona, chief executive officer of New York-based FGIC Corp., the holding company of Financial Guaranty Insurance Co., a major financial guarantee insurer.

In addition to FGIC, the three other major AAA-rated primary insurers are: MBIA Inc. in Armonk, N.Y., and AMBAC Assurance Corp. and Financial Security Assurance Inc., both of New York.

Major impact unlikely

Thomas J. Abruzzo, managing director of Fitch Ratings' financial guarantee group in New York, said, "We obviously do see potential for increased claims, at least over the short-term, resulting from, basically, the significant interruption that has occurred in that market." But Fitch at this point expects "very minimal" financial implications as a result, he said.

Stanislas Rouyer, senior vp at Moody's Investors Service in New York, said that under the "very stressful" scenario developed by Moody's to consider the worst-possible impact of the hurricane, the financial guarantee insurers' capital "would decrease to the point where they had less cushion than we typically want to see." This means they would have to make corrections to improve their capital profile, but that would not threaten their ratings, said Mr. Rouyer.

S&P managing director Richard P. Smith said so far, there have been minimal claims, in part perhaps because bond trustees may not have been able to file them yet.

Financial guarantee insurers say they can readily handle whatever claims develop.

FGIC's Mr. Bivona said, "We really don't expect any material effect on our financial strength here." He said FGIC has received a $4.7 million claim stemming from a group of three bonds by one issuer that he declined to identify. FGIC believes this claim, as well as an earlier $169,000 claim, "was more of a wire-transfer problem… than an actual payment default." Mr. Bivona said he expects full recovery of both claims payments.

"Our preliminary indications are that it will not have any material long-term impact on MBIA," said Mitchell I. Sonkin, head of insured portfolio management and government relations. He said MBIA now has two claims stemming from the hurricane, totaling $1.9 million.

"There's been some liquidity issuers that have just been unable to make payment, which we expect to get full repayment on," said AMBAC managing director Peter R. Poillon.

Long-term stability

An FSA spokeswoman said, "There may well be some interruptions of payment, given the current economic conditions, but I think we're comfortable with the underlying portfolio and think that it'll be stable in the long term, keeping in mind that these are generally 30-year bonds."

Despite the relatively slight impact, Hurricane Katrina may lead financial guarantee insurers to rethink their underwriting, say some observers.

This situation raises the question of whether the hurricane is "going to make all companies look at their exposures to natural hazards around the country" and "whether they have the right premium mix for that particular exposure," said Richard A. Ciccarone, chief research officer and managing director at Oak Brook, Ill.-based McDonnell Investment Management.

However, Mr. Bivona said, "We've already considered the natural-disaster type events, and we think that over the long term, here, the business model will prove accurate." FGIC continues "to be optimistic about cities and states and municipalities and their ability to finance through difficult situations."

Insurer insolvencies unlikely

By MARK A. HOFMANN

WASHINGTON—The insurance industry should not be hit with a wave of insolvencies as a result of Hurricane Katrina, industry representatives told a congressional hearing last week.

That assessment came during an informal but wide-ranging hearing held by the House Financial Services Committee. The hearing, called by Capital Markets, Insurance and Government Sponsored Enterprises Subcommittee Chairman Richard Baker, R-La., was designed to gather information about the insurance industry's response to the hurricane.


PHOTO: GETTYS

Despite facing numerous property damage claims from Hurricane Katrina, insurers should survive.

"We do not see any signs of insolvency," said J. David Daniel, an agent with Baton Rouge, La., insurance agency Daniel & Eustis L.L.C. and a member of the Executive Committee of the Independent Insurance Agents and Brokers of America.

Other witnesses shared Mr. Daniel's assessment. Both Peter McMurtrie, vp-claims services in St. Paul Travelers Cos. Inc.'s Hartford, Conn., office, and Michael McCabe, senior vp and chief legal officer of Northbrook, Ill.-based Allstate Insurance Co., assured committee members that their companies could and would pay all claims quickly and fairly.

Mr. McMurtrie appeared on behalf of the American Insurance Assn.

"The industry appears to be in shape to face this loss," said Markham McKnight, president of BancorpSouth Insurance Services of Baton Rouge. He spoke on behalf of the Council of Insurance Agents & Brokers.

Members of the committee also asked the insurance industry representatives about the speed with which claims could be settled and the problems adjusters encountered while trying to service the hurricane-ravaged zone, particularly in and around New Orleans.

Daniel Carrigan, director of national catastrophe response with Bloomington, Ill.-based State Farm Mutual Insurance Group, said the early curfews imposed by authorities greatly reduced the amount of time adjusters could work in some areas. That was particularly troublesome, given that the adjusters might have had to drive hours from their lodgings into the affected areas. Granting adjusters "special clearance" to stay longer if there were no health threats would speed the process, he said.

Allstate's Mr. McCabe said better communications between authorities and insurers would also help. For example, letting insurers know in advance when authorities would lift access restrictions would allow adjusters to get to work as soon as possible, he said.

Mr. McKnight also suggested a way to head off potential coverage disputes involving whether flooding or wind caused damage. He said that although many large businesses have difference-in-condition coverage that will respond to losses from being unable to conduct business, smaller firms do not, and insurance provided by the National Flood Insurance Program doesn't cover business interruption. Congress should take action to assure that flood policies follow form with private insurance to prevent gaps, he said.

"We've got to avoid a situation where the client is caught in the middle between adjusters for private insurers and the federal flood program, with gaping holes in coverage," explained Joel Wood, the CIAB's senior vp-government affairs, in an interview after the hearing. He noted that the NFIP doesn't cover business interruption.

"If you're a small business owner in New Orleans and you didn't sustain property damage but yet you're unable to conduct business for months because civil authorities won't let you in because of flooding, the federal flood program isn't going to make you whole," he said.

"We think Congress should act to close these gaping holes," said Mr. Wood. He said that the coverage limits provided by the NFIP—currently $250,000 for houses and $500,00 for businesses—should be increased as part of the solution to the problem.

Rep. Baker said he intends to hold another informational hearing on the insurance industry and Hurricane Katrina within the next few weeks.


PHOTO: REUTERS LIVE

Treasury Secretary John Snow, right, and IRS Commissioner Mark Everson announce proposals to aid victims of Hurricane Katrina.

House, Senate pass benefit bill to aid victims of Katrina

By JERRY GEISEL

WASHINGTON—Employees in Hurricane Katrina-affected areas would be allowed to receive distributions from their retirement plans without federal tax penalties under legislation approved by the House and Senate last week.

The retirement plan provision, included in a broader Katrina tax-relief bill, is one of several benefit plan actions taken by federal regulators and legislators in response to Katrina. Others include easing restrictions on 401(k) plan hardship withdrawals, health care plan premium relief and an easing of pension plan filing deadlines.

Under the Katrina tax-relief measures, employees taking preretirement distributions from their plans would be exempt from the 10% penalty tax that normally would apply.

Additionally, plan participants could recontribute the withdrawn funds over the next three years, while the income taxes owed on the distributions would be prorated over three years.

The measures, which are expected to receive final congressional approval after differences unrelated to the retirement plan provisions are worked out, also would increase the maximum loans defined contribution plan participants could take from the plans. Under current law, a participant can borrow up to $50,000 or half of his or her account balance, whichever is less. The Senate- and House-passed bills would double the maximum so participants could borrow up to $100,000 or their full account balance, whichever is less.

The measures also would extend by one year the length of time Katrina victims would have to pay back their loans.

Benefit experts say the legislation

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Environmental: Coverage disputes likely

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exclusions.

If insurers take those coverage positions, however, they would face tough challenges supported by case law and regulatory directives in policyholder-friendly Louisiana, policyholder attorneys say.

"There's a lot of tricky issues. It's going to be interesting. In some ways, it's more complicated than the World Trade Center," said policyholder attorney Lorelie S. Masters, a partner with Jenner & Block L.L.P. in Washington.

Floodwaters caused by Hurricane Katrina's storm surge on Aug. 29 and the levee failures that followed a day later swamped an estimated 80% of New Orleans. The waters quickly became a toxic concoction containing corpses; industrial, commercial and household chemicals; sewage; and refuse.

Even after the city is drained, the residue from the contaminated floodwaters likely would have to be removed from structures that survive, as well as from the ground and possibly groundwater, pollution experts say.

Under the Comprehensive Environmental Response, Compensation and Liability Act, also known as the Superfund law, owners of polluted property are strictly liable for cleaning their sites.

CERCLA allows property owners to seek recoveries from other potentially liable parties. But with so many chemicals in the water and so many companies in the area, "how do you decide who's responsible?" questioned policyholder attorney Ira Gottlieb, a partner with McCarter & English L.L.P. in Newark, N.J.

Identifying the source of a contaminant might be possible if the material were unique to a specific company or if a property owner were to trace contaminants back to the nearest possible source, said Mr. Gottlieb, a former U.S. Environmental Protection Agency attorney in the Superfund program. "It's kind of rough justice in that regard."

But with so many flooded properties in New Orleans owned by people of meager means and with contaminants carried by floodwaters over such a wide area, cleanup costs could far exceed the resources of potentially responsible parties.

While mortgage lenders would take possession of any residential properties that are abandoned, banks are shielded from cleanup responsibilities by a CERCLA safe-harbor provision.

Even so, some common or tort law theories may not allow banks to avoid cleaning the properties, said insurer attorney Laura A. Foggan, a partner with Wiley, Rein & Fielding L.L.P. in Washington and counsel for the Complex Insurance Claim Litigation Assn.

Contamination rulings

Coverage for the cost of cleaning up flood-related contamination in New Orleans may be available due to one or more court rulings, policy provisions or regulatory directives that address:

- Concurrent causation of losses by covered and uninsured perils.
- Ensuing losses from an uninsured peril that was triggered by a covered peril.
- Diminution of real estate.
- Restrictions on the applicability of pollution exclusions.
- Coverage for unintended pollution incidents that occur within a defined period.

Finding flood coverage

Despite the expected coverage defenses from insurers, policyholders without flood insurance are not without coverage arguments, policyholder attorneys contend.

For example, a 2002 ruling from a state appellate court in the New Orleans area affirmed the concept that policyholders are fully covered when both a covered and an uninsured peril combine to damage property concurrently, Ms. Masters noted.

Insurer attorney Lee Ayers, a partner with Cook Yancey King & Galloway A.P.L.C. in Shreveport, La., agreed that is the concurrent causation rule "generally speaking." But a state appellate court in one dispute last year apportioned policy limits based on the percentage of a loss that a covered peril caused, he noted.

Mr. Ayers said that he would not predict how state courts might rule on that issue for Katrina-related losses, because the loss scenario arising from the storm is "a special deal."

The ensuing-loss provisions in policies also could be tapped to trigger some coverage even if the flood exclusion stands, Ms. Masters said. Under those provisions, losses caused by a peril that was separate from an excluded peril, but was caused by that peril, are not excluded from coverage.

PHOTO: EPA PHOTOS

Coverage disputes are likely over who will have to pay for cleanup of contamination along the Gulf Coast.

Under that theory, even if flood-related losses were excluded, the damage to buildings that the contaminants in the floodwaters caused would be covered, according to Ms. Masters.

Property owners also may have policies with clauses that cover diminution of real estate or otherwise address the valuation of property before and after losses, noted policyholder attorney Robert M. Horkovich, a partner with Anderson Kill & Olick P.C. of New York. Those clauses could specifically or be interpreted to cover the cost of removing debris in the soil, he said.

Policyholders have an even stronger argument than those, according to policyholder Edward M. Joyce, a partner at Heller Ehrman L.L.P. in New York. He asserts that two decades-old rulings in the state bar insurers from invoking flood exclusions, because the flood would not have occurred if not for the hurricane, which is a covered peril.

In a June 1959 state Supreme Court case, *Roach-Strayhan-Holland Post. No. 20 vs. Continental Insurance Co. of New York, No. 45631*, the high court ruled that a policyholder was covered for the loss of a defectively constructed building that was destroyed during a windstorm.

In a February 1978 state appellate court case, *Stafford Riche vs. State Farm Fire & Casualty Co., No. 11777*, the court ruled that the loss of fishing equipment from a boat that sank in a lake during a windstorm could not be excluded under a homeowner policy's flood exclusion. That court, however, does not cover the New Orleans area, so its decisions—even if influential—are not binding there.

Both rulings support the policyholder argument that an excluded peril triggered by a covered peril should not jeopardize coverage, Mr. Joyce said.

But Mr. Ayers said: "I wouldn't bet on that horse. I think courts will say a flood is a flood. There's always some cause of a flood" that could be cited to render the flood exclusion

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Benefits: Congress passes bills to aid victims of Katrina

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would be especially helpful to employees who need cash while waiting for payments from their insurers for property losses.

"Sometimes, there are immediate situations that force people to tap into retirement savings," said Valerie Kupferschmidt, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Others, though, question, how many plan participants would be able to afford to put back money into their plans so soon after taking the funds out.

"If employees had such an urgent need now to take the money, would they have become so prosperous in a few years to recontribute it and, if still working, make their regular 401(k) plan contributions?" asked Michael Weddell, a consultant in the Southfield, Mich., office of Watson Wyatt Worldwide.

Meanwhile, the Internal Revenue Service last week took action to improve employees' access to 401(k) plan account balances.

In Announcement 2005-70, the IRS said Katrina victims can take hardship withdrawals for any reason from their 401(k) plans between Aug. 29, 2005, and March 31, 2006. The IRS announcement temporarily waives current rules that limit hardship withdrawals only if certain stipulated events have occurred.

> "Sometimes, there are immediate situations that force people to tap into retirement savings."
>
> **Valerie Kupferschmidt**
> **Hewitt Associates Inc.**

Additionally, the IRS said Katrina victims taking hardship withdrawals during the Aug. 29, 2005-March 31, 2006 period would be exempt from regulations that bar 401(k) plan participants from making new plan contributions within six months of receiving the hardship withdrawal.

The IRS also said employers in Katrina-affected areas could waive certain procedural requirements imposed on defined contribution plan loans.

Also on the regulatory front, the Bush administration—which earlier this month postponed to Oct. 31 any pension plan contributions due between Aug. 29 and Oct. 30 for employers located in the Katrina area, or if their pension plan recordkeeper, administrator or actuary in charge of determining plan contributions was located in that area—said it would not extend the funding delay to employers located outside the geographical region of the hurricane.

Consultants said delaying pension plan payments might have benefited employers who were based outside Katrina-affected areas but had significant operations in the area and whose cash flows were disrupted. Other employers may have been affected if their plan trustee in charge of making contributions to the plans was in the Katrina-impacted areas.

On the health care front, Sens. Charles Grassley, R-Iowa, and Max Baucus, D-Mont., unveiled a proposal under which the federal government would subsidize group health insurance premiums of plans sponsored by employers in areas affected by Katrina.

The package, which soon will be in legislative form, would set aside federal relief funds to be used for health insurance premiums of those covered in group health insurance plans that were established prior to Katrina. This assistance would continue for at least several months.

Additionally, the proposal says technical changes in the law would be made to protect individuals eligible for COBRA health care continuation coverage. While experts are awaiting more detail, they say the provision could be intended to ensure that beneficiaries in Katrina-affected areas don't lose their right to COBRA if they, for example, didn't elect coverage or pay premiums on time.

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AFTER THE STORM

Reinsurers' ratings put under review over concerns about Katrina exposures

OLDWICK, N.J.—Citing Hurricane Katrina losses, A.M. Best Co. last week downgraded the financial strength rating of Bermuda-based Olympus Reinsurance Co. Ltd. to B+ from A-, and put several other companies' ratings under review with negative implications.

Additional rating actions are likely in the future, said the rating agency.

Companies whose ratings have been placed under review, and their financial strength ratings, include Bermuda companies DaVinci Reinsurance Ltd., A; Endurance Specialty Insurance Ltd., A; IPCRe Ltd., A+; Montpelier Re Insurance Ltd., A; PartnerRe Group, A+; PXRE Group Ltd., A, and XL Capital Ltd., A+. Units of New York-based Odyssey Re Holding Corp., which have an A rating, were also put under review.

Best said it is also evaluating Katrina's impact on several companies whose ratings have already been under review for other reasons. These are Bermuda-based Alea Group, rated A-; Princeton, N.J.-based American Re Corp., A; Munich, Germany-based Munich Reinsurance Co., A+; and New York-based Transatlantic Reinsurance Co., A+.

Standard & Poor's Corp. previously had put under review with negative implications its ratings on several insurance and reinsurance groups with exposure to the "unparalleled" losses stemming from Hurricane Katrina.

Among the companies that the New York-based ratings agency placed under review were ACE Ltd., Allmerica Financial Corp., Lloyd's of London, Montpelier Re Holdings Ltd., OIL Casualty Insurance Ltd., PXRE Corp. and Swiss Reinsurance Co.

The decision to put the ratings under review highlights "the continued material uncertainty in accurately quantifying the insurance industry's ultimate exposure," Standard & Poor's Credit Analyst Steven Ader said in a statement. "However, downgrades are not inevitable."

—By Judy Greenwald

Environmental: Pollution coverage issues unclear

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useless, he said.

Even if policyholders get around the flood exclusion, commercial and personal lines policies contain pollution exclusions.

Pollution cover questions

But in a December 2000 decision, *Doerr et al. vs. Mobil Oil Corp. et al., No. 2000-CC-947*, the Louisiana Supreme Court ruled that the exclusions in commercial general liability policies apply only in classic industrial accidents (*BI*, Jan. 8, 2001).

Years earlier, the Baton Rouge-based Louisiana Department of Insurance issued directives that outlined the same instruction to insurers handling liability claims filed by commercial as well as homeowner policyholders.

"I can't think of a more nontraditional situation" than the contamination caused by the New Orleans flood, Mr. Gottlieb said.

That could be a significant coverage-saving crutch for industrial risks if property owners could trace the contaminants on their sites back to those risks.

But how that case law and the department's directive would apply to property insurers is unclear, said C. Noel Wertz, the department's chief attorney for property/casualty and life/annuities.

"In order to be prepared to respond to consumer inquiries, the LDI is looking into whether, if there is damage to insured property due to a covered cause of loss, an insurer can evade coverage by invoking the policy's pollution exclusion merely because of the presence of toxic matter in the flood water," Ms. Wertz said.

"The LDI has not deviated from its long-held position that pollution exclusions are triggered by damage from escaping byproducts, as opposed to products which may have a harmful propensity; the toxic gumbo resulting from Katrina no doubt contains both. Each claim must be evaluated on a case-by-case basis."

Case law and the department's directives should not come into play for some industrial risks that eventually face pollution liability claims arising from the flood, according to Ms. Foggan. Those risks have liability policy clauses that provide coverage for pollution releases that begin and end within a period that typically ranges from 48 to 72 hours, she said.

While those clauses are intended to trump a pollution exclusion, insurers could argue the exclusion still applies, Ms. Foggan said. Insurers could argue that the policyholder's lack of precautions to guard against a pollution release during a hurricane demonstrated that the policyholder expected or intended the release—an act that is not insured, she said.

Even after sorting through the state's case law and insurance department directives, the coverage situation for some commercial risks could become murkier. Ms. Masters pointed out.

For risks headquartered outside Louisiana, the law from their home state or where their policies were written could be the controlling law in a coverage dispute, she explained.

BI Stock Index [9/12 - 9/16]

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

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

***BI* Stock Index**	2660.74	0.50
Dow Jones	10641.94	-0.34
S&P 500	1237.91	-0.29

Largest gains

Axis Capital Holdings Inc.	9.98%
Partner Re Ltd.	8.02%
RenaissanceRe	7.62%
Aspen Insurance Holdings	6.81%
Everest Reinsurance	6.47%

Largest losses

IPC Holdings Ltd.	-7.43%
Endurance Specialty	-4.91%
EMC Insurance Group	-4.83%
SCPIE Holdings	-4.49%
American Safety	-3.90%

Weekly change by market segment

Brokers	0.17%
Insurers/Reinsurers	1.30%
Managed Care Organizations	-1.58%

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

Late News

Continued from page 1
including greater use of lower-cost generic drugs.

Private equity firm buys AmWINS majority stake

American Wholesale Insurance Group has agreed to sell a majority of its ownership to affiliates of Parthenon Capital L.L.C., a Boston- and San Francisco-based private equity firm. AmWINS, the nation's second-largest wholesaler, was 50% owned by private equity firm Pegasus Capital Advisors L.P. and 50% owned by management. Management will continue to own "a substantial portion" of the company, AmWINS said in a statement.

Integro opens Montreal office

Startup brokerage Integro Ltd. has launched a branch office in Montreal and tapped a former Willis Holdings Group Ltd. executive to lead its operations. Robert Dunn, most recently executive vp for Willis Canada, will be responsible for directing Integro's business strategy in Montreal and developing client relationships, the company said.

Wal-Mart faces sweatshop suit

Wal-Mart Stores Inc. faces a lawsuit charging the company with perpetuating sweatshop conditions at its supplier factories. The Washington-based International Labor Rights Fund filed the lawsuit in state court in Los Angeles on behalf of 15 factory workers in China, Bangladesh, Indonesia, Swaziland and Nicaragua. The suit, which seeks class action status, charges that the workers were subjected to forced overtime and not adequately paid, and that Wal-Mart effectively controlled factories' inhumane working conditions, which included long hours and abusive behavior. In a statement, Wal-Mart said it "expects every supplier to comply with worker protections and regularly audits suppliers' factories at a rate of 30 per day."

PICC to insure 2008 Olympics

PICC Property & Casualty Co. Ltd. has been announced as the official insurance provider for the 2008 Olympic Games in Beijing. Beijing-based PICC Property & Casualty will also provide insurance coverage for the Beijing Paralympic Games, the Beijing Organizing Committee for the Games of the XXIX Olympiad, the Chinese Olympic Committee, and the Chinese delegations to the 2006 Winter Olympics in Turin, Italy, and the 2008 Olympics.

Health plan premium hikes easing: Survey

Between the spring of 2004 and the spring of 2005, group health care plan premiums increased by an average of 9.2%, down from an 11.2% average increase during the comparable period between 2003 and 2004, the Kaiser Family Foundation and the Health Research & Educational Trust report in a survey of more than 2,000 employers. The latest increase is the smallest since 1999-2000, when premium increases climbed by an average of 8.2%. Since then, premiums had increased annually by double digits. Copies of the survey are available at *www.kff.org*.

Wachovia forms benefits group

Wachovia Insurance Services has combined its capabilities to form a new executive benefits group. Wachovia Executive Benefits combines the trust and fiduciary capabilities of Wachovia Executive Services with the plan funding expertise of Wachovia's Barry, Evans, Josephs & Snipes insurance unit, the brokerage said. The new group will offer employers consulting, recordkeeping and administration, plan-funding strategies, asset management, and trust and fiduciary services, including benefit payment and tax reporting services.

Broker USI acquires CBIZ Worksite Services

USI Holdings Corp. has acquired the Orlando, Fla.-based benefit communication and workplace enrollment business of CBIZ Inc. CBIZ Worksite Services Inc. will be integrated into Custom Benefit Programs Inc., a principal operating unit within USI's workplace benefits division. It is expected to add approximately $6 million in annual revenues, USI said. The deal allows USI to further strengthen its workplace benefits offerings while allowing CBIZ to focus on its core tax, accounting, payroll, insurance and benefit consulting services, the firms said.

HRH appoints Dinkins as CFO

Hilb, Rogal & Hobbs Co. has appointed Michael Dinkins as its executive vp and chief financial officer. Mr. Dinkins, who previously was vp-global control and re-engineering for Guidant Corp., succeeds Carolyn Jones, who recently announced her intention to retire from HRH. Mr. Dinkins will begin his new job next month, the brokerage said.

At *BusinessInsurance.com*

New **Online Poll**: Do you think Hurricane Katrina increases or decreases the chances that Congress will extend some version of the Terrorism Risk Insurance Act before TRIA expires on Dec. 31?

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