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Business Insurance®

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Late News

Quanta chief Russ departs

Tobey J. Russ has resigned as chief executive officer of Quanta Capital Holdings Ltd. Bermuda-based Quanta said in a statement that independent director Robert Lippincott III, who joined the company's board in March, has assumed the role of interim chief executive of the specialty insurer and reinsurer. Mr. Russ joined then-startup Quanta in 2003 as the company's chairman, president and CEO.

Court ruling favors cash balance conversions

Judge D. Davis Legrome of the U.S. District Court in Philadelphia last week dismissed a case against PNC Financial Services Group that was brought on behalf of its employees and retirees in connection with the company's switch to a cash balance plan. Pittsburgh-based PNC Financial Services Group replaced its traditional defined benefit plan in 1999. The plaintiffs filed suit against the company and its pension plan in December 2004. The plaintiffs argued, among other things, that the plan was age discriminatory.

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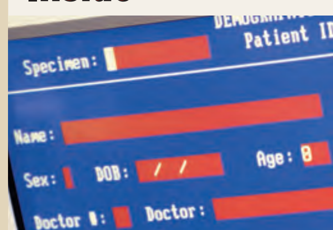
Inside



DATA DRIVE
Groups hope effort will improve health care, costs.
PAGE 3

HEALTHY RESULTS
Lower costs fuel profits at managed care companies.
PAGE 3

U.K. may mandate broker pay disclosure

Regulator cites concerns about conflicts of interest

By SARAH VEYSEY

LONDON—Commercial insurance brokers in the United Kingdom may be compelled to disclose their commission arrangements to corporate clients unless they improve their treatment of potential conflicts of interest.

In a letter to brokerage chief executives last week, the Financial Services Authority, the U.K. insurance regulator, said that, following an examination of systems and controls at 38 U.K. brokers and other reviews, it concluded that "the process for identifying and mitigating conflicts of interest is not, in most firms, sufficiently developed at present."

In particular, several brokerages do not have sufficient guards in place to prevent bid rigging and tying retail placements to reinsurance placements. Those practices were among several allegedly fraudulent activities at large brokerages in the United States that led to high-profile lawsuits and settlements earlier this year.

The FSA said that, during 2006, it will investigate further the way conflicts of interest are managed by brokers and will "assess whether there is a case to amend our policy for commercial customers to introduce the compulsory disclosure of commission and, if so, whether to make this binding on both intermediaries and insurance companies."

Under current FSA rules—which took effect in January, when the FSA took over broker regulation—brokers must disclose their commis-

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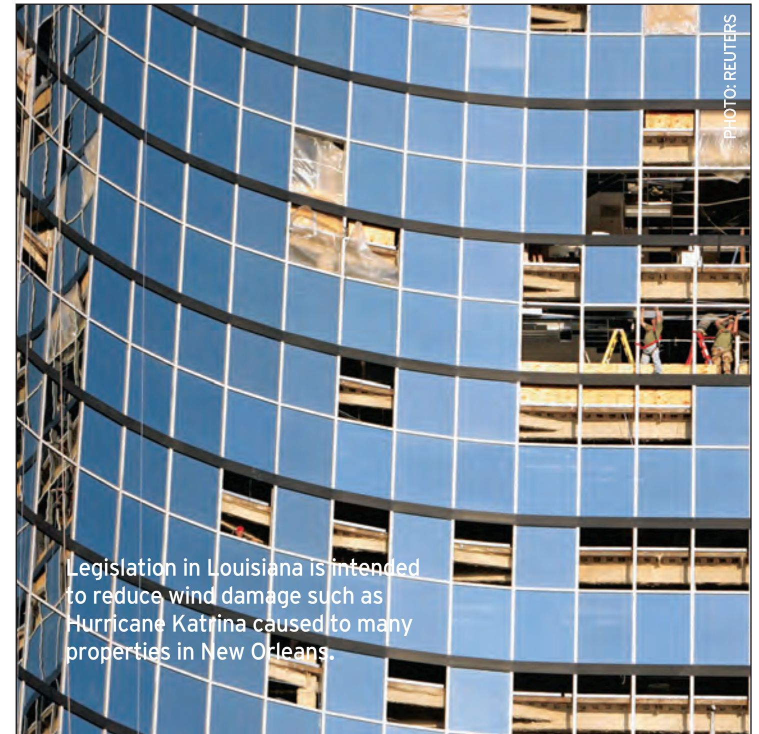

PHOTO: REUTERS

Legislation in Louisiana is intended to reduce wind damage such as Hurricane Katrina caused to many properties in New Orleans.

Louisiana moves to upgrade building code in wake of Katrina

By MICHAEL BRADFORD

BATON ROUGE, La.—Hurricane-battered Louisiana will have stronger building codes in place for next year's storm season.

State legislators passed S.B. 44 in the final hours of a special session that ended Nov. 22, mandating the creation of a uniform building code that must be adopted by all parishes and municipalities to ensure that commercial and residential structures can better withstand hurricane winds. The code will make some distinction in building standards that must be adhered to in the southern, more wind-prone part of the state and those in areas farther from the Gulf of Mexico.

The bill was sent to Gov. Kathleen Blanco, who was expected to sign the measure.

Creating a uniform code will be a big move for a state in which "numerous jurisdictions had no codes prior to Katrina," said Jeff Burton, building code manager at the Institute for Business & Home Safety, a Tampa, Fla.-based nonprofit association.

Except in the southeastern Louisiana city of Slidell, where building code enforcement has been stringent, "everything else was, in one way or another, inadequate to the task," said Mr. Burton, who helped draft measures within the Louisiana bill.

With the law's passage, Louisiana will have building requirements comparable to those in Florida and other states in which hurricanes are a threat, he said.

Glen Daraskevich, assistant vp for research and modeling at AIR Worldwide Corp. in Boston, agreed there is room for improvement in Louisiana building requirements. "Since Hurricane Andrew, Florida has made a number of updates" to its building code

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Illinois high court ruling clarifies venue selection

Forum must be linked to case

By MARK A. HOFMANN

SPRINGFIELD, Ill.—Tort reform advocates have hailed a recent Illinois Supreme Court decision ordering the dismissal of a proposed class action because it had little connection to the jurisdiction in which it was filed.

They say that the ruling, which involved a Madison County, Ill., court, is another blow against the type of "forum shopping" that has gained Madison County national notoriety as a place in which corporate defendants cannot get a fair hearing.

In addition, reform advocates hope the decision will give a boost to venue reform legislation pending in the state.

The case—*Christopher K. Gridley, on behalf of himself and all others similarly situated, vs. State Farm Mutual Automobile Insurance Co.*—involved a Louisiana resident's attempt to sue State Farm under Illinois law, even though none of the alleged misconduct had occurred in Illinois.

According to the Illinois Supreme

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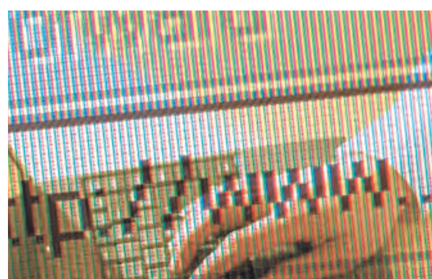
NEWSPAPER



SPOTLIGHT

BLOG LIABILITY
Insurers are writing coverage for bloggers, but not many are buying so far.
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Companies with online operations face a growing threat from fraudsters.
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Advertisement

AON | Focus
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In today's economy, business advisers, emerging growth and mid-size firms need to understand network risk and how to manage it.

NOVEMBER 28, 2005

The battle of e-risks makes its way to the middle market

Julie K. Davis is executive vice president and managing director of Wired for Growth, Aon Affinity Insurance Services. She helps companies establish effective risk management practices as they grow from early stage to maturity. Julie can be reached at julie_k_davis@aon.com.

Risk to corporate technology networks is a 21st-century exposure that cannot be overlooked. Its implications are broad, and the impact of not managing these risks can be severe. Nearly every operation relies on electronic networks, and the resulting exposures can extend beyond the corporate web site. Wall Street, shareholders, customers and other stakeholders rely on the quality of a firm's products and services and its ability to deliver consistent and predictable earnings – network risk factors heavily into this scenario.

Technology risks can endanger an organization's core assets and operations by limiting its ability to provide products and services. A damaged or destroyed reputation; arrested operations and decreased productivity; lost sales, increased expenses, and litigation are all tangible threats for companies of any size.

Today, network risk coverage continues to gain in popularity. And as we enter 2006, global capacity for network risk coverage is still somewhat limited, although carriers have better knowledge of this complex area than they had in the past. This coverage, once perceived to be reserved only for large companies, is quickly catching on among mid-market and emerging-growth firms. The market for this coverage, in fact, is made up mostly of privately held firms with less than $250 million in sales.

The reason network risk coverage has caught on is because of coverage gaps that exist in other areas. First, traditional property coverage is designed to pay for direct physical loss or damage by a covered cause of loss. Most business income forms will respond only if there is a corresponding covered property loss. Therefore, lost income from damage to or theft of data may not be covered.

Second, traditional general liability policies cover bodily injury, property damage liability and limited personal and advertising liability, whereas network risk contracts are designed to address emerging exposures. These new risks include network-based business activities, such as copyright, trademark infringement, libel, slander, Internet errors and omissions, breach of security and release of viruses.

And third, traditional crime policies cover damage to tangible property, whereas network risk contracts do not normally have a tangible property damage requirement in their forms.

One cannot rely solely on insurance coverage to manage risk. Comprehensive network risk mitigation may also include physical security measures, documented corporate policies, privacy policies, disaster recovery plans, employee training programs, third-party security/vulnerability assessments, limitation of liability, disclaimers of consequential damages, warranties and guarantees. It also includes technology implementation and maintenance.

Network risk is a serious threat that should be addressed by completing a network risk management assessment. Not until true exposures and coverage gaps are understood can a risk mitigating strategy, including optimal risk transfer, be completed to protect the company's future.

Businesses prepare to mitigate emerging risks from volatile trade environment

Latin American countries' resistance to the revival of the Free Trade Area of the Americas (FTAA) agreement indicates that multinational corporations must prepare for greater trade risk. Corporations investing in countries overseas are taking steps to become more fully aware of what products and services they are making and delivering to a given region, and equally important, what they are extracting from that region. Company risk managers should build political and regulatory risks into their crisis management plan and inform their corporate board when they buy cover for that risk. For further insights, visit **www.aon.com/focus**.

Lessons from 2004, 2005 hurricane seasons help businesses brace for future storms

Many organizations with operations in locations affected by the active 2004 and 2005 hurricane seasons are preparing for future hurricane seasons by leveraging forecasting models tailored to specific business operations. The models released for 2006 will incorporate lessons learned from these two record-breaking hurricane years and take into consideration key facts about the organization's portfolio, such as the number of buildings to insure, the number of stories in each building, the type of soil the buildings are built on and the type of materials used to build the buildings. For further information on impact forecasting, visit **www.aon.com/focus**.

"We have millions invested in systems and data. What if something goes wrong?"

Aon's unmatched knowledge and experience covering technology-associated exposures enable us to identify those unique risks not covered under traditional policies. Our professionals, including information technology consultants, intellectual property attorneys and former software company CEOs, are at the forefront of the marketplace – developing proactive risk solutions to protect data and the bottom line.

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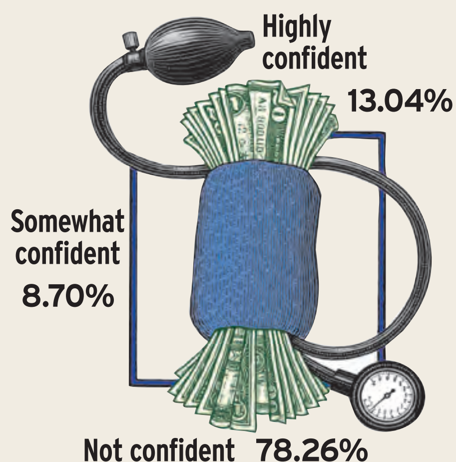
How confident is your organization that its health care cost increases will be lower in 2006 than this year?



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

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Slowdown in medical cost hikes boosts profits at health insurers

By GLORIA GONZALEZ

Commercial health care premium increases continue to remain in a stable range, a trend that is expected to last into 2006.

The major managed care companies continue to report medical cost trends in the 8% to 10% range for 2005, with products priced at or near cost trends. For example, WellPoint Inc., the largest managed care organization in terms of membership, said its medical cost trend is now less than 8.5% for 2005, with pricing slightly above that figure. "The medical costs increases remain stable for the year," said Joseph Marinucci, credit analyst with New York-based Standard & Poor's Corp.

Cost trends have moderated from the double-digit range seen in previous years and have stayed mostly in the high single-digit range for 2005. "It's been a good year," said Sally Rosen, a senior financial analyst with Oldwick, N.J.-based A.M. Best Co. "Trend has come in a little lower than what was expected for most companies."

In particular, pharmacy cost trends are moderating, aided by a continuing flow of generic drugs into the marketplace. In 2006, popular medications such as the cholesterol-reducing drug Zocor will lose patent protection, leading to expectations of further soft-

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Making money

The results of major managed care organizations for the first nine months of 2005. Companies are ranked by income. Dollar figures are in millions.

Company	Net income 2005	Percentage increase (decrease)	Revenues 2005	Percentage increase (decrease)
UnitedHealth Group	$2,400.0	24.0%	$33,300.0	19.9%
WellPoint Inc.	1,800.0	6.9	33,700.0	7.4
CIGNA Corp.	1,415.0	37.8	12,400.0	10.1
Aetna Inc.	1,200.0	(36.8)	16,600.0	11.5
Kaiser Permanente	1,200.0	(7.7)	23,300.0	10.3
Coventry Health Care Inc.*	375.2	34.6	4,900.0	19.7
PacifiCare Health Systems Inc.	296.4	22.0	10,800.0	15.7
Humana Inc.	243.9	4.5	10,400.0	8.5
WellChoice Inc.	221.2	15.6	4,900.0	12.2
Health Net Inc.	153.1	16.2	9,000.0	2.2

* Figures include results from Coventry's First Health Inc. acquisition as of Jan. 28, the date the transaction closed.

Source: Company reports

Health care costs, quality targeted by Wisconsin payer/provider coalition

By ROBERTO CENICEROS

MILWAUKEE—Employers, insurers and physicians in Wisconsin have teamed up in an effort to compile data that, they say, will allow them to build performance measurements for the cost, efficiency and quality of care provided by doctors.

Such efforts represent a new trend in which business groups, labor and employer coalitions in several states are striving to pull together health plan claims data to measure doctors' performance, a spokeswoman for the Washington-based National Business Coalition on Health said.

Participants in a newly formed Wisconsin Health Information Organization say that, with health insurers cooperating to form a

data repository, they will all be able to analyze a substantially broader representation of claims information than is possible working separately.

Insurers and employers working alone typically cannot gather a sufficient number of "data points," that is, interactions between individual doctors and plan members, according to Al Jacobs, director for the WEA Trust, a Madison, Wis.-based insurer providing health and other benefit programs for school districts.

Without enough data points or patient encounter information, insurers cannot make accurate judgments about the efficiency or quality of care that each physician provides,

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Risk Manager of the Year deadline extended

BI accepting nominations for top award until Dec. 23

CHICAGO—The deadline for submitting nominations for the 2006 Risk Manager of the Year™ competition has been extended by one month until Dec. 23.

Nomination forms are available for downloading at *www.BusinessInsurance.com/RMOY* or by contacting Karen Tucker at 312-649-5319.

A nominee need not handle risk management duties full time, but he or she must be a full-time employee of the organization whose program he or she directs. Risk managers anywhere in the world are eligible. Anyone acquainted with a candidate's work may submit a nomination. All nominations are confidential; only honored candidates will be announced.

The 2006 Risk Manager of the Year will be the 29th individual to receive the honor, which was first presented in 1978 to commemorate the 10th anniversary of *Business Insurance*. The award recognizes outstanding performance in the field of risk management. The Risk Management Honor Roll, added in 1981, recognizes the achievements of risk managers in various segments of the field.

Honorees will be profiled in the April 24, 2006, issue of *Business Insurance*, and will be recognized at a special awards luncheon to be held in Honolulu during the Risk & Insurance Management Society Inc. annual meeting.

A panel of independent judges will evaluate nominations. The highest-scoring candidate will be named Risk Manager of the Year™, and remaining individuals will be placed into one of four categories: corporations with sales exceeding $300 million; corporations with sales of less than $300 million; government entities; and tax-exempt or nonprofit entities. The highest-scoring candidate in each of the categories not represented by the Risk Manager of the Year™ is eligible to be named to the Risk Management Honor Roll, subject to the judges' discretion.

Ten criteria are used to score the nominations for the annual Risk Manager of the Year Award and Risk Management Honor Roll. The panel of judges will score each nominated candidate on a scale of one to 10, according to how well he or she:

- Established and implemented an effective risk management program within the organization.
- Tackled and solved one or more major problems for his or her organization.
- Innovatively applies the diverse tools of risk management and insurance.
- Creatively and effectively uses the insur-

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FedEx disability bias case dismissed

Injured worker insufficiently impaired to claim ADA protection

By JUDY GREENWALD

RICHMOND, Va.—A partially disabled worker who is still capable of performing numerous different jobs in his local area cannot successfully sue the former employer who terminated him for disability discrimination, says an appellate court.

The Nov. 16 decision by the U.S. 4th Circuit Court of Appeals in *Andre Taylor vs. Federal Express Corp.* says Mr. Taylor had been working as a FedEx courier for 12 years in Maryland when he injured himself on the job in 2000 and began to suffer back pain. Mr. Taylor's job required him to lift up to 75 pounds, but he was told he should not lift more than 30.

FedEx terminated him after he unsuccessfully applied for a dispatcher position with the company. He then sued Memphis, Tenn.-based FedEx under the Americans with Disabilities Act for disability discrimination.

A vocational consultant estimated that, based on Mr. Taylor's work experience and educational background, despite his impairment he was still able to perform the work involved in 1,410 job titles, or more than 130,000 jobs, in the Baltimore-Washington metropolitan area. His injury did exclude him from 370,000 other jobs.

Mr. Taylor also conceded that he drives more than one hour each way to college, sits in classes for two to three hours, performs yard work, camps with his family, plays catch with his children and cleans his house, according to the decision.

In upholding a lower court's ruling dismissing the case, the appellate court said that although the vocational evidence suggests Mr. Taylor's impairment precluded him from a number of jobs for which he would otherwise have qualified, "it does not suffice to create a jury question as to whether the impairment substantially limited the asserted major life activity, i.e., working."

Rather, says the three-judge panel's unanimous opinion, "the record indisputably reveals that Taylor could perform a range of daily activities requiring endurance, flexibility and some strength and that even with the impairment" he qualified for more than 130,000 actual jobs in the Baltimore-Washington region.

"Given that Taylor admittedly retains the ability to engage in a wide range of daily activity and to work in over 100,000 jobs in his geographic region, a reasonable juror could not find that his impairment substantially limits his ability to work, or for that reason renders him disabled for purposes of the ADA," said the court.

Mr. Taylor's attorney, Bruce M. Bender of Van Grack, Axelson, Williamowsky, Bender & Fishman P.C. in Rockville, Md., said he plans to seek a hearing on the case before the U.S. Supreme Court.

The appellate court's decision "conflicts with many other circuit courts of appeal throughout the United States," said Mr. Bender.

"We think the Supreme Court needs to give plaintiffs some guidance as to what standard of proof is necessary to prove substantial limitation in the major life activity of working, because right now the circuit court decisions' are all over the map," he said.

Andre Taylor vs. Federal Express Corp.; 4th U.S. Circuit Court of Appeals, No. 04-2056.

Physician apologies, listening skills found to reduce med mal claims

By DAVE LENCKUS

BOSTON—Physicians who have a congenial bedside manner overall and who apologize to patients and their families when treatments or procedures go wrong minimize their own and hospitals' medical malpractice risk, according to medical and legal experts.

A combination of statutory trends, study results and anecdotal evidence strongly suggests that hospitals should encourage not only employed physicians but also independently contracted doctors to maximize their interpersonal and communications skills with patients, the experts said.

The panel urged hospital risk management to focus on physicians' bedside manner during a session at the 18th Annual Professional Liability Underwriters Society International Conference. The conference was held Nov. 13-15 in Boston.

The issue is important for hospitals because of the vicarious liability risk created for them by independently contracted physi-

cians as well as by employed physicians, said attorney Peter W. Mosseau.

Mr. Mosseau, a partner at Nelson, Kinder, Mosseau & Saturley P.C. in Manchester, N.H., explained that hospitals often cannot limit their liability through independent contractor agreements with physicians.

Courts have imposed liability on hospitals for the actions of independently contracted physicians under the so-called apparent agency theory, Mr. Mosseau explained. Under that theory, hospital advertising and representations on patient forms and hospital signs lead patients and their families to believe independent physicians are employed by the hospital.

And even when a hospital has adequately notified patients that those physicians are not hospital employees, it cannot escape liability in certain situations under the so-called nondelegable duty theory of liability, Mr. Mosseau explained.

Thirty-eight states have adopted either the apparent agency or nondelegable duty stan-

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New D&O woes seen for foreign firms

Corporations coping with shareholder activism, new standards

By DAVE LENCKUS

BOSTON—Non-U.S.-based corporations seeking directors and officers liability insurance may face a tentative market that has to sort out a rapidly changing international environment, according to a panel of insurance and legal experts.

In Europe, Asia and Latin America, D&O insurers have to learn to underwrite in an environment of evolving shareholder attitudes, new accounting standards and changing statutes, the panel of experts noted.

"So, there's a lot of things to worry about," said Martin L. Firman, a senior vp in London at ACE INA Services U.K. Ltd., a unit of ACE Ltd.

Mr. Firman and other D&O liability experts outlined their concerns about international liability and coverage developments during a session at the 18th Annual Professional Liability Underwriters Society International Conference, held Nov. 13-15 in Boston.

A major recent development is the rise in shareholder activism, especially in Europe, the panelists noted.

Shareholders in Europe are demanding corporate governance similar to that in the United States, explained Richard H. Murray, chief claims strategist at Swiss Re America Holding Corp. of Zurich, Switzerland.

In Latin America, corporate governance—including the notions of independent directors and audit committees—is a new concept, noted Robert Vernon, a senior vp at reinsurance intermediary Mexbrit Ltd. in Coral Gables, Fla. "At this stage, shareholders (there) are just looking for information," he said.

As shareholders seek more information, corporations in many countries must for the first time prepare financial reports under the new international financial reporting standard, Mr. Firman noted. The new standard is designed to bring international accounting closer to U.S. generally accepted accounting principles, he explained.

For underwriters and shareholders, financial statements in countries that have adopted the new standard "will look incredibly different" this year and in future years, Mr. Firman noted. As a result, some companies that looked very strong before may appear to have "a very poor position" now, he said.

But recent developments in international litigation concern the panelists the most, they said.

The U.S. plaintiffs bar is "a growth industry" that is looking for new, revenue-generating products, and its new focus is on shareholder litigation in Europe, said Mr. Murray.

See **D&O** / page 6

BI editors select best Web site offerings for 2005

Business Insurance has again chosen a variety of Web sites for its annual Best of the Web feature.

The magazine created the feature in 2001 to recognize outstanding Web sites for the purchasers of commercial insurance and risk management and employee benefit services. Brief profiles and links to the sites are available at *www.BusinessInsurance.com*.

To select the Best of the Web, *BI* editors researched sites in multiple categories, looking for those that they deemed particularly useful, helpful, interesting, informative and innovative.

To be eligible for Best of the Web consideration, a Web site must provide relevant information to *Business Insurance*'s audience of commercial risk and benefit management professionals.

The site must also be open to the public and freely accessible on Internet. A site may have restricted areas, but those features are not considered for purposes of determining *BI*'s Best of the Web.

Readers are welcome to recommend their own sites or share those that they find to be noteworthy, though Best of the Web reviews will not be restricted only to such sites.

BI strives to review categories of interest to risk managers and benefit managers, though not all categories in any given year may produce Best of the Web winners.

To view the 2005 Best of the Web, visit *www.BusinessInsurance.com/bestofweb*.

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WE JUST MARKED OUR 20TH ANNIVERSARY.

HERE'S HOW WE SPENT THE DAY.

Thousands of us rolled up our sleeves and spent our 20th anniversary helping out in our own communities around the world. We built a playground in Malaysia. We fed the homeless in London. We taught kids how to read in Philadelphia. We painted homes in Bermuda.

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Bedside manner: Physician apologies, listening skills reduce med mal claims

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dards of liability, including nine states since 2000, he noted. The remaining 12 states either have not addressed the issue or, as in Missouri and Texas, have rejected those standards, he said.

But just as physicians can draw hospitals into malpractice cases, they can keep themselves and hospitals out of litigation through some behavioral changes, said hospital defense attorney Steve W. Day Jr., a partner at Marshall Dennehey Warner Coleman & Goggin in King of Prussia, Pa.

One of the most important changes physicians can make is to apologize to patients and their families for bad medical outcomes, Mr. Day said. Several hospitals that have implemented apology programs report reduced malpractice claim frequency, he noted.

Indeed, the Joint Commission on Accreditation of Healthcare Organizations this year issued a white paper recommending that doctors talk and listen more to their patients, Mr. Day noted.

In his own experience, Mr. Day said, patients' comments over years of depositions suggest physicians could prevent some litigation by improving their communication with patients. For example, he cited a comment from a woman who was suing a hospital and a physician for medical malpractice: "If someone, anyone, had just talked to me and my husband and explained what happened, we probably wouldn't be here."

Physicians say they do not want to give plaintiffs ammunition by issuing apologies for poor outcomes that

> One of the most important behavioral changes physicians can make is to apologize to patients and their families for bad medical outcomes.
>
> **Steve W. Day Jr.**
> **Marshall Dennehey Warner Coleman & Goggin**

the doctors believe did not result from medical errors, Mr. Day said. But patients who sue physicians who have apologized are precluded in 18 states from using the apologies as evidence of wrongdoing, he noted. In the other states, "I wouldn't want to shield an apology from a jury," because juries "want to hear what patients want to hear," he said.

Issuing apologies alone, though, is not enough to reduce claims, stressed Dr. Craig E. Samitt, chief operating officer of Fallon Clinic Inc. of Worcester, Mass., and president of the clinic's captive insurer.

Dr. Samitt said that a physician who has not established a cordial relationship with a patient and then apologizes after a poor medical outcome might make such a situation "even worse." The patient may view the apologizing physician as insincere, he explained.

In a 14-question patient-satisfaction survey that Fallon routinely conducts, physicians who are sued more often than other doctors receive lower marks than their peers on two questions, Dr. Samitt noted. Those questions asked patients to rate how well their physicians listened to them and respected them.

Fallon now informs the physicians who receive those low marks that they are greater malpractice risks than their peers and must take certain steps to improve their demeanor with patients. Otherwise, continued low patient-satisfaction scores will jeopardize up to 10% of those physicians' compensation, Dr. Samitt explained.

That risk management effort has helped reduce Fallon's malpractice claim frequency over the past couple years, according to Dr. Samitt.

Mr. Day noted that physicians often complain they can ill afford the time they think is necessary to improve their patient relationships and that doing so still would not dissuade all patients from filing malpractice claims.

He noted, though, that physicians would spend far less time establishing more cordial relationships with their patients than defending claims. And while that change in demeanor would not stop all dissatisfied patients from suing, it would greatly reduce the number, he asserted.

While physician resistance to recommended behavioral changes is not uncommon, Dr. Samitt said most physicians "respond very well to data and evidence" that shows how to improve their malpractice claims experience.

18th annual PLUS conference sees record attendance of 2,100

BOSTON—A record 2,100 visitors attended the 18th Annual Professional Liability Underwriters Society International Conference, held in Boston Nov. 13-15.

The conference featured 16 general and educational sessions that focused on topics such as evolving risks for directors and officers of non-U.S. organizations, managing law firms' risks, trends affecting architects and engineers professional liability, the impact of physicians' demeanor on their own and on hospital medical malpractice liability exposure, and technology and cyber liability exposures.

The 2006 PLUS international conference is scheduled for Nov. 8-10 at the Hyatt Regency Chicago in Chicago. PLUS also has scheduled several symposiums covering a variety of professional liability risks over the next 12 months.

More information is available by contacting PLUS at 800-845-0778 or at *info@plusweb.org*.

D&O: Foreign-based corporations face a changing international environment

Continued from page 4

At the same time, class action lawsuits—once only a U.S. concept—appear to be a litigation tool that lawmakers around the globe are interested in importing, the panelists noted.

For example, Canada, South Korea and the Netherlands now allow class actions, and German and French lawmakers have proposed allowing class action suits or similar forms of litigation, noted Perry S. Granof, a vp and claims counsel in Chicago for Chubb Corp. unit Chubb & Son Inc.

Meanwhile, U.K. lawmakers are considering giving corporate shareholders greater power to sue directors for negligence and breach of duty, Mr. Firman noted.

In addition, U.K. directors and officers for the first time face the prospect of derivative action claims under a recent law, he explained. But companies still cannot cover executives' legal and indemnification costs in derivative action cases unless the executives ultimately prove their innocence, he said.

Therefore, Side B coverage, which reimburses companies that indemnify their executives, is far less common in the United Kingdom than in the United States, Mr. Firman noted. However, U.K. lawmakers recently have allowed corporations for the first time to cover executives' legal and indemnification costs arising out of third-party claims, he said.

Most other European and Asian countries prohibit corporate indemnification of executives, he noted. That is a significant problem for executives in Germany, Sweden and Switzerland, where corporate supervisory boards are legally obliged to sue management boards if malfeasance is suspected, Mr. Firman said.

And running afoul of laws overseas is easy, because even lawyers and judges do not fully comprehend them, Mr. Firman asserted. "So you could have broken some of these laws very often without even knowing it," he explained.

Unlike the United States, many countries continue to require the losing side in a lawsuit to cover all litigation costs, which deters some plaintiffs from filing claims, Mexbrit's Mr. Vernon noted.

But Swiss Re's Mr. Murray said he "wouldn't be surprised to see that as the next wall to crumble."

Foreign-based companies also face litigation problems in the United States, the panelists noted.

Indeed, foreign companies listed on the New York Stock Exchange are just as likely to be sued in the United States as U.S. companies are, said insurer attorney Richard J. Bortnick, a partner at Cozen O'Connor P.C. in Philadelphia.

Some foreign-based companies are contemplating delisting because of the Sarbanes-Oxley Act, which requires chief executive officers to certify the accuracy of financial statements, noted Mr. Bortnick, the panel moderator. The act applies to foreign companies that are listed on U.S. exchanges.

But delisting is difficult for companies with more than 300 shareholders, he said.

Meanwhile, U.S. courts are finding reasons to assert jurisdiction in securities cases between non-U.S. shareholders and foreign-based companies, Chubb's Mr. Granof noted. Among the reasons U.S. courts have assumed jurisdiction in those kinds of cases are that a foreign company had acquired U.S.-based companies and that a foreign company's top executives had moved to New York to conduct business there for half of the year, Mr. Granof said.

Mr. Murray said a U.S. court also could assume jurisdiction if money from a foreign organization had moved through a U.S. bank.

But Mr. Bortnick noted the standards under which different circuits may assume jurisdiction vary.

As a result, Mr. Murray explained, "it's impossible for underwriters to research" this kind of risk to the extent that they feel comfortable they understand it.

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Editorial

Employers and government must act to cut health care costs

THE NEWS ON group health care plan cost increases is both good and bad. The good news is, of course, that health care plan inflation continues to ease.

This year's average increase of 6.1% is, according to an annual survey by Mercer Health & Benefits, the smallest increase in eight years and less than half the 14.7% increase racked up just three years ago.

The bad news, though, is that health care cost increases still are running substantially ahead of the overall increase in the cost of living, and that is a trend that cannot continue indefinitely—unless all corporate, governmental and individual spending goes for health care.

To be sure, there are encouraging findings in the Mercer survey. Employers, in ever-increasing numbers, have been changing the design of their health care plans. Going by the board are plans that, except for small co-payments, essentially picked up all the bills. At last, employers have recognized that not only have such plans become unaffordable but they also offer no possibility of controlling costs.

Common sense dictates that if employees are insulated from the true cost of medical services, they aren't going to make much effort to use those services in a cost-efficient way.

If the co-payment for a generic drug is $10 and the co-payment for a branded product is $20, for example, there isn't much incentive for an employee to opt for the generic. But if the employee has to pay for a percentage of a drug's annual costs, the incentive to use a generic, whose cost often is a fraction of a brand name product, is much greater.

Also encouraging is the rise in employer-sponsored programs such as health risk assessments that try to spot medical conditions early before they mushroom into very expensive problems. We think the potential of such programs to control costs is enormous.

Still, all these efforts clearly are not enough if health care cost increases are to fall along the lines of other goods and services.

What is needed, urgently, we believe, is greater transparency in the health care system. Automobile consumers, for example, can find online everything they need to know—vehicle records and information about prices, rebates and a lot more—before buying. But in health care, the situation is vastly different. While we hear things are starting to change, precious little information is available to health care users when they want to select a doctor or a hospital.

Obviously, having access to quality and cost information is essential for employees to make the best health care purchasing decisions. Until such information is widely available, we don't see how costs ever can be fully brought under control.

At the same time, policymakers have to devise ways to bring down the number of people—now well over 40 million—without health insurance. The huge number of uninsured is costly in many ways, particularly because those without health insurance often delay seeking needed medical treatment. That results in trips to emergency rooms, which provide the most costly type of care and one whose costs are shifted by hospitals onto insured patients.

Employers and government, if they have the will to act, can work to bring down cost increases. Cutting health care plan cost increases in half in three years is no small achievement, and we believe that success should inspire health care payers to take even more aggressive steps on the cost control front.

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

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Schillerstrom

Decision on forum shopping displays judicial common sense

SAY THE WORDS "Madison County, Ill.," to a tort reform advocate, and you're certain to draw a grimace—or worse.

That's because Madison County has earned the dubious reputation as one of the worst places in the country for a corporation—particularly one from out of state—to find itself facing a lawsuit. The county's overwhelmingly pro-plaintiff disposition has made it a favorite jurisdiction for attorneys filing class-action suits, which often have the most tenuous of connections with Madison County or even the state of Illinois.

Fortunately, as we report on page 1, the Illinois Supreme Court recently took a step toward reining in such potential abuses. In its decision in *Gridley vs. State Farm Mutual Automobile Insurance Co.*, the court issued a common-sense decision holding that the plaintiff or the alleged misdeed had to have some connection with the state.

In the *Gridley* case, the plaintiff was a resident of Louisiana, and the misconduct he alleged took place in Louisiana, yet he attempted to certify a class in an Illinois court to seek remedy under an Illinois consumer protection. The court said he couldn't do that, and it directed the Madison County court that had accepted the case to dismiss it.

Meanwhile, the Illinois General Assembly has been considering a bill that would tighten requirements for filing suits in county courts by requiring that such cases be filed in the county where the defendants live or where the alleged misconduct took place.

These are both common-sense developments that could help restore balance to a civil justice system that can—and, in some places, clearly has—been knocked out of whack. Requiring that the forum in which a suit is filed actually have some connection with the suit may seem revolutionary to some, but it is essential to ensure that all parties in a dispute get at least the possibility of a fair hearing.

Taken to their logical conclusion, the civil justice trends in Illinois could lead to the day when the words "Madison County" no longer conjure the image of a place where some defendants fear to tread.

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COMINGS & GOINGS - INDUSTRY

Mr. Schake

Mr. Troy

Mr. Fishman

Insurers

Los Angeles-based Farmers Insurance Group has named **Mhayse Samalya** president of the Farmers business insurance division. Mr. Samalya previously was chief executive officer and president of Hanover Insurance Co.

San Antonio-based Argonaut Group Inc. has elected Vp and Deputy General Counsel **Craig S. Comeaux** to the additional position of corporate secretary. Mr. Comeaux succeeds Senior Vp and General Counsel **Byron L. LeFlore Jr.**, who will continue in those roles. Before joining Argonaut, Mr. Comeaux was senior vp, general counsel and secretary for Seitel Inc. in Houston.

New York Life Insurance Co. has promoted **Maryann L. Ingenito** to senior vp in the life insurer's agency department. Ms. Ingenito, who has spent more than 25 years at the New York-based company, previously was a first vp.

Reinsurance

Hamilton, Bermuda-based Scottish Re Group Ltd. has appointed **David R. Howell** deputy chief executive officer of its international reinsurance business. In this new role, Mr. Howell will be based in Windsor, England, and responsible for marketing, pricing, risk management and treaty business of Scottish Re in Europe, Asia and the Middle East. Before joining Scottish Re, Mr. Howell was chief pricing officer for Swiss Reinsurance Co.'s life reinsurance business in Europe, Asia and Latin America.

RenaissanceRe Holdings has made two senior appointments: **Kevin J. O'Donnell** was promoted to president of Renaissance Reinsurance Ltd. in Pembroke, Bermuda. Mr. O'Donnell, who takes on the additional responsibility of overseeing RenRe's specialty lines, will remain senior vp of the holding company with oversight of the catastrophe reinsurance lines.

Ian Branagan will relocate to Bermuda in January 2006 to head RenRe's Group Risk Modeling division. Mr. Branagan currently is managing director of RenaissanceRe of Europe in Dublin, Ireland.

Agents/Brokers

Eric Schake has joined Willis Group Holdings Ltd. as executive vp in the brokerage's real estate practice. Mr. Schake, who previously was a managing director and leader of the North American real estate practice at New York-based Marsh Inc., will be based in Willis' Dallas office.

Also at Willis, **Ricardo Solis** has joined the brokerage as managing director of retail operations in Mexico. Mr. Solis, previously chief operating officer of Mexican business for Marsh Inc., is based in Mexico City.

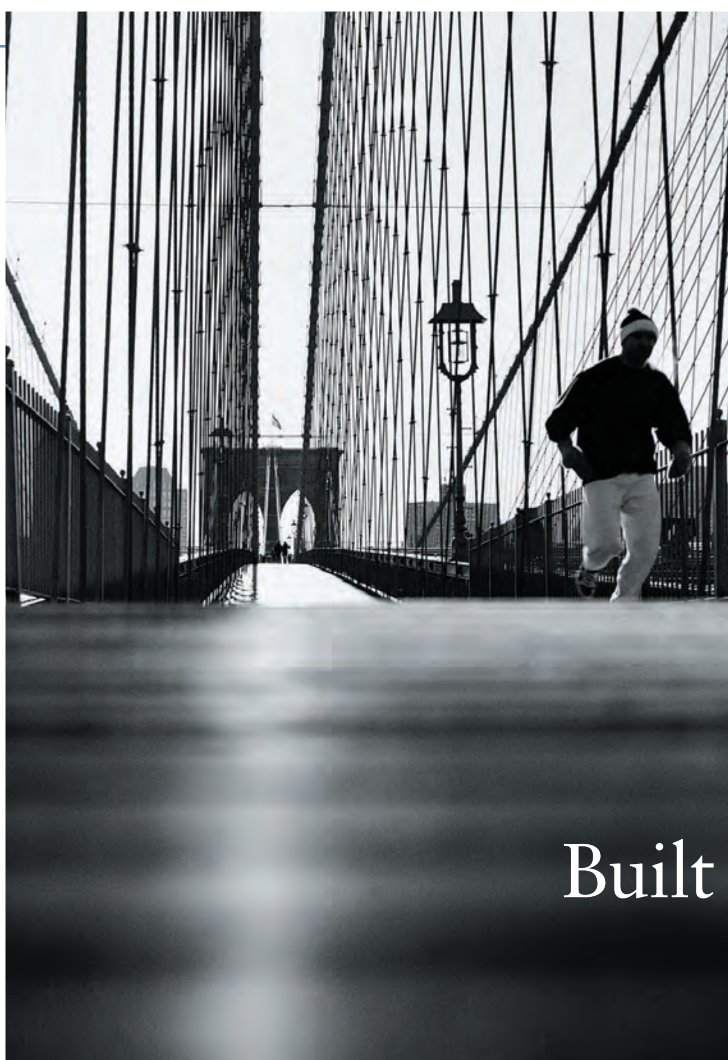
Farmington Hills, Mich.-based Burns & Wilcox has promoted **Wayne Bates** to director of the special risk division, International. Mr. Bates previously was director of Burns & Wilcox's London consortium department and deputy director of the special risk division. He is based in Michigan.

Other suppliers

Edward G. Troy has joined Parsippany, N.J.-based claims services company GAB Robins Group of Cos. as president and chief executive officer. Previously, Mr. Troy was president of ESIS, the risk management services arm of Philadelphia-based ACE USA, and before that he was founder and president of Ed Troy Associates, a risk management firm.

ARAG, a Des Moines, Iowa-based provider of legal insurance services, has named **Robert M. Fishman** chief executive officer and president. He succeeds **Jim Brennan**, who is retiring. Mr. Fishman previously was executive vp and chief underwriting officer for Schaumburg, Ill.-based Zurich North America.

Business Insurance would like to announce recent senior-level appointments and promotions at commercial insurance industry organizations. Please send information to Comings & Goings Editor Joe Walker, Business Insurance, 360 N. Michigan Ave., Seventh Floor, Chicago, Ill. 60601-3806; or e-mail jwalker@businessinsurance.com. High-resolution photos should be sent to Assistant Managing Editor/Graphics Kathy Barnes at the same mailing address or kbarnes@businessinsurance.com.



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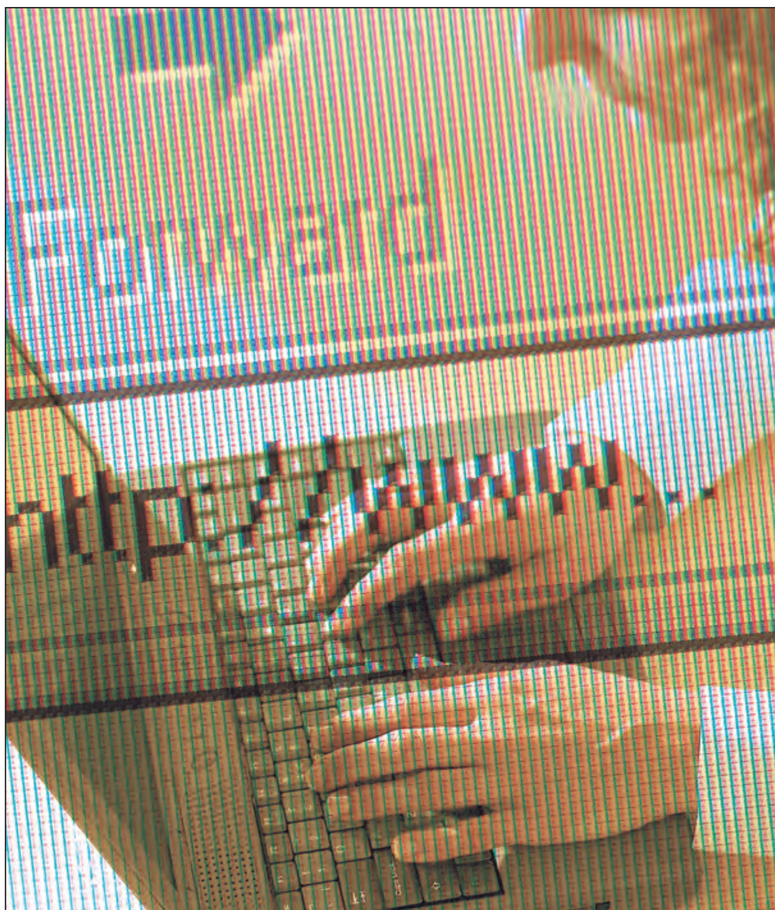
Spotlight E-Commerce Risks

Scarce coverage for open source software puts premium on managing risks / 14



Increased security needed to tackle phishing threat

By SALLY ROBERTS

As more employers add e-commerce capabilities to their Web sites, they become more vulnerable to the growing cyber threat known as "phishing."

Better use of technology, especially when it comes to authenticating the identity of customers accessing Internet-based financial services, and increased customer education efforts are imperative as companies seek to guard against the growing phishing threat, experts say.

Phishing is a general term for the criminal creation and use of e-mail and Web sites that are designed to mimic those of well-known legitimate businesses and financial institutions to deceive customers into disclosing their bank and financial account information or other personal data.

The so-called "phishers," who might lure a customer to a spoof Web site with an e-mail stating there is something wrong with their account, will take the customer's information and use it for criminal purposes, such as identity theft and fraud.

While banks, e-retailers and credit card companies most often are the targets of these schemes, experts say any organization with an e-commerce presence is at risk.

And that risk is substantial.

Approximately 1.2 million consumers lost $929 million in 2004 as a direct result of phishing attacks—most of which was repaid by banks and credit card companies, according to the Gartner Group, a Stamford, Conn.-based information technology research and consulting firm.

Moreover, the increasing number of phishing attacks is eroding consumer confidence in e-commerce and electronic transactions.

For example, Gartner found in a recent survey of 5,000 adults in the United States that nearly 30% of those who conduct banking online said that online attacks have influenced their activities. More than 75% of them said they log in less frequently and nearly 14% have stopped paying bills online.

"The end consumers are becoming alarmed by it and are beginning to question the channels of electronic commerce and electronic banking," said Scott Mackelprang, vp-security and compliance for Dig-

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Cyber privacy rules challenge employers

Regulations prompt more lawsuits

By MICHAEL BRADFORD

Employers busy fending off cyber invaders intent on stealing private information are also spending a lot of their time just keeping up with new regulations aimed at keeping that data safe and worrying about new liabilities the laws are creating.

As electronic commerce crimes have increased in recent years, so have the number of laws aimed at protecting consumers' information from hackers, careless employees and other threats. Criminals are particularly interested in acquiring Social Security numbers, bank account information, credit card numbers and other data that can help them steal identities or money from unsuspecting consumers.

Businesses that deal with such personal information are finding there is a growing regulatory effort to make sure that it is properly safeguarded and that potential victims are notified when thefts occur. As companies come under pressure to reveal security breaches, they are facing growing numbers of claims from disgruntled consumers.

The amount of new and proposed regulation is "really quite staggering," said Michael Lamprecht, national practice leader of e-insurance at Gallagher CyberRisk Services, a Chicago-based division of Arthur J. Gallagher & Co. A rash of high-profile data breaches, the rising incidence of identity theft and increasing numbers of angry consumers have driven lawmakers to come up with laws that ensure greater safety of private informa-

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Blog liability risks expanding, but coverage takeup limited

By JUDY GREENWALD

Companies seeking media liability insurance for their corporate blogs will find several insurers willing to provide the coverage, but, so far, there has been little demand.

This is likely to change, however, if significant losses develop for the online journals, experts say.

To date, there are no specific blog policies, but some insurers cover the blogs of nonmedia firms as part of a more-general policy that protects their other media outlets as well, such as Web sites.

They include units of Chubb Corp., American International Group Inc. and the ACE Group of Cos. In addition, Kansas City, Mo.-based Media/Professional Insurance Agency is developing a similar policy that it expects to launch in the first quarter of 2006.

Meanwhile, Chicago-based CNA Financial Corp. also offers coverage, either through a stand-alone policy that is offered to both media and nonmedia companies or through an endorsement added to a professional services policy.

Coverage for blogs written by professional journalists is generally included as part of their companies' libel policies, observers say.

Corporate blogs are hot these days. A growing number of firms are sponsoring—and encouraging their employees to write blogs, which are viewed as effective promotions for a company's image and products.

In response, some insurers are now covering blogs under their existing policies or introducing new ones.

At CNA, "we ask underwriting questions regarding (blogs)—and that's something we've never done in the past—due to the increased blogging that's going on," said Assistant Vp John Coletti.

Mike DiSilvestro, assistant vp of claims at Media/Professional, noted that his agency has focused on providing coverage to media companies for their intellectual property and defamation claims for 25 years. "But the fact of the matter is that most (nonmedia) companies are increasing their risks in intellectual property and in defamation," he said. "In other words, they're starting to have a lot more of the same type of exposure that traditional companies have had, and this is true largely because of the Internet."

Coverage demands

Observers say there has been little demand for blog coverage to date,

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Protect yourself

Nontechnical best practices for potential targets of a phishing attack, according to a recently published report by the Identity Theft Technology Council, include:

- Register the most deceptive available domain names similar to your brands.
- Trademark your domain names to provide recourse against any party that registers deceptively similar domain names.
- Monitor domain registrations and take action against parties registering domain names deceptively similar to yours.
- Establish clear policies on your e-mail practices, such as never asking for personal information or never providing a clickable link in an e-mail.
- Provide an e-mail address such as *spoof@yourcompany.com* to which customers may submit an e-mail to determine whether an e-mail is legitimately from you.
- Monitor signs of a phishing attack, including e-mail bounce messages, customer call volumes, anomalous account activity and suspicious use of images.
- Prepare customer communications to be sent out in the event of a phishing attack, to avoid delays in sending them when an attack is under way.

For more information about the ITTC report, "Online Identity Theft: Phishing Technology, Chokepoints and Countermeasures," visit *www.antiphishing.org*.

Phishing: Mimicking well-known legitimate Web businesses

Continued from previous page

ital Insight Corp., a Calabasas, Calif.-based online banking provider. "While there are statistics out there that would place (phishing) at a low absolute risk, the problem is people in the street are concerned and are beginning to modify their behaviors because of that concern. Therefore, it's a big problem for us."

The problem is far from going away.

According to the most recent report by the Anti-Phishing Working Group, an association of government agencies and commercial institutions that tracks phishing activity trends, 5,259 unique phishing Web sites were detected in August, the highest number ever recorded by the association, which was formed in 2003. This compares with 4,564 unique sites detected in July and 4,280 sites in June.

Not only are phishers becoming more sophisticated, they also are expanding the range of institutions that they are targeting, said Rebecca Bace, president and chief executive officer of Infidel Inc., a security consulting firm based in Scotts Valley, Calif. "If you're identified anywhere as being any kind of institution with an e-commerce presence that is perceived to have money flowing over your wires, you're a target," Ms. Bace said.

Indeed, the most important thing risk managers can do is "don't assume you're not at risk," advised Aaron Emigh, an Incline Village, Nev.-based managing director at Radix Labs, a technology consulting firm. "You've got to take the problem seriously. Just because you haven't been hit doesn't mean that you won't be," Mr. Emigh said.

One reason banks and financial institutions are so vulnerable to phishing attacks, experts say, is because they have relied too long on single-factor authentication technology—ID and password—to identify customers accessing financial services online.

"We're in a position where we've built a military system where we can only use moats and high walls to protect ourselves, and we're totally oblivious to the fact that the people who would attack us have fighter jets and heat-seeking missiles," Ms. Bace said of identity security.

To address the issue, the Federal Financial Institutions Examination Council last month released guidelines advising financial institutions offering Internet-based products and services to upgrade their current single-factor authentication processes to a stronger second form of authentication by the end of 2006.

The FFIEC considers "single-factor authentication, as the only control mechanism, to be inadequate for high-risk transactions involving access to customer information or the movement of funds to other parties," the regulating body said in its guidance report.

While the Arlington, Va.-based FFIEC is leaving it up to the financial institutions to choose which kind of authentication to implement, it lists several examples available, including biometric identifiers, such as fingerprint recognition and retinal scans, and physical devices such as smart cards, one-time passwords, USB plug-ins and other types of "tokens," which customers must attach to their computers.

Through a partnership with San Mataeo, Calif.-based TriCipher Inc., Digital Insight is in the process of weaving a number of FFIEC-compliant multifactor authentication functions into its products for its banking and credit union clients.

Currently, Mr. Mackelprang said, "cookies" and tokens are the method of choice.

Phishing not covered by all cyber, network policies

Insurance coverage for phishing attacks is available under various cyber and crime policies, but risk managers need to read their policies carefully to make sure phishing is covered.

Some cyber or network policies will not cover phishing attacks because there has to be a breach of security of the insured before the policies respond, explained Christopher Keegan, a senior vp and leader of the cyber network practice of FinPro in New York, a Marsh Inc. unit.

"Phishing isn't actually a breach of the bank per se. It's defrauding the customer because you're getting the information directly from the customer...and then going to the bank and taking money out of their account using an authorized password and authorized ID number," he said.

Mr. Keegan acknowledged, though, that some cyber policies do extend to cover breaches or liabilities arising from the disclosure of confidential information—whether they occur on third-party systems or not.

But he noted that traditional crime policies or financial institution bonds will not cover losses associated with a phishing attack unless there is a computer crime extension.

—By Sally Roberts

With a cookie, customers choose which computer or computers they want to use to access their online banking and Digital Insight will download to the customer's computer the information necessary to uniquely identify that person and that computer. If a customer attempts to access online banking information from another computer, he or she will not be allowed to log in, he explained.

With a USB memory token, Digital Insight stores cryptographic keys within the token that uniquely identify individual customers who must use the token in conjunction with a password to log on, Mr. Mackelprang explained.

Beyond stronger authentication techniques, experts say educating consumers about how to spot phishing e-mails and about their own corporate e-mail policies and procedures is key to mitigating the risk.

"If I were a risk manager looking at this, I would want to see that there was an ongoing program making sure customers knew we were not going to ask them (personal financial) information and that there was a place on the Web site where we keep telling them this," advised Alan E. Brill, senior managing director of technology services for Kroll Ontrack, a Secaucus, N.J.-based subsidiary of Marsh & McLennan Cos. Inc. unit Kroll Inc.

Risk managers also should make sure there's an easy way for customers to report phishing incidents relating to the company and that companies have a plan in place to respond if a phishing attack does occur, Mr. Brill advised.

Regulations: A growing effort to ensure info is safeguarded, victims are notified

Continued from previous page

tion, he said.

"Over the last couple of years, there has been a lot of momentum, particularly in the states," to pass laws protecting private data, agreed Aaron Latto, second vp, technology-claims, at St. Paul Travelers Cos. Inc. in St. Paul, Minn.

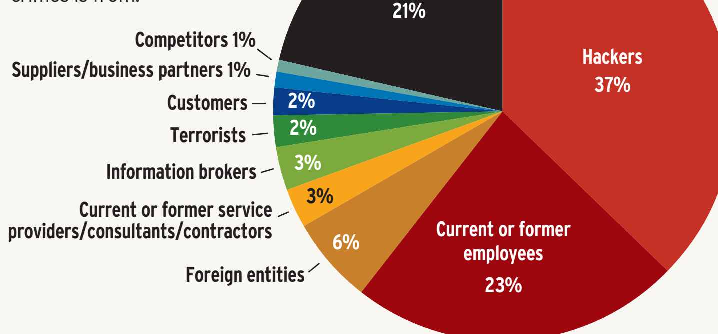
Large companies have not found compliance with new regulations "completely overwhelming yet," Mr. Latto noted, because most have the resources to handle the task.

For many, though, "it is quite expensive to keep up," acknowledged Mr. Lamprecht. Some businesses find they have to do a "state-by-state survey" to stay on top of regulations in all the areas in which the companies operate, he said, in part because the federal Sarbanes-Oxley Act of 2002 requires employers to demonstrate that they are in compliance with state privacy laws.

Sources point to California's S.B. 1386, which went into effect in 2003 to address identity theft, as the first law to institute strict information protection rules. It forces

Whom do you fear?

It's hackers who are perceived as the biggest threat among organizations worried about cyber attacks, with current or former employees regarded as the next-biggest menace, according to a survey earlier this year by CSO Magazine in cooperation with the U.S. Secret Service and Carnegie Mellon University Software Engineering Institute's CERT Coordination Center.



Source: 2005 E-Crime Watch Summary of Findings, *www.cert.org*

companies that have suffered a breach of certain types of consumer information to contact people who could be affected by the crime.

In an informational white paper titled "Information Management –New Threats, New Liabilities," the authors from ACE USA Professional Risk in Philadelphia and the Chicago-based law firm of Cozen O'Connor point out that at least 25 other states have instituted similar laws. Federal legislation mirroring the California requirements also is in the works.

The white paper points out that, as such laws are passed, companies with sensitive data are facing a growing liability.

"The unintended consequence of the California legislation has been to force companies to publicize their information security and information management failures, exposing them to reputational damage and potential class action litigation," the document says.

At least 20 class action lawsuits have been filed against an unnamed California-based data broker alleging violations of state privacy statutes when an identity theft ring accessed data on 145,000 people, according to the paper. A class action suit also was filed against a credit card payment processor that admitted information on around 34 million credit card holders was exposed to a security breach, the document states.

Mr. Lamprecht said that some holders of private information could face lawsuits from two different fronts if they disclose security breaches: a business' customers might file suit if their information is compromised, and financial institutions such as credit card companies, which could incur losses from improper charges, might also lodge claims.

"I work with Fortune 1,000 companies and don't know of any that haven't had a loss in the last three years," said Mr. Lamprecht. He said his clients have more frequently become the target of lawsuits as the privacy laws have evolved.

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Regulations: Cyber privacy rules challenge companies with Internet operations

Continued from page 12

But a risk manager points out that if information is tightly guarded, disclosure requirements are moot.

"The key for us is just to protect the privacy of our customers regardless of whatever the regulations are," said Roobik Galoosian, first vp-corporate insurance at IndyMack Bank in Pasadena, Calif. "That's what we want to accomplish."

And disclosing a breach, Mr. Galoosian said, "even in the absence of the law, is the right thing to do."

"You can argue that it puts the spotlight on you," he said, but notifying customers doesn't guarantee a lawsuit. "Claims either have merit or they don't," he said.

The threats to private information come from several places, sources say.

"External hackers seem to be the biggest source of attacks and risk to the companies," said Clint Johnson, one of the authors of the white paper and a senior vp at ACE USA Professional Risk, a unit of ACE USA. "There are a lot of individuals who can sit in relatively stress-free environments and hack and hack until they find access."

A survey completed earlier this year by COS Magazine showed that 37% of organizations believed the biggest threat to cyber security comes from hackers. Eighteen percent of the respondents suspected insiders as the most dangerous culprits (see chart page 12).

It is the damage done by insiders that Mr. Lamprecht said he commonly sees. Nearly all of the claims he handles from clients hit by security breaches are related to disgruntled insiders, he said. "It's usually the theft of a laptop or hard drive, or they are putting information on a disk or flash drive. It's absolutely rampant," he said.

Whether the incident stems from within the company or is the work of hackers, "both are very serious problems," said Mr. Latto of St. Paul Travelers. "Insiders have always been a problem. The hacker problem is bigger than it was a few years ago," he added, and has evolved from being mostly a crime of mischief to one of theft.

Robert W. Hammesfahr, an attorney with Cozen O'Connor in Chicago and a co-author of the information management white paper, said insurers offer a valuable defense against security breaches not only with their products but also by sharing their knowledge of losses.

Insurers see losses from a variety of businesses that are carried out by several methods, he pointed out. Their knowledge as to how those crimes were committed and the techniques needed to prevent them is something insurers can "bring to bear for their policyholders that have never seen these types of losses before," Mr. Hammesfahr said.

Blogs: Use of online journals expands liability, but insurance takeup limited

Continued from page 11

though. This is not "something that there's a lot of interest in," said David Hart, worldwide media product manager for Warren, N.J.-based Chubb Specialty Insurance, a unit of Chubb Corp.

But demand is beginning to develop, said Scott Kannry, Chicago-based media liability syndicator for Aon Risk Services. "Questions are starting to be asked, is probably the best way to put it, and I think demand will increase as the use of blogs increases," he said.

Demand would increase if there were "a lawsuit of that nature (which) would result in further awareness," much as the recent spate of security breaches has led to increased interest in security-type policies, said Mr. Kannry.

Mr. Hart said also, "The only way interest is going to increase is if people they think have coverage under their (general liability policy) and the company denies it."

There is a growing demand from non-media companies for media liability coverage as they develop their Web sites "and the blog is just sort of one other way that companies are expressing themselves to the public," said Chad Milton, Kansas City, Mo.-based national practice leader for media liability for Marsh Inc.

"At the same time, the general liability insurers are restricting coverage in the general liability advertising injury provisions, and that, too, is increasing demand for separate media liability policies" for non-media companies, said Mr. Milton.

There are unique aspects to blog coverage, said Mike Smith, president of the professional liability division of National Union Fire Insurance Co. of Pittsburgh, Pa., an AIG unit that insures exposures generated by companies' Web sites.

Mr. Smith noted that while the National Union policy is five years old, blogs are a phenomenon of only the past couple of years. "What we had to do as an underwriting company is recognize the exposure change and address it through underwriting means rather than change the policy," he said.

This is accomplished by first asking potential policyholders if they have any corporate blogs. Then "we review the blog itself to insure that we're comfortable with what they're telling us about their Web site, and we ask questions related to the review of information" that is posted on the blog, Mr. Smith said.

"What we want to do is ensure that somebody at the corporation is looking at it," he said, noting that that individual is typically someone who conducts legal review.

Mr. Smith said one concern is that a company will inadvertently pick up exposure through links to other Web sites that are not covered under the policy.

AIG offers deductibles as low as $10,000 and limits of up to $25 million for this coverage.

One of the factors Chubb would look for is whether the blog has a comment feature, said Mr. Hart. While there is software that edits out profane words, "we're looking for a deeper level of editing," he said. Mr. Hart noted, for example, that audio and video components are beginning to be available to blogs. "Those create certain types of problems," he said. "Generally, you can't have that Coke can in the background" because it could lead to accusations of copyright infringement, said Mr. Hart.

Chubb provides coverage for blogs through its multimedia liability policy, which offers limits of up to $15 million, with deductibles starting at $5,000.

Underwriting questions asked at CNA include whether the company has developed its own internal procedures regarding blogs, whether the blogs are for internal or external purposes, and whether they are group or individual blogs, said Mr. Coletti.

CNA offers limits of up to $10 million, with deductibles beginning at $10,000.

"One of the bigger issues with blogs is that a good blog page is kind of supposed to be off the cuff, open to discussion," said Clint Johnson, senior vp of ACE USA Professional Risk in Philadelphia. "It's just a little less of a controlled environment."

ACE policyholders can obtain blog coverage through the media component of its Digital Technology policy. The insurer offers up to $20 million in limits, with deductibles as low as $5,000.

These policies typically cover employees as well as the corporation, assuming the blogs are under the firm's aegis.

Media/Professional's policy will cover employees when the activity is "within the scope of their employment, so it would be important to know whether it was authorized, approved, encouraged by the employer," said Leib Dodell, president and chief executive officer of the underwriting manager and managing general agency.

Final details of the Media/Professional policy, including its deductibles and limits, are still being developed, he said. The insurer has not yet been determined.

Mr. Milton said that while employees who write blogs with their companies' blessing would be covered under these policies, "it gets a little bit sort of complicated" if the blogs are written outside the scope of an employee's employment.

But companies may find themselves drawn into litigation regardless, warned Mr. Milton. "I would think that if you're going to sue a blogger and you know the blogger's employed by some place that has money, the plaintiff is likely to sue the employer and at least allege that the employer has responsibility for it."

So far, though, there have been few, if any, claims in this area. AIG has not seen claims on blogs, but the exposure is "relatively new," said Mr. Smith. "Like anything," he said, "it takes time for the litigation to catch up with the change in exposures, unfortunately—or maybe it's fortunately," said Mr. Smith.

Alternative software may be source of risk, but coverage is scarce

By RUPAL PAREKH

With corporate use of open source software increasing, accurate assessment of the legal risks associated with that trend is becoming more important, experts say.

Concerns about possible copyright infringement and license infringement are escalating, but currently, there is little insurance protection available to companies using open source programs, they say.

Although a market for the coverage is developing, risk managers should concentrate on risk mitigation strategies as their principal defense against the potential liability, they say.

Open source software—which refers to computer programs whose licenses are designed to make their codes open, alterable and distributable—has been gaining ground over the past decade, increasing in distribution worldwide.

Currently, open source programs power 30% of Internet servers, 40% of e-mail servers and 65% of Web servers, running on the Linux, Sendmail and Apache operating systems, respectively, according to the Open Source Software Institute in Hattiesburg, Miss. In addition, more corporations are making the switch from commercial software products, such as those offered by Microsoft Corp., Oracle Corp. and others, to open source programs in order to gain flexibility for customers, customize software to better suit infrastructure needs and cut Internet technology-related spending, experts say.

"Open source-based products are continuing to grow and thrive all the time," said Stephen Walli, vp of open source development strategy for Boston-based Optaros Inc., an open source consulting and systems integration firm.

A survey conducted by Cambridge, Mass.-based Forrester Research Inc. found that, among 140 large U.S. corporations, 56% of respondents used Linux or another form of open source technology in Jan. 2005, up from 46% one year earlier. Nineteen percent said they were planning to adopt open source, compared with 14% in Jan. 2004.

While more and more companies are joining the open source movement, it doesn't come without its risks.

One major exposure faced by open source users, observers agree, is potential costly litigation stemming from the infringement–

See OPEN SOURCE / page 16

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Photo: Michael Marcotte

Lance Ewing (L) and Chris Mandel, RIMS past presidents.

BI's Daily News & Conference Coverage at RIMS 2006.

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Between the Lines

Compiled by Joanne Wojcik

Such stuff as dreams are made on

Reinsurance veteran Don Kramer certainly seems to have a literary bent, or perhaps just an affinity for the Bard.

The executive who formed property catastrophe reinsurer Tempest Re in 1993 is now taking the helm at the new $1 billion Bermuda-based reinsurer, Ariel Reinsurance Co. Ltd. Ariel is the spirit in William Shakespeare's play "The Tempest," a work many believe was inspired, in part, by a shipwreck on the island of Bermuda.

'Tis the season to be distracted

According to recent research conducted by British auto insurer Privilege, 32% of drivers admit they are distracted by such things as billboards and Christmas decorations.

Men are more susceptible to distractive advertising than women, with 22% of them admitting that they have been distracted by scantily clad women on advertisements, while only 11% of women said the same about semi-naked male models.

But if drivers cruise along while listening to easy listening or classical music on their car stereos, they just might mitigate that risk, the insurer has also found.

According to another Privilege study, safe drivers—defined as those who haven't had an accident in the last four years—are most likely to listen to easy listening and classical music, while those more likely to have accidents tend to listen to indie/rock, dance/house music and rhythm and blues.

Attack of the tomato killers

A couple who ordered their employees to saturate a tomato field with cocktail ice and then beat down the plants with wooden stakes to simulate a hailstorm has been sentenced to prison for crop insurance fraud.

From 1997 to 2003, Robert and Viki Warren filed dozens of insurance claims involving lost crops in North Carolina and Tennessee, collecting more than $9 million from the federal government program designed to help needy farmers, the U.S. Department of Agriculture reports.

While it may be particularly egregious, this latest caper is not new, according to the USDA.

Fraud has been sprouting up around the country as the value of the federal crop insurance program has grown to some $40 billion and as dozens of new specialty crops became eligible, from blueberries to sunflowers to lemon grass. The department estimates that bogus claims by farmers cheated the U.S. Treasury and insurance companies out of $160 million last year.

Oh, deer!

The phrase "like a deer in the headlights" is no mere simile for the 1.5 million motorists involved in deer-car collisions annually.

These accidents kill more than 150 drivers each year and result in more than $1.1 billion in vehicle damage, according to Bloomington, Ill.-based State Farm Insurance Co., the nation's largest auto insurer.

Because fall is the peak season for the likelihood of antlers colliding with bumpers, State Farm recently released its list of the states that experience the most deer-car collisions, based on claims statistics. Pennsylvania is No. 1, followed by Michigan, Illinois and Ohio.

According to the National Highway Traffic Safety Administration, the frequency of animal-vehicle collisions has increased 24% over the last 10 years as urban sprawl has increasingly led humans to encroach on the animal's natural habitat.

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

Open source: Copyright infringement concerns

Continued from page 14

known or unknown—of a technology copyright or patent. Such intellectual property claims threaten the users of open source and proprietary software alike, but the area caught attention in the open source community after Lindon, Utah-based SCO Group in 2003 brought a lawsuit against IBM Corp. for alleged breaches of SCO's copyright to Unix software through IBM's use of the Linux operating system. The case has yet to be resolved.

Another significant legal risk relates to license compliance, observers say. According to a study carried out by Open Source Risk Management Inc., a consulting firm in New York, more than 30 legal claims alleging open source license infringement have been filed against companies globally in the last two years.

Some companies may assume they are not at risk of open source licensing infringement because they do not commercially distribute the software, but a firm could face losses simply as a result of sharing its internal application with a related party such as a customer, supplier or partner, OSRM says.

An added complication is that corporate lawyers often lack an understanding of open source licenses. "The licenses are written in an informal fashion," and "so a lawyer cannot be as certain (about compliance) as one might otherwise be if a code were offered under a conventional commercial agreement," said Heather J. Meeker, an attorney with Greenberg Traurig L.L.P. in East Palo Alto, Calif., who advises software and technology companies on intellectual property issues and open source compliance.

While patent infringement risks have seen the development of some protections for companies—offered in the way of vendor-backed indemnification programs extended to customers by Hewlett Packard, Novell and other companies—open source license compliance risk, which is excluded from standard errors and omissions policies, has generally been uninsurable.

But last month, three companies partnered to offer open source compliance insurance coverage. The policies are underwritten by Kiln

> "I do not believe that disclosure of source code in 90% of cases would damage a company's core basis."
>
> **Bill Weinberg**
> **Open Source Development Labs Inc.**

P.L.C., which operates Lloyd's of London managing agency R.J. Kiln & Co., while London-based broker Miller Insurance Services Ltd. places the coverage. OSRM, meanwhile, serves as an advisor and risk-assessor to Kiln.

In order to be considered for coverage, potential policyholders must complete an initial risk assessment and license compliance audit, for which Kiln charges a flat fee of $25,000. Policy rates are approximately $20,000 per $1 million of coverage, with limits of up to $10 million, though companies with risk mitigation techniques in place for open source compliance will receive premium discounts, noted Matthew Hogg, an underwriter in Kiln's risk solutions group.

The policy offers coverage for lost revenue associated with the withdrawal or alteration of a product incorporating noncompliant code and, in some cases, the repair or replacement of a code that infringes upon the Open Source General Public License or other related licenses.

Long term, Kiln believes the demand for insurance to guard against compliance risks for open source will become more widespread. "I am under no illusion that this is going to be seen as a niche product for the next year or 18 months," said Kiln's Mr. Hogg.

Optaros' Mr. Walli is concerned, though, that taking on an insurance product for license compliance may give users "a false sense of security." "The level of risk that they run vs. the cost of the insurance does not warrant it," he added.

According to Bill Weinberg, strategist and analyst for Beaverton, Ore.-based Open Source Development Labs Inc., "The probability for being forced to give something away is very small." Even if a company was forced to make a proprietary code freely available, "I do not believe that disclosure of source code in 90% of cases would damage a company's core basis," Mr. Weinberg said.

But, regardless of whether companies choose to insure against compliance risks related to open source, other risk mitigation techniques—including proper training of employees and heightened education around subjects such as Internet protocol law and license compliance—should be emphasized, Mr. Walli stressed. Even simple risk mitigation strategies such as keeping a detailed manual log of license requirements can go a long way, Mr. Walli said.

Companies should look at open source no differently than they would any intellectual property, Mr. Weinberg said. "You should, at the very least, have a best practices regime in place" for open source usage, "and it would behoove you for proprietary software as well," he recommended.

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Commission discusses updating company law

Continent-wide modernization will reflect needs of companies

By BARBARA COCKBURN

LONDON—European corporate governance experts met with the European Commission in Brussels last week to assist commissioners in developing a Europe-wide directive to modernize corporate governance and company law.

Members of the Corporate Governance Forum, an advisory organization comprising 15 representatives from E.U. nations, met last Monday with policymakers. The group, which includes investors, insurance executives, lawyers and academicians, is keen to "avoid hasty legislation," according to Gerhard Cromme, a member of the forum and president of the German Corporate Governance Code Commission.

Mr. Cromme outlined the forum's position in a speech earlier this month at the European Corporate Governance Conference in London.

"Europe needs standardized principles to promote the convergence of corporate governance of E.U. countries. There are considerable differences in corporate cultures, and we have to take into account national peculiarities," he said.

One of the forum's goals is to avoid a European version of the Sarbanes-Oxley Act, a set of mandates that the U.S. Congress enacted quickly in response to corporate scandals.

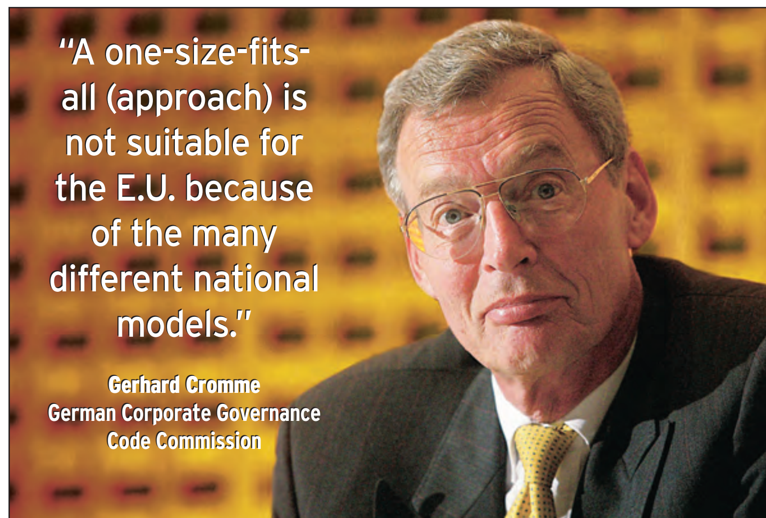
Many European companies already must comply with Sarbanes-Oxley because they have stock exchange listings in the United States, Mr. Cromme noted. He added, "a one-size-fits-all (approach) is not suitable for the E.U. because of the many different national models."

Charlie McCreevy, the European Commissioner for Internal Market and Services, said in his keynote address to the recent London conference that the purpose of the gathering was to "reflect" on what should be done next to improve the financial transparency and competitiveness of E.U. companies and achieve better regulation, "and this conference is the first step in that consultation."

The European Commission began its corporate governance project in 2003, and Mr. McCreevy explained that the eventual directive, scheduled to take effect by 2009, will "enhance transparency and empower shareholders."

Much of European company law was introduced from the late 1960s to the early 1990s and now must be updated to reflect the market and the current needs of companies and

See GOVERNANCE/page 19



"A one-size-fits-all (approach) is not suitable for the E.U. because of the many different national models."

Gerhard Cromme
German Corporate Governance Code Commission

Integro buys brokerage to enter London market

LONDON—Integro Ltd. has acquired independent Lloyd's of London broker Humphreys Haggas Sutton & Co. Ltd., giving the New York-based broker a presence in the London marketplace.

Integro said in a statement that it had received approval from the Financial Services Authority to assume control of London-based HHS, which will be renamed Integro Insurance Brokers Ltd. Terms of the deal were not disclosed.

HHS, which was founded in 1994, is an independent wholesale broker that places both insurance and reinsurance in the Lloyd's market. Specialties include aerospace, U.K. commercial risk, directors and officers, financial institution, medical malpractice, political risk and professional indemnity business.

HHS places premiums in excess of $200 million per year, according to the company's Web site, and it currently has a staff of 26.

"We are very pleased with the addition of HHS to our team. It is a very fine specialty operation with excellent professionals and deep skills in professional liability and medical malpractice lines of business," Roger Egan, chief executive officer of Integro, said in the statement. "Integro will build upon this platform to broaden our capabilities in this important marketplace," he added.

John Sutton, a founder member and director of HHS, said in the statement that the deal "represents an opportunity for us to leverage our skills and experience by aligning with a broker with great emerging marketplace power."

"In addition to the significant opportunities we expect for future growth, an important facet of this transaction is that it causes minimal conflicts and allows us to look forward to providing a continued high level of service to our existing clients," Mr. Sutton added.

Integro, which targets large, complex risk management accounts, was formed earlier this year by industry veteran Robert Clements along with Mr. Egan and Peter F. Garvey, both of whom came from Marsh Inc.

The startup broker now has offices in Atlanta, Bermuda, Chicago, London, Montreal, New York, San Francisco and Toronto and "will be opening offices in other selected cities in the upcoming months," according to the statement.

—By Sarah Veysey

HHS stats

FOUNDED
In 1994, as Humphreys Haggas Sutton & Co. Ltd.

SPECIALTIES
Aerospace, U.K. commercial risk, directors and officers, financial institutions, medical malpractice, political risk and professional indemnity business

ANNUAL PREMIUMS PLACED
More than $200 million

STAFF
26

Employers, trustees push PPF for changes of risk-based levy rules

By SARAH VEYSEY

LONDON—Employer representatives and pension fund trustees last week urged the United Kingdom's Pension Protection Fund to revise some rules for its proposed risk-based levy on employers operating defined benefit pension plans prior to introduction of the levy in April.

In particular, the PPF should make special allowances for multi-employer plans and plans for companies that are backed by larger parent corporations, they said.

The PPF, which is loosely modeled on the United States' Pension Benefit Guaranty Corp., will, from April, introduce a risk-based levy on employers with defined benefit plans. For the current year, the PPF's first in operation, employers were charged a flat-rate levy.

In July, the PPF published proposals on how the risk-based levy likely would be calculated, which included assigning employers to various risk bands based on their likelihood of insolvency.

After a public comment period on those proposals, the PPF announced that the levy would take into account the level of underfunding of an employer's pension plan, the risk of insolvency of the sponsoring employer and the amount of benefits the fund would have to pay if it were accepted into the PPF. In addition, the PPF said it would take into account special cash contributions made by employers to address deficits in their pension plans, as well as the use of contingent assets–such as letters of credit-that could be used by employers to address funding shortfalls when assessing the risk-based levy.

At a National Assn. of Pension Funds conference last week, Partha Dasgupta, director of investment and finance at the PPF, said he was unable to tell delegates how much their levies were likely to be. He said that, in calculating the risk-based levy that will be charged to sponsoring employers, the PPF was employing the principles of "fairness, simplicity and proportionality."

Mr. Dasgupta said the PPF would cap the risk-based levy and PPF would listen to sponsoring employers' concerns or questions about the levy.

Brendan Mulkern, pensions policy manager for the Liverpool, England-based Universities Superannuation Scheme, a multiemployer pension plan for university staff, said that he had been in discussion with the PPF about concerns over the treatment of multiemployer plans.

"The risks that multiemployer schemes pose to the PPF vary," Mr. Mulkern said. In order for the USS plan to make a claim on the PPF, he explained, every university participating in the plan would have to become insolvent; therefore, the likelihood of the plan ever making a claim on the PPF is small.

See PPF/next page

Updates

Munich Re issues cat bond for windstorm risk

Munich Reinsurance Co. has placed catastrophe bonds worth 110 million euros ($129.9 million) to provide the reinsurer with added protection against Western European windstorm losses until 2009. The bonds have a term of Nov. 18, 2005, until March 31, 2009. They will be triggered in the case of a 1-in-100-year windstorm event in Western Europe, which is defined by the deal as "the United Kingdom up to and including 55 degrees latitude north of the equator, continental France, Belgium, the Netherlands and Germany." Paris-based BNP Paribas placed the deal with investors, and Risk Management Solutions of Newark, Calif., modeled the underlying risk, Munich Re said.

Willis adds firms in Brazil, Peru

Willis Group Holdings Ltd. has strengthened its presence in Latin America with two acquisitions, whose terms were not disclosed. Willis acquired Lima, Peru-based brokerage JH Asesores y Corredores de Seguros S.A.–and its reinsurance brokerage arm, JH Corredores de Reaseguros S.A.–as well as K.R. Athos Consultoria e Correctora de Seguro de Vida s/c Ltda., an employee benefits company in Sao Paulo, Brazil. Annualized revenue from the operations total approximately $5.2 million, Willis said.

Marsh forming practice for U.K. public entities

Marsh Ltd. is launching a new division to focus on delivering risk management and brokerage services to the U.K. public entities. The new Public Sector Practice will offer risk consulting, sickness and absence management, business continuity management and captive consulting advice and insurance to the public sector. Marsh said the practice, which launches Jan. 1, will be led by Julie Page, who currently is responsible for client relations within Marsh's Corporate Client Practice in Southwest England.

Amlin says Wilma cost $52 million

Amlin P.L.C. said it expects losses of about $52 million from Hurricane Wilma. London-based Amlin, which operates Lloyd's of London syndicate 2001, said that despite this year's hurricane losses it expects to report "a good financial performance for the business in 2005." Amlin previously announced provisional loss estimates of $110 million and $30 million from hurricanes Katrina and Rita, respectively, and said last week that those estimates currently remain unchanged.

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PPF: Plan underfunding considered in calculating levies

Continued from page 17

Charles Tollit, chairman of the trustee board of the Black & Decker 1995 Pension Scheme, sponsored by Black & Decker U.K., asked the PPF to consider more greatly the strength of parental guarantees to defined benefit pension plans in its calculation of the risk-based levy.

Mr. Tollit said that Black & Decker U.K. has a U.S.-based parent—Towson, Md.-based Black & Decker Corp.—and this could put it at a disadvantage when the risk-based levy is calculated. He noted that many of the shareholder funds, among other assets, of Black & Decker are held by the U.S. parent company rather than by its U.K. subsidiary. This, he said, may make the U.K. company's defined benefit pension plan appear at greater risk of insolvency than is actually the case.

> "We'd like parental guarantees to be taken into account. The levy needs to be proportional to the overall risk that the scheme would ever make claim on the fund."
>
> **Charles Tollit**
> **Black & Decker 1995 Pension Scheme**

He said that trustees of the Black & Decker plan would, ideally, like an opt-out clause from participation in the PPF whereby the company would pay no levy in return for no protection should the sponsoring employer become insolvent.

But Mr. Tollit said that, given the unlikelihood of an opt-out being granted, Black & Decker trustees had some concerns about the risk-based levy.

"We'd like parental guarantees to be taken into account," he said. "The levy needs to be proportional to the overall risk that the scheme would ever make claim on the fund," he said.

Anthony Thompson, pensions policy adviser at the London-based Confederation of British Industry, which represents employers, said that it was vital that the risk-based levy did not penalize companies too harshly during times of cash flow difficulty.

When companies are experiencing cash flow difficulties, Mr. Thompson said, it may not be prudent for them to use all available assets to address pension plan underfunding. "But that doesn't mean that the employers is not committed to funding" the pension plan deficit, he said.

Mr. Thompson said the CBI hoped that the PPF would take into account parental guarantees as well as contingent assets in calculating the levy charged on participating employers.

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LEGAL NOTICE

NOTICE OF PUBLIC HEARING ON THE PROPOSED PLAN OF REORGANIZATION OF AMERICAN MUTUAL INSURANCE COMPANY OF BOSTON

Pursuant to chapter 175, §19H, of the Massachusetts General Laws, a public hearing will be held on December 19, 2005, at 10:00 a.m. at the offices of the Massachusetts Division of Insurance ("Division"), One South Station, Fifth Floor, Boston, MA.

The purpose of the hearing is to consider the Plan of Reorganization (the "Plan") adopted by the Permanent Receiver of American Mutual Insurance Company of Boston ("AMI"). This matter has been assigned Docket No. F2005-02. AMI was declared insolvent and all of its policies of insurance were canceled in 1989. Pursuant to the Plan, the Permanent Receiver proposes to reorganize AMI into a stock insurance company and to sell the stock to Liberty Mutual Group, Inc., whose goal is to re-capitalize the company and resume its operations under a different name. The consideration from that sale, along with all of AMI's assets and liabilities, will be transferred to a liquidating trust. By the terms of the anticipated court order approving the sale and creation of the liquidating trust, all claims against AMI, from any source, will be channeled to the liquidating trust. Claims against AMI for its pre-sale obligations will be otherwise permanently enjoined. The acquirer will have no responsibility for those obligations.

The public hearing will address the fairness of the terms and conditions of the Plan, the reasons and purposes for the reorganization of AMI, and whether the reorganization is in the best interest of AMI and is not detrimental to the insuring public. Copies of the Plan and related information are available for public inspection at the Division during regular business hours.

Any person who wishes to present an oral statement at the hearing is asked to file a written notice of intent with the Division of Insurance on or before December 12, 2005. Written statements may be submitted at any time prior to the conclusion of the hearing. Any person who wishes to participate in the hearing other than by offering an oral or written statement must file and serve a petition for leave to participate or intervene in accordance with the requirements of 211 CMR 144.07(3) and 211 CMR 144.06(3) on or before December 12, 2005. All submissions relating to the hearing shall refer to Docket No. F2005-02 and be addressed to the Docket Clerk, Hearings and Appeals, Division of Insurance, One South Station, Boston, Massachusetts 02110.

Julianne M. Bowler
Commissioner of Insurance

Dated: November 17, 2005

Governance: Laws to undergo update

Continued from page 17

shareholders, Mr. McCreevy said.

"Our idea is to work on the adoption of a single legislative text which modernizes and simplifies the company law directives by eliminating any dead wood together with any contradictory, overlapping and outdated provisions," he said.

Forum member Peter Montagnon, head of investment affairs at the London-based Assn. of British Insurers, provided a U.K. perspective. He explained during a presentation that transparency in U.K. corporate financial reporting is achieved through the principle of "comply or explain." Under that principle, public companies must comply with the provisions of the Combined Code on Corporate Governance or justify—in their annual reports—why they have not done so.

Mr. Montagnon said, "if you don't comply, then you're not in the club, so there's peer pressure to conform. If shareholders are not happy with the explanation, they have the power to dismiss members of the board. This is the U.K.'s alternative to regulation."

Forum member Jaap Winter, a partner specializing in corporate law, governance, litigation and insolvency at the Amsterdam, Netherlands-based law firm De Brauw Blackstone Westbroek, said during a presentation that "internal controls and risk management (are) needed to prevent financial scandals." He said it was "costly but effective for the U.S. to implement (the Sarbanes-Oxley Act), but regulation is about enforcement. What works in the U.S. will not necessarily work in the E.U."

He added that perhaps a voluntary system would be more effective, "based on the U.K. approach."

FAI execs face fraud charges

SYDNEY, Australia—Three former executives of FAI General Insurance Co. Ltd. face criminal charges related to alleged fraudulent alterations of the claims reserves of the former insurer.

In charges filed by the Australian Securities and Investments Commission, two of the executives, Daniel Wilkie and Ashraf Kamha, are alleged to have known about the altering of claims reserves and charged with deceiving the Australian Stock Exchange and inflating financial results in 1997.

Sydney, Australia-based FAI was acquired by HIH Insurance Ltd. in 1999. HIH's subsequent collapse was in part blamed on financial problems at FAI.

A third executive, Antony Boulden, has been charged with being "privy to the fraudulent altering of a book" affecting the claims reserves of FAI.

The case against Mr. Wilkie was adjourned until Jan. 31, 2006, and the cases against Messrs. Kamha and Boulden were adjourned until Feb. 28, 2006.

Mr. Wilkie, FAI's former chief operating officer, last week was acquitted of charges that he and two other former FAI executives tried to cover up a potential reserving shortfall by arranging a reinsurance deal with General Cologne Reinsurance Australia that prosecutors alleged was bogus.

—By Barbara Cockburn

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT - SOUTHERN DISTRICT OF NEW YORK

In re Petition of Malcolm L. Butterfield and Anthony J. McMahon, as Joint Provisional Liquidators of **BELVEDERE INSURANCE COMPANY LIMITED**, Debtor in a Foreign Proceeding.

In a Proceeding Under Section 304 of the Bankruptcy Code

Case No. 98-B-47660 (REG)

PLEASE TAKE NOTICE that, in connection with the motion seeking, pursuant to sections 105 and 304 of the Bankruptcy Code, the entry of a permanent injunction and order giving full force and effect to the Scheme of Arrangement proposed by Malcolm L. Butterfield and Anthony J. McMahon (the "Petitioners") of Belvedere Insurance Company Limited (In Liquidation) ("Belvedere"), dated November 16, 2005 (the "Permanent Injunction Motion"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order Specifying the Form and Manner of Service of Notice of Hearing to Consider Request for Permanent Injunction Order, dated November 7, 2005, pursuant to which a hearing will be held on December 7, 2005 at 9:45 a.m. before the Honorable Robert E. Gerber in the Bankruptcy Court, One Bowling Green, New York, New York (the "Hearing"), to consider the Petitioners' request for a permanent injunction on the terms as substantially set forth below:

1. that the Scheme (as defined in the Permanent Injunction Motion) shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors (as defined in the Scheme) in the United States upon sanction of the Scheme by the Supreme Court of Bermuda, Hamilton, Bermuda;

2. that all Scheme Creditors are hereby permanently enjoined from taking any action in contravention of, or inconsistent with, the Scheme;

3. that all person and entities, including, without limitation, all Scheme Creditors are permanently enjoined from seizing, repossessing, transferring, relinquishing, or disposing of any property of Belvedere in the United States, and its territories, or the proceeds of such property, to any person or entity other than Belvedere or the Petitioners;

4. that all person and entities, including, without limitation, all Scheme Creditors are permanently enjoined from: (a) commencing or continuing any action or legal proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against Belvedere or any of its property in the United States, and its territories, that is involved in the foreign proceeding, or the proceeds thereof, and seeking discovery of any nature against Belvedere, except as provided in the Scheme; (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award and commencing or continuing any act or any other legal or equitable action or proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) to create, perfect or enforce any lien, set off, attachment, garnishment, or other claim against Belvedere or any of its property in the United States, and its territories, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts, except as provided in the Scheme; (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring Belvedere to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings; (d) drawing down any letter of credit established by, on behalf of, or at the request of, Belvedere, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar agreement in which Belvedere has an interest in excess of amounts expressly authorized by the terms of the contract or any related trust or other agreement pursuant to which such trust, escrow, or similar arrangement has been established;

5. that all persons and entities, including, without limitation, all Scheme Creditors in possession, custody, or control of property of Belvedere in the United States, or its territories, or the proceeds thereof, will be required to turn over and account for such property or proceeds to Belvedere or the Petitioners;

6. that nothing in the permanent injunction shall in any respect prevent the commencement or continuation of proceedings against any person or entity other than Belvedere; and

7. that no action taken by either of the Petitioners, their successors, agents, representatives, advisers, or counsel, or any of them, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme, the Proposed Order (as defined in the Permanent Injunction Motion), this section 304 case, any further order for additional relief in the section 304 case, or any adversary proceedings in connection therewith as the Bankruptcy Code may make, will be deemed to constitute a waiver of the immunity afforded to the Petitioners, their successors, agents, representatives, advisers, or counsel pursuant to section 306 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on November 16, 2005, the Bankruptcy Court issued a Preliminary Injunction Order (the "Preliminary Injunction") pursuant to section 304 of the Bankruptcy Code. The Preliminary Injunction shall remain in effect until December 31, 2005 (the "Interim Date"), subject to further order of the Bankruptcy Court. Pursuant to the Preliminary Injunction, the Bankruptcy Court will consider whether the Preliminary Injunction shall be continued after the Interim Date at the Hearing.

PLEASE TAKE FURTHER NOTICE that, all parties-in-interest opposed to the relief sought in the Permanent Injunction Motion and/or to the continuance of the Preliminary Injunction after the Interim Date must appear at the Hearing at the time and place set forth above. All papers submitted for the purpose of opposing the relief sought in the Permanent Injunction Motion and/or the continuance of the Preliminary Injunction after the Interim Date shall be filed with the Bankruptcy Court with a copy to Chambers of the Honorable Robert E. Gerber and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received on or before December 2, 2005 at 5:00 o'clock p.m., New York time. The Permanent Injunction Motion, the Proposed Order, and any supporting papers and the Preliminary Injunction will be made available upon request at the offices of the Petitioners' United States counsel at the address below:

CHADBOURNE & PARKE LLP • Attorneys for the Petitioners • 30 Rockefeller Plaza
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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

IN THE MATTER OF THE ACQUISITION OF CONTROL OF ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY COMPANY BY THE GOLDMAN SACHS GROUP, INC.

Docket Number F2005-01

NOTICE OF PUBLIC HEARING

Pursuant to M.G.L. Chapter 175, § 206B, an application has been made to the Massachusetts Commissioner of Insurance (the "Commissioner") by the Goldman Sachs Group, Inc. (the "Applicant") for approval of a proposal to acquire control of Allmerica Financial Life Insurance and Annuity Company (the "Insurer"), a Massachusetts insurance company and wholly owned subsidiary of Allmerica Financial Corporation (whose name, effective December 1, 2005, will be changed to The Hanover Insurance Group, Inc.). The Applicant, a Delaware corporation, proposes to acquire control of the Insurer by purchasing 100% of the capital stock of the Insurer, thus resulting in the Insurer becoming a directly-owned subsidiary of the Applicant.

The Commissioner will conduct a public hearing pursuant to M.G.L. c. 175, § 206B, to determine whether to approve the proposed acquisition of control. The hearing will commence on December 9, 2005, at 10:00 a.m. at the Division of Insurance, 5th Floor, One South Station, Boston, Massachusetts, 02110. Documents filed in connection with this proposed acquisition of control are available for public inspection at the Division of Insurance, 5th Floor, One South Station, Boston, Massachusetts, 02110.

The purpose of this public hearing is to afford those persons identified in M.G.L. c. 175, § 206B(d)(2) the opportunity to present evidence, to examine and cross-examine witnesses, to offer oral and written argument and, in connection therewith, to conduct discovery proceedings in the same manner as in the Superior Court Department of the Trial Court. Any discovery proceedings shall be concluded no later than three days prior to the commencement of the hearing.

Any such persons who wish to testify or to participate in the public hearing may do so by submitting a Notice of Intent to Participate ("Notice of Intent") no later than December 2, 2005. The Notice of Intent must specify the basis for the asserted interest in the proposed acquisition of control, if applicable, as well as whether the person intends to make an oral statement, present evidence or cross examine witnesses.

If the Commissioner determines that a person's interest may be affected by the proposed acquisition of control, that person may participate at the hearing following presentations by the Applicant and the Insurer, and before any other persons the Commissioner may recognize at the hearing. The length of any oral statements, presentations of evidence or examinations of witnesses may be limited at the discretion of the Commissioner. Written argument may be submitted at any time prior to the conclusion of the hearing.

All submissions, including the written Notice of Intent, must be sent to: Docket Clerk, Hearings and Appeals, Division of Insurance, One South Station, Boston, MA 02110-2208, and must refer to Docket No. F2005-01.

Julianne M. Bowler
Commissioner of Insurance

Dated: November 18, 2005

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Results: Slowdown in cost hikes boosts managed care companies' profits

Continued from page 3

ening of pharmacy costs. "Because of that, they do expect the cost trends to continue to moderate," Ms. Rosen said.

The pharmacy cost trend for commercial business for Hartford, Conn.-based Aetna Inc. was in the high single digits, while its overall commercial medical cost trend was in the range of 8% to 8.5%, the company said.

With cost trends in a fairly predictable range, insurers are becoming more confident of their ability to estimate costs and price their products appropriately, said Dana Mehta, assistant vp, life/health division of A.M. Best. "I think insurance companies are pricing closer to trend," Ms. Mehta said. "They have more confidence in their ability to price close to trend. They don't feel the need to build in big cushions."

For the first nine months of 2005, most of the managed care companies reported higher net income, which they attributed to a number of factors, including moderating cost trends, disciplined pricing and strong performances from acquired businesses (see chart, page 3).

"I think (earnings) have been very strong, very consistent quarter to quarter," said Stephen Zaharuk, vp and senior analyst for Moody's Investors Service Inc. in New York. "We haven't seen any surprises."

Most of the managed care companies also reported solid membership gains, the exceptions being Philadelphia-based CIGNA Corp. and Los Angeles-based Health Net Inc., though the membership bases for both companies appear to have stabilized since the beginning of the year, analysts say.

CIGNA's year-over-year medical membership declined by 9%, but its enrollment has increased 1% from the second quarter of 2005 as the company appears to have resolved the service issues that contributed to its membership problems.

Meanwhile, Health Net's enrollment fell 7.3% compared to the prior year period, but only 1.9% from the second quarter. The insurer raised commercial premiums last year due to higher-than-expected health care costs, a decision that led to large membership losses.

Several insurers have announced projections for sizable growth in their national account operations. WellPoint, for example, said it will add 200,000 national account members in January and plans to use its acquisition of New York-based WellChoice Inc. to pursue accounts with the 17% of Fortune 500 companies in WellChoice's service region.

Some of this growth is coming at the expense of the smaller managed care companies, according to Mr. Zaharuk.

That's because large national employers are looking for one company to provide their health care benefits, and the smaller companies lack the capabilities the larger ones offer, such as consumer-driven health care products and disease management programs, he said. "There's definitely a shift in membership moving to these large national players," Mr. Zaharuk said.

M&A continuing

The continued consolidation of the managed care sector remains a key contributor to membership growth for the major managed care companies. WellPoint's takeover of fellow for-profit Blues insurer WellChoice was the second major acquisition announced this year, following Minneapolis-based UnitedHealth Group Inc.'s planned purchase of Cypress, Calif.-based PacifiCare Health Systems Inc.

With these deals, though, the two largest managed care companies have likely taken themselves out of the market for major acquisitions in the near future, analysts say, citing the need to obtain regulatory and shareholder approval and to fully integrate these acquisitions.

"They will perhaps be sidelined for some time in 2006," Mr. Marinucci said.

UnitedHealth has made a number of acquisitions in the past two years, which may stifle further major acquisitions by the company, noted Bradley Ellis, director at Fitch Ratings in Chicago. "At some point, they're going to start pushing up against antitrust issues," he said.

In addition, all the for-profit Blue Cross & Blue Shield Assn. health plans in the continental United States will be under the WellPoint umbrella once the WellChoice acquisition is complete, limiting its options on the acquisition front, analysts note.

Instead, major merger and acquisition activity in the sector is likely to occur among the next tier of players, including Aetna, CIGNA and Coventry Health Care Inc. Aetna and CIGNA have fairly strong balance sheets.

Bethesda, Md.-based Coventry, meanwhile, has successfully integrated its First Health Inc. acquisition and has the solid financial footing that would enable it to pursue other properties, Mr. Marinucci said.

"I wouldn't be surprised if they were to seek out nonorganic ways to grow their marketplace," he said of the three companies. "M&A activity will clearly remain an issue for the sector."

Going forward, the managed care companies will increasingly turn their attention to the government segment of the marketplace to increase their membership levels, participating in the government's expanded Medicare program.

In addition, the emphasis on consumerism and related product offerings is likely to continue as the managed care companies try to make further strides in controlling cost trends. "Consumer-driven health care might dampen trend a bit, but it's not widespread enough to have a major impact in 2006," Mr. Zaharuk said.

Coalition: Building performance measurements

Continued from page 3

Mr. Jacobs explained.

But by sharing their claims information—without exposing insureds' identities—insurers participating in WHIO hope to accurately shed light on how successful each doctor is in treating specific health conditions. The process will allow them to review the total treatment for a specific illness, even when several health systems or providers are involved in treating a single condition.

WHIO could eventually evaluate each complete episode of care, from the initial doctor visit through follow-up care, including lab work and any other services that doctors recommend.

Employees selecting doctors and health plans contracting with provider networks could use WHIO information to choose physicians based on the cost, efficiency and quality of the care provided. Ideally, doctors who lose patients because they migrate to physicians who are shown to perform better would be encouraged to improve, Mr. Jacobs said.

Employers are participating in WHIO because they want the health care industry to emulate other industries, and to reveal cost and efficiency information to remain competitive, explained Dianne Kiehl.

As a board member for the Greater Milwaukee Business Foundation on Health Inc., which aims to improve health care delivery, Ms. Kiehl represents employers on WHIO's board of directors. Ms. Kiehl is also executive director of the Business Health Care Group of Southeast Wisconsin, an employer health purchasing coalition.

Employers also want information that eventually emerges from WHIO to be presented in a format that could be usable by employees, Ms. Kiehl said.

One way WHIO could present such information is to follow the example set by the Wisconsin Collaborative for Healthcare Quality in its analysis of hospital performance, said Dr. John Toussaint, a physician and WHIO's chairman.

> Employers are participating in the coalition because they want the health care industry to emulate other industries, and reveal cost and efficiency information to remain competitive.
>
> **Dianne Kiehl**
> **Greater Milwaukee Business Foundation on Health Inc.**

On its Web site, the Wisconsin Collaborative for Healthcare Quality offers graphs analyzing the value hospitals provide when treating specific illnesses, such as heart attacks. The graphs, for example, show a hospital's treatment cost on an X-axis as compared with its quality score along a Y-axis.

The quality score is a composite number indicating performance in giving care that provides the best results. Consumers can use it to see how various hospitals compare with each other on the graph.

To obtain results for doctors, WHIO aims to analyze claims for patterns such as the drugs they prescribe, the outpatient treatments they provide and the inpatient care they give for specific health conditions, Mr. Jacobs said.

One goal is to get insurance plans representing 2 million plan members participating in the project, Mr. Toussaint said.

WHIO also plans to hire a vendor to aggregate and analyze the data. Insurers already use software capable of such analysis, but they have lacked the critical mass of claims data necessary to achieve robust results, Mr. Jacobs said.

But the insurers participating in WHIO are Wisconsin's largest; they insure a significant portion of the claims filed in Wisconsin.

Other entities cooperating in WHIO include Milwaukee-based Blue Cross Blue Shield of Wisconsin; Louisville, Ky.-based Humana Inc.; Milwaukee-based UnitedHealthcare of Wisconsin; Madison, Wis.-based WPS Health Insurance; and the Madison-based Wisconsin Medical Society, which represents doctors.

Attempts to aggregate and distribute doctor data generally face three fundamental challenges, according to the NBCH spokeswoman. Obtaining the cooperation of competing insurers, merging data from disparate sources and presenting the resulting information in a format that consumers can easily grasp are all tough issues, the spokeswoman said.

But the insurers participating in WHIO realized that they could all gain by improving the overall system, several sources say. The biggest challenge so far has been drafting a data-sharing agreement detailing the format for submitting data, Dr. Toussaint said.

RMOY: Call for nominations

Continued from page 3

ance markets to structure an insurance program that serves the needs of the organization (specifically addressing the types of policies purchased and manuscripted policies, if any).

- Established a workable intelligence system inside and outside the organization, culminating in a flow of information about events and activities that affect the organization's risk management and insurance (how the risk manager secures information from other departments and the use of risk management information systems are addressed in this criterion).
- Skillfully performs the functions of management in the overall organization and within the risk management/insurance department. The functions include planning, organizing, directing and controlling.
- Achieves the most effective program at the optimum cost over the long term.
- Developed technical expertise in any or all of the broad categories included within risk management, leading to a better managerial grasp of the operational aspects of the job.
- Exhibits an attitude and performs activities fostering the advancement of the risk management profession (such as through professional activities, speaking engagements, teaching and related activities).
- Develops in his or her career (as exhibited by job history, including current job description, education, honors and memberships).

Please visit *www.BusinessInsurance.com/RMOY* today to take advantage of this extended opportunity to nominate a worthy candidate.

New Crain magazine geared to financial executives

DETROIT—Crain Communications Inc., the Detroit-based publisher of *Business Insurance* and nearly 30 other magazine titles, is launching a newsmagazine for financial executives in 2006.

Financial Week, a high-frequency tabloid-size magazine based in New York, will cover topics including finance, investments and corporate governance.

The magazine's intended audience includes chief executive officers, chief financial officers, treasurers, controllers and other corporate decision-makers.

Financial Week will run a pilot issue in June, with biweekly issues from September through December 2006. It will run weekly beginning in 2007.

The new magazine's publisher will be William T. Bisson Jr., who also is publisher of *BI* sister publications *Pensions & Investments* and *Investment News*.

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Tort: Illinois high court ruling clarifies venue selection in forum shopping case

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Court, Mr. Gridley filed a suit in Madison County as a representative of a class of "all persons in the United States who purchased an automobile which was previously declared to be a 'total loss' by State Farm and for which State Farm failed to obtain a salvage title." Mr. Gridley claimed that State Farm sold these cars at auto auctions even though they had been declared total losses, and he sought redress under Illinois' Consumer Fraud Act.

State Farm cited the legal doctrine of "forum non conveniens" and asked that the case be dismissed or that it be heard in another venue.

"State Farm argued that Illinois was not the most convenient forum because Gridley, the only named plaintiff, was a resident of Louisiana, the events giving rise to the complaint were alleged to have occurred in Louisiana, and Gridley alleged a violation of Louisiana's title law," noted the Illinois Supreme Court in its decision. State Farm also argued that the Illinois Consumer Fraud Act could not apply to an action that took place in another state and thus the complaint should be heard in Louisiana.

As an alternative, State Farm asked that the case be transferred to McLean County, Ill., where the Bloomington, Ill.-based insurer has its corporate offices, adding that McLean County courts didn't face the kind of congestion suffered by their Madison County counterparts.

Both the Madison County court and an appeals court denied State Farm's requests. But the Illinois Supreme Court—in a Nov. 17 decision in which all but one justice joined—noted that it had already ruled in its Aug. 18 decision in *Michael Avery et al. vs. State Farm* that Illinois' consumer protection law "does not apply to fraudulent transactions which take place outside" the state (*BI*, Aug. 22).

"Louisiana law would govern Gridley's claim. Louisiana has an interest in applying its own law in its courts," noted the Illinois Supreme Court. "Louisiana has an interest in deciding this matter locally. In contrast, Illinois courts have an interest in not being burdened with applying foreign law in the absence of strong policy reasons and a strong connection to the case."

The court also said that Illinois residents "should not be burdened with jury duty, given the fact that the action did not arise in, and has no relation to, Illinois."

While declining to address the issue of the relative congestion of Madison County vs. Mclean County courts, the Illinois Supreme Court reversed the judgments of both the Madison County and the appeals court and remanded the case to Madison County with instructions to dismiss.

Tort reform advocates hailed the decision as a major move toward restoring balance to the Illinois civil justice system.

"Obviously, the decision was a positive step for Illinois," said Ed Murnane, president of the Chicago-based Illinois Civil Justice League. "It is an indication that the Illinois courts are really taking a good look at where litigation ought to be filed and the fact that there have been abuses from out-of-state plaintiffs attorneys as well as from in-state plaintiffs attorneys.

> "Forum shopping is an issue of critical concern. Out-of-state companies are being dragged into Madison County and Illinois in general."
>
> **Robin Conrad**
> **National Chamber Litigation Center Inc.**

"We think this is going to help convince the (Illinois) General Assembly that the current reform that's being proposed is something that is necessary and has the support, approval and even the encouragement of the Illinois Supreme Court. So, we're optimistic," Mr. Murnane said.

The bill in question, S.B. 1724, would amend the Illinois Code of Civil Procedure to require that civil cases be filed either in the county in which the most significant alleged wrongdoing occurred, the county in which all of the defendants reside, or the county in which the most significant wrongdoing occurred in instances when the defendants reside in different counties or out of state. The state Senate Judiciary Committee held an already-scheduled hearing on bill only an hour after the high court handed down its decision, noted Mr. Murnane. "It really gave us an extra boost," he said.

"The Illinois Supreme Court's *Gridley* decision sends a clear signal to the lower courts that Illinois' venue law should not be interpreted as a 'welcome sign' for litigation tourists," said Mark Behrens, a partner in the Washington office of the Kansas City, Kan.-based law firm of Shook, Hardy & Bacon L.L.P.

"The impact of the decision will depend on whether the lower courts carry out the spirit as well as the letter of the ruling," said Mr. Behrens, who testified in favor of S.B. 1724 at the hearing earlier this month.

"Forum shopping is an issue of critical concern. Out-of-state companies are being dragged into Madison County and Illinois in general for actions that occurred outside the state and involved plaintiffs who resided outside the state," said Robin Conrad, senior vp of the National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber of Commerce in Washington and which filed an amicus brief in the case. Ms. Conrad said that, taken with the *Avery* decision, the new decision meant that the Illinois high court had taken "two steps in the right direction."

"It's a very significant decision," concurred Lynda Mounts, assistant general counsel for the American Insurance Assn. in Washington, which also filed an amicus brief in the case.

"The fact that it was a 6-to-0 decision saying that this case was wrongly brought in Madison County is very significant. The court made it clear that the lower courts improperly failed to grant a motion to dismiss because virtually all of the relevant elements were in Louisiana. Hopefully, this court decision will let plaintiffs know that the Illinois Supreme Court is going to enforce forum non conveniens law and will diminish or eliminate forum shopping," she said.

Christopher E. Gridley, on behalf of himself and all others similarly situated, vs. State Farm Mutual Insurance Co., Illinois Supreme Court, No. 94144. Decided Nov. 17, 2005.

Building codes: Louisiana moves to upgrade construction rules in wake of Katrina

Continued from page 1

that have kept losses down in subsequent storms, he noted. "In Louisiana, those same building code standards aren't in play."

The legislation calls for the creation of a 19-member Louisiana State Uniform Construction Code Council, appointed by the governor to review and adopt the uniform construction code. The council's duties will include providing for the training and education of officials to enforce the codes.

All Louisiana municipalities and parishes must enforce at least the minimum requirements of the uniform code, which applies both to new construction and to repairs to existing structures. Those minimum statewide standards governing residential and commercial construction in Louisiana include the International Building Code and the International Residential Code, as amended by the new legislation.

PHOTO: NEW YORK TIMES

Under legislation in Louisiana, buildings destroyed by Hurricane Katrina would be replaced by structures built to stricter standards.

In the southeastern parishes, where hurricane exposure is greater, the law requires particularly stringent construction standards; buildings will have to withstand greater wind speeds and adhere to flood mitigation requirements. Those parishes are Orleans, Jefferson, St. Bernard, St. Tammany, Plaquemines, Terrebonne, Lafourche, Calcasieu, Cameron, Vermillion and Iberia.

Those parishes must begin adhering to the new standards 30 days from the governor's signature if they have code enforcement procedures already in place. Those that still must develop such procedures have 90 days.

Parishes in less-exposed areas, which are not required to implement the more stringent wind-resistance measures, have until Jan. 1, 2007, to comply with the legislation.

A stringent building code with different requirements for the southern and northern parts of the state is a good idea, said Denny Borne, risk manager at Bollinger Shipyards Inc. in Lockport, La.

North Louisiana "doesn't get the kind of wind and flooding that we get in south Louisiana," said Ms. Borne, whose company lost a ship repair facility in the eastern part of New Orleans to Hurricane Katrina. Bollinger facilities in other southern Louisiana cities sustained much less damage.

Insurers, meanwhile, are praising the bill's passage.

"Stronger building codes result in the construction of safe and durable structures, which will reduce economic losses to homes, businesses and cities, and, more importantly, they will save lives," said Greg LaCost, assistant vp, regional manager and counsel for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, in a statement.

> "Stronger building codes result in the construction of safe and durable structures."
>
> **Greg LaCost**
> **Property Casualty Insurers Assn. of America**

Insurers have some responsibility under the bill to ensure that their rates reflect the savings expected from the more-stringent code. The bill states that insurers must detail in their rate filing applications "as to what discount or reduced rate will be given to insured who comply with the State Uniform Construction Code."

Mr. Daraskevich said there is plenty of evidence from Florida to show how strengthened building codes can mitigate property damage. For example, requiring the use of impact-resistant glass or storm shutters in wind-prone areas of Florida has significantly reduced storm damage, he noted.

Garage doors in commercial properties in Florida have to be built to more-stringent standards after Hurricane Andrew, Mr. Daraskevich pointed out, making another type of loss less common during storms there. Conversely, damage to garage openings in Louisiana at automotive oil-change businesses was particularly severe after Hurricane Katrina, he said.

Mr. Daraskevich also noted that when Katrina tore away roofs in Louisiana, there was no "secondary moisture protection," because that wasn't required, as it is in Florida. "In Louisiana, once you lose shingles, you're getting water" into the structure, he explained.

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Late News

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ELIC policyholders awarded over $190M

A federal judge ruled last week that French billionaire Francois Pinault's holding company, Artemis S.A., must pay $190 million plus interest in restitution in connection with the 1991 sale of the now-defunct Executive Life Insurance Co. Artemis was allegedly part of a conspiracy that fraudulently took over ELIC in the early 1990s in violation of California's foreign ownership laws. In July, a jury awarded $700 million in punitive damages, but no compensatory damages. That award was overturned in October.

Alea sells some renewals for U.S. program business

Alea Group Holdings (Bermuda) Ltd. is selling the renewal rights to some of its U.S. business to New York-based AmTrust Financial Services Group Inc., as part of an ongoing plan to sell part or all of the company. Bermuda-based Alea said in a statement it is selling "certain portions" of U.S. program business written by its alternative risk funding unit, Alea Alternative Risk, to AmTrust and will place remaining AAR business into runoff. AmTrust will make an initial cash payment of $12 million for the renewal rights, with further payments possible depending on gross premiums written, up to a cap of $75 million.

AXIS raises funds through share issue

AXIS Capital Holdings Ltd. raised $200 million last week through the sale of 6.8 million common shares and separately announced plans to raise another $250 million. Net proceeds from both offerings will be used "primarily to enhance the funding of its insurance and reinsurance segments," Bermuda-based AXIS said in a statement. AXIS earlier this month reported a net loss of $143.4 million for the first nine months of 2005, largely as a result of losses stemming from hurricanes Katrina and Rita.

Brokers: FSA may mandate disclosure of brokers' commission arrangements

Continued from page 1

sions only if they are specifically requested to do so by corporate insurance buyers.

The FSA said in its letter that, according to its review, "in practice, few (corporate insurance buyers) in fact make such requests."

In its summary of findings from the 38 visits it made to brokers, the FSA said that "intermediaries stated that commercial clients very rarely asked for commission to be disclosed, but that in those instances where the request was made it was not complicated for the firm to identify and release the commission details."

"This suggests, albeit anecdotally, that there is not currently a pent-up demand for commission details, even amongst sophisticated insurance buyers," the FSA said.

One U.K.-based risk manager, who asked not to be named, said that he believed, though, that buyers increasingly are seeking information about commissions from their brokers. And, the risk manager noted, brokers increasingly are declaring such information voluntarily. One of his own brokers had provided significantly more information about remuneration at the most recent renewal, he said.

David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers, said that AIRMIC encourages its members to ask their brokers about earnings on their business.

A representative of one U.K. broker, who asked not to be named, said it was his company's policy to inform buyers that they have the right to request information about commission payments. And several large brokers operating in the United Kingdom have, in recent months, made pledges about increasing transparency.

The letter, signed by Hector Sants, director of wholesale and institutional markets, and Clive Briault, managing director of retail markets at the FSA, was sent out last week.

In the letter to CEOs, the FSA said it will study whether to make commission disclosure mandatory. The FSA will also conduct a more general review of the impact of its regulation of insurance brokers in April 2006.

The FSA said it believed that the mechanism for identifying and mitigating conflicts of interest was not well developed at most U.K. brokers and urged senior managers to become more involved in the process.

The FSA said, in a summary of findings from its visits to 38 brokers, that "most wholesale firms did not have any specific procedures in place to ensure that staff did not solicit quotations from insurers that were intentionally higher (or otherwise less favorable) than quotes provided by other insurers."

It also noted that firms should reconsider how they identify and mitigate conflicts of interest that might arise from the potential for companies with both insurance and reinsurance operations "to use the placement of direct business as a means of encouraging insurers to use the intermediary for the placement of outwards reinsurance."

In addition, the FSA said that many brokers need to formalize strategies to prevent conflicts of interest arising from inducements paid to, and remuneration of, brokers, among other things.

The letter stated that "responsibility for conflicts identification and management (must be) allocated clearly to accountable individuals, and that controls to mitigate conflicts (must be) reviewed on a regular basis. Relevant management information should be available to support this process."

In addition, the FSA said, "firms often perceive conflicts of interest in too narrow a manner, and some firms consider conflicts to be solely about remuneration."

The letter said that senior managers at each brokerage firm "are responsible for ensuring that the broad spread of conflict risk to which their firm is exposed is addressed, including latent and emerging conflicts."

And insurance intermediaries should "consider the wider issue of dealing with clients in a manner that is fair and seen to be fair."

The FSA letter informed broker CEOs that, in response to the findings of the review, it expects all boards to review the current and potential conflicts to which their companies are exposed and to put in place or review any existing policies that set out how the company proposes to manage conflicts of interest.

The FSA said that broker CEOs must inform the FSA of the outcome of these steps by Jan. 20, 2006.

Jane Owen, legal and regulatory director at Aon Ltd., the London-based arm of Aon Corp., said that her company already automatically discloses to most midsized and large corporate buyers the various fees it earns on their business.

And she noted that Aon–which was not among the 38 firms visited by the FSA in its recent review–already has a conflict of interest management policy in place. That policy, she said, is regularly reviewed and updated, and all staff must sign online to say that they have read, and comply with, the guidance.

A spokeswoman for Marsh Ltd., the London-based unit of Marsh Inc., refused to comment on the FSA's letter.

Representatives of several other brokers were unavailable for comment.

Andrew Cornish, head of insurable risk at Centrica P.L.C. in Windsor, England, and immediate past chairman of AIRMIC, said he welcomed the letter.

Mr. Cornish, who at AIRMIC's conference in June called for the automatic disclosure of broker commissions, said that buyers would like "it to get to a position where brokers always volunteer what they are earning."

Mr. Cornish said that he did not believe that such disclosure necessarily would have to be mandated but that he hoped the market might, on a voluntary basis, move toward automatic disclosure of broker earnings.

In response to the FSA's letter, the British Insurance Brokers' Assn. has written to its members outlining appropriate processes for managing conflicts of interest, including those resulting from remuneration practices.

Handling potential conflicts of interest

In a letter sent to its members last week, the British Insurance Brokers' Assn. identified some key questions brokers should ask themselves in light of the Financial Services Authority's letter. They include:

- Has responsibility for identifying and managing conflicts of interest been allocated clearly to accountable and senior individuals?
- How does senior management demonstrate that there is regular and systematic review of conflicts both within and across business lines?
- Can the board point to a rigorous method used to identify the drivers of conflicts, the outcomes that need to be avoided and the controls designed to achieve this?
- Does senior management critically review business practices and consider whether conflicts are being managed properly-which does not necessarily mean being in line with standard industry practice?
- Can the firm demonstrate explicit consideration of adherence to conflict procedures during staff appraisals?
- Do companies hold regular training with respect to conflicts and the firm's code of ethics, both at induction and in the form of refresher training?

Source: British Insurance Brokers' Assn.

BI Stock Index [11/21 - 11/23]

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

Indicator	Value	% change
BI Stock Index	7,743.34	1.04
Dow Jones	10,916.09	1.39
S&P 500	1265.61	1.47

Largest gains

Company	Change
Tower Group Inc.	7.94%
Marsh & McLennan Cos. Inc.	7.75%
Harleysville Group Inc.	7.71%
USI Holdings Corp.	6.37%
Vesta Insurance Group Inc.	5.50%

Largest losses

Company	Change
Gainsco Inc.	-9.36%
UNICO American Corp.	-4.74%
PXRE Group Ltd.	-3.75%
RLI Corp.	-3.18%
Alleghany Corp.	-2.86%

Weekly change by market segment

Segment	Change
Brokers	36.02%
Insurers/reinsurers	18.79%
Managed care organizations	27.19%

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

At *BusinessInsurance.com*

New **Online Poll**: In light of comments by U.K. regulators last week, should broker compensation disclosure be mandatory for all brokers or strictly voluntary?

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.

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