

**Alcoa gets OK to use captive for benefits funding / 3**

**20 years later: Lessons learned from Bhopal / 3**

# Business Insurance

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\$5

## Consumer-driven plan model enters fast lane

### UnitedHealth's purchase of Definity gives approach momentum

By JOANNE WOJCIK



**MINNEAPOLIS**—UnitedHealth Group's acquisition of Definity Health Corp. is likely to spur more product innovation and competition in the health care market because it legitimizes Definity's consumer-driven health care model, industry sources say.

The marriage of UnitedHealth's expertise in managed care and Definity's experience in consumer-driven care also is likely to give the Minneapolis-based health care company an edge over its competition, forcing other major players in the health insurance market to add consumer-driven plans to their stable of products, sources say.

It also provides one-stop shopping for employers that want to deal with only one plan. That's something that many employers have not been able to do if they wanted to offer a consumer-driven model in addition to more-traditional plans, because most major carriers have only recently started developing such products, employ-

ee benefit experts say.

And, finally, it demonstrates to investors that there's definitely money to be made in consumer-driven health care, which is likely to lead to further investment and perhaps more acquisi-

ADDING CONSUMERS	
Definity gives UnitedHealth a strong position in consumer-driven health care	
	
Purchase price: \$300 million	
UnitedHealth Group 2003 revenues:	\$7.52 billion
Lives covered in CDHPs:	180,000
Definity Lives covered:	320,000

tion activity in this fledgling market.

Before last week's announcement that it was acquiring Minneapolis-based Definity for \$300 million in cash, UnitedHealth was the fourth-largest provider of consumer-driven products, with 180,000 participants enrolled in its plans, according to *Business Insurance's* 2004 ranking of the nation's largest consumer-driven health plans.

Definity—though it was ranked No. 2, with some 320,000 plan members as of year-end 2003—had been considered the market leader. The creator of the consumer-driven concept, Definity had a strong brand name.

Together, though, the two companies will move into the No. 1 spot, with more than 1 million people enrolled in its various consumer-driven health plans in 2005.

UnitedHealth Group is also planning to move all of its 30,000 employees to consumer-driven plans, which will boost that enrollment figure even further.

See **DEFINITY**/page 26

## Probe sees pressure but no bid rigging Client steering found at Marsh's U.K. unit

By PETA MILLER and SARAH VEYSEY

**LONDON**—Brokers at Marsh Ltd. on occasion steered clients to insurers that paid the highest contingent compensation, according to an investigation commissioned by the brokerage.

But the investigation did not uncover any evidence of bid rigging at the London-based unit of Marsh & McLennan Cos. Inc.

London-based law firm Freshfields Bruckhaus Deringer reported last week that it found "a number of specific examples of brokers being encouraged to use or not to use a particular underwriter" because of the existence of what Marsh termed "market service

agreements."

And despite efforts to ensure that there was no incentive to place business with a particular insurer because of an MSA, Marsh Ltd. did not have an effective safeguard in place, Freshfields found.

Freshfields found no evidence, though, that Marsh brokers obtained coverage that was too costly or unfavorable for their clients. In addition, there was no evidence of "bid rigging or the submission of false quotes in connection with the placement of insurance business in the United Kingdom," the report states.

Marsh Ltd. commissioned the investigation shortly after New

See **MARSH**/page 25

## UnumProvident's problems not solved with settlement

By ROBERTO CENICEROS

**CHATTANOOGA, Tenn.**—Despite UnumProvident Corp.'s \$127 million multistate settlement of investigations of its claims practices, it still faces challenges that could hurt its group disability insurance sales, some observers say.

Continued legal challenges, rating agency actions and general policyholder wariness of dealing with the insurer, will likely still be significant concerns for UnumProvident, they say.

The Chattanooga, Tenn.-based disability insurer, however, is on the road to repairing its damaged reputation and needs time for improvements to play out, said Tom White, senior vp of investor relations for UnumProvident. Business

retention numbers, while falling slightly since last year, prove that buyers still believe in the company, he added.

UnumProvident said Nov. 18 that it will pay a \$15 million fine, change its claims-handling practices and reassess potentially hundreds of thousands of claims closed or denied since 1997. The settlement stems from market conduct examinations in several states that allegedly uncovered a number of problems, including an inappropriate burden placed on claimants to justify benefit eligibility, according to regulators.

The insurer said the \$127 million settlement figure includes potential benefit adjustments related to the reassessment of claims.

See **UNUMPROVIDENT**/page 25

## Late News

### Aon sells stake in Endurance

Aon Corp. has sold 9.8 million shares of Bermuda-based Endurance Specialty Holdings Ltd. to Goldman Sachs for \$320.5 million. Aon will retain warrants to purchase 4.1 million Endurance shares. The sale, pursuant to an Endurance registration statement filed with the Securities and Exchange Commission earlier this year, is unrelated to New York Attorney General Eliot Spitzer's investigation of conflicts of interest in the brokerage industry, an Aon spokesman said. "We have never felt this ownership posed a conflict of interest," he said. Aon was a founding shareholder of Endurance, contributing \$227 million of its initial capital. The broker produced 29.4% of Endurance's gross written premiums in 2003, slightly higher than Marsh & McLennan Cos. Inc., which produced 26.7%, according to SEC filings.

### Anthem, WellPoint complete merger

Anthem Inc. and WellPoint Health Networks Inc. completed a merger that creates the largest managed care organization in the United States after receiving approval last week from Georgia's insurance regulator. The companies agreed to financial concessions of more than \$390 million to secure approvals from insurance regulators in Georgia and California, but no other states requested financial concessions in exchange for approving the merger. The merged company is named WellPoint Inc.

### Spitzer issues subpoena to TPA Gallagher Bassett

New York Attorney General Eliot Spitzer has subpoenaed information from third-party administrator Gallagher Bassett Services Inc. Gallagher Bassett, one of the nation's largest TPAs, is believed to be the first claims administrator subpoenaed in Mr. Spitzer's probe of the insurance industry. The subpoena See **LATE NEWS**/page 27

PHOTO: PS



Mr. Spitzer

## Spotlight report

### BENEFITS COMMUNICATION & EBC AWARDS

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# Alcoa gets tentative approval to fund benefits through captive

**WASHINGTON**—The Labor Department has given tentative authorization for Alcoa Inc. to use its Vermont-based captive insurer to fund U.S. benefit risks.

Under the Alcoa plan, the giant Pittsburgh-based aluminum producer would use its captive, Three Rivers Insurance Co., to reinsure group term life insurance policies written by Metropolitan Life Insurance Co. for employees who work for Alcoa and two Alcoa-affiliated companies. New York-based MetLife would retain 50% of the risk.

John Wilson, president of Three Rivers in Burlington, Vt., earlier said the proposed expansion of the captive was being driven by several fac-

tors, including anticipated savings over the cost of buying life insurance in the traditional market and broadening the captive's premium base.

Alcoa currently uses 21-year-old Three Rivers to write property, marine and certain liability lines of coverage. Last year, Alcoa expanded Three Rivers to fund the benefit risks of non-U.S. employees.

Alcoa filed its application under an expedited review process, in which the Labor Department must make its initial decision within 45 days of receiving an application for a so-called prohibited transaction exemption.

To qualify for fast-track review, an employer has to cite two substantial-

ly similar exemptions the Labor Department has approved in the past five years. Alcoa cited the approval of applications by Columbia Energy Group, Archer-Daniels Midland Co. and International Paper Co.

Final Labor Department approval of Alcoa's proposal could come as early as the end of this year.

Meanwhile, the Labor Department is continuing to review a complex captive benefits funding proposal filed by major appliance manufacturer Whirlpool Corp. of Benton Harbor, Mich. Earlier, the Labor Department said Whirlpool's proposal did not qualify for fast-track consideration.

—By Jerry Geisel

# Despite AIG settlement, product future uncertain

By GLORIA GONZALEZ

**NEW YORK**—American International Group Inc.'s settlement of fraud charges with federal regulators is a positive step toward resolving questions about the company's nontraditional insurance products, but analysts say the full implications of the settlement remain uncertain.

While the \$126 million settlement itself should not have a major impact on the use of nontraditional insurance products, industrywide scrutiny may lead to decreased demand for the products, analysts suggest.

Last week, the U.S. Securities and Exchange Commission and the U.S. Department of Justice formally approved a settlement of charges against AIG over financial transactions between AIG units and Pittsburgh-based PNC Financial Services and Plainfield, Ind.-based Brightpoint Inc.

Under the terms of the settlement, AIG agreed to pay an \$80 million penalty to the Justice Department over the PNC and Brightpoint transactions and \$46 million in to an SEC

restitution fund related to the PNC deals. New York-based AIG does not admit or deny any wrongdoing under the settlement.

The federal agencies had accused AIG of entering into transactions with PNC that enabled PNC to transfer troubled and volatile loans from its balance sheet in violation of accounting rules. In the case of Brightpoint, AIG had allegedly provided retroactive coverage to the mobile phone distributor that allowed it to offset losses on its balance sheet without transferring any risk to AIG. Last year, AIG reached a \$10 million settlement with the SEC over the Brightpoint transaction, but in October a federal grand jury launched a probe into the deal.

In a statement announcing the latest settlement, Stephen M. Cutler, director of the SEC's Division of Enforcement, said: "This action is a message to insurance companies and others that sell structured finance or other products to public companies that are designed for no purpose other than to improve those companies' accounting results."

The settlement should remove some uncertainty for AIG, said Mark Rouck, senior director at Fitch Ratings in Chicago. "For AIG, it's a step in the right direction in putting this behind them."

Some uncertainty remains, however, due to a provision of the settlement that requires AIG to hire an independent consultant—jointly chosen by the company, the SEC and the Justice Department—to review certain transactions between 2000 and 2004 to determine whether they were used to violate accounting rules or to manipulate financial results. The consultant could potentially unveil other instances of similar transactions that would raise red flags with regulators, Mr. Rouck said.

The settlement bars AIG from violating the antifraud provisions of federal securities laws and from aiding and abetting violations of the reporting and record-keeping provisions of the federal securities laws. Although the agreement does not include penalty provisions for violating securities laws, if the indepen-

See AIG/page 22



PHOTO: AP/WIDE WORLD

Twenty years after the deadly gas leak, decaying tanks of chemicals remain at the abandoned Union Carbide plant in Bhopal, India. The catastrophe led to sweeping changes in industrial safety and risk management practices.

# Indian tragedy redefined safety Bhopal disaster changed handling of industrial risks

By CAROLYN ALDRED

**BHOPAL, India**—Twenty years ago this month, the world awoke to a new understanding of industrial risk.

The release of deadly methyl isocyanate gas from a Union Carbide Corp. pesticide plant in the city of Bhopal, in central India, killed more than 4,000 residents within hours and injured tens of thousands of others, according to Indian government estimates. Some estimates put the total death toll at more than 15,000, with as many as 500,000 injured.

An investigation commissioned by Union Carbide claimed that the accident resulted from sabotage by a disgruntled employee. Subsequent inquiries, though, revealed that a failure of safety systems, poor maintenance, reduced staffing

and a lack of contingency planning contributed to the scale of losses.

The disaster was among the events that led to massive changes in risk management and insurance for the chemical and manufacturing industries. These changes have shaped today's risk management environment, industry practitioners observe.

But while industry safety standards and accident preparedness have improved because of Bhopal, there is no guarantee that a similar tragedy will not happen again, warned Carolyn Merritt, chairman of the U.S. Chemical Safety & Hazard Board, one of several safety organizations and programs established in the aftermath of Bhopal.

"Union Carbide had the most advanced safety systems in the

See LESSONS/page 23

## Inside Business Insurance

### High court to hear discrimination case

The U.S. Supreme Court will review a case involving charges of discrimination against a girls' basketball team coach. **Page 4**

### DOT urges tighter rules on hazardous materials

A federal report recommends safer procedures for aircraft carrying hazardous items on board. **Page 4**

### Financial services panel agenda outlined

A member of an influential House committee addresses issues the panel may consider in the coming congressional session. **Page 6**

### PBGC deficit needs attention now

Before its problems worsen, the PBGC's financial condition should be fixed, an editorial suggests. **Page 8**



### JLT chief resigns amid profit drop

Steve McGill, above, quit as CEO after London-based brokerage Jardine Lloyd Thompson warned of a profit shortfall. **Page 21**

## Online

• The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.

• Searchable **directories** provide access to all the listings of industry vendors found in *BI's* Market Sourcebook.

• New **Opinion Poll** for readers: Will your organization offer a consumer-driven health care plan in 2005?

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

# High court hears Title IX whistleblower case

By MARK A. HOFMANN

**WASHINGTON**—The Supreme Court will decide whether a law designed to promote gender equality in educational programs offers protection to whistleblowers as well as victims of sexual discrimination.

The federal government believes that Title IX of the Education Amendments Act of 1972 does protect whistleblowers, Irving Gornstein, assistant to the U.S. solicitor general, told the high court as the justices heard oral arguments in *Roderick Jackson vs. Birmingham Board of Education* last week. The law is best known for promoting equitable funding for sports for both sexes.

And some legal experts say that the court's decision could have implications beyond educational institutions to other workplaces subject to employment rights litigation.

The case involves whether Mr. Jackson can pursue a lawsuit against the Birmingham, Ala., school board because he lost his job as a girls' high school basketball coach after he repeatedly complained that the facilities provided for the girls' team were not as good as those provided for the boys' team. Mr. Jackson, who kept his job as a physical education teacher, said that he lost his coaching position in retaliation for his complaints and sued for back pay and reinstatement as a coach. The board of education said that Ti-

tle IX, unlike some other anti-discrimination laws, does not allow private lawsuits for retaliation claims.

Both a district court and a three-judge panel of the U.S. 11th Circuit Court of Appeals in Atlanta upheld the school board's position. Alabama Solicitor General Kevin Newsom, one of two lawyers arguing the case for the school board before the Supreme Court, said that whistleblowers are not "left out in the cold," and that they can seek administrative remedies under Title IX. "There just aren't many of these retaliation claims out there," he said.

Administrative remedies available. See **TITLE IX**/page 23



PHOTO: AP/WIDE WORLD

**Roderick Jackson lost his coaching job after he repeatedly complained that the facilities provided for the girls' basketball team were not as good as those provided for the boys' team.**

## Top Medicare exec reviews employers' drug benefit options

By JERRY GEISEL

**WASHINGTON**—Final government regulations implementing the 2003 federal law adding a prescription drug benefit to the Medicare program will give employers with retiree health care plans several options that will save them money, a Bush administration official says.

"We need to present a wide range of options," said Dr. Mark McClellan, administrator of the Centers for Medicare & Medicaid Services.

Dr. McClellan spoke last week at a briefing sponsored by the Galen Institute, a health research organization based in Alexandria, Va.; and the Council for Affordable Health Insurance, an advocacy group also based in Alexandria that primarily represents insurers in the small and personal lines markets. He outlined some

of the prescription drug design opportunities that will be available to employers when the law goes into effect in 2006.

One option would be for employers to maintain their existing prescription drug coverage. If that coverage is at least equal

to what Medicare will provide, they would be eligible for tax-free government reimbursements of 28% of the prescription drug expenses between \$250 and \$5,000 incurred by each beneficiary.

Alternatively, the regulations will permit employers to provide prescription drug benefits that supplement or wrap around the benefits that Medicare will offer. Taking that option, as opposed to collecting the government subsidy, eliminates potential problems for em-

See **MEDICARE**/page 23



Dr. McClellan

## Errors & omissions

• Due to an editing error, a Nov. 29 chart illustrating the divergent views of insurance buyers, insurers/reinsurers and agents/brokers on whether contingent commissions represent a conflict of interest incorrectly listed the percentages of respondents that neither agreed nor disagreed. Sixty-two percent of the agents/brokers responding to the survey strongly disagreed or

disagreed that such commissions are a conflict of interest. A corrected version of the chart appears on page 24.

• The Nov. 29 chart of property/casualty insurers' 2004 nine-month results listed incorrect net income for Argonaut Group Inc. The San Antonio-based insurer's net income was \$45.6 million, down 41.5% from the year-earlier period.

## Sanders cash balance provision stripped from spending bill

By JERRY GEISEL

**WASHINGTON**—For a change, employers have scored a victory—albeit a modest one—in Congress on legislation affecting cash balance pension plans.

Late last month, congressional negotiators assembling a giant spending bill quietly knocked out a provision, overwhelmingly approved this summer by the House of Representatives, that would have barred the Treasury Department from taking any action to assist in the overturning of a 2003 federal court ruling that held that IBM Corp.'s cash balance plan discriminates against older employees.

That provision, proposed by longtime cash balance plan critic Rep. Bernard Sanders, I-Vt., was ap-

proved by the House on a 237-162 vote as an amendment to a broader bill appropriating funds to the Treasury Department and several other federal agencies (*BI*, Sept. 27).



Under that amendment, the Treasury Department could have done nothing through Sept. 30, 2005, that would have the effect of undoing a July 31, 2003, decision by U.S. District Court Judge G. Patrick Murphy, who issued a ruling that IBM's five-year-old cash balance plan was discriminatory.

Since Judge Murphy's ruling and after the House action, IBM and plaintiffs agreed to partially settle the litigation. Under one part of the settlement, IBM will pay—in the form of enhanced benefits—\$320 million to plan participants to settle claims regarding IBM's 1995 conversion of its traditional pension plan to a hybrid design known as a pension equity plan.

Under the other part of the settle- See **SANDERS**/page 24

## FAA to increase HAZMAT scrutiny But agency balks at DOT calls for covert airline tests

By MICHAEL BRADFORD

**WASHINGTON**—Airlines will face greater scrutiny regarding the shipment of hazardous materials after the U.S. Department of Transportation charged that the Federal Aviation Administration's cargo-handling oversight is not as tight as it should be.

In a report released in November, the Transportation Department's Office of Inspector General said the FAA's "oversight of HAZMAT has been in flux" since Congress gave the agency \$10.5 million to expand that function after the 1996 crash of ValuJet Flight 592 in the Florida Everglades. The crash, which killed 110 passengers and crew, was determined to have been caused by improperly packaged chemical oxygen generators in the cargo area.

The FAA has agreed to make the changes called for in several recom-

mendations in the report, but so far it has not responded to the inspector general's call for the covert testing of airlines' compliance with HAZMAT regulations.

While the FAA's Hazardous Materials Program is a better-run program than its predecessor, the Dangerous Goods/Cargo Security Program, it is "far from an 'end state' for ensuring the safety of HAZMAT shipments by air," the report stated.

In its response to the inspector general's report, the FAA agreed to, among other things, develop new guidelines and timeframes for conducting HAZMAT investigations of air carriers. The agency also said it would finalize a voluntary disclosure program that calls for airlines to report violations of hazardous materials regulations and would advise the airlines that they must have a procedure for reporting hazardous materials found in checked bag-

gage.

The FAA is not as enthusiastic, though, about the recommendation that the agency develop "a covert testing program to evaluate air carriers' compliance with HAZMAT regulations," as stated in the inspector general's report. While the FAA's current procedures for on-site inspections are "generally effective," the report said, what is needed is covert testing that "goes beyond checking if documentation and training are adequate" to verifying that, in practice, proper procedures for accepting hazardous materials are being followed.

The Transportation Department suggests that covert tests be conducted with FAA personnel posing as shippers and offering air carriers fake shipments that do not conform to HAZMAT regulations.

"Nobody, including the FAA, can See **FAA**/page 24

# Representative says TRIA extension is a priority

By MARK A. HOFMANN

**WASHINGTON**—Extending the federal government's terrorism insurance backstop program will be a priority for the House Financial Services Committee in the next Congress, according to one of the panel's key members.

The federal program, created by the Terrorism Risk Insurance Act of 2002, was designed to make terrorism insurance available while a private terrorism insurance market emerged. But "I believe the private market has not yet come back" for terrorism insurance, said Rep. Paul Kanjorski, D-Pa., during a conference sponsored by the Consumer Federation of America. With the federal program slated to expire at the end of next year, Rep. Kanjorski said that extending TRIA is "imperative" for continued economic growth.

The committee approved legislation earlier this year that would have extended TRIA through the end of 2007, but the full House and Senate did not move on the matter before Congress adjourned. Risk managers and insurers have called for the extension of the program as quickly as possible, because some policies are already being drafted that would extend beyond the life of TRIA if the program is not extended.

The Washington-based CFA has been among the most vocal opponents of extending TRIA, holding that the private insurance market can adequately provide terrorism coverage in all but a handful

of U.S. cities.

Rep. Kanjorski, who is the ranking Democrat on the committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, also said the committee would take up the issue of insurance regulation in the new Congress. He stressed, though, that he does not favor what he called "nationalizing" regulation, which has been a state responsibility for decades.



Rep. Kanjorski

"Without Eliot Spitzer, a lot of things wouldn't have happened," Rep. Kanjorski said, referring to New York's attorney general, who is currently investigating insurance industry practices.

## Paul Winston

### Service should be competitive factor

My new car was recently broken into.

I had parked it in a downtown Chicago garage and, as I approached the car at the end of the day, I saw that the passenger window had been pried and smashed out. Pieces of shattered glass were scattered all over the garage floor, as well as littered throughout the interior of the car. A pair of sunglasses and a portable music player had been stolen.

After a quick assessment of the damage, my thoughts soon turned to insurance. It was at that point that my mood worsened, as I imagined the insurance claims process adding insult to injury. I envisioned a web of red tape I would have to pass through to get the damage to this car repaired and the money that would come out of my own pocket to make up whatever the insurer would deny.

Why the pessimism?

One reason is a previous experience filing a claim with the same insurer. Several years ago, I was in an accident in which my car was struck by a vehicle ridden in by a couple of teenagers speeding through an unmarked intersection. The police cited the young driver for failure to yield. Their parents and I had the same insurer. I assumed the claim would be simple.

Instead, the insurer sent me a notice that blamed me for an accident involving their policyholder. After I clarified that I was their policyholder, too, and the other party was at fault, the insurer then argued that while the other party was primarily to blame for the accident, I would have to assume a small share of responsibility. Its reasoning: the accident would not have happened if I had not been in the intersection at the time.

Another reason I expected the worst is the prevalence of coverage conflicts between commercial insurers and their customers. We write almost weekly about property/casualty and life/health policyholders having to fight to get claims paid. As one disgruntled risk manager put it, "We pay millions of dollars for a promise of 'maybe.'"

But perhaps the strongest reason I expected trouble with my claim is that this was a brand-new car. In fact, it was so new—I bought it on a Friday and it was smashed on a Monday—that I had not personally informed my agent about it yet. I know the car dealer notified the agent at the time of the sale, but without direct notification by me, I expected the insurer would be building its case to deny coverage, refuse my claim and stick me with

the bill.

So I was stunned—and pleasantly surprised—when that isn't what happened at all.

The agent's office promptly called me to update my policy for the new vehicle and express condolences for the damage to the car. They put me in touch with the insurer's claims office, which made arrangements to inspect the car. A few days after that inspection, I received a check for the estimated amount of the claim, less my deductible.

In the days to follow, the repair shop called to say that the damage was worse than feared and that, in addition to replacing the window and fixing some frame damage from a pry bar, they would also need the

insurer's approval to repaint both doors due to scratches to the paint. I called back a few days later and was told that the insurer had to be called out yet again, because the upholstery on the passenger seat had been scratched by the glass and would need to be replaced.

I held my breath, waiting to hear how much these added

repairs would cost me, but I was assured that the insurer was great to work with and had approved all necessary repairs. The insurer even sent me an itemized list of all the damage and repairs.

I wish all insurers treated their policyholders as well as I found my claim handled, but it doesn't take a pessimist to know that's not the case.

My claim brought home for me what a sorry reputation the insurance industry has if many of its customers' expectations are those of dissatisfaction, uncertainty and mistrust. I think insurers should make fixing this poor reputation a greater priority than perhaps any other challenge they face.

Imagine how much stronger the industry would be if it could satisfy and delight customers. Imagine if quality service were a competitive factor, rather than an insurer's ability to skin prices to the bone. Policyholders would regain trust and build stronger relationships, while the industry would recover its reputation and strengthen its pride in a job well done.

The personal lines industry doesn't have a lock on customer service and satisfaction by any measure. But my insurer showed me that it is possible. And that's a start for all insurers to follow.

*Editorial Director Paul Winston's column appears fortnightly. He can be reached at [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com).*



Paul Winston

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

# HIGH FIVE

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## Editorial

## PBGC's finances need attention now

IT DOESN'T REQUIRE a Ph.D. in economics to understand this basic fiscal fact: if an organization promises to pay out more in benefits than it is collecting in revenue, eventually it will run out of money.

That is exactly what is happening to the Pension Benefit Guaranty Corp., the 30-year-old federal agency that guarantees employees and retirees' pension benefits through insurance premiums paid by employers with defined benefit plans.

As we recently reported, the PBGC, hit by a record \$14.7 billion in losses from the actual or probable terminations of underfunded pension plans in 2004, now has a \$23.3 billion deficit. That's more than double its 2003 deficit, which itself was a record.

For now, the PBGC is in no im-

minent danger of defaulting on its promise to pay benefits to the more than 1 million individuals in the nearly 3,500 pension plans it has taken over. It has, after all, nearly \$39 billion in assets, while last year its revenue—nearly \$1.5 billion from termination insurance premiums and \$3.25 billion from investments—exceeded the \$3 billion in benefits it paid out.

But the PBGC's long-term financial picture is bleak. Its annual benefit payout tab will inexorably rise as the younger individuals in the plans the agency has taken over become eligible for benefits. Indeed, \$39 billion in assets may seem like a lot, but it obviously can't cover the \$62 billion in benefits the PBGC has promised to pay participants in terminated plans.

And premium income is unlikely

to rise, as a growing number of employers phase out their defined benefit plans. In the last year alone, corporate giants and major PBGC premium payers Aon Corp., NCR Corp. and Sears, Roebuck & Co. have said they will no longer offer their defined benefit plans to new employees.

While the PBGC's picture is bleak, we do not believe it is hopeless. For starters, to reduce the PBGC's exposure to future losses, Congress needs to tighten pension funding rules. Employers should not be allowed to underfund their pension plans for extended periods of time.

Additionally, employers with significantly underfunded plans should not be allowed to boost benefits until what has been promised is funded.

Finally, curbs on lump-sum payments, which can quickly drain a plan of assets, should be put in place for underfunded plans.

Time is of the essence. The PBGC's financial problems only will grow worse if not addressed. Legislators should fix the problems while the problems still are fixable.

## Letters to the Editor

## IRS captive rules modify third-party requirements

To the editor: Your Nov. 29 editorial, "Consider Captive Benefits," discusses the potential tax advantages of funding employee benefit programs through a captive. The most significant tax benefit discussed is the fact that an employer can deduct premiums paid to a captive if a significant portion of the captive's business comes from insuring unaffiliated risks. The editorial points out that employee benefits are treated as third-party business for this purpose.

Although these statements are true, for many captive owners this issue may no longer be relevant. Many captives are structured as a subsidiary of a holding company that owns a number of other operating subsidiaries. The captive typically generates a significant portion of its premium income from the other commonly held affiliates. In a 2002 revenue ruling, the Internal Revenue Service ruled that the risk distribution requirement was satisfied in the case of a captive that received premiums from a significant number of commonly held affiliates, even in the absence of third-party premiums. The IRS' concession of the risk distribution issue in the "brother-sister" context has eliminated the need for most captives to write third-party business.

There are certainly good reasons to place employee benefits in a captive, but owners of captives—or those considering forming a captive—should be aware that generating third-party premiums is unlikely to be among them. You should carefully consider whether third-party premiums are necessary in your situation and, if so, whether there are simpler ways of achieving that objective. Furthermore, before making any decisions in which tax issues play an important role, be sure that you have the benefit of accurate, thorough and up-to-date advice from a professional tax adviser.

Asher Harris, Esq.  
New York

## Online Opinion Polls

Each week, Business Insurance posts a poll question about industry events on [www.businessinsurance.com](http://www.businessinsurance.com).

Visit the BI Web site to cast your vote in the weekly online polls and to view the results of previous questions.

## TRIA gets welcome push

A KEY MEMBER of the House Financial Services Committee had some good news for risk managers the other day, and he chose a rather unusual venue in which to deliver it.

Speaking at a conference on financial matters put together by the Consumer Federation of America, Rep. Paul Kanjorski, D-Pa., said that one of the House panel's first orders of business when the new Congress convenes early next year will be to extend the federal government's terrorism insurance backstop program. The fact that the CFA has been one of the most vocal oppo-

nent of extending the Terrorism Risk Insurance Act of 2002, which is slated to expire at the end of next year, did not deter Rep. Kanjorski from not only endorsing extension of the program but advocating its expansion to include group life insurance as well.

If the choice of venue was a bit of surprise, Rep. Kanjorski's position was not. He has supported the extension of TRIA ever since the issue emerged last year, and for good reason. As Rep. Kanjorski told his audience, the private terrorism insurance market TRIA was designed, in part, to foster has not emerged. Without some kind of guarantee

that affordable terrorism coverage will be available—a guarantee provided by TRIA—the economy will not perform to its full potential.

The House Financial Services Committee gave its unanimous approval to a TRIA extension bill in September, but Congress adjourned before either the full House or Senate could consider extension. The committee has its priorities straight by taking up the issue early in the next Congress. We hope that the House and Senate recognize the importance of renewing TRIA as soon as possible and add its extension to their lists of early priorities as well.

## Schillerstrom



# Spotlight

## Benefits Communication & EBC Awards



### As workers' benefit needs evolve, so do methods of communication Many employers opting for multimedia approach

By JOANNE WOJCIK

As benefits have evolved, so have the methods for communicating them.

Over the more than three decades that *Business Insurance* has been recognizing excellence in communicating employee benefit programs via its Employee Benefits Communication Awards competition, employers have used print, telephone and technology to inform employees about their benefits.

And today, many employers are going even further and using all of these benefits communication media in sync to teach their employees how to alter their behavior and enhance their health, wealth and well-being.

"The employer's perspective has moved from promoting benefit value to, in the '80s and '90s, helping employees make informed choices, to today, where we're talking about individual responsibility for financial planning and consumerism," said Martha Terry, global practice leader for rewards communications at Towers Perrin in Boston.

"What we're asking an employee to do today is quite different" from 30 years ago, Ms. Terry said. Back then, "they were passive recipients of health care. They received a retirement benefit when they walked out the door. Today, they have to save money, invest pru-

dently, choose from a range of health care options and be good consumers of care."

To achieve this goal, most employers today are taking a multimedia approach, using

**'Organizations aren't just talking about benefits or the choice of benefits; they're encouraging employees to become more involved in their benefits.'**

Laurie Barnes  
Mercer Human Resource Consulting

print to drive employees to interactive Web sites, where they can access plan documents, enroll in benefits programs, find providers, track health care claims and fine-tune retirement plan investments. Some employers are also providing telephone-based services with live health and financial coaching.

"What we've learned is there's a role for all types of communication," said Ms. Terry. "The predominance of electronic communication has changed the way we use print. Print used to be the only way, so it served the

purpose of reference, pull and push strategies. Today we look to embed a lot of knowledge in the electronic platform and push people to it through print promotion."

"The multimedia approach is imperative, especially when we're talking about challenges like behavior change," said Laurie Barnes, Midwest unit communications practice leader at Mercer Human Resource Consulting in Chicago. "You can't turn an ocean liner with a couple of oars."

Moreover, "the information is more complex. It used to be you had a major medical plan, and the communications told you what that meant. Simple. Nothing about cost or employee contributions or choices," Ms. Barnes said.

"Now it requires employees to really think differently and act differently in conjunction with their benefits. Organizations aren't just talking about benefits or the choice of benefits; they're encouraging employees to become more involved in their benefits," she said.

"They're saying, 'You need to think about your own health and wellness as it relates to well-being, productivity as well as cost. Your health is important to us on many different fronts,'" Ms. Barnes said.

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# Benefits: Methods of communication have evolved

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Benefits communication today is also much more simple and efficient, in recognition of the fact that employers are competing with the barrage of information that their employees confront every day from other sources, according to Suzanne Kenney, global leader for Hewitt Associates Inc.'s communication business in Lincolnshire, Ill.

"How do employers communicate benefits at a time when we're so saturated? By streamlining the amount of information that's being sent," Ms. Kenney said. "You have to assume that no longer are people

going to read the details. There's just not enough time. So fewer messages are being sent, with more simple, eye-catching graphics, whether online or in print. And we're taking the personalization idea to another level, such as allowing self-selection."

"I want it to be fun, because benefits are boring," said Lynda Morvik, director of benefits and human resources information systems at Toshiba America Medical Systems Inc., a division of Toshiba America Inc. in Tustin, Calif. The TAMS online benefits handbook won Best of Show in the electronic

communication category of the *Business Insurance* 2004 Employee Benefits Communication Awards competition.

To ensure the message gets delivered, "you've got to be brief, to the point, use an introduction or subject line that gets their attention," said Bruce Lasko, senior manager of retirement plans at Avaya Inc. in Basking Ridge, N.J., who worked with the Hay Group Inc. of Philadelphia to develop an electronic benefits statement that does just that. My Total Rewards, which went live in 2003, received the Profit Sharing/401(k) Council of Ameri-

ca's Signature Award for benefit communications.

"It's difficult balancing giving enough good information vs. too much. When you piggyback that with all the other electronic information employees receive, you get information overload," he said.

Today's benefit communications are also more personalized, to encourage employees to take a more active role.

The message sent to a new participant in a retirement plan, for example, "is quite different than to a 50-year-old who probably has some assets under manage-

ment and is thinking about the distribution phase," said Ms. Terry of Towers Perrin. "The solutions you offer, the messages, the media you use to reach them, can be quite different."

"It's less about dissemination and more about educating and laying a platform for behavior change," said Mercer's Ms. Barnes.

Technology also enables employers to make regular updates to the information.

"The No. 1 thing that drives me crazy as far as benefits are concerned is that employee handbook. As soon as it's printed, it's obsolete," said Ms. Morvik of TAMS.

"With technology, you could implement a change a lot faster—a new limit, a process or a rule. And we could implement that change across the entire organization overnight, and it would be virtually costless," said Ms. Barnes of Mercer.

**'Employers are pointing out to employees that there's a benefit to having so much access and decision- and behavior-support tools. So the medium is a benefit, too.'**

Suzanne Kenney  
Hewitt Associates Inc.

With Internet technology, it's also easier today to isolate those who haven't yet completed their open enrollment or made other benefit decisions, and target communications appropriately, said Mr. Lasko.

Because of the increasing investments employers are making in employee benefits, and the sizable budgets being dedicated to communicating them, in some cases the benefit communication programs themselves are being regarded as an additional employee benefit, according to Ms. Kenney.

"Employers are pointing out to employees that there's a benefit to having so much access and decision- and behavior-support tools," she said. "So the medium is a benefit, too."

"The financial commitment organizations make to benefits is significantly greater. As a result, there is a much greater interest to maximize investment by enhancing employee appreciation," said Ms. Terry.

"As for me, it is very simple," said Gary Earl, vp of benefits at Caesars Entertainment Inc. in Las Vegas. "Pure communications is more than delivering information to the user. It is all about hearing, seeing, touching and living."

In addition, "effective communications are a two-way street," Mr. Earl said. "It is a path of understanding a person's needs as well as environment, and then finding creative paths in which to help that person or group of people become more connected, engaged or invested."

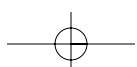
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## Print - Best of Show

# Sears stresses control of benefit costs

By GLORIA GONZALEZ

To help its employees better understand the link between its business and its employee benefit programs, Sears, Roebuck & Co. redesigned its benefit newsletters to include pictures of Sears products.

The idea was to get employees to understand that providing them with benefits is a business cost for the Hoffman Estates, Ill.-based retailer and to encourage them to think about the advantages of helping the company control benefit costs, said Colleen Helker, director-benefits communication for Sears. Sears spends about \$1 billion per year on benefits.

"Many were not aware of our health care costs, period, or how that impacted our business," Ms. Helker said. "We wanted to educate them about that."

The result was a series of newsletters that were named Best of Show in the print category in the *Business In-*

*urance* 2004 Employee Benefits Communication Awards competition.

The newsletters are rich in details and examples that explain the cost of health care for both Sears and its employees. For example, one newsletter showed both the company's cost and the coinsurance contributions for medical procedures such as chest X-rays under the company's preferred provider organization plans.

This is important because some employees believe that their copayments represent the entire cost of their health care and do not realize that they can affect the total costs of the health care services they receive, said Jan Burnham, principal of Chicago-based

The ROC Group, which worked with Sears in designing and writing the newsletters.

"The intention was to elevate the issue of benefit cost management to a level equal to any other cost management issue the company was facing," Ms. Burnham said. "There was

an attempt to help people start to think more like consumers."

The newsletters also show employees how they can save themselves money on their health care costs. For example, the newsletter explains the cost savings associated with the home delivery of prescription drugs. The newsletter notes that an employee who pays a \$15 copayment for a 30-day supply of a generic drug at a retail store could instead make a \$30 copayment on a 90-day supply by using the home-delivery option, saving that employee \$15

compared to the retail purchase.

Newsletters were again chosen as the means to convey benefits news because Sears' employees have become familiar with them; the company has used newsletters for several years, Ms. Helker said. Sears reworked the newsletters, though, to give them a more colorful appearance.

"It did have more of a fun look," she said. "In previous years, it was more of a serious look, with a serious message. It still has a serious message, but we were able to say we could be light and still carry the message."

A key element of its communication strategy was to keep its managers well informed of the latest benefit developments so they could answer questions posed by their staff members, she said. The company created a pocket guide with benefits information that was highly regarded by its store managers, Ms. Helker said. Sears' employees responded positively to the newsletters, commenting that they found them to be simple and understandable, she said.

The company targeted all its benefit-eligible employees, which represents about half of the company's 249,000 employees, Ms. Helker said. The communication program, which cost approximately \$150,000, was distributed between July and November 2003.



## Personalized correspondence - Best of Show

# Coke explains total package

By JUDY GREENWALD

The Total Rewards statement distributed by Coca-Cola Enterprises Inc. is much more than just a simple pension statement.

"We looked at the cost-benefit analysis" and "decided we could get a lot more for our money by presenting a total picture" and a nicer product instead of just a pension estimate to the company's 32,000

employees, said Kevin Reimann, corporate benefits director for the Atlanta-based beverage producer and distributor.

The 16-page booklet, which is personalized to the individual employee, presents data on each employee's total compensation, re-

irement plans, the past four years' stock option grants and current benefits coverage.

Under a headline that reads "Putting It All Together—What Does This Mean to Me?" the booklet asks: "How much do I need?" "How much will I have to save?" "Am I on target?" and "What are my options?" It presents calculations in response to each question

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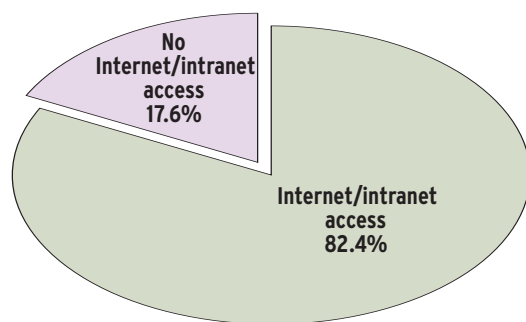
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**INTERNET ACCESS**

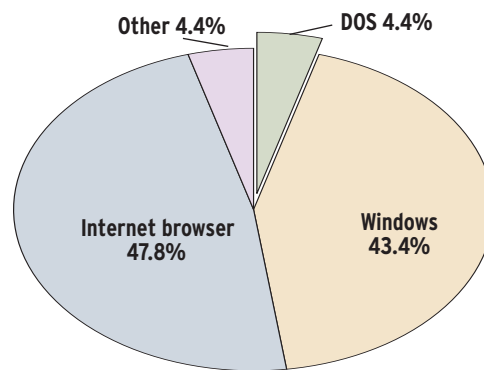
Percentage of systems offering online access



Source: BI survey

**SYSTEM REQUIREMENTS**

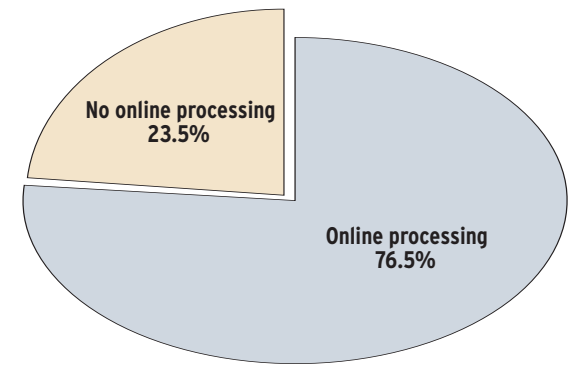
Breakdown by system requirements



Source: BI survey

**ONLINE PROCESSING**

Percent of systems that offer online processing



Source: BI survey

# Largest employee benefit communication systems

## Ranked by number of installations in corporate employee benefit departments

Rank	Company	Software name	Address	Phone/Fax/Web site	2003 number of installations	First installation	Principal officer
<b>1</b>	Human Resources Consulting Group Inc.	FlexComp 9.0 Taxdemo	1202 Dover Drive, Provo, Utah 84604	801-765-4417 Fax: 801-765-4418 <a href="http://www.hrconsultinggroup.com">www.hrconsultinggroup.com</a>	5,587	1986	Rob J. Thurston, president
<b>2</b>	Benefit Software Inc.	Fringe Facts Communicator	212 Cottage Grove Ave., Suite A, Santa Barbara, Calif. 93101	805-679-6200 Fax: 805-568-0239 <a href="http://www.bsiweb.com">www.bsiweb.com</a>	2,671	1978	Larry S. DuBois, president/CEO
<b>3</b>	Benelogic L.L.C.	Benelogic	2118 Greenspring Drive Timonium, Md. 21093	443-322-2494 Fax: 443-322-2496 <a href="http://www.benelogic.com">www.benelogic.com</a>	240	2000	Matthew T. Oros, CEO
<b>4</b>	Aon Consulting Inc.	HR Portal	200 E. Randolph St., Suite 1000 Chicago, Ill. 60601	312-381-4800 Fax: 312-381-0240 <a href="http://www.aon.com">www.aon.com</a>	150	1998	Donald C. Ingram, chairman/CEO-Aon Consulting Worldwide
<b>5</b>	Authoria	Authoria Employee Advisor	300 Fifth Ave. Waltham, Mass. 02451	781-530-2000 Fax: 781-530-2001 <a href="http://www.authoria.com">www.authoria.com</a>	125	1997	Tod Loofbourrow, president/CEO
<b>6</b>	Enwisen Inc.	AnswerSource	7250 Redwood Blvd., Suite 109 Novato, Calif. 94945	415-897-0728 Fax: 415-897-3863 <a href="http://www.enwisen.com">www.enwisen.com</a>	124	1996	Walter Smith, CEO
<b>7</b>	Beacon Global Solutions Inc.	Connection Server	1 Executive Drive, Suite 260 Somerset, N.J. 08873	732-560-9960 Fax: 732-560-9961 <a href="http://www.beaconglobalsolutions.com">www.beaconglobalsolutions.com</a>	100 <sup>1</sup>	1990	Andy Kelly, director-sales
<b>8</b>	ProAct Technologies Corp.	ProAct Benefits Communicator	120 Bloomingdale Road White Plains, N.Y. 10605	914-872-8000 Fax: 914-872-8100 <a href="http://www.proactcorp.com">www.proactcorp.com</a>	90	1997	Greg Rorke, president/CEO
<b>9</b>	Human Resources Consulting Group Inc.	Internet-Employee Self Service	1202 Dover Drive, Provo, Utah 84604	801-765-4417 Fax: 801-765-4418 <a href="http://www.hrconsultinggroup.com">www.hrconsultinggroup.com</a>	53	1986	Rob J. Thurston, president
<b>10</b>	Benefit Software Inc.	Fringe Facts Online	212 Cottage Grove Ave., Suite A, Santa Barbara, Calif. 93101	805-679-6200 Fax: 805-568-0239 <a href="http://www.bsiweb.com">www.bsiweb.com</a>	20	1998	Larry S. DuBois, president/CEO

<sup>1</sup> Estimate  
Source: BI survey

Visit [www.businessinsurance.com](http://www.businessinsurance.com) for more information and access to the full searchable Directory of Employee Benefit Communication Systems.

# Coke: Total package explained

Continued from page 13

based on the employee's individual data so each person can calculate the financial impact of contributing more to his or her retirement program.

The booklet also features wellness information on weight management and health risk appraisals, and it details other benefits available to Coca-Cola Enterprises employees, such as its educational assistance and adoption assistance plans.

The result is a booklet that was named Best of Show for personalized correspondence in the *Busi-*

*ness Insurance* 2004 Employee Benefits Communication Awards.

The cover of the color brochure



shows three Coca-Cola bottles nestling on a beach. Inside, more pictures convey the beach theme.

Throughout the booklet the phrase "Did you know?" appears, followed by tidbits of information such as "the average employee today plans to retire at age 65," some of which are surrounded by depictions of bottle caps.

Coca-Cola "had requested a lifestyle-type of theme, something a little more casual," said Kristin Peacock, Owings Mills, Md.-based assistant vp for Aon Consulting, explaining the

booklet's design. An Aon designer went to the beach and took the pictures herself, Ms. Peacock noted.

The Total Rewards statement has evolved over the five years since it was first distributed, said Mr. Reimann. At first, just compensation and retirement-related information was included. "We've added on since then, to include stock option data and all the health and welfare benefits and then wellness information as well," in order to present "a really comprehensive picture of their total benefits package and compensation," he said.

The project has gotten a good response from employees, said Mr. Reimann. "To a great extent, the feedback from the employees is phenomenal, and they actually

look forward to it each year now," he said.

Coca-Cola decided to use the brochure format "to make sure we could reach all of our employees," said Mr. Reimann. "We're not 100% sure who has access to a computer," he said. "We wanted to make sure everyone has the same opportunity to receive their total rewards statement and also keep it for planning purposes."

**Personalized correspondence  
- Award of Excellence**

## Michelin provides balanced options

By JUDY GREENWALD

When Michelin North America decided to give its employees the choice to either stay with its current defined benefit pension plan or move to a new defined contribution plan, presenting unbiased information on the issue was critical, say company officials.

"Our goal truly was to allow the employees to make the best deci-



sion for themselves," said Jim Fivecoat, manager of retirement plans for the Greenville, S.C.-based tire manufacturer. "We worked very hard to maintain a neutral posture in those communications."

While new hires are all placed in the Michelin Retirement Account Plan, the company also "realized that the new plan may be a better plan for some (current) employees," said Mr. Fivecoat.

To help them decide, beginning last March, about 10,600 employees received a 20-page Retirement Choice Decision Guide; a Retirement Plan Choice Personal Statement, which included personal salary information to illustrate estimates of employee benefits under both plans; and an insert that gave a broad overview of the features of both plans.

Preparing the personal salary information took an extraordinary amount of time, but "we could not have gotten folks to make this decision with general information," said Karen Summers, Michelin's implementation manager for its Total Rewards program, which includes

See MICHELIN/page 18



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# Michelin: Balanced options provided

Continued from page 16 the retirement plan.

"Everything had to be down there to the individual level," Ms. Summer said.

The company's efforts won it an Award of Excellence in the personalized correspondence category in the *Business Insurance* 2004 Employee Benefits Communication Awards competition.

Another critical goal was to make sure that all the pieces of information in the package distributed to employees were consistent. "We didn't want them to look at one source and see something different than they saw in another source," said Mr. Fivecoat.

The company also made sure that each individual piece in the package was as thorough as possible, in case, for one reason or another, employees looked at only one piece, said Ms. Summers.

The program was part of a process that also included changes in the company's health and welfare, retiree medical and 401(k) plans, said Mr. Fivecoat.

Anita Doncaster, a Charlotte, N.C.-based consultant for Hewitt Associates Inc., assisted Michelin in preparing the program.

## Electronic communication - Best of Show

# Toshiba employee handbook goes online

By JOANNE WOJCIK

While in the process of launching a new human resources and payroll system, Lynda Morvik, director of benefits and human resources information systems at Tustin, Calif.-based Toshiba America Medical Systems Inc., thought it would make sense to add a benefits communication component to it.

"The No. 1 thing that drives me crazy as far as benefits is concerned is that employee handbook," she said. "As soon as it's printed, it's obsolete."

In addition, because of printing and postage costs, it was expensive to produce—somewhere between \$45,000 and \$60,000, Ms. Morvik estimates.

"So we lumped it in with the HR/payroll system," she said.

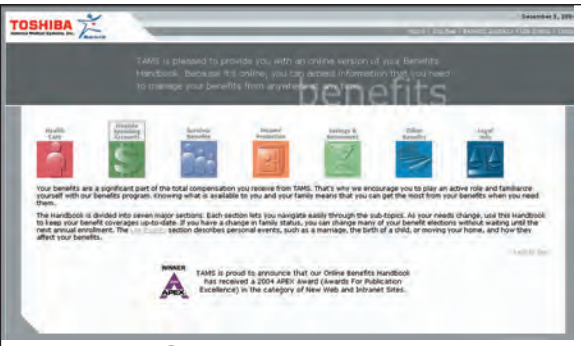
By having all the benefit information online, the TAMS employee handbook would also be a living document, enabling Ms. Morvik to make changes when necessary.

Such was the case halfway through the project, when TAMS changed health care plans from Aetna Inc. to UnitedHealth Group.

"We had to rewrite close to a third of the content," recalled Kathleen Renger, the communications consultant at Aon Consulting in San Francisco who worked on the project for TAMS, a division of

Toshiba America Inc.

As a result, rather than finishing the project in four months, it took a little more than a year. But, despite



the delay, it stayed within its \$150,000 budget, partly because Aon Consulting used a content management system that was able to separate design elements from the content.

That meant programmers weren't needed to make content changes, Ms. Renger explained.

The finished product, which won Best of Show honors for electronic communication in the *Business Insurance* 2004 Employee Benefits Communication Awards competition, also achieved other goals, according to Ms. Renger.

"Our larger objectives were to enhance employees' awareness of their benefits, encourage employee self-service to reduce the number of calls to the benefits department, make it simple to navigate and use technology that would allow for

real-time content changes," she said.

"The time it has cut for my staff is unbelievable," Ms. Morvik acknowledged.

Before the handbook went electronic, "we were getting tons of calls to the benefits department from all across the nation, and I have only one benefits administrator to take calls," she said. "When people sign up for benefits, half the time they don't know what they put on their W4," she said. But with the new

TAMS Online Benefits Handbook linked to an online enrollment, HR and payroll system, everything is accessible electronically in one location.

To ensure that employees don't

"get lost" while logged on, the system was designed to be simple to use. "You always have a breadcrumb trail so you know where you are within the site; you can easily go back to where you were two clicks away, and you can move forward wherever you want," Ms. Renger said.

The site is also colorful and appealing, which Ms. Morvik said she hopes will make employees more interested in learning about their benefits.

"I want it to be fun, because benefits are boring. I want it to be catchy, so it catches their attention," she said.

The next phase in the project is to create a separate benefits portal so that employees can go directly to the site rather than accessing it through the HR portal, where the site currently resides.

## Electronic communication - Award of Excellence

# PSEG desktop tools attract Web site use

By JOANNE WOJCIK

In an effort to attract more union employees to the company's benefits Web site, Public Service Enterprise Group, a utility provider based in Newark, N.J., used innovations in online technology to take its benefits communication to the next level: personalization.

PSEG's "Versioned Your Benefits Desktop" provides customized information for its various employee populations. When employees log on, they have access only to information about the benefits programs for which they are eligible, in accordance with

whether or not they are represented by a union, or are new hires or longtime employees.

The customized desktop, which won the Award of Excellence in the electronic communication category of the 2004 *Business Insurance* Employee Benefits Communication Awards competition, is the latest enhancement in an ongoing electronic communications effort that began in 1999, according to Jennifer Sofield, a communications consultant in the Bridgewater, N.J., office of Hewitt Associates Inc.

"We proposed the project, designed it, wrote it and we host it," said Ms. Sofield, who is a member of a six-person Hewitt team assigned to the PSEG account.

"Over the years, we've replaced so many pieces" of the paper com-

munications that Hewitt had developed for PSEG, she said. A full electronic replacement has not yet been possible, Ms. Sofield explained, because many of PSEG's unionized employees—who comprise some 7,000 members of PSEG's total workforce of 12,000—are not yet "wired."

But if PSEG were to replace just one of these print pieces—a complex fold-out health plan comparison tool—with the electronic version available on "Versioned Your Benefits Desktop," it would save the company \$30,000 annually, Ms. Sofield estimated. The electronic benefits desk-

top, which took four months to develop at a total cost of \$110,000, also features a retirement savings calculator, among other things.

"One of the biggest things we wanted to do was measure use by union populations," she said. "Many don't have computers at work."

But by tracking the origin of the hits to the site, "we know that a lot of people log on from non-PSEG computers. We also have over 500 people voluntarily subscribe their home e-mail addresses to the newswriter tool," Ms. Sofield said. The tool, she explained, was the brainchild of PSEG Director of Compensation and Benefits Dick Quinn, and it enables him to send out news headlines and articles targeted to specific populations.



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**Enrollment/re-enrollment - Best of Show**

# Customized package suits all

## National Gypsum's materials encouraged a diverse workforce to go online

By MEG FLETCHER

National Gypsum Co. faced two major challenges in communicating benefit enrollment information and encouraging online enrollment.

Specifically, it had a very diverse workforce and a culture that encouraged face-to-face interaction rather than individual action online.

The Charlotte, N.C.-based company, which manufactures and supplies building and construction materials worldwide, had to customize the information for its workforce—consisting of 2,500 employees spread across 35 different U.S. loca-

Encouraging online enrollment was an important priority for the company, said Linda Caggia, a National Gypsum employee benefit specialist. "We are trying to streamline our processes, and by encouraging Web enrollment we accomplished that," she said.

An Aon survey of National Gypsum employees found that many were willing to use computers to obtain benefit information, enroll in plans and make benefit changes,

Ms. Collins said. For example, 51% responded that they would be willing to go online to handle a family status change.

In addition, the overall program's positive impact was affirmed by a subsequent review by a Towers Perrin consultant. The review, which gathered observations from 112 employees participating in 12 focus groups, found that employees thought the materials were thorough, well written and useful.

**Enrollment/re-enrollment - Award of Excellence**

# Intuit focuses on consumer choices

By MEG FLETCHER

A communications program to educate and encourage Intuit Inc.'s diverse workforce to enroll in what the company calls its new "consumer-directed health plan" was successful on several fronts.

First, developing a partnership with Hewitt Associates Inc. greatly streamlined and simplified the process, said Lynette Hamel, senior glob-

al benefits manager for Mountain View, Calif.-based Intuit, a consumer and business products software manufacturing and service company.

Previously, Ms. Hamel said she not only wrote portions of the benefit plan documents herself but had to coordinate the efforts of another writer, a designer and a printer.

With the help of Jennifer Benz, a communications consultant in He-

See INTUIT/next page



tions—into as many as 17 different categories.

Those employee groups included individuals who were paid both on a salaried and hourly basis, as well as those whose benefits varied according to contract terms negotiated with different unions. Among the many unions that represent workers at the company are the International Assn. of Machinists & Aerospace Workers and the Paper, Allied-Industrial, Chemical & Energy Workers International Union.

The company's \$242,140 benefit communications package, which won Best of Show honors in the enrollment/re-enrollment category in the *Business Insurance* 2004 Employee Benefits Communication Awards competition, included a variety of customized media, such as individualized benefits information and enrollment guides, both online and print versions; two "teaser" folders; and a flexible spending account brochure. Those items were sent out, primarily to employees' homes, beginning in September 2003, said project consultant Rhonda Collins, a vp in Aon Consulting's Winston-Salem, N.C., office.

All of the materials featured bright red panels on their covers, which made the benefits correspondence easily identifiable. The benefits communication package also introduced a new flexible spending account administrator and promoted the new FSA "debit card" to eligible employees, Ms. Collins said. A participating employee can pay for eligible expenses with the debit card when he or she receives health care-related services or makes purchases. Also, the employee can track account balance use online.

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## Commentary

# Examiner's saga a cautionary tale

Congressional efforts to pre-empt state regulation of commercial insurance have hit a couple of bumps in the road: namely, the New York attorney general's investigation of alleged industry bid rigging and American International Group Inc.'s settlement of securities fraud charges related to its sale of financial insurance products.

While a proposal floated in August to pre-empt state rate regulation would have created a joint federal/state panel to advise on regulatory conflicts, the recent industry scandals are prompting calls for a more direct and powerful role for federal regulators.

If this turns out to be the direction future legislation takes—providing for direct federal oversight of large commercial insurers—you have to wonder if Congress knows what it's getting itself into. They obviously haven't heard, for example, the strange tale of insurance examiner Emil Earhart.

Mr. Earhart, a young Pennsylvania Insurance Department employee, apparently suffered a nervous breakdown and vanished in 1995 while attempting to audit AIG's National Union Fire Insurance Co. of Pittsburgh, Pa. After poring over National Union's balance sheet and ceded reinsurance schedules, he left the insurer's office one afternoon muttering "unaffiliated nonadmitted." He has not been located since, though he has been spotted periodically wandering in or near AIG offices from Southeast Asia to several former Soviet republics.

At one point, for example, Mr. Earhart walked into the offices of AIG's Nuala Financial Products (Cayman) Ltd. and asked several halting questions about the purpose of affiliates NF One Corp., NF Two Corp., NF Two (Cayman) Ltd., NF Nine Corp., NF Nine (Cayman) Ltd. and NF Twelve Corp.

"He seemed confused," a Cayman Islands-based AIG employee said.

He later returned to AIG's New York headquarters, demanding information about the company's Elmstead Investment Corp., Cedarstead Investment Corp., Beechstead Investment Corp., Pinestead Investment Corp., Oakstead Holdings Corp., Hold Oak Corp., Glenwood Holding Corp., Sherwood Holding Corp., Palmgrove Finance Co. Ltd. and Willowgrove Finance Co. Ltd. Also, AIG Liquidity Corp., AIG Relocation Inc., REM Securities, Goodwood Oil Corp., ALICO/CEH Balkan Holdings Ltd., JTGLQ Co., Back O' Beyond Inc. and Winkle Enterprises.

A security guard ordered him off the property.

There have been many reported sightings of Mr. Earhart in recent years, not all of them reliable. In 1998, he apparently visited AIG's Entrepreneurs & Exporters (Entreco) Inc. in the Philippines and Science Park of the Philippines, in which the insurer had a minority interest.

He is also believed to have stopped in Latin America at Unibanco AIG Warranty Ltda. and Brazil Cable Holdings Ltd. before moving on to Europe. There, he is confirmed to have appeared at the offices of Ueberseebank Investment Co. Ltd., UBZInternational Trust Management S.A. and Convest 21 Strategische Vermoögensverwaltung A.G., where he was asked to leave.

The latest information about Mr. Earhart's whereabouts is contradictory and includes simultaneous sightings at AIG Russia Asset Management Co., FAMLAT First International Insurance Co. of Latvia A/S, Uzbekinvest International Insurance Co., and AIG Uganda Ltd.

Mr. Earhart's colleagues and family are hoping he'll finish whatever he thinks he's doing and come home soon.

"He's a good guy," a Pennsylvania department co-worker said. "Plus he's got some significant vacation time coming."

More than a decade ago, congressional Democrats investigating the collapse of a few big insurers proposed federal insurance licensing and solvency regulation. The proposal, which ultimately died, prompted the National Assn. of Insurance Commissioners to develop several solvency-related model laws.

The current Republican Congress seems more interested in simply deregulating rates.

Whether that changes, and financial and market conduct regulation assume a bigger role in federal pre-emption proposals, remains to be seen. But given the anti-regulatory climate in Washington and the less-than-perfect record of some other federal agencies (remember Enron Corp.?), you have to question the likely effectiveness of any federal insurance regulator.

The best of luck to them if they want to give it a try, though. And if they run into Mr. Earhart, they should tell him to call the office.

*Editor's note: Emil Earhart is a fictional character, and any resemblance to any person, living or dead, is coincidental. The AIG subsidiaries cited are real.*

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Douglas McLeod

## Intuit: Consumer choices

Continued from previous page  
witt's San Francisco office, Intuit developed the plan and the communication strategy, which won an Award of Excellence in the enrollment/re-enrollment category in the *Business Insurance* 2004 Employee Benefits Communication Awards competition.

"It's great fun" to introduce a plan that focuses on consumer behavior and demonstrates the value of prudent decision-making, Ms. Hamel said. "The structure of the plan provides a strong health care benefit for employees," she said. Subsequently, the company learned that it had also reduced Intuit's health care costs, Ms. Hamel added.

Intuit spent \$250,000 to develop a new enrollment package—using bright turquoise and orange, teamed with bold illustrations—



that was designed to complement the company's youthful culture, Ms. Benz said. The package featured

a pre-enrollment newsletter; an annual enrollment kit, including a benefits guide with comparison charts; a double-sided poster; and a reminder postcard.

Those items were mailed beginning in April 2003 to the homes of Intuit's 6,500 employees, who range from software designers to call center staffers. Employees work at 16 sites across the United States.

The enrollment program also is considered a success because 14% of Intuit employees chose the consumer-directed option the first year it was offered, which exceeded Intuit's goal of 10% and the marketplace's average of less than 5%, Ms. Benz said.

## Comings & Goings - Industry

### Insurers:

Hamilton, Bermuda-based ACE Ltd. has made several executive appointments.

• **Andrew Kendrick**, previously president and CEO of ACE Bermuda, has been named chairman and CEO of ACE European Group.

• **Keith White** has been named executive officer, Bermuda companies. Previously, Mr. White was chief administration officer of ACE Ltd.

• **Rees Fletcher** has been named president and CEO of ACE Bermuda. Before his promotion, Mr. Fletcher was senior vp.

• **Judith Gonsalves**, who was vp of ACE Bermuda, has been promoted to senior vp.

Also at ACE, **Patricia Henry** has been promoted to executive vp, government affairs and legal, at Philadelphia-based ACE INA. Previously, she was a senior vp.

And **Robert Omrod** has joined ACE INA as senior vp, government affairs. Previously, he was a vp of claims at St. Paul Travelers Corp.

**Kevin W. Natrass** has been named CEO of Berkley Mid-Atlantic Group, a unit of W.R. Berkley Corp. He was previously president and

COO of Richmond, Va.-based BMAG and will continue as its president.

GE Insurance Solutions has made two senior-level appointments.

• **Tony Buckle**, formerly risk manager for the company's property and specialty risk teams, has been named business leader for global engineering in London.

• **Peter Tailby**, a former engineering account manager for Royal & SunAlliance P.L.C., has been named engineering underwriting leader in London.

### Agents/Brokers:

Atlanta-based Beecher Carlson Holdings Inc. has named **Jeffrey Smith** managing director. Previously, Mr. Smith was senior vp at Aon Risk Services.

**Brian Morgan** has been named chief executive officer of the Nashville office of Willis Group Holdings Ltd. Previously, Mr. Morgan was a senior vp for Marsh & McLennan Cos. Inc.

Hays Cos. of Denver has named



Mr. Smith



Mr. Butler

**Michael R. Butler** executive vp in the Denver office. Previously, Mr. Butler was senior vp for Lockton Cos. of Colorado.

### Other providers:

Lenexa, Kan.-based LabOne Inc. has appointed **Kent McAllister** senior vp for information services and chief information officer. Before joining LabOne, Mr. McAllister was director of the client experience group at Cerner Corp.

**Joseph E. Monks**, a former sales executive at IVANS Inc., and **Ken Winer**, a former director of sales for GCS Software, have joined New York-based SeaPass Solutions as directors of sales.

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**Business Insurance**

# European buyers seek broker pay rules

By SARAH VEYSEY  
and PETA MILLER

Several European risk management associations plan to draw up broker compensation standards in the wake of the allegations of bid rigging and client steering by brokerages in the United States.

While European risk managers say they have not seen evidence of price collusion between brokers and insurers similar to practices outlined in New York Attorney General Eliot Spitzer's lawsuit filed against Marsh Inc. in October, there does need to be greater disclosure in insurance transactions.

In an e-mail poll conducted by the Brussels, Belgium-based Federation of European Risk Management Assns., several respondents said their national associations planned to address the issue of broker compensation.

FERMA asked national risk management association representatives how concerned they were about the payment of contingent commissions to brokers, how concerned they were about possible price collusion between brokers and insurers, and whether their association was taking any action, or planned to take any action on the matter.

Serge Marchand, risk manager for Brussels-based Solvay S.A. and a representative of BELRIM, the Brussels, Belgium-based risk management association, said his organization was drawing up a standard declaration for brokers to sign whereby they would agree not to accept contingent commissions and to declare any compensa-

tion the receive that is linked to insurance placements.

There needs to be greater clarity about the role of the broker in insurance transactions in order for a "fair compensation" to be paid, he said.

In the United Kingdom, the Assn. of Insurance and Risk Managers has established a task force to produce draft disclosure standards to discuss with the insurance market later this month, a spokesman said.

**Bid rigging should be 'totally banned and should attract high fines in case of subsequent offense.'**

Serge Marchand  
Solvay S.A.

In addition, AIRMIC representatives met last week with the London-based Financial Services Authority, which takes over the regulation of U.K. insurance brokers in January, to discuss broker compensation issues.

"One could say if it happens in the U.S.A., then why not in Europe," said Peter den Dekker, group insurance risk manager at Hagemeyer N.V. and committee member for the 2005 FERMA forum for the Hague-based Dutch risk managers' association, Nederlandse Associatie van Risk en Insurance Managers.

He said the association wanted to create a

NARIM or a FERMA standard "whereby brokers and insurers will have to answer questions regarding these issues."

Generally, European risk managers said that issues relating to broker compensation were a significant concern.

In Germany, according to Ralf Oelssner, of the Bonn, Germany-based risk management association Deutscher Versicherungs-schutzverband e.V., and director of corporate insurance for Cologne, Germany-based Lufthansa A.G., extra commissions charged by brokers are not publicized. "They do, however, exist," he said.

"Even smaller brokers have been known to ask for them, for example, for changing a lead or for changing the insurer. Large brokers have approached insurers about contingent commissions," he added.

But, according to respondents, there was no evidence that European brokers and insurers had engaged in rigging bids to ensure that business was placed with a selected insurer.

Michel Yarhi, director of insurance at Paris-based bank Société Générale and the Paris-based Association pour le Management des Risques et des Assurances de l'Entreprise's representative to FERMA, said that the matter was of particular concern "because it brings into issue our relationship of confidence with the broker. It is fraud."

Bid rigging should be "totally banned and should attract high fines in case of subsequent offense," said Mr. Marchand of BELRIM.

Maurizio Castelli, group risk manager of Milan, **See FERMA/next page**

## World Updates

### FSA fines former insurance executive

The U.K. Financial Services Authority has publicly censured The Underwriter Insurance Co. Ltd. and imposed a fine on its former chief executive officer. The Underwriter, based in London, went into solvent runoff last year after posting a loss of £12.4 million (\$18.0 million) in 2001. The FSA said in a statement that the company had, in 2001 and 2002, split insurance contracts and deferred premium income into the following year, breaching premium income limits imposed by the FSA. This meant, the FSA noted, that the company's reported premium income "did not accurately reflect the underwriting risks to which it was committed." The company's former CEO, Keith Rutter, who is now a business development consultant at London-based broker Jardine Lloyd Thompson Group P.L.C., was fined £20,000 (\$37,896).

### Heath Lambert forms natural resources unit

Heath Lambert Group P.L.C. has formed a natural resources unit to respond to the insurance needs of the increasingly diversified energy and power industries. The London-based company said Thursday its Natural Resources Group, headed by David Way, will provide property/casualty, directors and officers liability and alternative risk transfer coverages to energy, power and mining companies.

### U.K. OKs tax exemption for pension advice

The U.K. government has announced a tax exemption for employers that pay for their employees to receive independent advice on pension savings. Paymaster General Dawn Primarolo last month announced that employers who give their employees access to pension advice would qualify for the exemption if the advice is generally available to all employees and costs less than £150 (\$284) per employee per year. The new rules will come into force on Dec. 14.

### Briefly noted

Lloyd's of London insurer **Chaucer Syndicates Ltd.** has recruited two underwriters to write international property binders and take advantage of rating opportunities caused by recent windstorms. William Alderton and Nathan O'Donnell have joined the property division of Chaucer's syndicate 1084 from Heritage Managing Agency Ltd. Mr. Alderton, who was a class underwriter at Heritage, will act as international binders underwriter, and Mr. O'Donnell, an assistant class underwriter at Chaucer, will support him.



PHOTO: LOCKHEED MARTIN

## IntelSat Ltd. self-insured satellite loss

**PEMBROKE, Bermuda**—The loss of an IntelSat Ltd. communications satellite that served much of North and South America was self-insured.

The Pembroke, Bermuda-based company said Sunday that its IntelSat Americas-7 satellite "experienced a sudden and unexpected electrical distribution anomaly that caused the permanent loss of the spacecraft."

The firm is working with the manufacturer of the satellite, New York-based Loral Space & Communications Ltd., to identify the problem, but the satellite was a total loss, it added in a statement.

The IA-7 was launched in September 1999. The company would not disclose the value of the satellite, but Diane Van Beber, vp of investor relations at IntelSat, said the company normally purchases insurance for any satellite valued at more than \$150 million.

Zeus Holdings Ltd., a consortium of private equity firms that had agreed in August to purchase IntelSat, is reviewing its options following the loss, according to the statement.

—By Peta Miller

## McGill resigns as JLT's CEO after profit shortfall forecast

### Lower consulting, reinsurance revenue expected

By PETA MILLER

**LONDON**—The chief executive of Jardine Lloyd Thompson Group in London has resigned after the firm warned that its 2004 profits would be 18.6% lower than analysts expected.

In a statement issued Friday, JLT announced net income before tax and exceptional items will likely be £92 million (\$174.3 million) for 2004,



Mr. McGill

£21 million (\$39.8 million) less than the figure forecast by analysts.

The London-based brokerage also said it has accepted the resignation of Steve McGill as a result of the profit warning. Mr. McGill has been JLT's CEO since 2002, when he replaced Ken Carter.

JLT reported first-half net income before tax and exceptional items of £63.8 million (\$115.6 million) in July, which means it expects to make only £28.2 million (\$53.4 million) in the second half.

The company lowered its expectations because its risk consulting unit, which is part of its risk and insurance business, has experienced difficult trading after insurance rates softened faster than expected, the statement said.

Lower reinsurance revenues in the United States and the United Kingdom as insurers have opted to retain more risk and the weakness of the U.S. dollar have also had a negative impact, the statement added.

In a report on its interim results in July, Mr. Carter, the group's chairman, described the insurance market as being "more fragile and less stable" than at the beginning of the year.

In July, Mr. Carter also noted the group's prediction at the beginning of the year that a continuing weak U.S. dollar and a changing reinsurance environment would affect results but "that the benefits from recent recruitments and...acquisitions would become more apparent in the second half of 2004."

A Jardine Lloyd Thompson spokesman could not comment, though, on how the performance of newly recruited staff and the acquisition of new business contributed to the worse-than-expected second half.

Asked to comment further on reasons for the departure of Mr. McGill—who joined one of JLT's founder companies in 1989—the spokesman said, "The fact is, Steve was bullish on the rating environment, and that turned out to be wrong and someone has to take responsibility."

As a result of Mr. McGill's departure, Mr. Carter has agreed to act as executive chairman for up to two years while the group recruits a new CEO.

## FERMA: Broker pay

Continued from previous page

Italy-based Pirelli S.p.A. and a member of Italy's Associazione Nazionale dei Risk Manager e Responsibili Assicurazioni Aziendali, said that while the issue of price fixing is of great concern, he believes the practice was likely limited to a small number of individuals in the United States.

"On the other hand, it is obvious that this question brings us back to the very old issue of the conflict of interest for brokers, particularly when they are remunerated on a commission basis," he said.

Meanwhile, disclosure of commission payments must be consistent, said Andrew Cornish, head of insurable risk at Centrica P.L.C. in London and chairman of AIRMIC at the organization's annual dinner last week.

"This is a key moment for the U.K. insurance and risk management profession," he said, referring to the impact of Mr. Spitzer's investigations.

"AIRMIC does not believe there

has been any evidence of bid rigging in the United Kingdom but contingent commissions have been regular features of practice and we want to see that change to complete transparency in the future," he continued.

Transparency "can have no hidden corners," he said. "It cannot mean one thing to one broker and another thing to another broker."

In light of Mr. Spitzer's charges, the insurance industry must work to restore trust in insurance regulation, said James Schiro, chief executive officer of Zurich Financial Services, who also spoke at the AIRMIC dinner.

"We have been instilling financial discipline, improving internal controls, and improving transparency and as a result I believe we are well-positioned to move into the future," he said.

"We must together strive for the highest levels of operational efficiency and integrity," Mr. Schiro said.

## AIG: Product future uncertain

Continued from page 3

dent counsel, SEC or Justice Department decides there has been a violation, AIG could be prosecuted, a Justice Department spokesman said.

As part of the settlement, the Justice Department also said it would defer prosecution on its criminal complaint for 13 months and eventually dismiss the complaint if AIG and its subsidiaries fully comply with the obligations set forth in the agreement. The existence of the deferred prosecution provision demonstrates, however, that the settlement is "still clearly a work in progress," said Alan Murray, senior credit officer for Moody's Investors Service in New York.

The settlement also does not apply to New York Attorney General Eliot Spitzer's ongoing probe of the insurance industry, which includes scrutiny of loss mitigation products.

Although AIG has pledged to avoid products that may be used to misrepresent a company's income statement or balance sheet, analysts

say the settlement will not deter the company from aggressively creating, writing and marketing its insurance products.

"Aggressive and innovative has always been a part of their culture," said John Ward, chairman of the Ward Group in Cincinnati. "As long as Hank Greenberg is at the helm, I think that will be a characteristic of AIG," referring to Maurice R. Greenberg, chairman and chief executive officer of AIG.

The AIG settlement does not appear to have broader implications for the insurance industry, because it applies to specific transactions conducted by the company, but the use of nontraditional insurance products, such as finite risk or other income smoothing products, has been questioned by both state and federal regulators, which may ultimately lead to a decline in demand for the products, analysts say.

"Companies aren't going to want to purchase them on a go-forward basis," Mr. Rouck said. "I think

there's probably going to be reduced demand for these types of products. If there's lower demand, there's not going to be many people selling them."

"I would surmise that any type of transaction that suggests inappropriate reporting of earnings will be discouraged generally," said Grace Osborne, director of New York-based Standard & Poor's Corp. "The recent probes have highlighted this type of transaction as not being a favorable one."

Demand for the products will not likely subside completely, but companies may shy away from them initially because of the regulatory probes, Mr. Murray said.

Despite the charges against AIG, nontraditional insurance products have generally been regarded as meeting accounting standards, Mr. Rouck said.

"It's kind of hard to fault a company for doing something that meets the regulatory requirements," he said.

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### LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
In re: **SEFTON PARK INSURANCE LIMITED**  
(Petition of Malcolm L. Butterfield)  
Case No.: 02-12934(BRL)

PLEASE TAKE NOTICE that on November 23, 2004, the Bankruptcy Court entered an order continuing the Preliminary Injunction Order (the "Order") pursuant to 11 U.S.C. §§ 105 and 304(b) originally entered in this case on November 7, 2002. The order shall remain in effect pending a hearing scheduled for May 25, 2005 at 10:00 a.m. before the Honorable Burton R. Lifland, in the Alexander Hamilton Custom House, One Bowling Green, New York, New York. Any person wishing to obtain a copy of the Order should contact Theresa D'Agostino at (212) 610-6300.

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# Bhopal: Disaster changed handling of industrial risks

Continued from page 3

world at the time. But the problem was the safety systems in Bhopal had not been maintained, staff had been reduced and money was not being spent on the facility. That can occur anywhere in the world today, particularly in an economic downturn," she said.

Bhopal "absolutely" changed risk management planning and process safety throughout the chemical industry, according to Ms. Merritt. "But commitment to safety and to emergency preparedness has to be maintained," she said.

Although many new safety procedures and standards were introduced by the chemical industry in the aftermath of Bhopal, "companies and people forget about history. The 20th anniversary of Bhopal is a very important event that we should use to help remember what can happen when things go wrong," she noted, adding that "it is a reminder that unless we are diligent and manage facilities well, another Bhopal can always happen again."

## Catalyst for change

The accident in Bhopal was "very much a defining moment for the chemical industry. It changed how we operated and transformed occupational safety and environmental management," said Glenn Ruskin, senior director of special projects at the Arlington, Va.-based American Chemical Council, formerly the Chemical Manufacturers Assn.

Within four months of the disas-

ter, the CMA introduced its Community Awareness & Emergency Program, developing emergency response plans for chemical facilities and their communities throughout the United States, Mr. Ruskin noted.

This led to the Responsible Care program, introduced in 1988 and now adopted by all of the council's 140 members, which represent 90% of the chemical manufacturing in the United States.

Responsible Care is a code of conduct that governs accident preparedness, community awareness, process and occupational safety and environmental protection, Mr. Ruskin explained.

More recently, the council started a process whereby member companies are required to conduct independent audits of their Responsible Care management system every three years.

"The morning after Bhopal, CEOs of chemical companies woke up aghast, asking, 'How did this happen, and could it happen in my company?'" said Mr. Ruskin.

As a result of changes after Bhopal, workplace injuries in the chemical industry are a fraction of those in the manufacturing industry as a whole, said Mr. Ruskin, adding that emissions have decreased by 71% since 1988 while production has increased by 26%.

Richard Gowland, director of the Rugby, U.K.-based European Process Safety Centre, agreed that disasters such as Bhopal have helped make chemical companies particularly proactive when it comes to

safety.

The chemical industry has to make safety a priority, right up to the chief executive level, because of the potential of accidents that can impact hundreds of people "outside the fence" of its operations, Mr. Gowland said.

**'The problem was the safety systems in Bhopal had not been maintained, staff had been reduced and money was not being spent on the facility. That can occur anywhere in the world today, particularly in an economic downturn.'**

Carolyn Merritt  
U.S. Chemical Safety  
& Hazard Board

As a result of the industry's commitment to safety, the chemical industry's accident-at-work rates are four to 10 times better than other industry sectors in the European Union, he noted.

## A turning point

Bhopal and other disasters led to widespread changes in safety management, legislation and the insurance market.

Other industrial disasters include the 1989 explosion at a Phillips Petroleum Co. plant in Pasadena, Texas, which led the U.S. Occupa-

tional Safety and Health Administration to set up its process safety management program in 1990, and the 1976 leak of dioxin at a pesticide plant in Seveso, Italy, which led to the introduction of European Union safety legislation, according to Mr. Gowland.

Bhopal not only altered safety practices for chemical companies but also led to permanent changes in the insurance market for large industrial risks, said Richard Inserra, who was risk manager of Union Carbide from 1991 to 2001, when it was acquired by Dow Chemical Co.

Although Bhopal did not by itself trigger the extreme hardening of the liability insurance market in 1985, it probably helped hasten the market shift and alerted insurers to the potential enormity of industrial accidents, said Mr. Inserra, who now runs his own consulting firm, Insurance Strategies Ltd. in Ridgefield, Conn.

The insurance capacity crunch in the mid-1980s forced many companies to take larger risk retentions and consider alternatives such as captives. Mr. Inserra, who worked as risk manager for Danbury, Conn.-based industrial gases supplier Praxair Inc. until earlier this year, also pointed out that the hard market following Bhopal led to the formation of Bermuda-based specialized excess liability facilities ACE and XL, which today are global, multiline insurers.

"The Bhopal incident clearly illustrated the bodily-injury danger to third parties from large petro-

chemical operations," said Kenneth J. Berger, vp of a unit of Schaumburg, Ill.-based Zurich North America that provides environmental and design professional coverage.

"Bhopal-type incidents probably gave rise to the total pollution exclusion from the more-limited pollution exclusions," said Mr. Berger, who added that this led to "the development of specialty covers for environmental impairment in the U.S. and London insurance markets."

Bhopal also had a "significant impact on health and safety planning and regulations, resulting in better preparation and prevention, emergency response and community right-to-know regulations," said Mr. Berger.

In a statement, Dow Chemical agreed that the "chemical industry learned and grew as a result of Bhopal—creating Responsible Care, with its strengthened focus on process safety standards, emergency preparedness and community awareness."

Although "Dow never owned nor operated the plant, we, along with the rest of industry, have learned from this tragic event, and we have tried to do all we can to assure that similar incidents never happen again."

A spokesman for Dow's Union Carbide unit in Danbury, Conn., explained that Union Carbide "had no day-to-day responsibility for the Bhopal plant," which was owned and operated by subsidiary Union Carbide India Ltd.

# Title IX: Does protection extend to whistleblowers?

Continued from page 4

able under the law range all the way to a school losing federal funds because it violated Title IX. Mr. Newsom told the high court the lack of retaliation claims brought under Title IX shows that the administrative remedy approach is doing what it is supposed to do.

**'The case concerns Title IX directly but also has implications for the enforcement of many other significant civil rights laws. The case will determine whether anyone—a teacher, coach, a student or a parent—can speak up without fear of punishment when they see the laws being violated.'**

Jocelyn Samuels  
National Women's Law Center

In a brief filed with the Supreme Court in support of the school board's position, the Alexandria, Va.-based National School Boards Assn. and several individual school boards and other educational groups said they "fully support the

policy of nondiscrimination underlying Title IX." But the brief continued that its signatories "also have a critical interest in reducing wasteful litigation against public schools and other institutions of learning and in ensuring the effective management of school, college and university personnel."

The brief also noted that "litigation against school boards represents a diversion of scarce resources and a distraction from their mission of academic achievement that the nation's schools can ill afford."

The Washington-based National Women's Law Center, which represented Mr. Jackson, holds that the case could have implications beyond the scope of Title IX.

"I think that this is an important cases that is much broader than Coach Jackson alone or even coaches in general," said Jocelyn Samuels, vp-education and employment for the law center. "The case concerns Title IX directly but also has implications for the enforcement of many other significant civil rights laws. The case will determine whether anyone—a teacher, coach, a student or a parent—can speak up without fear of punishment when they see the laws being violated."

"If they can't, the amount of discrimination will increase and the

advances made under the civil rights laws over the last several decades will be at risk. If they can't, neither our daughters nor their daughters will have truly equal opportunities in our schools. We hope that the Supreme Court will agree," Ms. Samuels said.

An employment law expert with no ties to the case agreed that the court's ultimate decision could have ramifications for employers other than educational institutions.

# Medicare: Drug benefit options

Continued from page 4

ployers such as having to certify that their prescription drug programs are actuarially equal to those of Medicare and setting up payment mechanisms to take in the government money.

Another option outlined by Dr. McClellan would be for employers to arrange customized prescription drug coverage from so-called Medicare Advantage plans—managed care plans that contract with Medicare to provide coverage to beneficiaries—for their retirees.

It is too soon to say which option will be most popular with employers, Dr. McClellan said, noting that

"one size does not fit all."

Still, Dr. McClellan emphasized that he believes that relatively few employers with retiree health care plans will drop those plans because of the expansion of Medicare to cover prescription drug expenses.

Dr. McClellan said the addition of the prescription drug benefit to Medicare is a major step to modernize the federal program, which Congress enacted nearly 40 years ago and which now provides health care coverage to 40 million people, predominately the elderly.

"Medicare has not kept up," he said, citing the lack of Medicare cov-

Mr. Maatman added that the "other key issue is whether the Supreme Court will hold that a male coach—who is retaliated against but not himself a victim of discrimination under Title IX—is nonetheless within the category of potential plaintiffs to whom a cause of action is allowed. If so, this would give plaintiffs in civil rights and workplace bias litigation a platform and an argument for expanding the categories of plaintiffs who may sue."

And that failure to update coverage has been costly to the government and to beneficiaries, Dr. McClellan said, noting that many diseases can be treated at a fraction of the cost with far better outcomes if they are detected early.

While Medicare has been expanding the preventive services it will cover, many beneficiaries are not aware of those changes. To combat that problem, Medicare will beef up a communications program to better inform beneficiaries of the health care services covered by Medicare, he said.

# Comings & Goings - Buyers



Mr. Lambdin



Mr. Baxter



Ms. Zeman



Mr. Davidovich

**John W. Lambdin** has been promoted to assistant treasurer and director of insurance for Federal Way, Wash.-based Weyerhaeuser Co.

Mr. Lambdin will replace Gary A. Baxter, who is retiring at the end of the year. Mr. Baxter joined the company's insurance department in 1971. He was named Weyerhaeuser's director of insurance in 1996 and its assistant treasurer in 1997. Mr. Baxter was a member of

the *Business Insurance* Risk Management Honor Roll in 2001.

Mr. Lambdin's responsibilities consist of managing the company's worldwide insurance program. Before his promotion, he served as assistant director of insurance.

Mr. Lambdin earned a bachelor of science degree in engineering from the University of California at Los Angeles. He also served as president of the Risk & Insurance Management Society Inc.'s Washington

state chapter from June 1999 to May 2000.

**Andrea Zeman** has been promoted to vp of human resources for ARTEL Inc., a Reston, Va.-based information technology company.

Ms. Zeman is responsible for designing and administering the company's benefit program, as well as all other human resources policies and programs, including recruitment, development and retention.

Before her promotion, Ms. Zeman served as the director of human resources.

She earned a bachelor of science degree in business management from the University of Phoenix.

**Bill Davidovich** has been appointed senior vp, human resources, for ABD Insurance & Financial Services, a Redwood City, Calif.-based insurance brokerage.

Mr. Davidovich is responsible for all human resources policies and programs, including the company's employee benefit programs, compensation, employee relations, compliance and strategic and workforce planning.

He replaces Howard Simon.

Before joining the company, Mr. Davidovich served as director, corporate human resources, at Blue Shield of California in San Francisco.

Mr. Davidovich earned a bachelor's degree in international relations and drama from San Francisco State University.

**John L. McWilliams** has joined RehabCare Group Inc., a

provider of program management services for hospital inpatient rehabilitation units based in St. Louis, as senior vp/chief human resources officer.

Mr. McWilliams' responsibilities include employee benefits, recruiting and training and human resources and corporate office administration.

Mr. McWilliams replaces Patricia Fish.

Before joining the company, he served as senior vp of global business support for New York-based Mead Johnson Nutritionals.

Mr. McWilliams earned a bachelor of science degree in business administration with a specialization in human resources management from Marquette University in Milwaukee.

*We'd like to report on staff changes in your risk management, safety and employee benefits departments. Contact Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: cpeinado@businessinsurance.com.*

## FAA: More scrutiny

Continued from page 4

present fake packages" and claim they contain hazardous materials, said a spokesman for the Washington-based FAA.

"It's against the law," he said. And, he added, actually using hazardous materials in a covert test would be too dangerous.

"It's difficult to see how we could do this on its face," the spokesman said of the covert testing recommendation.

Jim Laria, president of the Orlando Air Cargo Assn., said a survey has been sent to his group's members to gather feedback on the changes and the proposal for covert inspections. While he is waiting until the surveys are in before speaking on behalf of the Orlando, Fla.-based association, Mr. Laria said he believes the increased scrutiny amounts to "overkill."

"Our members take great pains in determining the type of shipper they can do business with," as part of the government's Known Shipper Program, which allows cargo carriers to authorize clients as safe shippers and expedite their shipments.

Mr. Laria pointed out that while the ValuJet incident was mentioned in the report, the oxygen generators that caused the accident were "company material" that belonged to the airline, rather than cargo from an outside shipper, and they were certified under procedures other than those called for by FAA hazardous materials regulations that apply to cargo.

The FAA spokesman said the agency already conducts "thousands of surprise on-site inspections" each year to make sure hazardous materials are properly handled by air carriers.

And, Mr. Laria said, the agency is "rigidly enforcing" its training requirements for personnel who handle hazardous materials.

### RECOMMENDED CHANGES

**U.S. Department of Transportation's recommended changes to the Federal Aviation Administration's Hazardous Materials Program.**

- Implement covert tests to determine air carriers' compliance with HAZMAT regulations.

- Develop guidelines and timeframes for conducting HAZMAT investigations, legal reviews and issuing Notices of Proposed Civil Penalties.

- Implement a nationwide plan to equitably distribute the number of HAZMAT cases per FAA attorney.

- Streamline enforcement of HAZMAT violations.

- Finalize the voluntary disclosure reporting program that would allow airlines to self-report violations of HAZMAT regulations.

- Create a pilot project with the Transportation Security Agency and one or more air carriers to determine the effectiveness and cost of an automated system to process violations of HAZMAT regulations by passengers found during screening to be carrying hazardous materials.

- Advise air carriers that they must report hazardous materials found in passengers' checked baggage.

- Development by DOT of a process for resolving disputes between the FAA and the Research and Special Programs Administration over HAZMAT regulation wording so as to ensure that safety requirements for shipping of hazardous materials are adequately addressed.

Continued from page 4

ment, IBM will appeal Judge Murphy's ruling that IBM's cash balance plan, which the Armonk, N.Y.-based company set up in 1999 to succeed the PEP plan, is age discriminatory. If IBM prevails on appeal, it will have no further liability. If it loses, its liability will be capped at \$1.4 billion, also payable in the form of enhanced benefits (*BI*, Oct. 4).

The Senate, though, failed to complete action on the House-passed appropriations bill, which included the Sanders' cash balance plan amendment. It also did not act on numerous other appropriations bills.

With time running short in the legislative session, Congressional leaders decided to bundle the various uncompleted appropriations bills into one measure. That bill is expected to receive final approval this week, during a special one- or two-day session.

In assembling the broad bill, though, congressional negotiators stripped the Sanders amendment from it. Employer benefit lobbyists say the deletion was the result of several factors, including opposition from several senators and quiet lobbying from the Bush administration signaling its opposition to the amendment.

Given that the Treasury Department has no current plans to issue cash balance plan regulations, the congressional victory on the removal of the Sanders amendment is a modest one, observers note.

"While there will not be any restrictions on how Treasury spends its money, it is pretty unlikely Treasury will restart the regulatory process," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Still, the discarding of the Sanders amendment contrasts sharply with prior congressional action regarding cash balance plans. The Senate last year, for example, approved an amendment—introduced by Sen.

Tom Harkin, D-Iowa, also as part of a Treasury Department appropriations bill—to prevent Treasury from finalizing regulations it proposed in late 2002 that would have recognized that the basic design of cash balance plans is not age-discriminatory. Chilled by the Senate vote, the Treasury Department withdrew the regulations.

Cash balance plans give employees a credit equal to a percentage of pay and provide interest on benefit accounts.

Some say the refusal of Congress this time around to take up the Sanders amendment may signal a changing and improving congressional attitude toward the plans, which combine elements of defined benefit and defined contribution plans. About 1,200 cash balance

plans have been established, with more than 20% of defined benefit participants enrolled in the plans.

"I think legislators are beginning to appreciate that cash balance plans are an integral part of the defined benefit plan universe," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

Plan supporters hope that when the new legislative session begins in January, Congress, working with the Treasury Department, will finally develop rules that cash balance plan sponsors can follow, eliminating the legal uncertainties they now face.

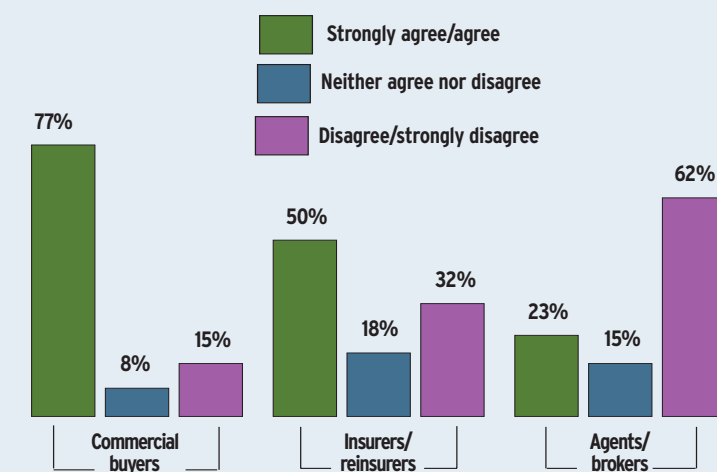
"I have a reasonable amount of optimism that an appropriate resolution can be found," said Scott Macey, a senior vp in the Somerset, N.J., office of Aon Consulting.

## Errors & Omissions

This is the corrected version of a chart that ran in the Nov. 29 issue. It originally accompanied a story on a survey conducted by *Business Insurance* and The National Alliance Research Academy.

### WIDELY DIVERGENT VIEWS

**Respondents were divided on whether they agreed with the statement: 'The practice of insurers paying bonus commissions for volume of business or similar loyalty compensation represents a conflict of interest that can adversely affect the choice of the insurer for the insurance consumer.'**



Source: The National Alliance and *Business Insurance*

# Marsh: Investigation finds client steering at U.K. unit

Continued from page 1

York Attorney General Eliot Spitzer sued the brokerage unit's New York-based parent, MMC, on charges of rigging bids to ensure that certain insurers received specific accounts and steering clients to insurers that paid the highest contingent commissions. The U.K. unit was not cited by Mr. Spitzer and is not subject to any U.K. regulatory investigation.

MSAs generated \$845 million worldwide for Marsh in 2003, and about \$200 million of that revenue came from risks placed in London, sources say. MMC in October said it will no longer accept contingent compensation in the form of MSAs.

## Probe limited in scope

Freshfields, which does not represent Marsh Ltd., agreed in October to conduct a six-week review and report its conclusions by Nov. 30 to the U.K. unit's board. Specifically, the law firm investigated whether between Jan. 1, 2003, and Oct. 19, 2004, there were any instances of:

- Bid rigging or submission of false quotes by Marsh Ltd.
- Unfair treatment of customers because of the use and operation of MSAs.

Freshfields noted that its investigation was limited. "With a limited exception in relation to a sample of client placement files, we have not investigated client-specific transactions to assess whether at that level

there has been unfair treatment or prejudice" to clients, the report states. "That degree of analysis, to be meaningful, could not be performed in the time available. It follows that we have not investigated client advisory files, client-specific disclosures and client communications in relation to fees or fee arrangements; or how Marsh Ltd. has responded to client queries."

In addition, reinsurance placements were not included in the probe because those were not part of Mr. Spitzer's original complaint. He is, though, investigating the possibility of "tying" practices by brokers with reinsurance intermediary operations (BI, Oct. 25).

Other than those limitations, Freshfields was free to access any documents or part of the U.K. organization, a Marsh Ltd. spokesman said.

## Freshfields' findings

Over the six-week period, a team of 50 lawyers attended 100 internal and external meetings and reviewed hundreds of thousands of e-mails and documents, according to the report. Freshfields interviewed Marsh Ltd. management and a selection of staff involved in brokering day to day. The law firm also looked at business systems and practices governing MSAs and disclosures by Marsh Ltd. to clients about these arrangements. The law firm concen-

trated on Marsh's London headquarters, deeming it impossible in the time available to investigate all regional offices.

Freshfields found that certain brokers were aware of MSAs and were under pressure to consider them in their choice of insurers. "We have seen...evidence of pressure applied by senior employees to brokers to

**Freshfields' report stated, 'We have not found any evidence that a particular client paid more for insurance, or was insured on less favorable terms' as a result of a market service agreement.**

maximize MSA income," the report states.

"Moreover, we have seen a number of instances where senior employees have sought to impose pressure upon brokers to show business or not to show business to a particular underwriter, because of the position in relation to an MSA," the paragraph continues.

In addition, "the impetus to maximize MSA revenue was felt to a greater or lesser extent by the underwriters Marsh Ltd. dealt with, some of whom, taking into account Marsh Ltd.'s size and reach in particular

markets, believed they would not grow their accounts with Marsh Ltd. if they did not agree to an MSA." Freshfields did not identify those underwriters.

But, "we have not found any evidence that a particular client paid more for insurance, or was insured on less favorable terms or with weaker security or services as a consequence of the influence of an MSA," Freshfields reported.

The report stated "there were no general systems in place sufficient to ensure either that those placing the business could not have access to information regarding MSA income, or that the risk of moving business to certain insurers or away from others as a consequence of MSAs was eliminated." It also found that "neither were there any general systems in place to detect and discourage any improper pressure applied internally."

The report notes Freshfields found no evidence of fraudulent activity at Marsh Ltd. "We have found no evidence of bid rigging or submission of false quotes by Marsh Ltd. in connection with the placement of insurance business," it says. "Nor have we seen any evidence suggesting such conduct would have been condoned."

Marsh said it accepts the findings. "We now look forward to implementing a new business model that will reaffirm our commitment to serve our clients' best interests on

the basis of transparency, integrity and the highest standards of ethical practice," Bruce Carnegie-Brown, chief executive of Marsh Ltd., said in a statement.

## FSA response

The Financial Services Authority, which takes over supervision of U.K. brokers Jan. 14 from the General Insurance Standards Council, confirmed it has received a copy of the report but said it has no plans to reconsider its intent to authorize Marsh or other brokers operating in the U.K. market.

An FSA spokesman said that the Freshfields report could influence the regulator's decision "only to the extent that we will look (at the report) and if there is anything that raises any questions the firm is unable to answer we would reserve the option of reconsidering...but at this stage we are still minded to authorize them and see no reason to reconsider."

Eric Galbraith, chief executive of the British Insurance Brokers' Assn. in London, said he was confident that regulators would have prevented any serious conflict of interest arising at U.K. brokers.

While he would not comment on Freshfields' report, he said most U.K. brokers had conducted reviews to ensure there were no conflicts of interest or abuses such as those alleged by Mr. Spitzer.

# UnumProvident: Problems remain despite settlement

Continued from page 1

But the settlement won't end UnumProvident's problems.

Trial lawyers vow they will continue pressing individual and class action lawsuits alleging UnumProvident improperly denied or terminated disability claims.

Additionally, four days after the company announced its settlement, Moody's Investors Service placed the corporation's credit ratings and the financial strength ratings of its insurance subsidiaries on review for possible downgrades. Moody's currently rates UnumProvident's se-

nior debt at Ba1 and rates the insurer's financial strength of its life insurer units at Baa1, which is considered adequate, said Ann G. Perry, vp-senior credit officer for Moody's in New York.

The rating agency said it will review how ongoing broker compensation investigations impact UnumProvident's core U.S. group long-term disability coverage business, and especially sales and customer retention.

Neither A.M. Best Co. nor Standard & Poor's Corp. took any rating action against UnumProvident following the settlement announcement.

Atop the reputational damage from various settlements and investigations stemming from UnumProvident's claims handling, additional reputation harm could result from lawsuits filed by the California Department of Insurance and New York Attorney General Eliot Spitzer, Ms. Perry said.

"Our concern is that if there is additional damage to the company's reputation, it could translate into lower sales and lower retentions," Ms. Perry said.

In a lawsuit filed Nov. 18, the California Department of Insurance alleged that four insurers, including UnumProvident, participated in a client-steering kickback scheme with benefits broker Universal Life Resources Inc. The other three insurers are MetLife Inc., CIGNA

Corp. and Prudential Financial Inc. (BI, Nov. 22)

Mr. Spitzer earlier sued ULR, charging the broker with steering business to insurers paying it secret override commissions, but he did not name any insurers as defendants.

Moody's did not place under review its ratings of the other three

**Trial lawyers vow they will continue pressing individual and class action lawsuits alleging UnumProvident improperly denied or terminated disability claims.**

insurers charged in such deals with ULR, Ms. Perry said. Moody's acted on UnumProvident for several reasons, including the insurer's concentration of disability business. Reserving for claims in that line remains more art than science, Ms. Perry said. Additionally, events beyond management's control could erode a turnaround effort implemented by the company.

"For Unum, our view was that this type of action, given the company's position in its turnaround strategy and some of the past weaknesses that it has shown, is in a more vulnerable situation" when there is some negative news, Ms.

Perry said.

Sharon Kaleta, chief financial officer for the Disability Management Employer Coalition, a San Diego-based organization founded by employers to advance integrated disability management, said that no employer she has spoken with has changed its disability coverage arrangements because of negative news involving UnumProvident.

But a disability manager for a California county that provides LTD coverage for its employees said that recent events have changed her view of UnumProvident. If she were looking to purchase new coverage and other insurers presented similar quotes, she would pass on UnumProvident, said the disability manager, who asked not to be identified.

No group disability clients of New York-based brokerage Travers O'keefe Inc. have faced employee complaints because UnumProvident denied their claims, added John Van Wie, a broker at the firm who places disability benefits.

But some new accounts are passing over UnumProvident for other insurers, Mr. Van Wie said. UnumProvident might have overcome one bad news story, but as several emerge, it grows increasingly difficult to do so, he added. Over the past two years, several TV news programs have investigated UnumProvident's claims practices. And

See UNUMPROVIDENT/next page

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# Definity: Consumer-driven plan model enters fast lane

Continued from page 1

The acquisition is good news for employers, industry sources predict, because legitimizing the consumer-driven concept should stimulate further product innovation in the health care market.

Definity's product incorporates a high-deductible insurance plan with an employer-funded health reimbursement account that is used to pay for expenses within that deductible. Any funds remaining at year-end can be rolled over to subsequent years.

"I think this now permits hybrid products to evolve quicker," said Scott Keyes, a consultant at Watson Wyatt Worldwide in Minneapolis.

"I think you're going to end up with different high-deductible, account-based plan types now," he said. "I think the market has been headed in that direction anyway."

In particular, Mr. Keyes pointed to the product innovation that has occurred since the passage of legislation last year that created tax-favored health spending accounts, which are similar to HRAs with a few exceptions. Unlike HRAs, which are funded solely by the employer, HSAs can be funded with contributions from employees, employers or both. They are also similar to individual retirement accounts in that they are an investment managed by financial institutions and are "owned" by employees.

Bill Sharon, a senior vp at Aon Consulting in Tampa, Fla., said the move is also likely to spur competition in the health care market as other major players develop similar products.

"The demand for this product is accelerating so rapidly, from employers and employees, that for an insurance company to play in the health care business they have to have a strong consumer-driven product portfolio, and, if they don't, they risk losing market share to those that do," he said.

Mr. Keyes agreed.

"I think the Blue Crosses are go-

ing to have to take a harder look at what they do, because now they have a strong competitor in a national market," he said.

In fact, by the end of next year, consumers in 49 states and the District of Columbia will be able to buy coverage from a Blue Cross & Blue Shield plan that they can combine with a health savings account, the Blue Cross & Blue Shield Assn. announced last week.

"I think Lumenos is going to be challenged," added Mr. Keyes, referring to an Alexandria, Va.-based provider that had 140,000 members at the end of 2003. "They've always been 'Avis,' the No. 2 player."

But Lumenos doesn't see it that way.

"Our view is that this creates a wonderful opportunity, in that we now are the only pure-play consumer-driven health care company in the marketplace," said Doug Kronenberg, Lumenos' chief strategy officer. "We're going to keep our heads down and continue to sell aggressively. Our clients say there is still a need in the market for this pure, focused approach."

In fact, Mr. Kronenberg suggested that it was the success of Lumenos and Definity that prompted UnitedHealth to make this acquisition.

"First and foremost, it validates the concept that a large firm like UnitedHealth would have a need or desire to pull someone like Definity in. It's indicative of the challenges that some of the traditional carriers are probably faced with in terms of building a consumer-driven infrastructure. The initial thought as they began to do that was, this is simply line extension. If it was that simple, I think they would have gotten in earlier. There was a level of innovation and complexity to this program that they didn't realize," he said.

## Access to providers

But the marriage will also be advantageous for Definity, sources say, by giving it access to United-

Health's network of 460,000 doctors and other health care providers and more than 4,000 hospitals nationwide. Independents like Definity and Lumenos don't have the negotiating clout that large carriers have, they say.

"Definity really only had available to them the independent networks like Beech Street and PHCS, and those networks do not have as deep of discounts as carriers like Aetna, UnitedHealth Care and

**'I think this now permits hybrid products to evolve quicker...I think you're going to end up with different high-deductible, account-based plan types now.'**

*Scott Keyes  
Watson Wyatt Worldwide*

CIGNA. That was a weakness in the Definity product that now goes away," said Mr. Sharon.

"I think there's a realization that consumer-driven is going to be a player in the market for sure, but it may not go far enough. You still need to work with provider groups in a pretty organized way," said Mr. Keyes.

Definity's strong brand reputation was certainly a selling point, and, in recognition of this fact, UnitedHealth has decided to retain the company's name, integrating its own consumer-driven product, the iPlan, into Definity's. Tony Miller, Definity's founder and chief executive officer, also is staying on.

"The Definity name will help them grow their product," said Mr. Keyes of Watson Wyatt. "It sure gives them a lead, because Definity had name brand. Now United's got that."

"By acquiring Definity, it will give UnitedHealth a model with an already-proven track record," observed Beth Remus, principal of Re-

mus & Associates Inc., a Chicago-based health care company consulting firm. "No inventing a model by people without the experience."

"This looks to me like an acquisition of expertise," echoed Brian Klepper, president of the Center for Practical Health Reform in Atlantic Beach, Fla.

The fact that Mr. Miller is part of the package is icing on the cake, according to Mr. Keyes.

"He's a visionary," Mr. Keyes said. "When you're trying to do something like this and move a market, you need enthusiasm to fire people up, and Definity always fired people up. You could see the same consumer-driven presentation by United or Blue Cross or Aetna, and it was good. But Definity was always great. They always got my clients excited. Whether they decided to work with Definity or not, they got them excited about the concept," he said.

"And that's worth something in the marketplace. I don't mean that as a slight. They believed in what they were doing and they're passionate, and we all know passion's important to move things along," Mr. Keyes said.

## One-stop shopping

The acquisition also gives UnitedHealth a sizable range of products, which should make it more attractive to employers that want a single carrier but also want to be able to offer a variety of plans to employees, according to Mr. Sharon.

For example, UnitedHealth and Definity clients could also offer some of UnitedHealth's other products, which include its health maintenance organization and preferred provider organization plans, the Definity HRA and UnitedHealth's hybrid CDHP called Overture, which is based on a tiered benefit strategy.

UnitedHealth also chartered its own bank, Exante, to offer a new HAS product beginning in 2005. And, as a result of its 2003 acquisi-

tion of Golden Rule Insurance Co., UnitedHealth also offers medical savings accounts to the individual and small-group market.

"There aren't that many big-carrier consumer-driven plans out there" with a similarly rich portfolio, pointed out Mr. Sharon.

In fact, when Aon decided it wanted to offer a consumer-driven product to its own employees back in 2000, it chose Definity because, at the time, it was pretty much the only game in town, he said.

"Aon four years ago wasn't looking to add another vendor. But, at the time, we wanted consumer-driven health care and Definity was the only available product," he said.

But "now, as it becomes more mainstream, all the guys that have been on the sidelines, that have been waiting and seeing this is for real, then they will start adding their products," Mr. Sharon said. "So it's going to be the ticket to succeeding in this health care game."

## New opportunities

The \$300 million all-cash deal—which pays off investors Merrill Lynch, VantagePoint, Alta Partners and Psilos Group—also demonstrates that there's money to be made in the emerging consumer-driven health care industry, predicted Regina Herzlinger, professor of economics at the Harvard Business School in Boston and a leading advocate of the consumer-driven health care concept. "Others will likely go down this same route—Lumenos might, Destiny might," she said, referring to Oak Brook, Ill.-based Destiny Health.

"And," Ms. Herzlinger said, "as some of the other companies mature...they, too, will become attractive acquisition candidates for big insurers who are buying two things: One is, they're buying a Rolodex—about a half a million people in Definity's case—and, secondly and more importantly, they're buying entrepreneurial talent that's devoted to a consumer-driven vision."

# UnumProvident: More challenges ahead

Continued from previous page

other media outlets have reported on settlements and additional litigation.

"I believe that this news absolutely has taken a lot of the wind out of new business sales" for UnumProvident, Mr. Van Wie said.

Financial reports issued by UnumProvident do show a drop in sales.

In its third-quarter results released Nov. 3, UnumProvident reported that new sales for group long-term disability fully insured products declined 23.9%, to \$41.1 million, from \$54.0 million in the same period of 2003. Group sales of short-term income protection products also fell.

But UnumProvident says that is by choice. The report attributes sales decline to a "disciplined pricing strategy and the competitive

market environment," with expectations for a "lower rate of sales activity to continue as it places a higher emphasis on the profitability of its business."

Meanwhile, though, the insurer will still have to contend with some ongoing lawsuits over its claims-handling business.

"I and all of the other lawyers with UnumProvident cases are going to press ahead," said Michael Tobin, a Coral Gables, Fla., plaintiffs attorney who regularly communicates with lawyers nationwide who are suing the insurer.

Mr. Tobin said he will continue pressing lawsuits he has filed until UnumProvident shows it will stick to the terms in its settlement agreement by properly addressing his clients' claims.

Other attorneys are capitalizing on the settlement agreement with

Web sites that advise claimants they will need legal help to benefit from the settlement. Some of these Web sites also invite potential claimants to participate in class action lawsuits against UnumProvident.

But UnumProvident's Mr. White said that claims-handling changes made even before the global settlement have already reduced litigation. The number of claims litigated peaked early in 2003, following television news stories about UnumProvident's claims handling. Litigated claims have been declining since.

Changes called for in the settlement should accelerate the trend, he said.

Mr. White also points out that Moody's stated that the settlement will help the company remove some uncertainty from its operating

picture.

"Our company has been through a number of issues over the last couple of years that have challenged the reputation," Mr. White said. "I think its very telling when you look at customer survey information and you look at persistency trends, which show that our in-force business has held up very well through this process."

In 2003, for example, 87.2% of group disability customers renewed with UnumProvident. That slipped to 84.6% in 2004, mostly because of repricing, Mr. White said.

"What that says to us is that we are doing something right in the way we manage claims, despite what the media may be saying. We are doing something right in the way we are servicing business and the way we are handling relationships with customers," he said.

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## Late News

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does not seek information about the insurance brokerage business of parent Arthur J. Gallagher & Co., but a Gallagher spokeswoman would not describe the information requested. A spokesman for Mr. Spitzer also declined to comment.

### Survey finds satisfaction with health benefits

Despite escalating health care benefit costs, most employees remain satisfied with their employer-sponsored health plans, a survey finds. Conducted by Watson Wyatt



Worldwide in Washington, the survey of nearly 13,000 employees from a broad range of U.S. companies revealed that 61% of workers in 2004 are satisfied with their health

### Equitas payouts fall in first six months

Equitas Ltd. paid claims of £353 million (\$668.8 million) in the six



months ending Sept. 30, compared with £357 million (\$595.3 million) in the comparable period last year. Equitas is the runoff reinsurer for the pre-1993 long-tail liabilities of Lloyd's of London syndicates. A spokesman for London-based Equitas said that while a runoff company's claims payments normally would be expected to fall substantially as the runoff matures, Equitas has entered into a large number of policy buyback agreements during the past year.

### Cooper Gay forms new division

Broker Cooper Gay & Co. Ltd. has set up a division, CG Global Risk, to service large, multinational clients. The company said in a statement that the division, which is headquartered in London and New York, would offer an alternative to "the consolidation business model by separating retail client service and global marketing into diverse and complimentary functions." The division is headed by co-managing directors Erik Nikodem and Emma Freedman, both based in New York.

### Large casualty, D&O rates fall: Survey

Some liability insurance rates fell sharply in November and average property/casualty insurance rates increased only 2%, according to a

Market Barometer



survey of agents and insurance buyers. Directors and officers liability rates decreased 15% last month, according to the survey conducted by MarketScout, an online insurance exchange. Rates for large casualty risks were down 12%. MarketScout said that on average, all coverages with premiums of more than \$500,000 placed by survey respondents experienced rate decreases of 9%, except for coastal property and offshore energy risks.

### Senators propose lifting oil pollution liability caps

New Jersey's two senators plan to introduce legislation that would phase out by 2010 the Oil Pollution

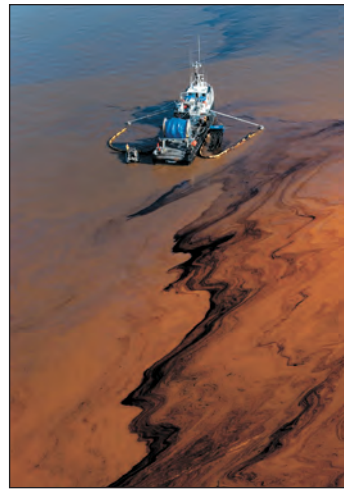


PHOTO: KRT

### A tanker spilled thousands of gallons of crude oil in the Delaware River near New Jersey.

Act of 1990's liability cap for single hull ships that cause oil spills. Sens. Frank Lautenberg and Jon Corzine, both Democrats, announced their legislative plans after a vessel spilled thousands of gallons of crude oil into the Delaware River near Paulsboro, N.J., last month. Under OPA, of which Sen. Lautenberg was a co-sponsor, liability for oil spills is capped according to various factors, such as ship size or the nature of the facility in which the spill occurred.

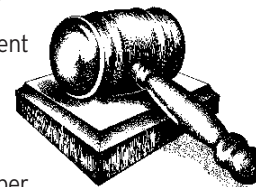
### SEC subpoenas Chubb in finite risk probe

Chubb Corp. said it has received a subpoena from the U.S. Securities and Exchange Commission as part of a fact-finding inquiry into certain loss-mitigation insurance products. "Chubb believes this investigation involves a number of industry participants and that Chubb has not been singled out in being asked to provide information to the SEC," the company said in an SEC filing. Chubb said the SEC subpoena, which it received last week, is similar to another subpoena Chubb received from New York Attorney General Eliot Spitzer, who is investigating the use of finite risk products.

### ERISA suit filed against AIG

A lawsuit seeking class action status has been filed against American International Group Inc. for alleged violations of the Employee

Retirement Income Security Act related to a loss of value of AIG stock caused by its alleged involvement in bid-rigging activities.



Law firm Wolf Popper L.L.P. filed the lawsuit last week on behalf of present and former employees of AIG participating in the company's 401(k) pension plan from Nov. 1, 1998, to the present.

### Briefly noted

The Washington-based Council of Insurance Agents & Brokers is endorsing the National Assn. of Insurance Commissioners' proposed regulation that brokers fully disclose all compensation arrangements—especially contingent commissions from insurers—to commercial insurance buyers, according to a statement the CIAB issued last week....A federal bankruptcy judge has approved asbestos insurance settlement agreements between two bankrupt units of Halliburton Corp. and more than 150 London- and U.S.-based insurers. The agreements, combined with earlier insurance settlements, will provide \$1.5 billion in cash to trust funds for asbestos claimants of Halliburton's DII Industries and Kellogg, Brown & Root subsidiaries. Halliburton said it expects to conclude the DII and KBR bankruptcy proceedings by the end of the year and fund the trusts by the end of January 2005....Aon Corp. has completed the sale of its Cambridge Integrated Services Group Inc. claims administration unit to Singapore-based technology company Scandent Group. Aon will retain a minority interest in Cambridge's parent company.

### Check out BusinessInsurance.com

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

## Online Poll

[ 11/29 - 12/3 ]

Would a federal insurance regulatory system benefit insurance buyers?



Yes 48.8%

No 46.2%

Do not know 5.0%

## BI Stock Index

[ 11/29 - 12/3 ]

Up-to-the-minute data for all 87 companies that comprise the BI Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com)

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

BI Stock Index 1.34  
2289.91

Dow Jones 0.67  
10592.20

S&P 500 0.72  
1191.17

### Largest gains

Gainsco Inc.	15.79%
Unico American Corp.	11.33%
SCOR	9.84%
Humana Inc.	9.22%
Baldwin & Lyons Inc.	8.39%

### Largest losses

WellPoint Health Networks	-12.89%*
HCC Insurance Holdings	-3.75%
American Financial Group	-2.34%
ACE Ltd.	-2.28%
RenaissanceRe	-2.08%

\* WellPoint completed its merger with Anthem Inc. on Dec. 1.

### Weekly change by market segment

Brokers	2.99%
Insurers/Reinsurers	1.99%
Managed Care Organizations	1.72%

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

# Marsh refunding Oregon school districts for overcharges

**PORTLAND, Ore.**—Marsh Inc. will refund about \$1.2 million to several Oregon school district clients that the broker overcharged for insurance placements over several years, company representatives confirm.

Marsh's Portland office will pay the refunds to six school districts and one community college after discovering that it had improperly charged commissions in addition to the flat fees called for in its contracts with the districts.

Discovery of the overcharges is unrelated to New York Attorney General Eliot Spitzer's complaint against Marsh for alleged client

steering and bid rigging, said James McDermott, a partner with Ball Janik L.L.P. in Portland who represents Marsh.

"It's unfortunate timing, but it's completely independent," he said.

The district to which Marsh owed the largest refund—\$216,239—includes the cities of Salem and Keizer, Ore., Mr. McDermott said. Others affected are districts covering Portland and several Portland suburbs, as well as Eugene, Beaverton, Springfield and Eugene-based Lane Community College.

Marsh has asked for a waiver of

liability from the schools, but only two have so far agreed to provide them, and Marsh will pay the refunds regardless of whether it receives waivers, Mr. McDermott said.

The districts are also expected to hire an independent auditor to review their accounts with Marsh, and the broker has agreed to pay for the audit, he said.

Marsh blamed the overcharges on one of its producers, Robert Lilly, who was fired in October for his handling of the accounts, according to Mr. McDermott. Mr. Lilly never benefited personally from the overcharges, which another

Marsh employee discovered in August while comparing the charges with the terms of client service agreements, according to Mr. McDermott.

Mr. Lilly could not be reached for comment.

The six school districts and Lane were the only clients overcharged, Mr. McDermott said.

The Oregon Insurance Department, which had already joined the broker compensation investigation launched by Mr. Spitzer, is investigating the school district cases, an Insurance Department spokesman said.

— By Douglas McLeod