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\$5

Late News

House may delay vote on pension reform

The House of Representatives is unlikely to act on pension funding reform legislation this year, GOP leaders said last week. Acting House Majority Leader Roy Blunt, R-Mo., said there is "really no likelihood" that the House will act before legislators adjourn until January. But Rep. John Boehner, R-Ohio, whose Education and the Workforce Committee earlier passed a reform bill, is continuing to push House leaders to schedule a vote this week, a spokesman said. If a vote is not scheduled, the legislation will carry over to next year.

XL share sales raise more than \$3 billion

XL Capital Ltd. last week raised about \$3.2 billion through two share offerings. Hamilton, Bermuda-based XL sold a total of 38.9 million common shares at \$65 per share, along with \$745 million worth of equity security units. Proceeds from the offerings will be used for general corporate purposes, the insurer

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GRAY SKIES

Storm forecaster sees active 2006 season.

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BROKER BATTLE

Brokers, insurers seek dismissal of lawsuits.

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A tale of two backstops

Senate, House TRIA extension proposals differ in several ways.

	SENATE	HOUSE
Deductible 2006*	17.5% for all covered lines	16% to 25%, depending on line
Deductible 2007*	20%	Increases of 2 to 5 percentage points by line
Group life coverage	NO	YES
Domestic terrorism	NO	YES
White House support	YES	NO

*in terms of direct earned premium for covered lines

TRIA measures set for compromise talks

House passes extension bill, but sunset nears

By **MARK A. HOFMANN**

WASHINGTON—It's down to the wire, but there remains optimism that the federal terrorism insurance backstop will be extended before expiring on Dec. 31, even though some significant obstacles remain.

The extension is far from a given, though, since the contents of bills passed by the House and Senate differ significantly even though both measures bear the same number, S. 467. In fact, the House of Representatives' version of S. 467, which the House calls the Terrorism Risk In-

urance Revision Act of 2005 and which passed by a 371-49 margin last week, is actually an entirely different measure in all but its number. The House took the Senate bill, stripped it of everything but the number and attached its own legislation.

That didn't sit well with the Bush administration, which wasted little time in expressing its displeasure. The administration, which strongly supported enactment of the original Terrorism Risk Insurance Act, has adamantly opposed extending the backstop unless it is significantly scaled back. The House version of S. 467 somewhat expands the program. But even though the White House sharply criticized the House bill, the Office of Management and Budget's official "statement of ad-

See **TRIA** / page 26

Most employers to keep retiree drug benefit in 2006

By **JERRY GEISEL**

Most large employers providing prescription drug coverage to Medicare-eligible retirees will keep those plans in 2006, when Medicare is expanded to cover drugs, but that expansion is unlikely to stop the erosion of employer-provided retiree health care plans, according to a new survey.

Nearly 80% of 335 employers surveyed by the Kaiser Family Foundation and Hewitt Associates Inc. said they would maintain in 2006 their prescription drug plans and thus qualify for a federal subsidy available to organizations whose drug coverage is at least equal to what the newly created Medicare Part D will provide.

Employers eligible for the subsidy

will receive a tax-free reimbursement of 28% of the prescription drug claims between \$250 and \$5,000 incurred by each Medicare-eligible retiree.

The intent of the subsidy, which is projected to cost the government more than \$70 billion over a 10-year period, was to encourage employers to retain their prescription drug plans, eliminating the need for

millions of the retirees they cover to choose among plans offered by insurers and others entering the new Medicare Part D prescription drug market.

With nearly eight in 10 large employers retaining coverage and taking the subsidy next year, that congressional goal—at least for now—is

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Insurers, regulator clash over disability

Policy language at center of fight

By **JUDY GREENWALD**

California employers will face skyrocketing group disability insurance rates and may have difficulty finding coverage if California Insurance Commissioner John Garamendi succeeds in an effort to revise standard policy language, say industry observers.

Insurers filed suit against Mr. Garamendi and the state's insurance department earlier this month in response to an Oct. 3 letter to the disability insurers from department General Counsel Gary M. Cohen. In his letter, Mr. Cohen said the department is concerned that there are provisions in disability income insurance products that "would not be approved if they were submitted to us today, and in many cases have not been approved for many years."

The seven provisions cited in the letter—which observers say are standard in disability policies nationally—concern: discretionary clauses that give insurers authority to determine eligibility for benefits and to interpret policy terms and provisions; additional benefit triggers; the definition of total disability; offsets in group disability income insurance; the definition of pre-existing conditions; compulsory uniform provisions and payment of benefits to the insured.

The letter said one course of ac-



California Insurance Commissioner John Garamendi is pushing for changes in group disability insurance policy language.

tion the department is considering is to withdraw approval of all previously approved policy forms that contain provisions "that are determined not to be lawful and appropriate."

The letter was apparently prompted by an October settlement with UnumProvident Corp., under which the insurer agreed to pay an \$8 million fine, improve claims handling and make changes in its policy language.

When the settlement was announced, Mr. Garamendi said that many of the provisions of the

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SPOTLIGHT

BENEFIT COMMUNICATIONS

Strategies for getting the word on plan info out to employees

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BI RANKS

Largest employee benefit communication and information systems

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AON**Focus**
www.aon.com/focus*The success of outsourcing
hinges on the company's ability
to change behavior.*

DECEMBER 12, 2005

If you're outsourcing benefits administration, communication is key



Rhonda Collins is a vice president with Aon Consulting's communication consulting practice. Strategic communication plays a key role in successfully outsourcing human resource administration. Rhonda can be reached at rhonda_collins@aon.com.

For the world's largest organizations, outsourcing has become a standard practice in human resources (HR) departments. A recent survey found that 75 percent of major corporations outsource at least some part of the HR function. Moreover, companies are outsourcing more activities than ever before, going beyond the annual benefits enrollment to include such tasks as recruiting, employment processing, health and welfare plan administration, retirement plan administration and more.

To succeed, these new outsourced processes often require a significant shift in employees' mindsets and behavior, which is largely dependent on a communication strategy that is targeted and ongoing. Companies that expect instant employee buy-in by simply creating a web site, forming a call center and sending letters will inevitably be disappointed by low adoption rates.

A comprehensive communication plan that involves the needs of all constituencies affected by the change is key. One important target may be the HR staff. They may need to learn a new behavior – for instance, to refrain from providing time-intensive personal service to employees and instead direct them to the new tools. One company overcame this hurdle by setting up a kiosk in the HR department. When employees walked in with questions, the HR staff was trained to take them to the kiosk and help them find the answer.

The outsourcing partner is another prime communications target. The partner should be engaged in a common goal to ensure that employees understand the business reasons behind the change. Working together, employers and their outsourcing partners can help keep employees motivated and interested in learning how to use the new tools and processes to their advantage.

Employees themselves should, of course, be at the heart of the plan. Tactics such as updating benefits information on a regular basis (not just at annual enrollment time) and delivering content that is meaningful and customized can go a long way toward keeping employees coming back to the self-service tools – and out of the HR office.

Other targeted tactics include:

- **HR staff:** Empower trainers to deliver the messages face-to-face, instead of relying on memos.
- **Employees:** Reinforce their messages throughout the year, not just during annual enrollment or other key dates.
- **Call center representatives:** Alert them when reinforcing employee messages are disseminated, and arm them with the latest information about the processes and tools.
- **Managers:** Empower managers with information to help them respond to employee questions. Managers can be a big advocate or a big barrier.

How long should the transition to a new outsourced process or tool take? Changing deep-rooted behaviors is a process, not an event. As a general rule, with good communication and incentives, employers can expect to see new behaviors adopted by about half of the employee population in the first year and the majority of it within the next two to three years.

As companies continue to seek the efficiency benefits of HR outsourcing, those that focus on strategic, targeted and ongoing communications that reinforce the desired behaviors are most likely to achieve the best long-term results.

To receive Aon Focus by email, log on to www.aon.com/focus.

Innovative approach helps build executive retention and success

In large organizations, up to 50 percent of newly hired executives exit the company during the first three years. Many companies are taking steps to protect human capital investments, including an innovative strategy called executive onboarding coaching, which uses an integrated approach for onboarding executives that involves identifying early signs that indicate risk of derailment and developing processes for mid-course correction and contingency planning. An alternative to traditional coaching and executive orientation, this strategy requires the participation and partnership of key people, including the new leader, external coach, HR manager and hiring manager. For further insights, visit www.aon.com/focus.

New publication helps evaluate investment adviser objectivity

After SEC released a report on conflicts of interest in the investment consulting business serving the retirement plan community, both the Department of Labor and the Securities & Exchange Commission publicized 10 questions that plan fiduciaries should ask investment advisers to evaluate the objectivity of their advice. Some of the key questions include: Do you or a related company have relationships with money managers that you recommend? Do you consider yourself a fiduciary under ERISA with respect to the recommendations you provide to the plan? To learn more about critical regulatory developments, visit www.aon.com/focus.

"We are outsourcing benefits administration. How can we encourage the entire company to utilize the new processes?"



Successful employee benefits outsourcing initiatives include a well-designed communication strategy. Aon can help you develop and implement a communication strategy that will drive desired behavior change among employees, HR staff and your outsourcing partner—thereby increasing awareness and usage of new administrative processes and tools.

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Inside

Verizon reworks management retirement plans

Verizon Communications Inc. is restructuring its retirement plans for managers, including freezing its defined benefit plan, to help cut costs by \$3 billion over 10 years.

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Time is short to overhaul retirement pension system

Fear of offending constituencies should not excuse Congress' failure to act on pension funding reform legislation this year, one of this week's editorials says.

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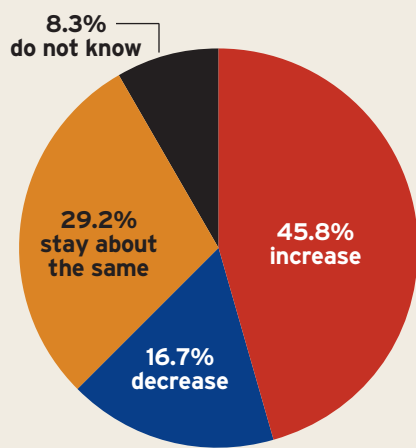
James Hardie reaches record asbestos settlement

James Hardie Industries N.V. and the New South Wales government signed the largest personal-injury settlement ever reached in Australia.

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Online poll - [12/5 - 12/9]

For 2006, do you think your organization's risk management department budget will:



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

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STANDARD MAIL ENCLOSED IN EDITION 03

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Dismissal of policyholder lawsuit sought

Brokers, insurers cite McCarran-Ferguson as bar to class action

By DOUGLAS McLEOD

NEWARK, N.J.—Several dozen insurance brokers and insurers are asking a federal judge to dismiss a sweeping antitrust and racketeering suit filed by policyholders in the wake of New York Attorney General Eliot Spitzer's insurance industry investigation.

The proposed class action complaint, filed in U.S. District Court in Newark, N.J., charges that brokers and insurers conspired to rig bids and steer business to favored companies, resulting in coverage that was more costly and inferior to that which commercial policyholders might have secured otherwise.

In motions filed late last month, though, most of the nation's largest brokers and numerous insurers asked U.S. District Judge

Faith S. Hochberg to dismiss the action. They argue, among other things, that the federal McCarran-Ferguson Act bars most insurance-related claims under federal antitrust law, and that the policyholder plaintiffs have failed to support a claim that the industry effectively functioned as a racketeering enterprise.

The plaintiffs "allege an industrywide conspiracy, touching virtually every placement of commercial and employee benefits insurance over the past 10 years," one motion filed by the broker defendants states, labeling the conspiracy charge "as baseless as it is implausible."

The complaint "attempts to piggyback on a New York state enforcement initiative focused principally on a single line of commercial insurance (excess casualty), the operation of one department of a single broker (Marsh Inc.) and a small handful of insurance company employees," a separate motion by several insurance groups argues.

"Using this narrow state action as a launching pad, the complaint purports to assert...claims against the entire insurance in-

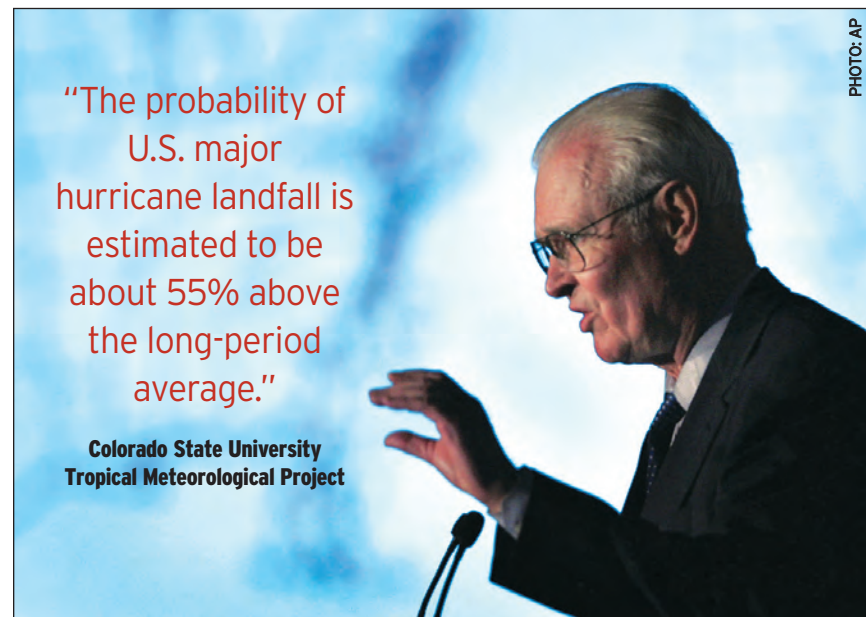
dustry reaching all lines of commercial insurance and reinsurance nationwide. Simply put, there is no factual basis pled in the complaint for this broad attack," the insurer motion maintains.

The policyholder plaintiffs are not expected to respond to the motions until early next year. Lawyers for the policyholders either could not be reached or declined to comment on the record.

The lawsuit originated as several separate complaints filed by individual policyholders after the New York attorney general sued Marsh last year for rigging renewal bids and funneling business to those insurers paying it the highest contingent commissions. Marsh and other large brokers subsequently agreed to stop accepting contingent commissions, and Marsh, Aon Corp. and Willis Group P.L.C. agreed to pay their clients a total of more than \$1 billion to settle the investigations.

The policyholder suits were consolidated in Newark federal court, and 19 plaintiffs filed

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The Colorado State University Tropical Meteorological Project, headed by William Gray, above, projects that 17 named tropical storms will form next year.

Intense hurricane activity predicted for next year too

By MARK A. HOFMANN

Another unusually active hurricane season is likely to roil the Atlantic and Caribbean, storm forecasters said last week.

The Colorado State University Tropical Meteorological Project, headed by noted forecaster William Gray, projects that 17 named tropical storms will form next year. Of those, nine will grow into hurricanes, five of which will be considered intense hurricanes packing winds of at least 111 mph. In addition, "the probability of U.S. major hurricane landfall is estimated to be about 55% above the long-period average," according to the forecast.

Meanwhile, London-based forecasting consortium Tropical Storm Risk predicted that Atlantic Basin hurricane activity next year should be about 60% above the average for the period from 1950 to 2005. TSR's long-range forecast calls for 16 tropical storms—eight of which will grow to hurricane strength—to form in the Atlantic Basin next season. Two of

those hurricanes will make landfall in the United States, according to TSR.

Weaker-than-average trade winds and warmer-than-normal water temperatures are the two main climate factors influencing the forecast, TSR said.

In a statement accompanying the prediction, Mark Saunders, TSR lead scientist and head of seasonal forecasting and meteorological hazards at the Benfield Hazard Research Center at University College of London, said that even though the forecast calls for above-average activity, "the chance of seeing as many as five intense hurricanes in the Gulf (as happened in 2005) is extremely remote. No other year since 1950 has recorded more than two intense Gulf hurricanes. Thus, despite the forecast, we are most unlikely to see a repeat of the Gulf devastation witnessed in 2005."

In issuing this week's forecast, Colorado State's Mr. Gray, professor emeritus of atmospheric science, also announced that the primary authorship of forecasts has shifted to his research assistant, Philip J. Klotzbach.

U.K. court decides against reinsurers in 'Aon 77' appeal

Ceding insurers don't owe duty of care to reinsurers

By SARAH VEYSEY

LONDON—Reinsurers underwriting excess-of-loss contracts may not deny coverage on the grounds that ceding insurers owe a duty of care to underwrite original risks prudently, unless such a duty is expressly contained in policy wordings, the U.K. Court of Appeal has ruled.

In the case of *Bonner & Others vs. Cox & Others*, known as the "Aon 77" case, which centered on nonproportional energy reinsurance coverage, the appeals court ruled, among other things, that a cedent owes no implied duty of care to reinsurers to select and underwrite its own risk prudently.

Several Lloyd's of London syndicates writing energy insurance on the Aon 77 cover—a policy brokered by the U.K. arm of Aon Corp.—were reinsured on a nonproportional basis by another group of Lloyd's syndicates.

During 1999, the cedents suffered large underwriting losses and sought about \$90 million under the reinsurance coverage.

Among other reasons, the reinsurers denied the claim, arguing the contract implied a duty of care to underwrite prudently, and that certain loss-making risks underwritten by the primary insurers would not have been underwritten by them had they lacked access to reinsurance.

A lower court ruled in 2004 that the reinsurance buyers did not owe their reinsurers a duty of care.

In upholding that ruling, the Court of Appeal's Lord Justices Waller, Tuckey and Moses in their ruling last week said: "The fact that the reinsurer does not exercise his own judgment about the individual risks to be reinsured is a feature...of almost all reinsurance. The reinsurer exercises his judgment as to which underwriter he will reinsure and upon what terms."

The ruling means that reinsurers underwriting nonproportional excess-of-loss contracts will not be able to complain to the courts if they believe cedents did not underwrite original policies carefully enough, explained Vere Wheatley, a partner at CMS Cameron McKenna

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Verizon retools managers' pensions

Defined benefit freeze part of \$3 billion, 10-year cost cutting plan

By JERRY GEISEL

NEW YORK—Verizon Communications Inc. is restructuring its retirement plans for management employees, including freezing its defined benefit pension plan, as part of an effort to cut costs by \$3 billion over 10 years.

Under one change, announced last week, Verizon management employees will no longer accrue benefits in the company's pension plan or receive new service credits to be counted toward Verizon's subsidy of retiree health care premiums.

Instead, effective July 1, 2006, Verizon will sweeten its 401(k) plan match. Verizon will match 150% of the employees' deferrals on the first 6% of pay, with additional contributions depending on company performance.

Verizon now matches 100% of management employees' deferrals—up to the first 4% of pay—and 50% of deferrals on the next 2% of pay.

As a one-time transition, Verizon will add 18 months of service in calculating employees' pension benefits and the amount of Verizon's retiree health care subsidy.

However, Verizon employees lacking 15 years of service, including the additional 18 months of service that Verizon will credit them, will not be eligible for the retiree health care premium subsidy, which ranges from 50% to 80%.

The changes affect about 50,500 Verizon employees.

Verizon officials say competition is a key factor behind its benefit redesign.

"This restructuring reflects the realities of our changing world," Ivan Seidenberg, chairman and chief executive officer of New York-based Verizon, said in a statement.

"Companies today, including many we compete with, are not adopting defined benefit plans or subsidized retiree medical benefits," Mr. Seidenberg said.

Verizon—which last year earned more than \$71 billion in revenues and \$7 billion in net income—joins a long and growing list of Fortune 500 companies that in the past year have decided to phase out their defined benefit plans.

Other companies phasing out defined benefit plans include Hewlett-Packard Co., IBM Corp., Lockheed Martin Corp., Motorola Inc. and Sears Holdings Corp.



Verizon Chairman and CEO Ivan Seidenberg said the benefit restructuring "reflects the realities of our changing world."



Alessandro Iuppa, left, and Walter Bell recently were elected to the top offices of the National Assn. of Insurance Commissioners.

NAIC elects leaders, assigns controversial subject to committee

By MEG FLETCHER

CHICAGO—The National Assn. of Insurance Commissioners last week elected state insurance regulators to its leadership ranks during its winter quarterly meeting in Chicago.

Heading the Kansas City, Mo.-based organization for the 2005/06 year are President Alessandro Iuppa of Maine, the former president-elect, and Vp Sandy Praeger of Kansas, the former secretary-treasurer.

In addition, commissioners chose Walter Bell of Alabama as president-elect and Eric Serna of New Mexico as secretary-treasurer.

NAIC members also took action on several issues during the Dec. 3-6 meeting.

Large-deductible issue

The NAIC adopted the Insurer Receivership Model Act, which will provide guidelines for the handling of financially troubled insurers in those states that enact it.

The issue of how to handle large-deductible insurance policies, which are primarily written for employers' workers compensation liabilities, is still outstanding, though. The NAIC has assigned that controversial issue to an NAIC subgroup for review.

Several trade organizations, including the Washington-based American Insurance Assn., oppose

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Errors and omissions

An article in the Dec. 5 issue contained incorrect information about the price XL Capital Ltd. paid for Winterthur International. While the main story contained the correct price of \$330 million, an accompanying article included the

original offer price, which was subsequently reduced prior to the completion of the transaction. The Dec. 5 issue of *Business Insurance* omitted a photo credit for the cover photo. The photographer was Michael Marcotte.

British Airways not liable for DVT victims

By SARAH VEYSEY

LONDON—British Airways P.L.C. does not have to compensate airline passengers with deep vein thrombosis, the U.K.'s highest court ruled.

The House of Lords upheld lower court and appeal court decisions that, under the terms of the 1929 Warsaw Convention, which governs airline liability, DVT victims and their families cannot bring a case against the airline because DVT cannot be classed as an "accident."

According to article 17 of the convention, airlines are only liable to passengers for injuries sustained as a result of an accident.

The eight claimants had argued that DVT, a condition that causes



PHOTO: PICTURE ARTS

potentially fatal blood clots and that has been linked to spending long periods in cramped conditions, was an event that airlines could take steps to prevent.

In July 2003, the Court of Appeal upheld a 2002 lower court ruling that several airlines were not liable to 24 claimants, as their failure to

warn passengers of the potential risks of suffering a thrombosis did not constitute an accident.

Several claimants then petitioned to have their case heard by the House of Lords, and the court heard the case of eight claimants against BA this fall.

BA said in a statement that it was pleased with the House of Lords ruling. It added that it "sympathizes with those that suffer from DVT and that the health and well-being of its customers remains of paramount importance."

The airline said it would continue to provide advice and information about DVT to customers "in ticket wallets, on the Internet, (in) on-board videos, over the phone and in its in-flight magazine."

2006 Risk Manager of the Year deadline extended until Dec. 23

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

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

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

The 2006 Risk Manager of the Year will be the 29th individual to receive the honor, which was first presented in 1978 to commemorate the 10th anniversary of *Business Insurance*. The award recognizes outstanding performance in the field of risk management. Honorees will be profiled in the April 24, 2006, issue of *Business Insurance*, and will be recognized at a special awards luncheon to be held in Honolulu during the Risk & Insurance Management Society Inc. annual meeting.

A panel of independent judges will evaluate nominations. The highest-scoring candidate will be named Risk Manager of the Year, and remaining individuals will be placed into one of four categories:

corporations with sales exceeding \$300 million; corporations with sales of less than \$300 million; government entities; and tax-exempt or nonprofit entities. The highest-scoring candidate in each of the categories not represented by the Risk Manager of the Year is eligible to be named to the Risk Management Honor Roll, subject to the judges' discretion.

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



James Hinton, *Business Insurance's* 2005 Risk Manager of the Year, was the 28th person to receive the honor.

PHOTO: MICHAEL MARCOTTE

200,000 REASONS

A SPRINKLER HEAD DOES NOT

DOUBLE AS A COAT RACK.

WAUSAU PACKAGE AT WORK. Recently, we received some interesting property claims. Hotel guests, trying to expand their closet space, enlisted the help of sidewall sprinkler heads, using them as makeshift coat racks. The weight of the clothing damaged the fusible element of the sprinklers, setting them off and causing more than \$200,000 in water damage. When our loss



prevention experts located the source of the problem, they quickly advised clients to place a warning sign next to sidewall sprinklers to prevent similar damage. Simple, but effective. That kind of industry knowledge and attention to detail can be found throughout Wausau, in any of our areas of expertise – from hospitality to construction. And with Wausau Package, you can leverage that expertise to get comprehensive coverage tailored to the specific needs of your business. It's all part of Wausau TotalValueSM and our commitment **PRICE ≠ COST.** to lowering your total cost of risk. A commitment backed by the financial strength of Liberty Mutual. To learn more, contact your Wausau Signature Agency representative or your appointed Wausau producer.



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Most CFOs believe worker health affects bottom line

60% see negative implications of continually shifting costs to third parties and employees

By **ROBERTO CENICEROS**

SAN DIEGO—Chief financial officers grasp that employee health drives absence and benefit costs and benefit managers should build on that understanding to improve their programs, research reveals.

While costs remain a top benefit priority for CFOs, finance executives are also concerned about such issues as absence management and so-called presenteeism.

Analyzing all health-related issues and assessing their impact on

corporate profits is now a growing interest for CFOs, said Thomas Perry, president of the Integrated Benefits Institute in San Francisco.

He was speaking at a Joint Forum on Health Productivity & Absence Management held in San Diego and sponsored by IBI and the Washington-based National Business Group on Health.

According to a survey conducted by IBI, six in 10 CFOs do not believe that they can continually shift health costs to third parties or employees. They understand that there

are negative implications for using that as a strategy to manage health care, Mr. Perry said.

The research, which is slated to be published next year, also showed that a majority of CFOs also understand that employee health drives medical costs, and that employees suffering from ill health are absent more often and don't focus on their jobs when they are at work—a phenomena referred to as presenteeism.

The findings provide benefit managers with an opportunity to engage CFOs in discussions that can move their companies beyond merely focusing on controlling health plan costs to focusing on the value of employee health, Mr. Perry said.

"The challenge is to understand the value of health and health investments and link that to health status and business impact," Mr. Perry said. "And we must go beyond plan design and medical spending if we are to get to value."

Among other results, IBI research found that a majority of CFOs also believe that employee health impacts their business' bottom line. They are also more open to viewing health care costs as an investment in employee health, but need data to convince them, Mr. Perry added.

The findings were based on a survey of 343 financial execs at companies with significant numbers of white-collar workers.

CFOs "don't have blinders on when it comes to looking at health care and their businesses," Mr. Perry said.

Benefit managers can take advantage of that by measuring the im-

your own human capital costs, and that is going to allow you to have this conversation with CFOs."

Several reporting tools already exist to help evaluate presenteeism, Mr. Perry added.

Benefit managers can make their CFOs strategic partners by seeking their help in developing a framework for evaluating costs and by linking employee health status and productivity to business outcomes.

To make productivity relevant to management in his former position as health officer for the Union Pacific Railroad, Dr. Dennis E. Richling said he linked productivity to gross ton miles of freight per employee.

Dr. Richling, who is currently president of the Midwest Business Group on Health in Chicago, said he learned Union Pacific management valued the gross ton mile metric after listening in on a meeting with stock analysts.

While it is encouraging to see survey results that indicate that CFOs are now interested in managing all health-related costs, benefit managers still face significant pressures to manage increasing health plan costs, said Mary L. Tavarozzi, a principal for Towers Perrin HR Services in Tampa, Fla.

CFOs currently focus more on health plan costs rather than viewing employee health as an investment because they pay more attention to measurable issues, said William J. Evans, president and chief operating officer at Gates McDonald, a disability management company in Columbus, Ohio.

"The challenge is to understand the value of health and health investments and link that to health status and business impact."

Thomas Perry
Integrated Benefits Institute

pact of absence and presenteeism on their specific companies, Mr. Perry said. "Monetize your company's response" to absence, Mr. Perry advised.

That requires uncovering absence-related costs, whether it be money spent on overtime pay or having additional staff replace sick workers, he said.

Such costs are specific to individual companies, with corporate responses often varying depending on whether absence is related to a workers compensation injury, a short-term disability issue or other benefit areas.

"Find out how your company responds," Mr. Perry advised. "Monetize it based on your own numbers,

NBGH/IBI joint forum attracts more than 650

SAN DIEGO—More than 650 people registered for the 2005 Joint Forum on Health, Productivity & Absence Management that was presented by the National Business Group on Health, which is based in Washington, and the Integrated Benefits Institute, which is based in San Francisco.

Employers and their vendors presented case studies from efforts to improve workers compensation, disability, behavioral health, and group health pro-

grams. They also discussed benefit integration efforts, presenteeism, return to work and measuring outcomes, among other topics.

The 2½ day conference was held Dec. 5-7 in San Diego. Next year, the fourth Forum on Health, Productivity & Absence Management will be held in Washington from Nov. 28-30.

More information will be available in early 2006 at www.businessgrouphealth.org and at www.ibiweb.org.

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Business Insurance will publish two online directories in January. They will be available as searchable databases in the Directories area of www.businessinsurance.com.

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The Directory of Long-Term Care Insurance Providers will be published Jan. 23, 2006, in conjunction with a Benefit Management Section on Retiree Benefits and a ranking of the largest long-term care insurance providers. To be listed, companies must provide long-term care insurance to individuals or through employee group plans.

Crisis Management Consultants

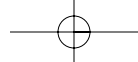
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Editorial

Better late than never for pension reform legislation

IN LIGHT OF last week's decision by House Republican leaders to delay until next year floor consideration of pension funding reform legislation, it is not unreasonable to ask why the GOP decided to pull the bill.

We hope the reason was simply not enough time remaining in the session to schedule time for a vote. But we would be concerned if the real reason for the delay is that House Republican leaders are losing their enthusiasm for the legislation.

To be sure, the issue is tough, and no matter what legislators do, there are bound to be angry constituents. Union organizations, for example, are concerned about provisions that would bar the enhancement of pension benefits when plans are way short of assets to pay for benefits that already have been promised.

Employer groups have numerous concerns, too. Those include the time period over which interest rates would be averaged to value plan liabilities and the lack of a retroactive clarification of federal law as to whether the design of cash balance plans violates age discrimination law.

These and other concerns should not be taken lightly. On the other hand, worries about offending one group or another should

not excuse inaction.

It should be clear to all legislators that the worst course would be no action at all. Simply put, the current retirement plan system is not sustainable and is headed for collapse. Doing nothing would mean that the Pension Benefit Guaranty Corp.—due to huge loopholes in funding law—will continue to face massive losses when financially weak companies, which haven't been required to fully fund their defined benefit plans, dump those plans on the agency.

That will mean the PBGC will need ever higher premiums from employers remaining in its insurance program. And escalating premiums will drive employers out of the system, depriving the PBGC of badly needed premium income and perhaps setting the stage for a taxpayer-funded bailout, a burden we don't think the public would be happy to shoulder.

To those who say it is too late for congressional action, we strongly disagree. Thousands of employers want to continue offering defined benefit plans, and Congress owes it to them and the millions of participants in those arrangements to enact reform legislation that ensures such plans can continue to operate.

Schillerstrom



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Two years in, HSAs prove a boon to consumerism

ON THE SECOND ANNIVERSARY of their creation, we think health savings accounts already have had an impact on the group health insurance market that goes far beyond the number of HSAs that have been established.

Two years ago last week, President Bush signed Medicare prescription drug legislation that included provisions that authorized—effective Jan. 1, 2004—tax-favored HSAs.

HSAs are paired with high-deductible health insurance plans. Enrollees use the

HSAs, which are funded by employers, employees or both, to pay for uncovered health care-related expenses. Unused funds can roll over to pay for health care expenses incurred in succeeding years.

At retirement, remaining funds can be withdrawn—tax-free—to pay for such expenses as Medicare premiums or out-of-pocket medical costs.

While more precise numbers won't be available until next year, the Bush administration estimates more than 1 million people, including many who were previ-

ously uninsured, now are covered through HSAs.

Compared to the roughly 160 million people covered in employment-based plans, HSA enrollment is very small.

But that small number belies the influence HSAs have had on the market. The launch of HSAs, we think, has been a key catalyst for the huge and ongoing redesign of group plans.

To be sure, the concept of consumerism, which includes giving employees financial incentives to make more cost-effective pur-

chases, existed before HSAs. But we think that HSAs and the publicity they've received have given a boost to consumerism that would not have been possible without their creation.

To be sure, controlling health care costs will require action on many fronts, such as giving health plan enrollees access to provider cost and quality information, and reducing the number of uninsured. HSAs, in conjunction with other strategies, we think, will be tools of growing importance to help bring down cost increases.

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Perspectives

Ask a Benefit Actuary

Reforms would refine hybrid plan rules

Q: I've been hearing a lot lately about proposed funding reforms. What is the good news on cash balance plans in the proposals?

A: While the primary focus of the legislative activity surrounding pension reform has been the financial strengthening of the defined benefit plan system, the scope of the various proposals has included a fair bit of hybrid plan legislation. In the face of somewhat disheartening news about increased funding requirements for pension plans, the word is somewhat more upbeat for hybrid pension plans, particularly because it would represent the long-anticipated arrival of guidance on key issues regarding such plans.

In the fall of 2002, proposed age discrimination regulations were issued that seemed to place many hybrid plans in jeopardy. While the proposed regulations confirmed the basic principle that hybrid plans are not inherently age discriminatory, a hybrid plan that failed to meet the safe harbor risked being found in violation of age discrimination laws. Virtually every pension equity plan would have failed to meet the safe harbor. And age discrimination concerns for hybrid plans were also found on the judicial landscape, with one notable case going against the plan sponsor, though three other courts, which had made their rulings before and after the other notable case, decided in favor of hybrid plans. Consequently, most plan sponsors that were contemplating adopting a hybrid plan design halted all discussions for fear of legal and judicial concerns.

The potential clarity surrounding hybrid plans is perhaps the biggest piece of good news offered by the House, Senate and administration proposals. The Bush administration offered a high-level proposal in early 2005. The House bill, the Pension Protection Act (H.R. 2830), has made it through two committees and is pending before the full House, though it is not expected to be voted on by the House this year, while the Senate recently approved a reform bill, the Pension Security and Transparency Act (S. 1783). The focus of this article will be on the provisions of the PSTA, with some observations of how the PPA and the administration's proposals differ.

Which conversion standards?

Suppose you are a plan sponsor that had been exploring a conversion from a traditional defined benefit program to a hybrid plan. You've gotten the green light that the hybrid approach won't be age discriminatory and

now it's time to design.

The PSTA offers plan sponsors three explicit conversion approaches, which in all cases provide never-seen-before clarity for plan sponsors:

Prohibition of wear-away. Under this approach, there could be no wear-away of accrued benefits, and one of two transitions is required: During a five-year period, plan participants would receive the greater of the benefit accrual under the traditional or the hybrid plan formula.

Plan participants who were 40 and had a combined age and number of service years of 55 at the time of conversion would receive the greater of the benefits earned under the traditional or the hybrid plan formula, or they would be allowed to select between the plans.

The greater of the old or new. All plan participants would receive the greater of the benefits earned under the traditional or the hybrid plan formula, or they would be allowed to select between the plans.

The equivalence approach. Plan sponsors would have to provide additional credits or additional opening account balances that would substantially equal the benefits provided under either of the above conversion approaches.

The administration's proposal takes a much stronger line with conversion approaches, requiring that all participants receive the greater of the traditional or the hybrid plan formula for a five-year period.

The House bill is silent on conversion, so one can imagine that reconciling differences between the House and Senate proposals would be challenging.

Whatever the shape of the ultimate legislation, plan sponsors will feel the financial impact. A popular misconception is that plan sponsors shift to hybrid plan designs in order to save costs, but a 2000 Watson Wyatt study found that the typical company realizes little, if any, net cost savings when it shifts from a traditional pension to a cash balance or other hybrid plan design. Any cost savings are generally used to cover the cost of the transition or to provide improvements in other retirement programs such as a defined contribution plans. A 2004 Watson Wyatt study indicates that more-recent hybrid plan conversions have even resulted in net cost increases.

Prospective or retroactive relief?

All the proposals on the table with conversion standards offer a clean bill of health as far as age discrimination on a looking-forward basis. This is helpful for plan sponsors that

have been caught in the limbo of plan redesign for the past few years and are committed to the hybrid plan design approach. Depending on when the final legislation reaches the president's desk, we might expect to hear a loud sigh of relief that redesign activity can get back on track.

The unanswered question, of course, is whether those plan sponsors that converted to cash balance in the past are at any greater legal risk than they are under current law. The current legislative proposals explicitly state that no inference is to be made about the viability of hybrid designs established under current law based on the provisions of new legislation.

Some would argue that this places hybrid plan sponsors at a greater risk than they are under today. After all, a litigious plan participant could make the leap that a hybrid plan conversion five years ago that didn't conform to PSTA conversion rules would be grounds for plan disqualification or for an entitlement to benefits under the preconversion benefit formula. And a judge might reason that the PSTA standard is the appropriate age-discrimination standard even if the legislative history for PSTA ultimately says that no negative inference should be drawn about the age-discriminatory status of hybrid plans established under pre-PSTA law.

Individual calculation details

Beyond these issues, the various proposals weigh in on some of the benefit calculation aspects of hybrid plan design. The following are among the more notable, though only whipsaw was addressed in all proposals:

Whipsaw. Cash balance plan sponsors would be allowed to have the hypothetical account balance treated as the present value of the accrued benefit. This would eliminate the need to project forward and discount back (at separate rates, in some past designs) in determining lump sums. This change alone would significantly ease day-to-day plan administration.

Vesting. Cash balance benefits would be nonforfeitable—fully vested, that is—after three years of service. This change would essentially place cash balance plans on an equal footing with defined contribution plans in re-

gard to vesting requirements.

Interest crediting rate. The rate at which interest credits would be earned must fall within a range no less than the federal midterm rate (currently hovering above 4%) but no more than the long-term investment grade corporate bond rate (currently just north of 5.75%).

For the most part, the hybrid plan provisions are a welcome step in the direction of giving hybrid plan sponsors (and those that wish to sponsor hybrid plans) the ability to develop their plans without fears that they are tax disqualified.

Considerable reconciliation would be needed between the various proposals. We hope that the resounding endorsement of the cash balance plan value proposition from Rep. John Boehner, R-Ohio, the chairman of the House Education and the Workforce Committee, is indicative of congressional sentiment: "Cash balance pension plans are the future of the defined benefit system, and it's critically important that Congress act to resolve the legal uncertainty that is jeopardizing generous pension benefits for workers across the country."

Rep. Boehner is one of the chief architects of the PPA, and we hope that he and his counterparts in the Senate and the administration can enact legislation that will serve as an equitable solution for sponsors and plan participants alike.

Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Three regular features in the Perspective section of Business Insurance can give you some answers.

Ask A Casualty Actuary, Ask A Benefit Actuary and Ask A Risk Manager answer written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on actuarial questions in the benefits field is written by William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago. For more information about the funding proposal and its implications, please contact Watson Wyatt Worldwide at 312-525-2169. Mr. Miner was assisted in the preparation of this column by Valerie Lopez-Zinzer, a consultant in Watson Wyatt's Chicago office.

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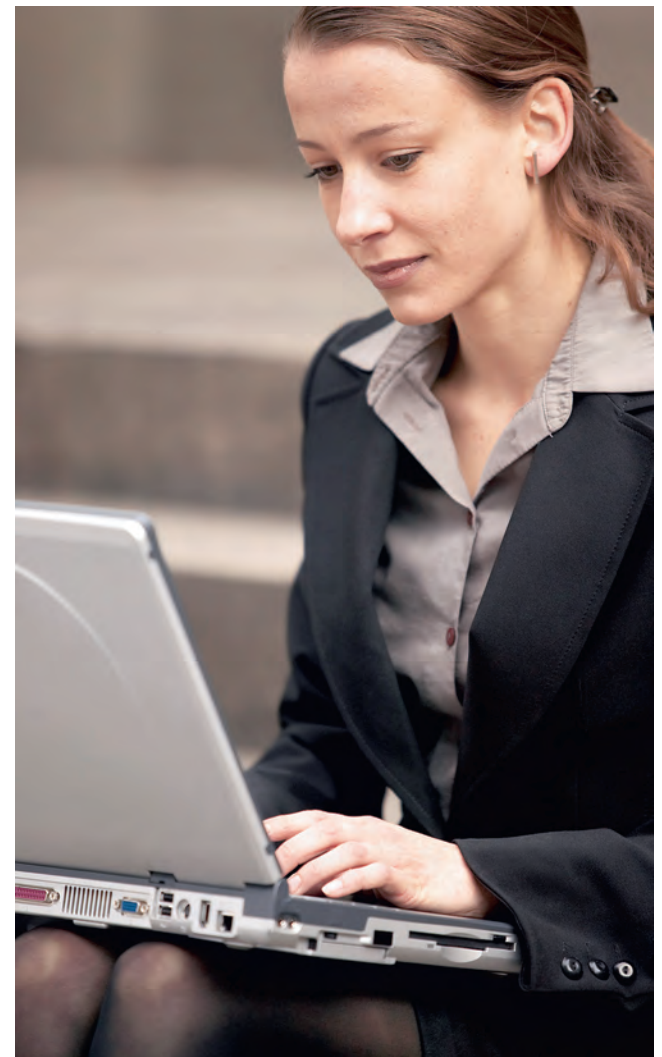
BENEFITS MANAGEMENT

Benefit Communications

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Putting the word out on consumer-driven plans

How to communicate newfangled health care options? Start early

By **KAREN PALLARITO**

Before introducing two new health benefits options—a choice of high-deductible health plans paired with health savings accounts—to its 8,500 employees, Zions Bancorporation of Salt Lake City began setting the stage for open enrollment.

Shortly after the U.S. Congress passed legislation authorizing HSAs in December 2003, the financial services company convened focus groups to gauge employee reaction and launched an extensive communications campaign leading up to a January 2005 effective date.

"We were right there on the heels of it, saying, 'OK, we can do this, but we have to start our communications progress very, very early on,'" explained Diana M. Andersen, the company's senior vp and corporate benefits director.

The effort clearly paid off. Thirty-four percent of eligible employees enrolled in the first year, Ms. Andersen said. That's an overwhelming rate of participation compared with the meager take-up that many employers have experienced.

As more companies consider introducing consumer-driven health plans to tame escalating health care costs, benefits managers face a stubborn communications challenge. How do they herald these newfangled plans in a way that makes employees take notice, become engaged and make informed choices?

After all, the consumer-driven model is a vast departure from traditional health maintenance organization, preferred provider organization and point-of-service designs, in which employees' financial exposure to the actual cost of care is more limited. Even large companies with extensive health plan options can stumble when trying to explain and

sell this largely unfamiliar consumer-driven concept to an often-skeptical workforce.

"It's definitely significantly different, and the challenges are significant," acknowledged Barry Barnett, a principal with PricewaterhouseCoopers L.L.P.'s human resource services group in New York. "Really," he added, "it's a whole different approach."

As yet, relatively few employers have experience with CDHPs. Only 2% of all employers offered this type of plan in 2005, according to Mercer Health & Benefits' annual survey of employer-sponsored health plans. Consumer-driven plans are most common among employers with 20,000 or more workers, with 22% of these companies offering this type of plan in 2005.

Still, interest in the consumer-driven model is percolating. Among all employers surveyed, 11% said they are likely to offer a CDHP in 2006 (see box, page 14).

Reaching out to employees long before open enrollment, as Zions Bancorporation did, is one of the keys to CDHP success, benefits experts agree. A 2004 survey by the National Business Group on Health and Watson Wyatt Worldwide demonstrated the link between communication and employee participation.

"We found that the enrollment levels, or participation, in these new consumer-directed health care plans increases the longer you communicate before open enrollment," noted Pam Rollins, communications practice leader with Watson Wyatt in Detroit. "So if you communicate more than six months in advance, you're pretty much almost four to five times the level of participation than if you communicate less than one month in advance of open enrollment," she said.

See **CDHP** / page 14

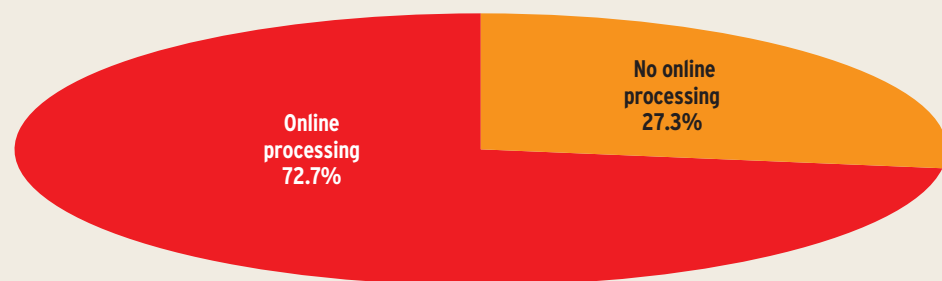
Largest Benefit Communication Systems / 12

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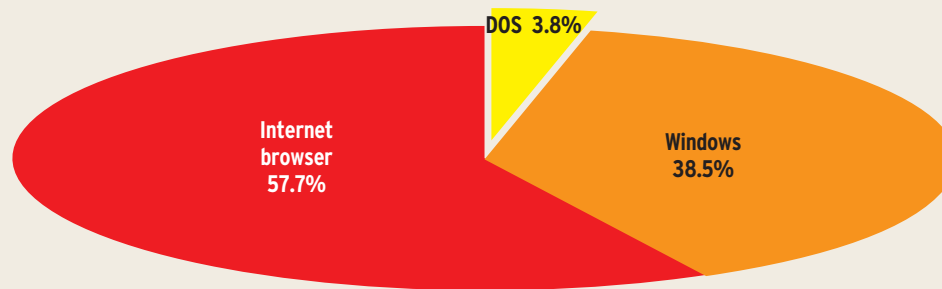
Percentage of communication systems that offer online processing



Source: BI survey

What's needed

Communication or communication/information systems required



Source: BI survey

Largest benefit communication and information systems

Ranked by number of installations in employee benefit departments

Rank	Software name/Company/Address	Phone /Fax/Web site	System type	Number of installations	First installation	Principal officer
1	FlexComp 9.0 Taxdemo HR Consulting Group Inc. 1202 Dover Drive, Provo, Utah 84604	801-765-4417 Fax: 801-765-4418 www.hrconsultinggroup.com	Benefit communication	5,382	1986	Rob J. Thurston, president
2	Fringe Facts Communicator Benefit Software Inc. 212 Cottage Grove Ave., Suite A, Santa Barbara, Calif. 93101	800-533-1388 Fax: 805-568-0239 www.bsiweb.com	Benefit communication	4,000	1978	Larry S. DuBois, president/CEO
3	Benelogic Benelogic L.L.C. 2118 Greenspring Drive, Timonium, Md. 21093	443-322-2494 Fax: 443-322-2496 www.benelogic.com	Benefit communication and information	996 *	2000	Matthew T. Oros, CEO
4	bSwift Manager bSwift L.L.C. 656 W. Randolph St., Suite 4-W, Chicago, Ill. 60661	312-261-5750 Fax: 312-261-5751 www.bswift.com	Benefit communication and information	250	2000	Richard Gallun, president/CEO
4	My Benefit Express Benefit Express 220 W. Campus Drive, Arlington Heights, Ill. 60004	847-637-1550 Fax: 530-267-7790 www.benefitexpress.info	Benefit communication and information	250	2000	Maria Bradley, president
6	HRLinks Colt Express Outsourcing Services Inc. dba Colt HR 2125 Oak Grove Road, Suite 210 Walnut Creek, Calif. 94598	800-265-8397 Fax: 925-933-3029 www.colthr.com	Benefit communication and information	200	1995	Samuel G. Colt III, president/CEO
7	AnswerSource Enwise Inc. 7250 Redwood Blvd., Suite 109, Novato, Calif. 94945	415-897-0728 Fax: 415-897-3863 www.enwise.com	Benefit communication	188	1996	Walter Smith, CEO
8	HR Portal Aon Consulting Inc. 200 E. Randolph St., Suite 1000, Chicago, Ill. 60601	312-381-4800 Fax: 312-381-0240 www.aon.com	Benefit communication and information	160	1998	Andrew Appel, chairman/CEO- Aon Consulting Worldwide
9	Benergy OnlineBenefits 333 Earle Ovington Blvd., Suite 210, Uniondale, N.Y. 11553	516-414-7000 Fax: 516-414-5103 www.onlinebenefits.com	Benefit communication	85	2001	Alan Cohen, CEO
10	Campus UnumProvident-Enrollment Services 1 Fountain Square, Chattanooga, Tenn. 37402	800-421-0344 Fax: 423-294-8326 www.unumprovident.com	Benefit communication and information	70	2000	Thomas R. Watjen, president/CEO

* Estimated
Source: BI survey

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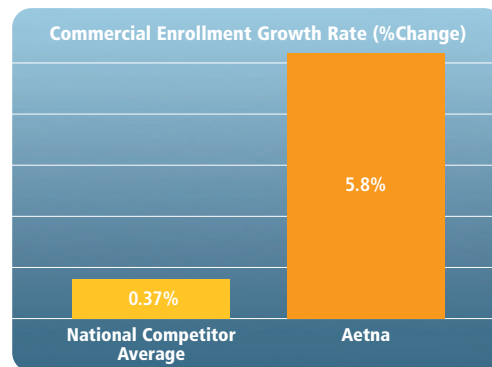
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CDHP: Start education process for employees long before open enrollment

Continued from page 1

Employers also need to communicate frequently before, during and after open enrollment, consultants add. "It's kind of like advertising," explained PWC's Mr. Barnett. "Throw enough spaghetti against the wall; some of it's going to stick."

Using multiple channels, the Chicago-based accounting firm of Grant Thornton L.L.P. recently introduced a high-deductible health plan option and wellness initiative to its 4,200 eligible employees and retirees for 2006. Partners received a video message from Chief Executive Officer Ed Nusbaum giving them a heads up on the looming benefits

changes and asking for their support. A day or two later, employees viewed a separate message on their desktops kicking off the wellness initiative.

Getting top management to rally the troops is a good starting point, benefits consultants insist. "One of the first things that we would encourage employers to do is make sure that their leadership has bought into the process early on," noted Watson Wyatt's Ms. Rollins.

In October, trained presenters began fanning out across Grant Thornton offices nationwide to teach employees about the move to consumer-driven health care. Dur-

ing those presentations, Peter Curtis, manager of benefits and human resources information systems, asked employees to recall recent purchases, "everything from a refrigerator to a cell phone plan to a house," and to think about the time and resources that went into making those decisions. Similarly, Mr. Curtis said, the company is encouraging its health plan participants to become more involved in making informed choices, as opposed to just saying, "Hey, I'm just going to click the in-network plan and go pay my 20 bucks."

To help individuals understand their options and calculate their fi-

nancial exposure, Grant Thornton encourages employees to take advantage of various online tools, Mr. Curtis said. Its health insurer, Blue Cross & Blue Shield of Illinois, for example, offers a Treatment Cost Adviser that employees may use to obtain the costs of various medical procedures.

Robin Downey, head of product development for Hartford, Conn.-based Aetna Inc., reminds employers to continue the communications juggernaut even after open enrollment. Aetna employees, for instance, receive continual reminders throughout the year to take a health risk appraisal. Those

Opting for CDHPs

A survey of employers found:

11% are likely to offer a consumer-driven plan in 2006

13% expect to add one in 2007

Among employers with more than 20,000 workers:

29% likely to offer a CDHP in 2006

31% may do so in 2007

Source: Mercer Health & Benefits

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who heeded that advice, she said, get an additional contribution from the company into their HSAs or their health reimbursement arrangements.

Ms. Downey suggests that an employer determine, before it begins its communications campaign for 2007, why it is moving to a consumer-driven model. One goal may be simply to begin informing employees about the costs of health care and the need to share that responsibility. But if the company is forced to cut costs or reduce benefits, "that's a different communications strategy," she explained. "If your health plan knows your strategy, then it can help you in that communication process," Ms. Downey added.

To help employers convey a clear message, the National Business Group on Health offers its members a tool kit containing letters and charts explaining how health care costs have soared over the years and why companies want employees to take more personal responsibility for the cost of their care.

"We know that everybody wants to know the 'what's-in-it-for-me?' question," acknowledged Helen Darling, president of the Washington-based organization. "They may not like a decision, but they are going to be more willing to accept it if they understand it, even if they don't agree with it."

Zion Bancorporation's Ms. Andersen expects to retain, and perhaps increase, enrollment in the company's two high-deductible plans. For 2006, the premium has dropped 17% over the prior year, "so that got everybody's attention," she said.

At Grant Thornton, open enrollment just ended. And Mr. Curtis, who was hired in September, is doing a little Monday-morning quarterbacking. If the company had to do it again, he said, it would have started the education process in late spring. And there would have been more emphasis on dealing with the sense of entitlement some employees expressed in connection with the medical benefits they receive.

"I don't know that we focused enough on that emotion," Mr. Curtis admitted. Next time around, he said, the message might go something like this: "We need to be competitive and we want to provide this benefit to you, but you've got to help us out; you've got to meet us a little bit here and do some things to help control some of these costs."

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Employers embrace electronic benefit tools

More online media used to provide information

By LOUISE KERTESZ

Interactive employer Web sites are now the principal source of employee benefits communication at many large firms. Many employers have virtually eliminated paper and mail in benefits communication; others use paper and the telephone only to supplement online information.

Employers also send targeted e-mails—with links to information on their Web sites—and conduct benefit Webinars. Some employees are ac-

cessing benefit information with their personal digital assistants.

On the horizon, employees will be receiving benefit information on their iPods and reading employee benefit blogs.

Recent surveys document the increasing use of information technology in benefits communication. Watson Wyatt found that 55% of its surveyed employers offer employees Web access to personalized health benefits information.

The survey also found that 24% of health and welfare benefit trans-

actions and 16% of "life events" transactions such as marriages and retirement are managed online, up from 20% and 5%, respectively, in 2002.

A Buck Consultants survey found that 93% of employers communicate benefits information via Web sites. Eighty percent of those organizations reported that three-quarters of their workforces are online, according to Scot Marcotte, Chicago-based electronic communications leader at Buck.

In their early use of IT, employers

"put a lot of static documents on their company intranet, which easily confused people and were not searchable," noted Barry Maxon, executive vp of product strategy at Novato, Calif.-based Enwise Inc., which hosts employer Web sites. "The result was you still had a lot of phone calls going in to the human resources department," he said.

Now, information is "far more personalized," Mr. Maxon said. "Employees see only what they need to see," based on variables such as whether they are in a union. "And we make it dynamic: If the user is asking one question about maternity, we anticipate oth-

er topics—such as hospital choice," he explained.

Scrapping paper

"There's a trend toward employers using more online media to communicate with their employees," confirmed Jennifer Murphy, health care communications leader at Hewitt Associates in Lincolnshire, Ill.

"This is partly driven by benefit plans becoming more complex," requiring employees to do more modeling and projections, which is "a

See ONLINE/page 18

Models offer new views of retirement benefits

By DEBORAH SHALOWITZ COWANS

Employers increasingly are turning to computer-based modeling programs as they seek to help employees understand and appreciate their retirement benefits amid a rapidly changing environment for those benefits.

Web-based tools that allow employees to calculate retirement savings projections and provide other information for employees converting to defined contribution plans from defined benefit plans are being used increasingly by employers, observers say.

In addition, employers are seeking to simplify the choices available to employees in an attempt to make that transition easier.

But, despite the new tools available, educating employees about their retirement benefit options remains a challenge, some em-

ployers say.

"The main thing that we're seeing is (employers) providing employees with a wider range of tools" to understand their retirement benefits, explained Kathy Kibbe, West division practice leader for communication for Watson Wyatt Worldwide in San Francisco.

"Employers are providing a lot more information" to employees about their retirement benefits, agreed Ginny Olson, a principal with Towers Perrin in Atlanta.

Online or interactive computer modeling that allows employees to see how much their retirement savings accounts are worth now and how much they would be worth under various scenarios are becoming more popular, experts note.

For example, a modeling program may allow a worker to sign on to a company intranet, see the current value of his or her retirement account and then compare

how various rates of return would affect the future value of that account.

This kind of modeling information "is becoming very common on the 401(k) side," Ms. Kibbe explained.

Some 52% of companies offer their workers Web access to retirement benefits information, according to a survey released in November by Watson Wyatt Worldwide in Washington. Watson Wyatt's 2005 HR Technology Trends survey of 135 employers also noted that 39% of 401(k) savings plan transactions now take place on the Web, up from 30% in 2002.

Companies that are changing their retirement benefits by moving from defined benefit pension plans either to defined contribution pension plans or to savings plans also are relying on modeling to educate workers about their new benefits.

The first step for an employer involved in this process is to promote the change and pique workers' interest in the new program through broad messages such as workplace posters and meetings, Ms. Kibbe advised. Once employees have become curious about the new benefit, they can be directed to an intranet for more information.

"Organizations that want to communicate effectively can't simply send out (a plan document) or technical information and hope that people will pick it up and read it," she cautioned.

Employers moving from defined benefit plans to defined contribution plans should highlight the positive aspects of the new plans, experts recommend.

"Try to excite (employees) over the fact that they have more control over their accounts," suggested Bob Fischgrund, vp and national practice group leader for the retirement plan services division of benefit broker CBIZ Benefits & Insurance Services in Leawood, Kan.

Changes in retirement programs are confusing, Ms. Olson acknowledged. Furthermore, she said, workers "don't have a good understanding of what the value of the benefit is."

Computer modeling helps

"make the information as transparent as possible to employees," Ms. Olson explained.

Modeling enables workers to "see a tangible dollar amount" and how that amount will change over time, Mr. Fischgrund added.

Organizations also are learning that too many investment choices confuse employees, so they are streamlining investment options.

"We are seeing a resurgence of lifestyle funds," Mr. Fischgrund noted. Lifestyle funds are prepackaged asset allocation models based on a combination of an individual's risk tolerance and his or her expected retirement date. There is "an increased focus on trying to get the individual into the right asset allocation model," he noted.

Most employers that provide the option of investing in lifestyle funds offer between three and seven of the funds, with five lifestyle funds the most typical offering, according to Mr. Fischgrund.

"Most employees don't feel comfortable with investment decisions," Ms. Olson explained. Lifestyle funds are "a way to make the investing decisions a little more focused," she said.

Back in the 1990s, "everyone was a genius" in the stock market, Mr. Fischgrund noted. As the stock market has cooled, though, investing well has become more complicated, he said.

Some employers are simplifying their investment choices even more, offering funds based on an employee's anticipated year of retirement, according to Mr. Fischgrund. For example, an organization might offer separate funds for those retiring in or near 2010, 2020, 2030, 2040 and 2050.

Many companies still rely mostly on traditional retirement benefits communication such as printed materials and group meetings to inform and educate their employees.

Citizens Memorial Hospital in Bolivar, Mo., typically holds group meetings to tell workers about retirement benefits, according to Gary Fulbright, the hospital's chief financial officer. Printed materials are distributed and discussed at these meetings.

Citizens Memorial, which has approximately 1,600 employees at several locations, recently hosted an "over 55" dinner for employees nearing retirement age and their spouses. The dinner "was well received," Mr. Fulbright said. Nonetheless, "it's hard to get attendance at group meetings" because younger workers just aren't interested in their retirement benefits, he acknowledged.

Group meetings allow employers to "touch people at a personal level," Mr. Fischgrund explained.

Yet in some cases, even group meetings are becoming more technological. "The definition of meeting has changed," Ms. Kibbe noted.

For example, many companies hold Webcasts and use them as meetings, she explained. A Webcast is similar to a conference call, but the information is sent over the Internet and an attendee views the Webcast on a personal computer. Webcasts can be interactive, with participants either typing questions into their PCs or using audio bridges to speak to other participants. The Webcast can be recorded and posted on a company's intranet so that those workers who missed the original Webcast can view it another time.

"I've seen (Webcasts) happening more and more and more," noted Ms. Kibbe.

Yet despite all the technological advances that employers are using to communicate retirement benefit information, some companies still are finding it hard to educate workers.

"We do everything in every possible way," said Ray Brusca, vp of benefits for Black & Decker in Towson, Md. Employees receive a host of communications, including printed materials, weekly e-mails, six newsletters annually and access to a company intranet and Internet-based retirement benefit information. "It's available in any possible way, shape or form," he said.

Nonetheless, "employees just don't take the time to read and understand the retirement benefits," Mr. Brusca sighed. "It's employees being lazy. I just don't know what the answer is."

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Materials must be suited to a diverse workforce

By MEG FLETCHER

Employers with diverse workforces find they can help workers choose appropriate benefits by simplifying their benefit communication messages and using a variety of strategies and media to convey them.

The goal is to help all workers understand the benefits their companies offer and to help them become savvy consumers, especially of health care.

"You really have to understand your audience to be able to understand their needs, their perceptions,

and be able to target messages that will make it real for them," said Lisa O'Driscoll, communication practice leader for the San Francisco office of Watson Wyatt Worldwide.

It is important to be receptive to workers from all types of backgrounds, because "good people are hard to find," said Scott Anderson, a principal and San Francisco Bay Area communication business leader for Mercer Human Resource Consulting L.L.C. "You can't afford to exclude any source of talent—whether they wear a veil, a yarmulke, or speak with a heavy ac-

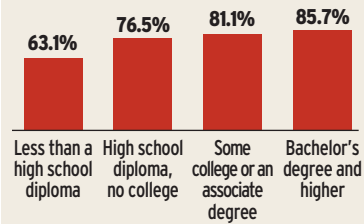
cent," he said.

Benefit managers also strive to meet the needs of workers for whom English is not a native language, as well as the needs of those who have problems understanding what they read.

Most benefit programs for companies with diverse work force provide the same benefit communication materials to all groups, including white-collar managers and factory line workers, benefit managers and consultants note. And while the U.S. labor force has made significant educational strides over the

Degrees of education

Percentage employed of the civilian noninstitutional population by educational attainment, 2004



Source: U.S. Bureau of Labor Statistics, 2004

last 35 years (see chart, page 22), those who prepare benefits materials are increasingly aware that they should make them as accessible as possible.

"Typically, we write to a seventh- or eighth-grade reading level" and use that across the board, even for workers with higher reading comprehension levels, explained Matt Pfeiffenberger, national director of benefit communications in the Radnor, Pa., office of Willis Benefits, a unit of Willis North America.

Benefit materials have also been

See **DIVERSITY**/page 20

Online: Employers embrace use of electronic benefit tools to provide information

Continued from page 16

lot easier using a Web-based tool rather than a print-based tool," Ms. Murphy said.

For example, she said, at enrollment time, an employee can use an online modeling tool to compare the cost of the three types of health plan the employer offers, considering the employee's needs.

"We have seen a steady increase in benefits enrollment via the Web," noted J.C. Dominguez, president of professional employer organization operations at SCI Cos., a Tampa, Fla.-based outsourcer of human resource functions for 1,000 firms, including nursing homes, restaurant chains, motel chains and realtors.

"For the convenience of our employee base, we offer phone enrollment too, but we have scrapped paper enrollment entirely," Mr. Dominguez said. "We try to be as

paperless as possible" in HR communications, he said.

A good sign of the demise of print in employee benefits is that Norcross, Ga.-based Unisource Worldwide Inc., a leading distributor of paper products that uses the Enwisen system, has put all its enrollment forms on line and is steadily eliminating paper from benefit communications, said Mike Rowell, Unisource's director of compensation and benefits.

"It's a little unique that we've driven away from the paper market, but you do what's best for the business," Mr. Rowell said.

About 78% of Unisource's workforce uses online benefits tools, he noted. Twenty-two percent of employees, mainly "transient truck drivers and warehouse personnel," still use a telephonic interactive voice response system. But

Unisource is considering eliminating the telephone option in 12 to 24 months, Mr. Rowell said.

Employers have begun to communicate employee benefits information and other job-related information through the same channels. "We're seeing a blur these days of the benefits-related Internet and the enterprisewide portal," said Buck Consultants' Mr. Marcotte.

For example, he said, a salesperson out on the road may be using a PDA to access sales tools to help with the next client appointment. The salesperson could also use the PDA to search for a network doctor and read an e-mail about a benefit change. "I wouldn't say that was prevalent," Mr. Marcotte said, "but it's where it's trending."

While employers say electronic communication is more cost-effective than print, there is another ad-

vantage. "Some things you can't put a cost on," Unisource's Mr. Rowell said. "Morale seems to improve when you implement tools such as these."

Public Service Enterprise Group still provides some material in hard copy to represented workers, "but we make it all available on our Web site," explained Charles Miracola, manager of corporate benefits at the Newark, N.J.-based energy company.

PSEG's benefits communications hub provides everything from summary plan descriptions to information about healthy living, financial planning and retirement planning.

One section of PSEG's Web site contains general information for employees, interactive tools and various types of estimators and comparison tools for dental and medical premiums. Another section is a secure site where employees can

look at their 401(k) accounts and project their balances into the future, Mr. Miracola said.

Employees can also opt to receive by e-mail all benefits news that's posted on the company Web site.

"We try to keep things interesting—with graphics and animation," Mr. Miracola said. For example, there's a counter at the top left-hand corner of the Web site that tracks what it is costing the company in health care benefits. In mid-November, the number had reached \$141 million.

Mr. Miracola said that because "there is a certain point where you need to talk to someone"—especially during hiring and retirement planning—PSEG has a benefits center at which representatives take employees' calls and provide assistance.

What the future holds

Many companies now have a chief executive officer or a division manager blog, a first-person online communication directed at senior management. "I think it would only be logical maybe to have the vp of HR do a blog to employees in the month and a half before enrollment," said Michael Rudnick, Stamford, Conn.-based global practice leader—Internet and portals at Watson Wyatt.

Podcasts—or audio on the Internet that can be downloaded onto an iPod or any MP3 player—could communicate explanations of benefit changes. Employees could play the messages at their convenience and even subscribe to regular benefit podcasts on topics of interest to them, Mr. Rudnick said.

At least two challenges to this electronic future remain.

First, employers need to consider their company culture before making transitions to electronic communications, said John Sias, a senior consultant at Curcio Webb in Stamford, Conn. An employer may need to have a service center that will walk employees through an electronic system and show them how easy it is, he suggested.

Second, there's the perennial challenge of getting employees to read employee benefits materials, said Ray Brusca, vp of benefits at Towson, Md.-based Black & Decker Corp. In a test of its weekly benefits e-mail, the company found that 80% to 90% of its employees deleted the e-mail without reading it.



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Diversity: Benefit materials must be suited to workforces with varied backgrounds

Continued from page 18

come more understandable to general audiences because the insurance jargon has been removed and the information has been rewritten in simpler terms, he said.

Oklahoma City-based INTEGRIS Health is currently engaged in a "simplification initiative" to revise its benefit communication documents to remove such acronyms as HMO and PPO, which it considered to be potentially confusing to some members of its diverse workforce, according to Chris Havens, corpo-

rate director of human resource design. The company, which operates hospitals, rehabilitation centers and other facilities throughout the state, employs 8,500 workers in positions that range from those of physicians and executives to food service workers, warehousemen, housekeepers and aides.

For example, INTEGRIS now refers to its three PPO plans as the "\$500-deductible plan, the \$750-deductible plan and the \$1,000-deductible plan," rather than "PPO Plan 1, 2 and 3," Mr. Havens said.

To further boost workers' understanding, INTEGRIS also is planning to bring in a full-time professional communicator to serve as the chief spokesperson for the benefit program, he said.

In addition, "I have seen a great spike in the number of employers seeking multilingual support," Mr. Pfeifferberger said. The majority are seeking support for workers whose primary language is Spanish, although others are seeking help in communicating with workers whose primary languages are Kore-

an, Chinese or Russian dialects, he noted.

According to 2004 data from the U.S. Bureau of Labor Statistics, "Hispanic or Latino" workers comprised 13% of the labor force, while "black or African-American" workers comprised 11% and "Asian" workers 4%.

In one case, an employer created a bilingual benefit plan "flip book" that a worker could read through in English—or, when turned over—in Spanish. The employer wanted to have one benefit plan book to emphasize that all workers are eligible for identical benefit options, Mr. Pfeifferberger explained.

While it was a more expensive booklet to produce, the employer apparently felt it was cost-effective because it reduced other costs, such as the time the human resources manager would have otherwise spent answering questions, he said.

Another employer, which has a concentration of Hmong workers at its Minnesota operation, adapted its benefit information to that language, Mr. Anderson said.

AFL-CIO spokesman Robert E. McGarrh Jr. said the labor organization "definitely urges all employers...to provide all health care information to their employees in their language." Employers should follow the lead of California, which currently provides state Medicaid

information in approximately 20 languages, suggested Mr. McGarrh, the AFL-CIO's Northeast capital strategies coordinator.

Denver Water got a different reaction from its Hispanic workers, who comprise about 20% of the utility's 1,050 workers, according to Jim Crockett, risk and benefits manager. In a targeted survey that accompanied a Spanish-language benefits newsletter, most recipients indicated such an adaptation was not necessary, he explained.

Some companies, though, provide different benefit information to various groups.

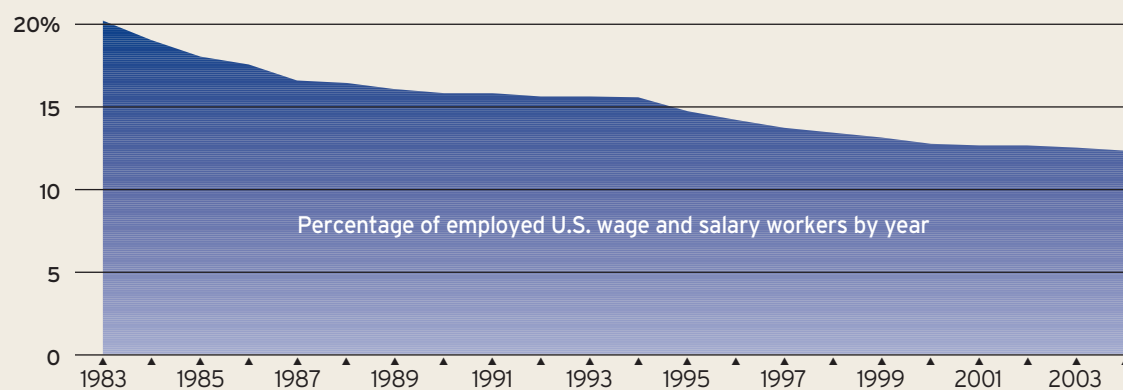
For example, companies that use "a cascading approach" to benefit communications give additional information to managers "to help them guide employees," Ms. O'Driscoll said.

Also, Charlotte, N.C.-based National Gypsum Co., which manufactures and supplies building and construction materials worldwide, uses varying benefit communication materials to reflect the specific options that unions have negotiated into their contracts, said Linda Caggia, a company employee benefits specialist.

Consultants and benefit managers also note that dealing with a diverse workforce requires analyz-

Fewer union members getting benefit documents

The proportion of U.S. wage and salary workers who were union members averaged 12.5% in 2004, compared with 20.1% in 1983, the first year for which comparable data are available.



Source: U.S. Bureau of Labor Statistics, July 2005

See DIVERSITY / page 22



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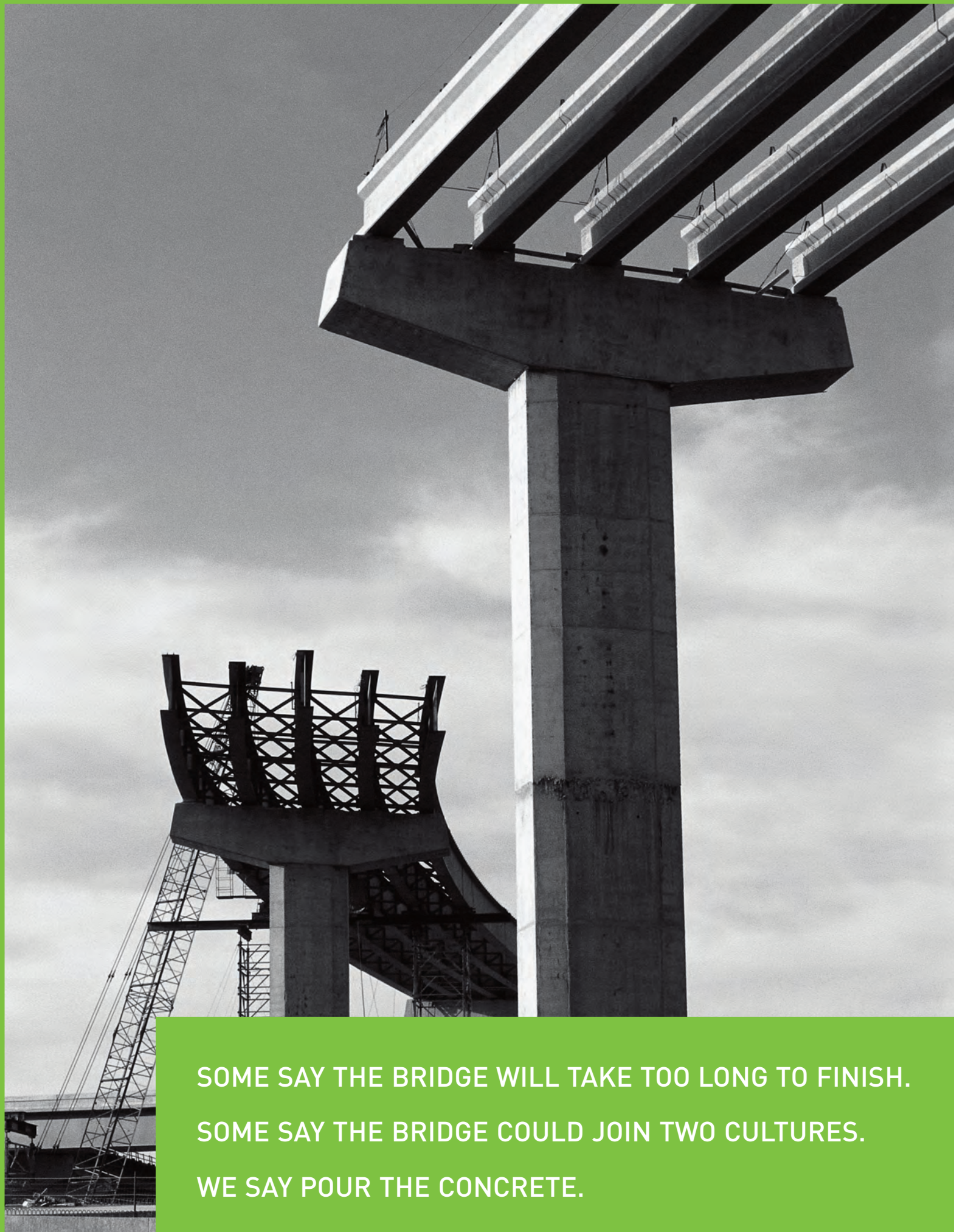
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Between the Lines

Compiled by Joanne Wojcik

Party hardly

Eat, drink but be wary this holiday season if you are an employer hosting any kind of party at which liquor is being served.

The holiday season may herald hangovers for employers if office merrymaking generates lawsuits, disputes or harassment claims, according to Todd Fredrickson, a Denver attorney who specializes in labor law.

"There are a number of calls that you get after the holiday season, and you also get them after company picnics, and the one common ingredient is, as you might guess, alcohol, where people lower their inhibitions and sort of play their own personal dating game using those work-sponsored functions," Mr. Fredrickson explained. "The scary thing is when you have functions in a ballroom in a hotel, which provides not only alcohol but also ready access to hotel rooms. It's just a recipe for disaster."

While employers don't necessarily have to play Big Brother to their employees, once they have been put on notice about one employee's unwelcome advances toward another, by law, they must take appropriate corrective action, he said.

To prevent potentially volatile situations, Mr. Fredrickson suggested that employers set ground rules for holiday revelry in advance of events. In addition, they should have a policy in place that prohibits harassment and discrimination. Mr. Fredrickson also advised that companies address the consumption of alcohol at the events they sponsor in their company handbooks.

"A great idea is having cab slips available, so if employees drink too much, you give them a cab slip and put them in a Yellow Cab and send them home," Mr. Fredrickson suggested.

And the winner is...

In GEICO's first Golden Gecko filmmaking competition, the trademark green salamander was cast in such wacky roles as a lizard that morphs into an insurance salesman, a tuxedo-clad underworld spy and an individual who suffers from species identity disorder.

He doesn't just think he's a gecko; "he is a gecko trapped in a man's body," a concerned mother acknowledges in one clip.

But it was "The Fury of the Gecko," an animated feature starring a fierce, sword-wielding gecko, that won top honors. Filmmaker Steve Rosolino will take home a grand prize package worth more than \$12,000, including a seven-day Hawaiian getaway, an assortment of high-tech gear and, of course, the "Golden Gecko" statuette.

The Washington-based insurer hasn't said, though, whether any of the creative entries will be used in its advertising.

A total of 90 amateur filmmakers submitted 15-second trailers in the competition, which was announced in September (BI, Oct. 3). To view the winning entries, visit www.goldengecko.com.

Over hill, over dale, we will hit the snowy trail

Soldiers injured while fighting in Iraq and Afghanistan attacked the slopes of Breckenridge, Colo., last week, courtesy of one of the nation's leading disability insurers.



U.S. Paralympic Ski Team member Allison Myers, left, provides instruction to Army Sgt. Carla D. Best during the 18th annual Ski Spectacular, held in Breckenridge, Colo., last week.

Members of the U.S. Paralympic Ski Team, all of whom have overcome disabilities of their own, mentored some 75 U.S. soldiers participating in the event in such alpine techniques as beginner snowplowing and more-advanced schussing, carving and cruising.

The 18th annual weeklong Ski Spectacular, which was sponsored by The Hartford Financial Services Group and ran Dec. 4-11, is the largest winter sports event for people with physical disabilities.

The U.S. Paralympics is a division of the United States Olympic Committee formed in 2001 to increase support for athletes with physical disabilities.

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

Diversity: Materials must suit many people

Continued from page 20

ing the communication process itself and often means providing multiple ways that a worker can learn about benefit information. A worker also needs to be able to ask specific, personal questions about which plan is best for his or her needs.

For example, National Gypsum has "a wide range of educational attainment" among its 2,500 employees in 35 different U.S. locations, Ms. Caggia said. It found that mailing benefit enrollment information to workers' homes provides an opportunity for family members or union representatives to help workers make appropriate choices.

Hosting health fairs on Saturdays and inviting the workers' entire families is an effective way of communi-

cating with Latinos, for whom family is important, Mr. Anderson said. Also, "by including the family, you defuse the language issue," he explained, because many workers can get help from their teenage children, whose English proficiency may be greater than that of their parents.

Another alternative offered by Willis for employers is to contract with a call center staffed with trained benefit consultants who can access translators who are fluent in about 150 different languages, Mr. Pfeifferberger said.

Most companies also make use of small group meetings to clarify benefit offerings; for example, Denver Water holds "brown bag" meetings throughout the year.

Companies also typically provide computer access kiosks or centers

for workers who do not normally use computers at work, according to consultants and benefit managers. That gives workers access to online benefits information and enrollment processes, which are usually supported by a wide range of media, including posters and newsletters, they say.

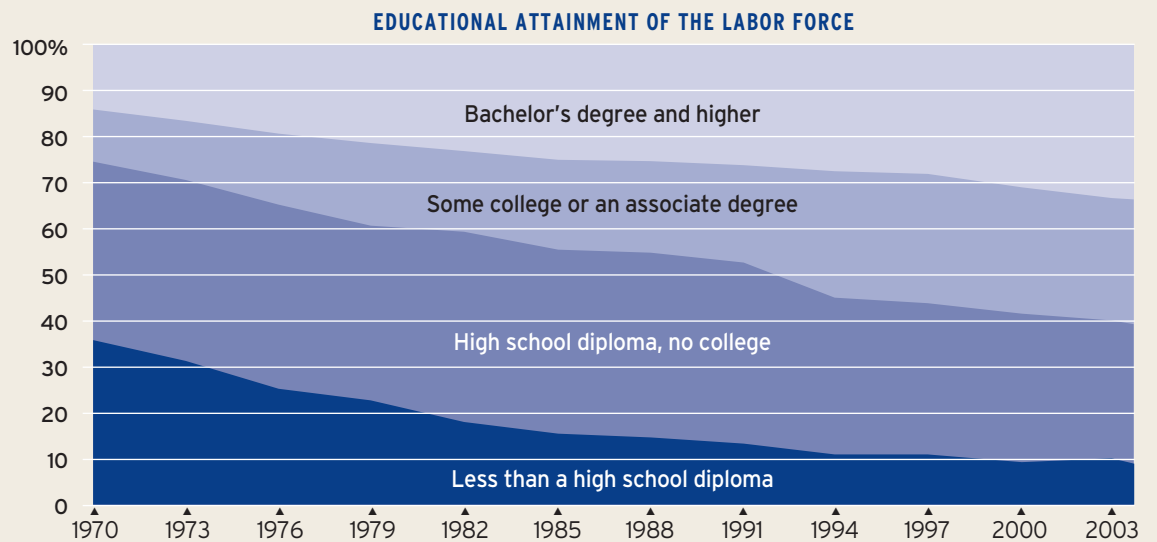
Overall, lower-paid workers who have been previously employed tend to have a better understanding of their benefit choices than did previous generations, benefit managers and consultants say.

"By and large, employees are much more in tune today than they have ever been," Mr. Pfeifferberger said.

"Employees are having to take more responsibility," Ms. O'Driscoll said.

Workers' levels of education vary widely

The proportion of persons 25 to 64 years of age with some college or with a bachelor's degree and higher more than doubled over the period from 1970 to 2003. In contrast, the share of the labor force with less than a high school diploma declined markedly.



Source: U.S. Bureau of Labor Statistics, July 2005

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Historic U.K. law honors civil partnerships

By SARAH VEYSEY

LONDON—Employers in the United Kingdom must ensure that they offer the same employee benefits to same-sex partners entering into newly introduced civil partnerships as they do to married spouses.

Same-sex couples in the United Kingdom last week became able to register for civil partnerships that will afford them the same legal protections as married couples.

And starting next week, same-sex couples will be able to take part in ceremonies under the Civil Partnerships Act.

In addition, under that law a member of an occupational pension plan may request that, on his or her death, pension benefits be passed on to a same-sex partner, among other changes.

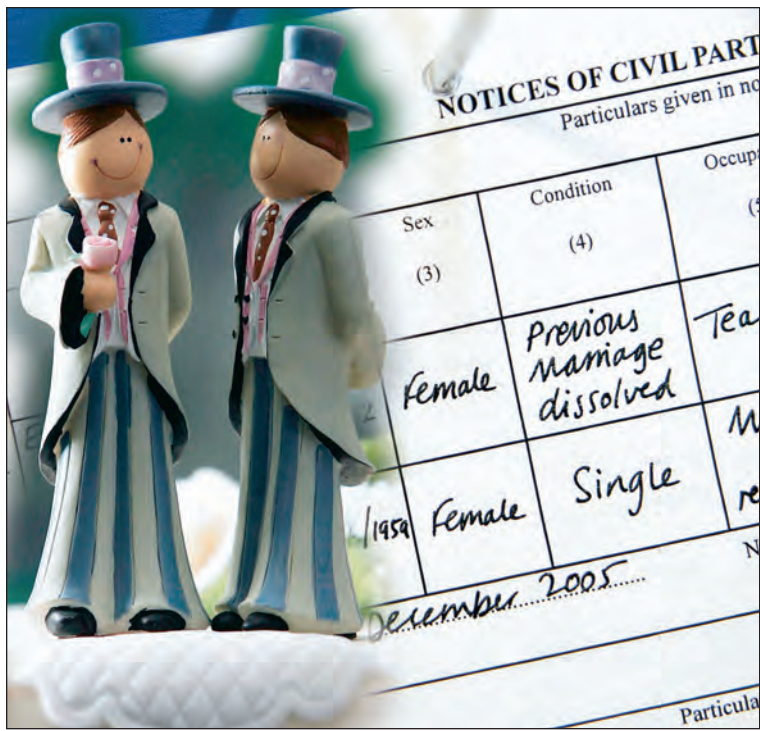
While many companies already offer benefits to same-sex partners, employers need to ensure that all communication is updated to include civil partnerships, according to experts.

"The Civil Partnership Act creates a new legal relationship which for the first time recognizes same-sex relationships by giving parity of treatment with married couples across a wide range of legal issues. This has implications for employers," explained Rita Donaghy in a statement. Ms. Donaghy is the chair of the Advisory, Conciliation & Arbitration Service, a London-based independent organization set up to advise on employer-employee relations.

"For example, if you are making a benefits package like private health care available to the spouse of an employee, you now need to make it available to any civil partners of employees too," Ms. Donaghy explained.

"This is straightforward enough, but managers should also think about the sensitivities of the situation—employees should not be singled out via a separate system, and they may need help to understand

See PARTNERSHIP/next page



Same-sex partners in Britain must file a notice of Civil Partnership, above, 15 days before registering their union to enjoy the same rights as married couples, rights that include passing on pension benefits.

Updates

SCOR to buy Alea book in Europe

French reinsurer SCOR S.A. has agreed to buy the renewal rights to the property/casualty portfolio of Alea Europe A.G., the European subsidiary of Alea Group Holdings (Bermuda) Ltd. SCOR said that the value of the renewal rights is estimated to be between €8.3 million and €16.6 million (\$9.7 million and \$19.5 million), depending on how many treaties it decides to renew. SCOR will pay Alea Europe 9.5% of gross written premiums on renewed business incepting in 2006, a total payment likely between \$10 million and \$20 million. Alea, which has been selling parts of its operations since it was downgraded to B++ by A.M. Best in September, earlier last week said it would sell the renewal rights to part of the facilities insurance and reinsurance business of Alea London Ltd. to Canopus Holdings U.K. Ltd.

Zurich to close London unit

Zurich Financial Services Group said its Zurich Specialties London Ltd. unit, a U.K.-based commercial insurer, will stop underwriting on Dec. 31. Most of the business currently written by the unit will be transferred to the U.K. branch of ZFS' Irish subsidiary, Zurich Insurance Ireland Ltd., the company said in a statement. ZFS said the decision to close ZSL was "in line with the group's strategy to optimize capital allocation." A ZFS spokeswoman declined comment on the amount of business to be transferred to Zurich Insurance Ireland.

IRM elects next chair

Michael Walker, director and head of risk management at London-based Currie & Brown Consulting, a risk consulting firm, has been elected chairman of the London-based Institute of Risk Management for 2006. He succeeds Ian McNeil, national risk manager at Zurich Risk Services, a London-based subsidiary of Zurich Financial Services Group.

Adjusters' institute forms in India

Loss assessors in India will have access to education, research, training and other services from a new institute. The Hyderabad-based Indian Institute of Insurance Surveyors will be open to individuals who hold valid survey and loss assessment licenses. The institute aims to promote quality in the loss assessing profession by establishing best practices and providing members with technical information to aid skill improvement. More information is available at www.irdaindia.org.

Details of asbestos settlement

Building products maker James Hardie promised to:

- Compensate asbestos sufferers who filed claims against former subsidiaries Amaca Pty. Ltd., Amaba Pty. Ltd. or ABN 60 Pty. Ltd.
- Pay \$115 million initially into a special-purpose fund
- Pay annually into the special-purpose fund, capped at 35% of the company's free cash flow for the immediately preceding fiscal year, with provision for the percentage to decline dependent on financial performance and claims outlook
- Provide a "buffer" to draw upon if the fund does not have enough money in any particular year

James Hardie reaches record settlement

By ELIZABETH FRY

SYDNEY, Australia—James Hardie Industries NV and the New South Wales government signed the largest personal-injury settlement ever reached in Australia—a \$3.4 billion, 40-year compensation package for asbestos sufferers.

The deal, signed earlier this month, was struck 15 months after a government commission investigated James Hardie's separation of itself from its former asbestos subsidiaries in 2001 and relocation to the Netherlands while leaving an inadequate fund to meet potential Australian asbestos liabilities.

The inquiry commissioner, David Jackson, released a report in September 2004 criticizing the conduct of the James Hardie board of directors and its management.

As a consequence, James Hardie offered to establish an additional compensation program that would meet asbestos injury claims not covered by the original fund—the Medical Research & Compensation

Foundation.

Meredith Hellicar, James Hardie chairman, said there was no overall cap on the liability of James Hardie to make funding payments and no caps on the payment to individual victims.

Although the deal originally looked to be contingent on James Hardie payments being tax deductible and on a new compensation fund's exemption from income tax, a James Hardie spokesman said that "if tax deductibility doesn't come through, James Hardie will not renege from its voluntary commitment for funding."

Federal Treasurer Peter Costello ruled out a tax break on the grounds that James Hardie is no longer an Australian company.

While the compensation deal protects James Hardie officers from being sued individually, it does not grant immunity from securities regulators, who allege company officers breached Australia's Corporations Law and their duties as directors.

Law expands rights of disabled workers

By BARBARA COCKBURN

LONDON—Employers are barred from discriminating against workers diagnosed with HIV infection, multiple sclerosis or cancer under 2005 revisions to the United Kingdom's disability discrimination laws.

In addition, the Disability Discrimination Act 2005, which went into effect last week, eliminates the need for an individual with a mental illness to prove that his or her condition is "clinically well recognized" when making a claim against an employer for unfair dismissal.

Under the newly revised law, people with HIV infection, multiple sclerosis or cancer are deemed to be disabled from the date of diagnosis, not just when physical or noticeable symptoms occur. According to the law, individuals who have been diagnosed with such conditions but are not yet showing signs of their illnesses are now protected from unfair dismissal from work; previously, the law provided protection only to workers with clinically recognized mental conditions or physical disabilities that had a long-term effect on their ability to perform at work.

The DDA 2005, which was passed by the U.K. Parliament in April and went into effect on Dec. 5, supersedes the Disability Discrimination Act 1995. The recent changes incorporate proposals made by the Disability Rights Task Force and the Disability Rights Commission, groups established by the government in 1997 and 2000, respectively.

The DDA 1995 gave persons with physical disabilities rights in employment and education, among other areas, but it mandated that a mental illness had to be "clinically well recognized" before it could be regarded as an impairment. The new law eliminates the need for an individual to show that his or her mental condition is clinically well recognized; it specifies, though, that the condition has to have lasted 12 months or more to be classed as a disability.

Responding to the new legislation, a spokesman at the Assn. of Insurance & Risk Managers said that AIRMIC's rehabilitation campaign "illustrates that employers need to be proactive and keep disabled staff in employment for as long as possible through treatment or by finding them alternative work within the organization."

The campaign encourages employers "to have a proactive attitude to staff welfare and absence management," the AIRMIC spokesman said.

The Trades Union Congress, a London-based labor organization, welcomed the changes. Disability officer Peter Purton said, "The extensions mean that people are protected from discrimination at work that derives from ignorance or prejudice against people with illnesses such as cancer or HIV. In the past, employers could ease people out of the workplace if they discovered a person has such an illness."

Hanna Haas, senior policy adviser at London-based Confederation of British Industry, which repre-

See DISABILITY / next page

Partnership: Historic law gives same-sex couples new legal rights

Continued from previous page

these changes and the implications in terms of benefits available to them or their civil partner," she added.

ACAS has produced a guide for employers on how to comply with the law, which recommends, among other things, that employers "revise and review all policies, guidance, forms and other material to reflect the new arrangements and make clear that wherever 'spouses' and 'marriage' are used that that includes 'civil partners' and 'civil partnerships.'"

In addition to giving parity of treatment in benefits packages, employers must ensure that civil partners are provided access to other benefits—such as the right to request flexible working hours or paternity leave—that are offered to married partners, said Julie Quinn, a partner in the employment practice at law firm Allen & Overy L.L.P. in London.

Pension plans may still exclude same-sex partners who have not registered in civil partnerships from receiving benefits provided

that nonmarried heterosexual partners are treated in the same way, noted Paul McGlone, head of employer propositions at Aon Consulting in London.

In addition to updating their policies to include civil partnerships, employers must also ensure that they do not fall afoul of rules that outlaw discrimination on the grounds of sexual orientation, experts say.

According to the ACAS guidelines, an employee should not be forced to publicly identify himself or herself as either married or in a civil partnership.

"Maintain confidentiality where employees want it. No one should have their sexual orientation revealed or inferred by inappropriate disclosure of their status," the guide advises.

If employers wish to collate data on the diversity of their workforce for monitoring purposes, this should be done confidentially, noted Allen & Overy's Ms. Quinn. There is no duty for employees to disclose their sexual orientation, she added.

Disability: Discrimination laws undergo revision

Continued from previous page

sents employers, said that because the requirement for an individual to prove his or her condition is "clinically well recognized," has been eliminated, employers are concerned that this may give rise to false claims.

"It will be difficult for employment tribunals to assess an unfair dismissal claim on the grounds of disability dis-

crimination," Ms. Haas said.

Diana Wallman, an adviser on diversity at the London-based Chartered Institute of Personnel & Development, said that the law presents a "big challenge for employers to begin thinking in a focused way" about how to work more effectively with disabled workers.

"If a company already employs a disabled person, it's more likely to

be able to respond to their needs, because it will be familiar with the issues," Ms. Wallman said.

Employers should ask for advice from disability rights activists and employer groups, because "companies are not expected to know the solutions to everything all at once. If employers don't comply, it could lead to tighter and more-prescriptive legislation," she said.

Aon 77: No underwriting duty of care implied

Continued from page 3

L.L.P. in London, which represented Aon. As the broker, Aon was part of the reinsurers' appeal regarding disclosure.

As a result, reinsurers need to be "very careful in situations where they effectively give their pen away," noted Tony Rai, a senior assistant lawyer at Clyde & Co. in London, which acted for the cedents in the case.

The ruling marks the first time the Court of Appeal has ruled on whether cedents owe their reinsurers a duty of care in nonproportional business, Mr. Rai noted.

In addition, the justices ruled that certain risks contested by the reinsurers were not written imprudently or carelessly by the insurance underwriters and that those risks were underwritten "in accordance with the ordinary practice of the market."

The court ruling also highlighted that, in the case of excess-of-loss reinsurance contracts, the interests of the cedent and the reinsurer are not necessarily aligned, noted Mr. Rai.

Among other points, the justices ruled that cedents should not be penalized for "commercial optimism"

in relation to one of the risks covered by the Aon 77 contract because the cedents knew the policy's aggregate deductible already was exhausted when the risk was underwritten, meaning that any losses would almost exclusively fall to the reinsurers.

If an underwriter "is presented with an excellent risk from the perspective of those for whom he acts, he cannot be expected not to write it because to do so might have an adverse effect on his reinsurers. There is nothing wrong with taking advantage of an advantageous contract," the justices ruled.

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
 CIVIL JURISDICTION
 2005: NO. 369
 IN THE MATTER OF
SRO RUN-OFF LIMITED
 AND IN THE MATTER OF THE COMPANIES ACT 1981,
 SECTION 99
NOTICE OF MEETINGS OF SCHEME CREDITORS
 TAKE NOTICE that by Order dated the 24th November 2005 (the "Order"), the Supreme Court of Bermuda has directed that meetings (the "Scheme Meetings") of creditors (the "Scheme Creditors" as defined in the scheme of arrangement hereinafter referred to) of SRO Run-Off Limited ("the Company") be held to consider, and if thought fit, approve a scheme of arrangement proposed to be entered into between the Company and its Scheme Creditors pursuant to section 99 of the Companies Act 1981 ("the Scheme"). Unless otherwise provided capitalized terms herein shall bear the same meanings assigned to them by the Scheme.
 The Scheme Meetings will be held on 17th April 2006 at the offices of Conyers Dill & Pearman, 2nd Floor, Richmond House, Hamilton HM 08, Bermuda.
 Creditors with Paid 11.30 a.m.
 and/or Outstanding losses (Bermuda time)
 Creditors with IBNR 11.45 a.m. (Bermuda time or at such later time as the prior meeting has concluded)
 If you wish to provide a proxy for voting at any one or more of the Scheme Meetings, you should return that proxy, together with your Claim Form so as to be received by the Company no later than 4.00 pm (prevailing Eastern time) on 17th March 2006 at the following address: c/o Cambridge Integrated Services Group Inc., 1234 Market Street, Suite 1815, Philadelphia, Pennsylvania 19107 in the USA.
 The Claim Form and proxy forms can be found on the Scheme Website [HTTP://WWW.CAMBRIDGEWORLDWIDE.COM/FTP/SRO-SOA](http://WWW.CAMBRIDGEWORLDWIDE.COM/FTP/SRO-SOA) (username: SRO; password: gw84x).
 Each Scheme Creditor or his proxy will be required to register his attendance at the Scheme Meeting prior to its commencement. Registration will commence at 11.00 a.m.
 The Scheme is proposed between the Company and its Scheme Creditors. A copy of the Scheme document and a copy of the Explanatory Statement to the Scheme can be found on the Scheme Website. If you have any questions regarding the Scheme and this process please contact Andrew Ward on +1 267 330 2027 or email to andrew.s.ward@us.pwc.com.
 By the Order, the Supreme Court of Bermuda has appointed D Geoffrey Hunter or in his absence, Peter C B Mitchell to act as Chairman of the Scheme Meetings and has directed the Chairman to report the results thereof to the Court.
 The Scheme will be subject to the sanction of the Supreme Court of Bermuda and Scheme Creditors should take note that a hearing of the application for sanction of the Scheme has been fixed for 21st April 2006. Should that date or time change, the Company will post a notice on the Scheme Website giving details of the new date and time.
 Dated this 8th day of December 2005
CONYERS DILL & PEARMAN
 Attorneys for SRO Run-Off Limited

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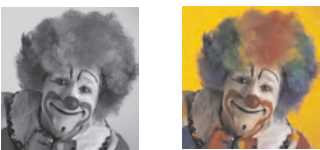
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COMINGS & GOINGS - INDUSTRY

Insurers

Switzerland-based Zurich Financial Services Group has named several executives to senior positions, effective Jan. 1, 2006:

Thomas Hurlimann will become chief operating officer in ZFS' global corporate business division, a new position. Mr. Hurlimann previously was head of group reinsurance.

Mike Kerner will become head of group reinsurance. He previously was head of ceded reinsurance in ZFS' North America commercial business division.

Andreas Grunbichler will become ZFS' chief risk officer, succeeding Wayne Fisher, who is stepping down to take over special projects at ZFS. Mr. Grunbichler joined ZFS in 2004 as head of group risk management policy and research.

Hamilton, Bermuda-based XL Capital Ltd. has made two appointments in its marine and offshore energy division.

Jeff Kaufmann will head XL's U.S. marine and offshore energy operations from New York, while **Colin Sprott** will head international marine and offshore energy operations from London. Mr. Kaufmann joined XL in 2000 from Reliance National Insurance Co.'s marine division. Mr. Sprott has worked at the XL London Market unit since 1999.

Birmingham, Ala.-based Vesta

Insurance Group has named **John Hines** chief financial officer and senior vp. He replaces **Hopson B. Nance**, who resigned from the company but will remain with Vesta as senior vp during the transition. Mr. Hines previously was a director at Smart & Associates L.L.P., where he performed consulting work on behalf of Vesta.

Reinsurance

New York-based Transatlantic Holdings Inc. has elected **Michael C. Sapnar** senior vp and chief underwriting officer, domestic operations. He holds a similar title at operating subsidiary Transatlantic Reinsurance Co. In addition, **Eugene Fisher** and **Seymour Katz** were elected senior vps at Transatlantic Re.

New York-based Guy Carpenter & Co. Inc. has named two managing directors. **Scott Whipp** has joined the reinsurance intermediary as managing director in the professional liability specialty practice in San Francisco, where he will head medical malpractice liability. **Michael Bleisnick** has joined as managing director in the retrocessional specialty practice. Mr. Whipp previously was facultative health care practice leader at General Reinsurance Corp. Mr. Bleisnick formerly was executive vp of the global specialty department at PXRE Reinsurance Co.

John B. Collins Associates Inc. has hired a team of facultative reinsurance brokers in Hartford, Conn. The team includes: **John W. Threlfall**, senior vp and manager of the Hartford office; and senior Vps **Peter V. Jackson**, **John F. Gentile** and **Salvatore M. Lo-Bello**. All four brokers previously were with Palmer & Cay Reinsurance Services L.L.C.

Other suppliers

Parsippany, N.J.-based claims services company GAB Robins Group of Cos. has named **Alan N. Mansfield** executive vp and chief financial officer. Mr. Mansfield previously was senior vp and financial officer at ESIS, a risk management services division of ACE USA.

Business Insurance would like to announce recent senior-level appointments and promotions at commercial insurance industry organizations. Please send information to Comings & Goings Editor Joe Walker, Business Insurance, 360 N. Michigan Ave., Seventh Floor, Chicago, Ill. 60601-3806; or biweb@businessinsurance.com.

High-resolution photos should be sent to Assistant Managing Editor/Graphics Kathy Barnes at the same mailing address or by e-mail to kbarnes@businessinsurance.com.

California: Benefit triggers key

Continued from page 1

UnumProvident agreement would eventually apply to all other disability insurers operating in the California market (*BI*, Oct. 10).

The commissioner opted out of a \$15 million settlement that the Chattanooga, Tenn.-based insurer reached last fall with 48 other states over its claims-handling practices. Observers do not expect other states to follow Mr. Garmendi's pursuit of the policy language issue.

Bruce Wenger, president of the Sacramento-based Assn. of California Life & Health Insurance Cos., one of the plaintiffs that filed the insurers' suit in state Superior Court in Sacramento, said plaintiffs believe the change the commissioner is advocating "really requires a formal regulatory process."

Mr. Wenger said he also disagrees with the department's contention that the provisions listed in the Oct. 3 letter are not authorized by existing law, "so we have procedural and policy differences."

A California Insurance Department spokesman said, "What we've asked them to do is to follow existing law." No new regulations have been issued, said the spokesman, who added the department will "vigorously" contest the lawsuit.

The lawsuit seeks an injunction restraining the department from enforcing its "underground regulations" and a judicial declaration that the changes must be promulgated as regulations "before they can be imposed on an industry-wide basis."

Other plaintiffs are America's Health Insurance Plans and the American Council of Life Insurers, both of which are based in Washington, and the Sacramento-based California Chamber of Commerce.

Observers say one major problem with the department's effort is a proposal to remove additional benefit triggers from policies, including requirements that claimants obtain appropriate medical care and vocational rehabilitation.

Not requiring a statement from a regular attending physician makes it "very simple" for claimants to mailer, said W. Harold Petersen, president of Valencia, Calif.-based Petersen International Underwriting, a disability specialist. That means others who buy the coverage "will have to pay more because the frauds cannot be sorted out," he said.

It also would remove workers' incentive to return to work and would conflict with the state's workers compensation laws, said Paul Botkin, Dallas-based senior vp and national practice leader for income replacement consulting at Aon Consulting.

Mr. Botkin said removing the requirement for appropriate medical care also would likely lead to increased use of independent medical examination, from the current 10% or less of all cases to about 40%. These increased costs would be passed on to the employer from the insurer, said Mr. Botkin.

Gerald Katz, a consultant whose company is Weston, Fla.-based Disability Insurance Concepts Inc., said another problem is that the department would consider an employee totally disabled if he is un-

able to perform the duties of his own, specific job, rather than his occupation in general.

For example, under this expansive definition, an engineer with an inner ear problem who travels frequently would qualify as being totally disabled, even though he could still work as an engineer at a job that did not require air travel, according to a study by Seattle-based Milliman Inc. on behalf of the AHIP. The study says this provision alone could increase the cost of group disability insurance by 10-15%.

Plaintiffs attorney Gene Livingston, a lawyer with Greenberg Traurig in Sacramento, said an agreement between the plaintiffs and the department is unlikely. "There's going to have to be a ruling that the department is trying to enforce underground regulations. I don't see any way to avoid that at this point," said Mr. Livingston.

Much at stake

"This is going to take a long time to play out" in light of the litigation, said Carl Austin, assistant vp at A.M. Best Co. "There's a lot at stake here, and insurers are not going to go quietly on this one."

If the department imposes the changes, insurers will "pull out of the state, or the premiums will be so high that employers won't be able to offer the programs to their employees," said Sharon Kaleta, president and chief executive officer of the San Diego-based Disability Management Employer Coalition.

The Milliman study said the department's action could lead to group disability insurance rate hikes up to 46%, although observers say that may be too conservative.

Critics warned the changes could encourage insurers to either limit their business or leave the state.

If these provisions are enacted, "there'll be considerable upheaval in the California market" immediately, said Mr. Austin. "Disability insurance rates would go up in California, and the availability of disability coverage would be substantially impacted negatively."

"It'd be tougher to get coverage, especially because all companies would have a hard time to get their policies approved on a timely basis to conform with the new regulations," said Mr. Austin. The insurers could probably adapt over time, "but companies and insureds would not like the consequences—the higher rates, that's going to come from the changes," he said.

Michael Kramer, a principal with Towers Perrin in San Francisco, said larger employers' first instinct would be to write their group disability contracts in other states. Those employers that cannot do so will have three options: cancel their plans, reduce benefits or have employees pay more.

But Libby Sanchez, a legislative advocate for several unions who works in the law office of Sacramento-based attorney Barry Broad, said that Mr. Garmendi's proposal "to my understanding seeks to solidify what is his interpretation—and what is also our interpretation—of existing law."

NAIC: Large-deductible insurance a future issue

Continued from page 4

the model act because it does not address the issue of large-deductible policies, among other things.

"When a state guaranty fund makes payment to an injured worker or other claimant of amounts within the large deductible, the subsequent policyholder reimbursement of the deductible payment should go directly to the guaranty fund that paid the claim," Steven Bennett, AIA assistant general counsel, said in a statement.

Four states—Illinois, New Hampshire, Pennsylvania and Texas—have adopted laws that require such guaranty fund reimbursement, noted Dale F. Stephenson, president of the National Conference of Insurance Guaranty Funds. The Indianapolis-based NCIGF also opposes the model.

Some regulators—including those in Pennsylvania—previously sought to designate such large-deductible policy reimbursements as assets of the insolvent insurer's estate, rather than limiting their use to reimbursing guaranty funds for payments made primarily under workers comp policies.

Enhanced disclosure

On another front, an NAIC subgroup is proposing to adopt a higher threshold in its Model Audit Rule that would reduce the number of insurers subject to enhanced finan-

cial disclosures under best practices outlined in the Sarbanes-Oxley Act of 2002.

The NAIC/AICPA Working Group proposes that the management of an insurer must have more than \$500 million in direct and assumed premiums before the company is required to perform an annual assessment of its internal controls over financial reporting as well as meet other related requirements. Regulators originally proposed a \$25 million threshold.

The NAIC is seeking comment on that and other related revisions during the next 45 days.

While several industry trade groups helped craft a proposal containing the higher threshold, the National Assn. of Mutual Insurance Cos. opposes the measure on philosophical and public policy grounds, it said in a statement.

Congress adopted SOX requirements to better control public companies, not nonpublic mutual companies that were exempted from those requirements, Indianapolis-based NAMIC said in a statement.

In addition, the proposal is not cost effective, NAMIC President and CEO Charles M. Chamness said in a statement.

In other action, the NAIC mem-

bers:

- Gave interim approval to a white paper that discusses collateralization issues primarily related to non-U.S. insurers and reinsurers.

Many of them are seeking to reduce the amount of money they are required to post to write policies in the United States.

NAIC members will discuss the white paper during an annual commissioners-only meeting in February, Mr. Iuppa said.

- Approved the organization's 2006 operating budget.

The final budget anticipates \$59.3 million in consolidated revenues, up 0.18% from this year, and \$58.4 million in consolidated expenses, up 3.69% from this year.

The NAIC budget includes a substantial financial commitment for its System for Electronic Rate & Form Filing, which permits insurers to file rate and form-filing information electronically, as well as support for continued market reforms, according to an NAIC statement.

Overall, the NAIC's primary objective has been "to demonstrate the NAIC's focus on the modernization of state insurance regulation," Mr. Iuppa said in a statement.

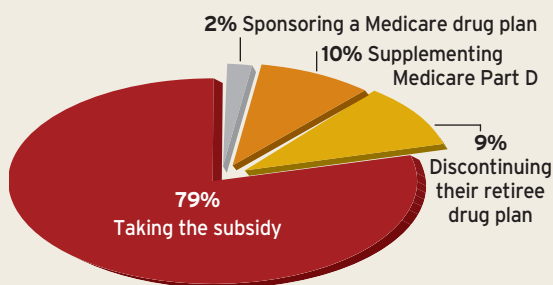
- Heard that Pennsylvania has become the 19th state to join the NAIC's Interstate Insurance Product Regulation Compact.

The compact is designed to allow for uniform filing standards for several life/health-related coverages and products.

"The current compacting states represent approximately 30% of the (nation's) premium volume" for those coverages and products, ac-

Medicare expands to cover drugs

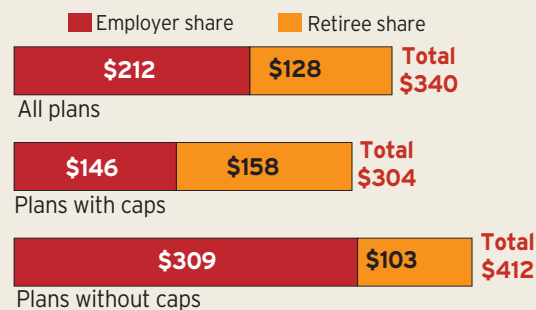
How large employers that provide prescription drug coverage are responding to the new Medicare drug law



Source: Kaiser Family Foundation/Hewitt Associates Inc.

What retiree health coverage costs

Average monthly premium for retiree plans*



* Single coverage for individuals eligible for Medicare and retiring on or after Jan. 1, 2005

Source: Kaiser Family Foundation/Hewitt Associates Inc.

Subsidy: Retiree health plan phaseouts ahead

Continued from page 1

But Kaiser and Hewitt experts say that, for many employers, the decision to take the subsidy is a short-term strategy and one made to give employers more time to analyze and decide on a longer-term approach.

“Employers, no doubt, will revisit those decisions,” said Tricia Neuman, a Kaiser vp in Washington.

In fact, many employers decided to retain coverage and take the subsidy rather than pursue a potentially more cost-effective approach because it was the least disruptive to retirees, explained Frank McArdle, a Hewitt consultant in Washington.

Indeed, when employers were making their retiree health care plan decisions for 2006, it wasn't known, for example, how many health insurers, prescription benefit managers and others would enter the Medicare prescription drug market. That no longer is a concern, with retirees in many parts of the country able to choose from a plethora of Medicare prescription drug plans—or PDPs—from insurers and others.

With more certainty in the Medicare prescription drug market, the percentage of employers retaining plans that qualify for the 28% subsidy is likely to drop, according to the survey. For example, while about eight in 10 surveyed employers said they are taking the subsidy next year and expect to do the same in 2007, only about 50% of employers say they expect to do so in 2010.

“Employers may find other options to be more attractive in later

years, such as supplementing Medicare drug plans as a secondary player,” the survey says.

In fact, supplementing the coverage retirees obtain from PDPs can be more cost effective than maintaining coverage that is at least equal to Part D, according to the survey.

Based on information provided by employers, the survey estimates those taking the subsidy will save an average in 2006 of \$626 per retiree, while the savings for employers that supplement the Medicare drug benefit will average \$826 per retiree. Supplemental plans can generate greater savings because employers can set the level of benefits they want to provide. By contrast, to qualify for the subsidy, employer plans have to be at least equal to what Medicare Part D would provide.

Ultimately, whether employers will maintain drug coverage for Medicare retirees—or, for that matter, any retiree health care coverage—over the long term will depend on several factors. One key factor is how great the financial burden to provide coverage will prove to be over time, the survey notes.

While the savings employers rack up as a result of the expansion of the Medicare program to cover prescription drug costs may be significant in dollar terms, they are only a small percentage of total retiree health care costs. The survey estimates that the median savings employers will accrue due to the Medicare expansion is equivalent to just 7% of the total cost of the health care plans they provide to retirees.

And the cost of those programs continues to rise, the survey shows. The total cost of providing retiree health care benefits increased by an average of 10.3% in 2005, down from an average of 12.7% in 2004 but still several times greater than the increase in the cost of living overall.

Responding to those cost increases, 71% of employers boosted the premiums retirees pay for coverage, while 34% increased coinsurance or copayments and 24% raised deductibles, according to the survey.

And 12% of employers in 2005 took the most drastic step possible to cut retiree health care costs—they terminated employer-subsidized coverage for future retirees, and there are more retiree health care plan phase-outs on the horizon.

For example, New York-based telecommunications giant Verizon Inc. announced last week that, effective next year, retiree health care coverage no longer will be offered to new management employees, or to current employees with less than 15 years of service (see story, page 27). Employees with 15 or more years of service will not earn additional service credits toward company subsidized retiree health care coverage.

Even with the availability of generous government prescription drug subsidies, 9% of employers said they will drop prescription drug coverage next year.

Copies of “Prospects for Retiree Health Benefits as Medicare Prescription Drug Coverage Begins” and accompanying materials are available at www.kff.org.

Antitrust: Dismissal sought

Continued from page 3

an amended class action complaint in August. They include OptiCare Health Systems Inc. of Waterbury, Conn.; Golden Gate Bridge, Highway and Transportation District, based in San Rafael, Calif.; Bayou Steel Corp. of LaPlace, La.; Collect L.L.C., a foam products maker based in St. Johnsville, N.Y.; and the City of Stamford, Conn.

The defendants include Marsh, Aon, Willis and several other large brokers, along with multiple units of American International Group Inc., ACE Ltd., Berkshire Hathaway Inc., Hartford Financial Services Group Inc., Liberty Mutual Holdings Inc., The St. Paul Travelers Cos. Inc. and XL Capital Ltd.

The class action complaint alleges a broad conspiracy among the brokers and insurers to stifle market competition for their own benefit. While Mr. Spitzer accused only Marsh of bid rigging, the complaint

“Plaintiffs nowhere even attempt to explain how the entire insurance industry exists for criminal purposes.”

Defendants' motion

charges that other brokers engaged in the practice, in addition to steering clients to maximize contingent commission revenue.

The suit offers two alternative theories of the alleged conspiracy: one in which all of the brokers and insurers knowingly participated in a single scheme and coordinated their actions through industry trade groups, meetings and professional networking; and one in which separate but parallel conspiracies existed between each broker and the insurers it dealt with.

The actions violated the Sherman Act as well as various state antitrust laws, the suit alleges. And, while McCarran-Ferguson exempts “business of insurance” from federal oversight, the defendants' actions do not constitute the “business of insurance” because they do not involve the transfer or spread of risk and are not integral to the policyholder/insurer relationship, the suit argues.

McCarran also carves out exceptions to the bar against federal law claims in cases of illegal boycott and coercion, and the brokers' alleged bid rigging and client steering fall within those exceptions, the policyholders argue.

Along with the antitrust claims, the suit also charges that the alleged conspiracy violated the federal Racketeer Influenced and Corrupt Organizations law.

On Nov. 29, the brokers and insurers responded with motions to throw out the complaint.

Arguing for dismissal

McCarran, they contend, bars the suit's Sherman Act claims because the claims “unequivocally” involve the business of insurance: “The plaintiffs' whole case is about one thing—the business of insurance,” including the pricing of policies, methods of pricing and broker compensation, the brokers' motion says.

The complaint also fails to cite any actions that fit McCarran's exceptions for boycott and coercion, they add: “What plaintiffs purport to allege is a massive cartel to rig bids, but that is not a ‘boycott’ in either the usual sense or in the McCarran-Ferguson sense,” the brokers contend.

While the suit also levels charges under dozens of state antitrust statutes, these charges are similarly pre-empted in many cases by state analogues of McCarran-Ferguson, the brokers and insurers say.

The defendants also argue that the suit's RICO claims should be dismissed for various failures to meet legal requirements for pleading a racketeering case.

The suit contends, for example, that the entire insurance industry represents a racketeering enterprise, broker defendants note. “Vague allegations of an industry-wide enterprise, devoid of any allegations setting forth organizational structure and control, do not satisfy these requirements,” the brokers' motion argues. “Plaintiffs nowhere even attempt to explain how the entire insurance industry exists for criminal purposes.”

The suit also fails to specify each defendant's role in the alleged enterprise or what specific acts of mail or wire fraud give rise to the RICO claims, brokers and insurers argue.

TRIA: Congressional conferees to iron out terror bill differences

Continued from page 1

ministration policy” does not specifically promise a veto.

Another potential problem arose when the Senate Banking Committee did not follow the action of the House Financial Services Committee by naming conferees quickly, thus raising concerns that a conference committee would not be able to complete its work this year. A spokesman for the Senate Banking Committee noted that not much time remained to accomplish the task, but he did not rule out the possibility that a bill could emerge this year. Banking Committee Chairman Richard Shelby, R-Ala.,

“continues to remain hopeful that we will be able to pass a temporary and targeted TRIA extension, provided it follows the Senate approach,” said the spokesman Thursday afternoon.

Both the House and Senate versions of S. 467 would extend the backstop for two years, although the House bill could allow the backstop to remain in place through 2008 under some circumstances. Both bills also increase the current minimum loss needed to trigger the backstop from the current \$5 million to \$50 million in covered damage in 2006 and \$100 million 2007.

The bill passed by the House

would, among other things, establish a broad-based commission to make recommendations on what role, if any, the government should play in guaranteeing terrorism insurance and would extend the current protections granted to property/casualty insurers to group life insurers. It would also create so-called “silos” for various lines of coverage and subject them to differing deductibles before individual insurers could tap the backstop created by TRIA. In addition, the House bill would expand the program to cover acts of domestic terrorism as well as foreign-originated terrorism.

The House bill would require in-

surers participating in the program to offer coverage for acts of terrorism involving nuclear, biological, chemical and radioactive agents, though that coverage “may differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than NBCR terrorism.”

The bill approved by the Senate—the Terrorism Risk Insurance Extension Act—is silent on that matter; conferees from both chambers will have to meet to iron out such differences between the House and Senate measures. The Senate bill, for ex-

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TRIA: Conferees to iron out terror bill differences

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ample, does not cover group life and eliminates coverage for some other lines currently covered, such as commercial automobile. The Senate bill also does not contain silos, does not extend coverage to acts of domestic terrorism and calls for the President's Working Group on Financial Markets rather than a broad-based commission to report on terrorism insurance market conditions. Nonetheless, proponents of TRIA extension are confident that the differences can be overcome and a compromise reached well before Dec. 31.

"We're thrilled with the overwhelming bipartisan vote," said Joel Wood, senior vp-government affairs with the Council of Insurance Agents & Brokers in Washington minutes after the vote. "And we expect that House and Senate negotiators will be able to complete action next week. But it's not over till it's over, and we're very mindful that there are some enemies of this bill who would like to see the differences between the two chambers derail the process."

"The passage of TRIA extension legislation by the U.S. House of Representatives represents an important step forward in preserving the federal backstop to protect companies that would otherwise be left vulnerable in the aftermath of a terrorist attack," said Terry Fleming, a member of the Risk & Insurance Management Society Inc.'s board of directors with responsibility for external

affairs. "RIMS applauds both chambers of Congress for their work on this critical economic issue and encourages the House and Senate to reconcile their respective bills at the earliest possible moment," said Mr. Fleming, who is also director-division of risk management for Montgomery County, Md., in Rockville.

"We think that a compromise will be reached and it will go to the president," said Carl Parks, senior vp-government affairs in the Washington office of the Property Casualty Insurers Assn. of America. PCI is concerned about the House bill's NBCR provision, he said. "If there is such a thing as an uninsurable risk, that's it. It really is a problem for midsized and smaller insurance companies, because there's no reinsurance at all. If they're in position where they're required to offer it, they have to make a decision as to whether they will be in the marketplace at all for overall coverage."

Mr. Parks added that PCI is "very much supportive" of finding a long-range market-based solution to the terrorism insurance issue and thinks that specific House provisions calling for the broad-based commission and an examination of reinsurance solutions "is the best way to have a long-range market-based program."

"We remain very optimistic about getting this done by the end of the year," said Leigh Ann Pusey, senior vp-government affairs for the American Insurance Assn. in Washington. "The House vote was a key

step toward resolution before Congress adjourns."

According to the OMB statement, the Bush administration "strongly opposes" the House measure. "Adding new lines to the federal reinsurance backstop sends the wrong signal to the marketplace, which should be encouraged to find new ways to diversify the risks of doing business," said the OMB statement. The statement noted the White House's goals of reducing the lines of coverage covered by TRIA while increasing the insurance industry's exposure are not met in the House version of S.467.

Observers said the OMB statement does not present an insurmountable obstacle.

"We don't think it's a stumbling block," said PCI's Mr. Parks. "The president has not yet cast his first veto in five years, and we don't think that this will be the first time. We certainly understand that the administration has some concerns, and we think those concerns have been addressed in both the House and Senate in terms of shrinking the program" and providing a greater degree of private-sector insurance involvement, he said.

"I don't see it posing an additional problem. I think it's something members have been aware of and have factored in," said AIA's Ms. Pusey. "The overwhelming strong votes for passage in both the Senate and the House are clear indications of Congress' intention to protect the economy."

Late News

Continued from page 1

said, including replenishing capital depleted by hurricane losses in 2005 and helping to pay an \$830 million pretax charge—a sum confirmed last week by an actuarial analysis—in the fourth quarter stemming from a dispute involving Winterthur International, a former unit of Winterthur Swiss Insurance Co. that XL bought in 2001 (BI, Dec. 5).

Equitas settlements flat in first half

Equitas Ltd. paid claims of £352 million (\$618.0 million) in the first six months of its current fiscal year, down slightly from the £353 million (\$634.6 million) paid in the comparable period last year. In a letter to reinsured names—individual investors at Lloyd's—Equitas Chairman Hugh Stevenson said that, although the company continues to make progress in settling direct asbestos liabilities, "completion of settlements on inwards reinsurance liabilities has been significantly slower than hoped" during the first half of 2005. During the six-month period, Equitas posted an investment return of £153 million (\$268.6 million), up from £38 million (\$68.3 million).

Bermuda trade group names first president

Bradley L. Kading has been named the first president and executive director of the Assn. of Bermuda Insurers & Reinsurers, which represents the interests of several large companies operating on the island. Mr. Kading has previously served as senior vp and director of state relations for the Reinsurance Assn. of America, among other positions. His appointment stems from ABIR's decision to "professionalize the association by hiring executive staff," ABIR Chairman Brian O'Hara said in a statement. The Hamilton-based group was set up in 1986.

AIG execs to sell shares of C.V. Starr

American International Group Inc. executives will sell their stake in C. V. Starr & Co. Inc., a private firm led by former AIG Chairman and Chief Executive Officer Maurice R. Greenberg, the insurer said last week. The move—which marks another step by the two long-

affiliated companies to unravel their relationship—was reported by AIG in a Securities and Exchange Commission filing. C.V. Starr offered to buy common and preferred shares owned by current senior AIG executives, and "AIG expects that most or all of its executives holding Starr shares will take advantage of this offer," the insurer said in its filing.

MRM, Hancock settle comp carve-out dispute

Mutual Risk Management Ltd. has settled litigation with John Hancock Life Insurance Co. over Hancock's reinsurance of workers compensation carve-out business ceded by MRM's now-defunct Legion Insurance Co. unit. The terms of the settlement were not disclosed. Bermuda-based MRM sued Hancock in U.S. District Court in Philadelphia last year, charging that Hancock's refusal to pay carve-out claims to Legion forced MRM to default on its bank debt and to reorganize its operations. Hancock stopped paying Legion claims in 1999 and became embroiled in disputes with its own retrocessionaires, which contested Hancock's claims on the grounds of alleged fraud by reinsurance brokers handling the carve-out placements.


Briefly noted

U.S. affiliates of U.K. pharmaceutical giant AstraZeneca P.L.C. have received tentative approval from the Department of Labor to fund some of their employee benefit risks through a Vermont captive. Final approval is expected some time next month....Larry S. Boress has been named president and chief executive officer of the Midwest Business Group on Health. Mr. Boress, who has had several roles with the MBGH in the past 15 years, succeeds Dr. Dennis Richling, who is leaving the Chicago-based group to pursue other business opportunities....Dan R. Francis, chief operating officer of ABD Insurance & Financial Services Inc., has been tapped as the broker's next president and chief executive officer. Effective Jan. 1, Mr. Francis will succeed Frederick J. de Grosz, who will assume the role of co-chairman, joining current Chairman Bruce M. Basso in that new position.'

BI Stock Index [12/5 - 12/9]

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

Percentage change of BI Stock Index vs. key indicators

BI Stock Index
2,879.46  0.07

Dow Jones
10,778.58  -0.52

S&P 500
1,259.37  -0.22

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

Largest gains

Vesta Insurance Group, Inc.	17.39%
Gainsco, Inc.	11.53%
Baldwin&Lyons, Inc	4.00%
Aetna Inc	3.52%
Old Republic International Corp.	3.34%

Weekly change by market segment

Brokers	36.62%
Insurers/Reinsurers	18.72%
Managed Care Organizations	28.35%

Largest losses

Meadowbrook Insurance Group Inc.	-5.62%
Aspen Insurance Holdings Ltd.	-4.85%
Endurance Specialty Holdings Ltd	-2.63%
Odyssey Re Holdings Corp.	-2.30%
CIGNA Corp.	-2.26%

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New **Online Poll:** Will House and Senate negotiators be able to reach an agreement on a bill to extend the federal terrorism insurance backstop before the TRIA expires on Dec. 31?

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

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Carole Lynn Proferes
Client Advisor, Philadelphia

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