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Late News

Senate approves PBGC premium hike

The Senate has approved a deficit reduction bill that includes a provision that would increase the premiums employers with defined benefit pension plans must pay to the Pension Benefit Guaranty Corp. S. 1932—which passed by a 51-to-50 vote last week—would among other things increase the annual premium per participant in single employer plans paid to the PBGC to $30 from the current $19. Additionally, employers that terminate underfunded plans as part of the bankruptcy process would be liable for a fee of $1,250 per plan participant in each of the three years following emergence from Chapter 11. The House passed a similar deficit reduction bill earlier in the week, but the Senate made changes—unrelated to the PBGC provisions—that require House concurrence.

Aon restates client settlement figures

Aon Corp. has restated details about the extent of client participation in its $190 million compensation fund established

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Inside

Two-year extension shifts TRIA debate

Permanent solution sought

Members of Congress "have missed a golden opportunity to frame the TRIA program more effectively and to move to a more market-based solution."

Rep. Michael Oxley

By MARK A. HOFMANN

WASHINGTON—Proponents of a federal terrorism insurance backstop are wasting no time in pondering their next moves after President Bush signed legislation that will extend a scaled-back program through 2007.

That's because the Terrorism Risk Insurance Extension Act—S. 467—doesn't answer what many in the debate consider to be the central question concerning terrorism insurance: What is the best long-term solution to the problem?

House-passed terrorism insurance legislation called for the creation of a broad-based commission—one that would have included at least one policyholder representative—with a mandate to report back to Congress with long-term recommendations.

But that provision was stripped out of compromise legislation that followed almost entirely a much narrower Senate extension bill backed by the White House. Rather than creating a commission, the final version of S. 467 calls on a presidential working group to consult with various stakeholders, they say.

But other restatements are looming that could still concern cedents of the Zug, Switzerland-based reinsurer, they say.

Converium last week said that an unspecified number of transactions previously accounted for as reinsurance had been restated to be recorded as deposits. After conducting a previously announced internal review, the reinsurer concluded that the transactions in question did not include sufficient risk transfer to be accounted for as reinsurance. The review was prompted by regulatory investigations into the transactions.

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Converium restates to fix finite problems

More changes in the works

By SARAH VEYSEY

ZUG, Switzerland—Converium Holding Ltd.'s restatement of financial reports to reclassify certain finite transactions as deposits will go some way to reassure cedents about the reinsurer's future, but questions hanging over the company remain, observers say.

The restatement last week of shareholders' equity figures for 2004 and the first nine months of 2005 resulted in only modest changes to the company's capital

See **CONVERIUM** / page 34

GLOBAL FLU FEARS:
PREPARING FOR A CRISIS

Risk managers wary of avian flu threat, but responses vary

By MICHAEL BRADFORD

As a deadly strain of influenza creeps toward the United States, employers are making bets on whether the threat of a pandemic is serious enough to call for extraordinary measures that would protect workers and productivity.

While some risk managers are busy updating contingency plans to address the threat of an avian flu pandemic, many others are hoping current plans are sufficient.

"I think very few employers address this kind of thing today," said Gisele Norris, an epidemiologist and senior consultant with Aon Healthcare in San Francisco. "I don't think people think very much about infectious diseases."

"People need to think about how prepared they are and how they would manage this, should it happen," said Thomas N. Falzarano, managing director and global practice leader for liability claims at Marsh Inc. in Morristown, N.J. Not doing so could invite claims like those that accused organizations of being ill-prepared for the severe acute respiratory system, or SARS, epidemic that swept Asia in 2003, he said.

No one can say whether the H5N1 virus—the so-called avian flu—will evolve into a form that will easily sweep through human populations. But experts are sure that if it does rapidly spread in a lethal form, it could kill millions and cripple world economies.

The virus has killed at least 71 people, with 138 cases of human infection reported to the World Health Organization. Vietnam has reported the highest number of infections, with 93 cases that left 42 dead. Deaths also have occurred in Cambodia, China, Indonesia and Thailand.

"The virus has established that it is capable of infecting humans," said Dr. Toby L. Merlin, director of private and public partnerships at the Centers for Disease Control and Prevention's National Center for Health Marketing in Atlanta. Speaking earlier this month during a teleconference arranged by Marsh, he said there is "only one

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Human virus strains hard to contain.
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In the next *BI*: Coverage concerns

NEWSPAPER

SPOTLIGHT

YEAR IN REVIEW: EMPLOYEE BENEFITS
A look at the major events and newsmakers in employee benefits during 2005.
PAGE 11

Aon Focus
www.aon.com/focus

A centralized global employee benefits function can drive cost savings and enhance organizational effectiveness.

DECEMBER 26, 2005

Multinationals move to centralize the global employee benefits function

Erwin Janush is senior vice president for Aon Consulting. He provides strategic global employee benefits consulting to multinational organizations. Erwin can be reached at erwin_janush@aon.com.

Most multinational companies today agree that people are the single most important factor in determining business success. Attracting, retaining and properly incenting employees are key challenges—managing a sophisticated global employee benefits function is vital.

Historically, most multinationals have taken a decentralized approach to benefits management. Usually, the local country manager, or operations manager, is responsible for a wide range of tasks: choosing what plans and plan designs will be offered; establishing funding and financial strategies (including selecting insurance carriers); obtaining local advisors; and satisfying compliance requirements.

In the emerging global business environment, however, several forces are driving employers to re-evaluate the wisdom of this approach: the alignment of benefit/HR strategy with business strategy, the need to leverage global buying power, the maze of governance issues and the increasing cost of insurance coverage. Thus, many organizations are moving to centralize benefits management on a global scale. This involves identifying the optimal level of centralization, deciding on the level of involvement from corporate headquarters and supplying top corporate management with data and information that build the business case. C-level buy in is critical for success.

Gathering this data on local plans and activities, however, can be difficult; it is often incomplete or nonexistent. Typically, a solid data management structure will need to be designed and implemented. But it is an effort worth making, as the resulting analysis, in addition to building a business case, often creates the opportunity to achieve other desirable outcomes, including benchmarking local country designs against corporate philosophy, strategy and competitive standards.

A global benefits partner is well suited to help multinationals reap the rewards of centralization. It can create a system to hold, process and report on plan data, populate the system with essential information and create a process for maintaining the system's contents to ensure accuracy. A global benefits partner can also provide the high level of service needed by local operations, while managing a global framework that satisfies corporate needs and creates financial efficiencies from greater buying leverage.

For many multinational organizations looking for ways to maximize profitability, centralizing benefits management is worth exploring. Within that strategy, making maximum use of local plan data can enhance the efficiency and effectiveness of management processes and be a key success driver. Transitioning to a centralized global employee benefits function that analyzes, interprets and maintains information can create cost savings, enable greater efficiency, identify emerging trend opportunities and enhance the overall success of the organization.

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

Multinational companies apply strategies for choosing local insurers

As U.S.-based companies become increasingly global in scope, a wide range of insurance and risk management challenges face senior-level officers and boards of directors. To address these challenges, the companies must apply best practice strategies for choosing a local insurer, developing strong retention levels and efficiently managing claims and other documentation. Proactive, forward-thinking organizations are accessing accurate and timely data sources for informed decision making surrounding global insurance and risk management issues, as well as establishing metrics for benchmarking costs and limits with competitors and peers. To view an online webcast that explores these issues in detail, visit **www.aon.com/focus**.

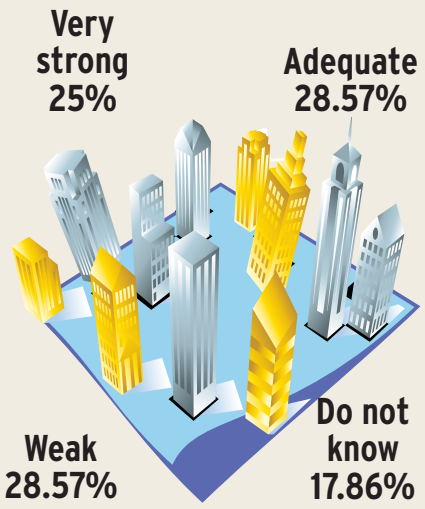
Auditing long-term disability programs yields greater efficiencies, control

Many employers have historically audited health care, pharmacy and dental programs as a matter of fiduciary and cost due diligence. Plan sponsors now recognize that auditing long-term disability programs can maximize effectiveness and yield direct financial benefits. Typical audit findings include failure to meet definition of disability and ways to improve outcomes for claims that are more than two years old. These audits can reduce proposed rate actions for insured programs and establish a road map for the insurance carrier and plan sponsor to resolve specific claim issues, tightening policies and procedures. To read the complete article, visit **www.aon.com/focus**.

Inside

Online poll - [12/19 - 12/22]

How do you view the financial security of Bermuda's Class of 2005 startups?



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Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Tsunami preparations make Hawaii first state to attain readiness status


PHOTO: NOAA HISTORICAL ARCHIVES

A photo from the 1946 tsunami that hit Hilo, Hawaii, shows a man praying on a pier. The tsunami, which killed 150, prompted Hawaii to establish an early-warning system.

1946 catastrophe spurred planning

By ROBERTO CENICEROS

When the deadliest tsunami in recorded history surged across the Indian Ocean a year ago this week, it caused employers and residents across Hawaii to reflect on their own safety precautions.

Hawaii is far from the path of the tsunami generated by the 2004 Indian Ocean earthquake that killed approximately 200,000 people across a number of countries, including India, Indonesia, Sri Lanka and Thailand.

But history shows that large temblors in Alaska, Chile, Japan or the West Coast of the United States can unleash tsunamis capable of devastating Hawaii, said Julie C. Mayeda, corporate insurance and risk manager for Pacific Marine & Supply Co. Ltd. in Honolulu.

The Hawaiian Islands' own seismic and volcanic activity also have generated destructive tsunamis, added Nezette Rydell, warning coordination meteorologist for the National Weather Service in Honolulu.

"Tsunamis are real to us," Ms. Rydell said. "They are not something that might happen. Everyone here knows someone who was impacted by a tsunami. It's part of life here. It's going to happen."

So tsunami preparations have been ongoing in Hawaii at least since 1946, Ms. Rydell said.

That year, a tsunami emanating from an earthquake centered near the Aleutian Islands off Alaska killed more than 150 Hawaiians. Of the deadly tsunamis to

See **TSUNAMI** / page 32

UnitedHealth Group cleared to complete PacifiCare acquisition

Agrees to federal, state concessions

MINNEAPOLIS—UnitedHealth Group Inc. has completed its $9.2 billion acquisition of PacifiCare Health Systems Inc. after receiving conditional antitrust approval from the U.S. Department of Justice.

In order to complete the acquisition, Minneapolis-based UnitedHealth must sell portions of Cypress, Calif.-based PacifiCare's commercial health insurance businesses in Tucson, Ariz., and Boulder, Colo. It must also modify—and, after one year, terminate—a network access agreement with Blue Shield of California.

UnitedHealth Group got a key approval for its deal last week from California Insurance Commissioner John Garamendi.

The department's Antitrust Division filed a civil lawsuit Tuesday in U.S. District Court in Washington to block the proposed transaction; but, at the same time, the department filed a proposed consent decree that, if approved by the court, would resolve the department's competitive concerns and the lawsuit. The department said the deal as originally proposed likely would have resulted in higher prices and lower quality commercial health insurance plans.

Under the merger agreement, PacifiCare stockholders receive $21.50 in cash and 1.10 shares of UnitedHealth common stock for each share of PacifiCare common stock.

Earlier last week, the deal cleared another key hurdle when it was approved by California Insurance Commissioner John Garamendi. The approval came in exchange for certain concessions agreed to by the companies that premiums paid by California health care purchasers will not increase as a result of the acquisition and that they will make $250 million in investments and contributions to medically underserved communities.

—By Gloria Gonzalez

NAIC president has global goals for regulators

By MEG FLETCHER

KANSAS CITY, Mo.—The new president of the National Assn. of Insurance Commissioners sees his organization's work—and its influence—as extending well beyond U.S. borders.

Mr. Iuppa

Maine Superintendent of Insurance Alessandro A. Iuppa was elected to a one-year term as NAIC president in December. He previously served as the NAIC's president-elect, a post that the organization established in 2004 to promote continuity in its leadership.

During his tenure as a U.S. insurance regulator, Mr. Iuppa has been active on the international front, and he plans to continue that work. After several years of participating in NAIC international and reinsurance subgroups, as well as representing U.S. regulators at international meetings, Mr. Iuppa now also presides over the International Assn. of Insurance Supervisors as chair of the Basel, Switzerland-based organization's executive committee.

As the new NAIC president, Mr. Iuppa said he "will work to solidify our position in financial services sector discussions on the international front." Current issues include unifying accounting standards and determining the appropriate collateralization requirements written primarily for non-U.S.-based insurers and reinsurers.

In addition, "I pledge to work toward continuing progress in uniformity and modernization efforts whenever and wherever possible," Mr. Iuppa said.

Mr. Iuppa, 52, grew up in Bristol, Conn., as a first-generation U.S. citizen. His parents emigrated from near Naples, Italy.

He was educated in New England, earning a bachelor of arts degree from St. Michael's College in Colchester, Vt., and a master's degree in public administration from Suffolk University School of Management in Boston.

Before joining the Maine Bureau, Mr. Iuppa provided consulting services to various state insur-

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PHOTO: NEW YORK TIMES

Victims of hurricanes Rita and Wilma could take pre-retirement distributions without penalties under legislation President Bush has signed.

IRS expands criteria on plan withdrawals to aid storms' victims

By JERRY GEISEL

WASHINGTON—Employees in areas affected by hurricanes Rita and Wilma will be allowed to receive distributions from their retirement plans without federal tax penalties under a measure President George Bush signed into law last week.

Under the measure, H.R. 4440, individual participants in affected areas taking pre-retirement distributions of up to $100,000, such as hardship withdrawals from 401(k) plans, will not be assessed the 10% penalty tax that normally would apply.

In the case of Hurricane Rita victims, eligible distributions will be those made on or after Sept. 23 through Dec. 31, 2006, while eligible distributions for Hurricane Wilma victims will be those made on or after Oct. 23 through Dec. 31, 2006.

While the distributions still are subject to regular taxes, they are exempt from the 20% withholding tax that normally applies to pre-retirement distributions that are not taken as annuities or rolled over into other qualified plans.

A victim of Rita or Wilma is allowed, over a three-year period, to recontribute the distribution back to his or her employer's plan, if allowed, or to an individual retirement account.

The measure also allows a victim of Rita or Wilma to borrow up to $100,000 or the entire balance of his or her defined contribution plan account. Under current law, loans are limited to the lesser of $50,000 or half of the balance of an individual's defined contribution plan account.

Additionally, the measure extends by one year the length of time victims of Hurricane Katrina would have to pay back their defined contribution plan loans.

The legislation that won Congressional approval last week follows action Congress took in September in approving similar tax breaks related to retirement plans for victims of Hurricane Katrina.

Experts say the measures will be especially helpful to employees who need cash while waiting for payments from their property insurers, a process that can drag on for many months.

Still, some question if a significant number of plan participants will be able to afford to put back money into their 401(k) plans so soon after taking the funds out.

The latest measure, which President Bush signed, probably marks an end to legislative activity on benefit plans related to the three 2005 hurricanes.

In fact, other storm-related legislative efforts involving benefit plans failed to develop much momentum. For example, on the health care front, an effort by Senate Finance Committee Chairman Charles Grassley, R-Iowa, and Sen. Max Baucus, D-Mont.—that would have set aside federal relief funds to be used for the health insurance premiums of those covered in group health insurance plans that were established prior to Katrina—to include such provisions in a broader bill died amid a lack of broad-based support.

Error & Omissions

Due to incorrect information provided to *Business Insurance*, a Dec. 19 story erroneously stated that legislation to extend the federal terrorism insurance backstop would exclude general liability from the program.

The story was published before final legislative language was available.

Ex-401(k) participant wins market timing court decision

By JUDY GREENWALD

BALTIMORE—A former 401(k) plan participant who worked for a mutual fund firm accused of market timing and late trading may pursue litigation against his former employer for the alleged adverse impact on his plan's performance even though he no longer works for the firm, a federal judge has ruled.

The Dec. 6 decision by Judge Catherine C. Blake of the U.S. District Court for the District of Maryland in Baltimore came in one of seven cases brought in multidistrict litigation under the Employee Retirement Income Security Act by 401(k) plan participants who worked for seven mutual funds caught up in the market timing scandal.

Late trading occurs when a purchaser places a post-closing order and buys at that day's net asset value, thus unlawfully receiving a benefit other investors are denied. Market timing allows an investor to take advantage of market news.

All of the firms have reached settlement agreements with regulators in connection with the charges against them.

The plaintiffs claimed, though, that the value of their retirement accounts was adversely affected by the timing activities permitted in certain mutual funds and that plan fiduciaries knew, or should have known, the relevant funds were not a prudent investment.

Judge Blake's ruling earlier this month came in a suit brought by Brian Flynn, who worked for Menomonee Falls, Wis.-based Strong Capital Management and then Strong Financial Corp. from 2001 to 2003.

In 2004, New York Attorney General Eliot Spitzer and Wisconsin Attorney General Peg Lautenschlager announced a $175 million settlement with Strong Capital, founder Richard S. Strong and others to resolve allegations of unlawful trading of mutual funds.

Mr. Flynn argued that the plan fiduciaries failed to take action to protect plan participants' interests even though plan fiduciaries knew some of the firm's funds engaged in illegal late trading and/or market timing, which diluted the value of participants' investments.

Judge Blake held in her opinion that Mr. Flynn had standing to bring suit even though he no longer was a plan participant. "While the defendants correctly note that employers generally cannot force their former employees out of ERISA plans, the motivating principle in these cases is that employees should not forfeit a cause of action under ERISA to recover what is rightfully theirs under their plan by taking a payout of what they

See RULING/page 6

California ruling holds landowner liable for exposing contractor to asbestos

SAN FRANCISCO—A landowner may be liable for injuries to an independent contractor's employee in cases involving latent or concealed pre-existing hazardous conditions on the owner's property, California's Supreme Court ruled Monday.

In *Ray Kinsman vs. Unocal Corp.*, the court ruled unanimously that a landowner can be liable to a contractor's employee when the landowner knew or should have known about a hazardous condition, the contractor did not now know or could not have reasonably discovered the hazard, and the landowner failed to warn the contractor.

The premises liability case stems from a carpenter who worked on Unocal's property several times during the 1950s, court records show. He was exposed to airborne asbestos and years later developed mesothelioma, an asbestos-induced malignant lung cancer.

The plaintiff argued that Unocal was negligent in the use and management of its property where he worked. A jury found in his favor, awarding him more than $3 million after assigning 15% fault to Unocal, court records show.

An appeals court reversed the decision finding that a contractor's employee cannot recover under a premises liability theory unless the landowner had control over the dangerous conditions and affirmatively contributed to the employee's injury.

The high court disagreed with that opinion and remanded the case to remedy faulty jury instructions that if found prejudicial to the defendant.

—By Roberto Ceniceros

Merck, ex-unit ordered to pay $7.8M

CINCINNATI—An Ohio jury awarded $7.8 million to the State Teachers Retirement System of Ohio in its lawsuit accusing its former pharmacy benefits manager, Medco Health Solutions Inc., of fraud and other misconduct.

The state court jury in Cincinnati also found Merck & Co., Medco's former parent, guilty of the same charges in its Monday verdict. The Whitehouse Station, N.J.-based pharmaceutical manufacturer faces no liability for the judgment, though, because a 2003 spinoff agreement requires Franklin Lakes, N.J.-based Medco to indemnify Merck, a Merck spokeswoman said.

Ohio Attorney General Jim Petro said in a statement that "the verdict is the first time a U.S. jury has recognized that a company managing pharmacy benefits has a legal duty to act in the best interest of retirees and pensioners" and marks the first time a court as found that a PBM committed constructive fraud.

PHOTO: AP PHOTO/KICHIRO SATO

Ohio Attorney General Jim Petro said the verdict is the first to find a PBM guilty of constructive fraud.

Mr. Petro sued both companies in 2003 to recover damages, charging them with overcharging the teachers' plan "for certain prescription drugs and mail-order dispensing fees and for wrongfully withholding drugmakers' rebates," according to his statement.

The jury awarded the plan $915,000 for Medco's breach of its fiduciary duty and $6.9 million for fraud, he said. In addition, the jury found that Merck is jointly liable for the actions of Medco but did not illegally interfere with the contract or business relationship between the plan and Medco, he added.

Medco denies wrongdoing and plans to immediately appeal the verdict, according to a statement by David Machlowitz, the company's general counsel.

The issue of whether the companies will face punitive damages for misconduct will be the subject of a future trial, according to Mr. Petro's statement.

—By Meg Fletcher

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1. 2004 MetLife Mid-Large Market Case Implementation Satisfaction Study. 2. *Harvard Business Review*, April 2004.

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Perspectives

Securing a future for defined benefits

Pension funding reform, hybrid plan clarification needed

By Sylvester J. Schieber

Recent news stories about pension plans might lead us to draw the wrong conclusions about the overall state of the defined benefit system. The vast majority of private-sector defined benefit plans are highly secure and pose virtually no risk to the Pension Benefit Guaranty Corp. or to workers and retirees in terms of pension losses.

Pension plans are highly valued by employees and are a proven way to efficiently deliver stable and reliable retirement benefits. For employers, these plans act as effective workforce management tools. And the risks the employer carries can be managed by matching business objectives to the right plan design, investment strategy and governance policy.

There is a growing body of evidence that many workers and retirees favor these forms of benefits over the do-it-yourself retirement planning and management of the 401(k) world. And because employees value these plans, pensions serve as an important attraction and retention tool for employers. According to Watson Wyatt research, among companies sponsoring a pension plan, more than 50% of workers say that their decision to stay with a company is highly influenced by the presence of a defined benefit plan. Only 31% of workers said they feel the same way about a defined contribution program. These numbers are further amplified when you look at older workers—a fact that may become critical as the workforce ages.

In the past decade, several companies have entered bankruptcy with large unfunded pension obligations that they have transferred to the PBGC. Firms in the steel and airline industries were particularly hard hit. And now there is concern that the auto industry is on the same path and that the entire retirement system may be overwhelmed.

While some may conclude the benefit structure of the pensions in these firms is the problem, we believe that the flaw is in the regulatory structure that governs how benefits are funded in relation to when the benefits are earned. The pension financing problems in the steel and airline industries arose because the benefits in the plans were not sufficiently funded at the time they were earned and the industries were thriving. The bills then came due at a time when the productivity of many companies could not support the burden. The bottom line is that companies in these industries were unable to prepare for future pension obligations, even though they could see them coming. The regulatory limits on pension funding that do not allow companies to anticipate future increases in pension benefits must be changed.

> "The regulatory limits on pension funding that do not allow companies to anticipate future increases in pension benefits must be changed."

Such regulatory-induced pension shortfalls have been surfacing since the early 1980s. Going forward, we need to find a way that allows employers to sponsor the benefit plans that meet their business needs and the personal needs of workers. And we must make sure that benefits are being funded and secured as they are earned.

For those companies that have been overwhelmed by economic developments, we must recognize the flaws in the current rules and correct them. That corrective action should not put companies out of business simply because they have unfunded pension obligations due, in part, to the flawed rules of the past.

Employers need more than better funding rules, though, if they are to voluntarily continue to provide these benefits. They need flexibility in the type of pension plans they offer. The workforce is not only aging but it is also more mobile. Given current turnover patterns, for a firm today that is sponsoring a traditional pension plan, only 20% of the workers now vested under that plan will still be with the employer when they reach age 55. Most people who leave a traditional pension before reaching retirement age lose considerable value that cash balance plans protect. Cash balance or hybrid pension plans allow workers to take their pension with them when they leave a company, even if they are far from retirement age. But—unlike a 401(k) plan—the employer still carries the investment risk. Unfortunately, these plans have been in regulatory limbo for the past several years. Congress needs to clarify the legal uncertainty around cash balance and hybrid pension plans now.

As workers assume more risk overall in their pay and benefits, there should be far more support for this form of guaranteed income. But 401(k) plans alone simply do not have the design features that support workforce management goals, such as encouraging valuable employees to stay with the employer and providing the resources needed to allow for retirement. Moreover, defined benefit plans are inherently less costly than 401(k) plans. Defined benefit plans are generally pooled and incur lower investment fees. In addition, the assets are almost always professionally managed and invested over a longer time horizon, which tends to generate greater returns.

Defined benefit plans play a critical role in the retirement security of millions of American workers. Rather than merely reporting on the system's demise, we should be finding ways to keep it strong. Revising pension funding rules and clarifying the legal status of hybrid plans would be a positive first step.

Sylvester J. Schieber is U.S. director-benefits consulting for Watson Wyatt Worldwide in Arlington, Va.

Ruling: Timing suit proceeds

Continued from page 4

incorrectly believe is all that is owed them at the time," said the decision.

Judge Blake rejected Strong's argument that the plan fiduciaries were entitled to a "presumption of prudence" in maintaining these investments because the company was not facing "dire circumstances" or an "impending collapse."

"This type of case is the next step in this area of controversy," said Bill Flanagan, an attorney with Crowell & Moring in Washington. Once the government reached settlements with companies that were involved in these types of activities, "it's the natural next step that the individual plans and individual participants that were involved would seek some sort of recompense as a result," said Mr. Flanagan.

Hot-button issues

People will look more closely at any plan that invested in mutual funds sponsored by a firm involved in the timing investigations, said Mr. Flanagan. "These are hot-button issues," he said.

"This case is a little unusual," though, because its focus is the mutual funds that the company itself provided, said Bruce Schwartz, an attorney with Jackson Lewis in White Plains, N.Y. Because of this, "there is, theoretically, an element of insider knowledge that you would not have in other circumstances," said Mr. Schwartz. "This is not something you're going to be dealing with within the broad investment world," he said.

Lynn Lincoln Sarko, a plaintiff attorney with Keller Rohrback in Seattle, said he considered the decision an excellent one.

"Defendants in these cases have tried to run away from responsibility by terminating employees and then claiming that former employees have no rights under ERISA," he said.

In this case, though, the judge has said "that argument is absurd," said Mr. Sarko. "This court saw through the argument."

Other defendants in the multidistrict litigation include New York-based Alliance Capital Management Holding; London-based Amvescap P.L.C.; Charlotte, N.C.-based Bank of America; Chicago-based Bank One Corp.; Denver-based Janus Capital Corp. and New York-based Marsh & McLennan Cos. Inc. and its Putnam Investments Inc. unit.

Brian Flynn vs. Strong Capital Management Inc. et al., Civil No. 1:04-cv-949, in the U.S. District Court for the District of Maryland.

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Editorial

Extension of TRIA only a short-term fix

RISK MANAGERS AND INSURERS have gained an additional two years of breathing room—but precious little else—from Congress' approval of a measure that would extend a scaled-back version of the federal terrorism insurance backstop through the end of 2007.

That's not to say that the extension isn't welcome—anything that returns some certainty to the terrorism insurance market comes as good news. But the bill leaves an awful lot of unfinished business that needs to be addressed.

Ironically, the extension bill passed by the House wouldn't have left nearly so many matters unsettled. The House's support for a broad-based independent commission required to present lawmakers with long-term solutions to the problems associated with providing terrorism insurance by itself made the House bill the preferable vehicle for backstop extension.

But the measure that emerged from the House-Senate conference committee only days before the current backstop would have expired contained no mandate, only a provision that a presidential working group report back to Congress on the state of the terrorism insurance market.

The House bill would have been better, because this is a long-term issue that demands a long-term resolution. As House Financial Services Committee Chairman Mike Oxley said, the compromise bill meant that "the can was simply kicked down the road without any real reform."

We couldn't agree more with Chairman Oxley. The compromise bill simply extends the status quo—in a diminished form—for two years, thus setting the stage for more last-minute wrangling in 2007 or simply letting the program expire whether or not a market-based replacement of some sort has arisen. Neither is acceptable.

It's incumbent upon risk managers and others directly affected by the federal terrorism insurance backstop to continue pushing for a permanent solution over the next two years.

They deserved such a solution this time around, but unfortunately, they didn't get it.

It's unfinished business that must be addressed as soon as possible, because there may very well not be another opportunity when the program expires two years down the road.

Schillerstrom

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Governments alone can't tackle threats from flu outbreaks

THE ONGOING THREAT of an avian flu pandemic is clearly a concern for world governments, but it is also a concern for individual organizations and their management, including risk managers.

When phrases like "deadly virus" and "flu pandemic" are thrown around, it's tempting to view the issue as being too big to be handled by companies in isolation. But while companies alone cannot tackle the problem, ignoring the issue and relying completely on government action to stem the threat would be negligent.

As we report on page 1, the chances of the relatively isolated incidents of human deaths from avian flu developing into a pandemic that causes millions of deaths throughout the world remain incredibly difficult to gauge. Though we know that about half of the diagnosed cases in humans have proved deadly, no one knows how many people may have been unknowingly infected by the virus and then recovered without being diagnosed as having contracted avian flu, and no one knows whether the virus will remain as deadly if it mutates into a form that can easily be passed between humans.

We do know, however, that pandemics occur periodically, and though the 1918 flu that killed 50 million is often cited as an example of what could happen now, other, less devastating pandemics since then also have caused widespread death.

Developing a response plan for a potential pandemic is obviously something that should be the result of consultations among a team of managers within an organization, but risk managers should be key members of those teams.

Based on their role as authors of crisis management plans for other disasters, such as hurricane or earthquake losses, risk managers should be able to adapt the skills necessary to write those plans and assess many of the numerous threats that would occur in event of a pandemic.

Individual organizations will need to assess the costs of those crisis management plans and take actions that make commercial sense, but ignoring the issue should not be an option.

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Spotlight

YEAR IN REVIEW : EMPLOYEE BENEFITS

TOP EMPLOYEE BENEFIT STORIES OF 2005

1. Congress moves to enact pension funding reform legislation
2. Interest in consumer-driven health care plans swells
3. Health care cost increases ease
4. Federal judge allows EEOC to issue retiree health care ADEA exemption
5. Consolidation grows in health care industry
6. Treasury Department eases 'use it or lose it' FSA rule
7. Exodus of big employers from defined benefit plans accelerates
8. States try new approaches to reduce number of uninsured
9. Employers prepare for Medicare prescription drug expansion
10. Employer interest in captive benefit funding grows

Explaining benefit changes was key task in 2005

Communication efforts continue

By RUPAL PAREKH

From the newly created Medicare Part D to the continued push toward consumerism, benefit managers in 2005 had much to deal with.

Employee benefits education and communication—especially related to the Medicare program's expansion to cover prescription drug costs—consumed a great deal of time throughout year, benefit managers say.

Following a longtime trend, employers this year also struggled to curb the costs of group health care plans, despite a dramatic slowing of health care inflation in 2005.

To keep costs in check, not only did they alter benefit plan designs and shift more costs onto workers but many used different coping strategies too—including health and wellness programs, promoting generic medications for prescriptions and encouraging consumerism among employees.

And though it wasn't the most pressing issue on their radar, federal legislators' plan to enact pension funding reforms was another area that weighed on benefit managers' minds.

The top benefits-related challenge this year for Cleveland-based Eaton Corp. was "the implementation of Medicare Part D for retirees," said Ellen P. Collier, director of benefits for the industrial products manufacturer. "We ended up doing a worksheet for retirees to help them determine whether they should remain in the Eaton plan," Ms. Collier explained.

Medicare Part D similarly ate a large chunk of time for Ray Brusca, vp of benefits for Black & Decker in Towson, Md., who undertook a detailed cost data analysis that ultimately led the power tool producer to decide against maintaining prescription drug coverage for its Medicare-eligible retirees. "We're eliminating prescription drug coverage, because it actually saves the retirees money," Mr. Brusca said. As a result of the change, Black & Decker had to accelerate its benefit communications by more than a month, to Oct. 1 rather than in November.

"It's extremely complicated," Helen Darling, president of the National Business Group on Health in Washington, said of Medicare Part D. "Congress designed a plan that even experts have trouble interpreting," Ms. Darling said.

"We actually went out and held 44 meetings with our retirees to really explain what the Medicare Modernization Act is and how that's going to affect them and their health care." said Dale Whitney, corporate health care manager for Atlanta-based United Parcel Service Inc.

According to Robert A. McAree, corporate retirement practice leader at actuarial and consulting firm The Segal Co. in New York, "Communication is the theme that runs through everything benefit managers are doing, especially because there is so much changing right now in the retirement area."

On top of the new Medicare requirements, companies are anticipating the possible impact of federal legislation that would strengthen pension funding rules and hike the premiums employers pay to the Pension Benefit Guaranty Corp.

"We're watching with great interest to see what's going to happen," said Nicki Gustin, employee benefits manager for Aquila Inc., a Kansas City, Mo.-based natural gas and electricity distributor, that currently has a defined benefit pension plan. "It is a big concern," Ms. Gustin said.

Benefit managers in 2005 spent more time and resources to educate not only their re-

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Overview: Finding ways to control health plan costs remains a high priority

Continued from previous page

tirees but their whole employee populations.

"You have to say things to people over and over again before it starts to sink in," said Ms. Gustin.

Complicating the process is the fact that "people don't learn the same way," pointed out Mr. Whitney. "You've got to know your own population and what is the best way to communicate with them."

Many employers turned to technology to communicate benefits information.

"This was the first year that we rolled out, since the mid-1980s, a total compensation and benefits statement," said Ms. Collier. The statement was delivered to Eaton's 28,000 active employees in an e-mail format, "and that was very well received," she recalled.

Faced with the challenge of integrating the benefits of 80,000 active employees through the merger of Sprint Corp. with Nextel Communications Inc. in August—while at the same time attempting to minimize the provider disruptions to employees—Sprint Nextel created three separate enrollment Webcasts, designed for human resources staff, corporate managers and employees at large.

"Through a lot of communication, we ended up getting about 90% participation," said Collier Case, the company's director of health and productivity benefits in Overland Park, Kan.

While other issues came into the spotlight this year, the high price of group health care remained a perennial problem for benefits managers, experts say.

"Trying to figure out ways to continue to control the rate of increase of health care costs is still occupying a great deal of benefit managers' time," noted John Asencio, Segal's senior vp and corporate health practice leader.

Even with the easing of health care inflation this year—cost increases in 2005 fell to an eight-year low, according to a survey released last month by Mercer Health & Benefits in New York—companies are still feeling the pressure of costs associated with group health care plans.

"From the (chief financial officer's) point of view, it's the absolute costs that matter, not the increase," noted Ms. Darling. As a result, benefit managers are left with "having to figure out the least painful plan design changes" that will help stem rising costs.

For example, Sprint Nextel this year created a new income-based system of contributions for employee health care. "We had five different income tiers, and what we tried to do was to keep the cost of health care about flat for those in lower tiers, and those in higher tiers had to pay a little bit more," Mr. Case said.

According to Segal's Mr. Asencio, employers in 2005 continued to shift costs to employees, in the form of increased copayments, raised deductibles and contributions, although there is now "a recognition on the part of benefit managers that they are going to have to do something more than just change how employees pay for their health plans."

"It's not a problem that's going to be easily resolved; it's something that we have to chip away at," stressed Aquila's Ms. Gustin. In an effort to "squeeze out some of the waste in our plan," Aquila has been exploring ways to shift workers away from brand-name prescriptions to generic drugs, she said.

There is still some debate surrounding the return on investment realized by disease management and wellness programs, noted Mr. Asencio, but more companies are pursuing these programs in an attempt to reduce overall costs.

Sprint Nextel this year launched "Sprint Alive," a comprehensive health management and wellness program designed to identify risks and manage conditions, all through a single point of entry. According to Mr. Case, the company viewed the new program not so much as a challenge "but really an opportunity to support employees in becoming healthier, because that's really the long-term solution to our health cost challenges."

As a cost saving strategy, many employers in 2005 continued taking steps toward a consumerist approach to health care—encouraging employees to take more responsibility for their own care.

"There is a lot of optimism among CFOs and benefit managers about consumerism," said Ms. Darling. Companies didn't necessarily plunge into adopting a consumer-driven health plan, though, because "on the one hand, they're hopeful, but on the other hand, they are nervous," she explained.

"We have not gone to full-blown consumer-driven health care yet," said Eaton's Ms. Collier, but, "as an initial step toward consumerism," the company did introduce a flexible spending card for employees this year.

Even if they have not actually adopted CDHPs, employers are "using the language around being a smart consumer" and are including the message of consumerism as part of their benefits information more than ever before, Mr. Asencio pointed out.

UPS has yet to implement a CDHP but is currently in the midst of a multiyear plan designed to engage their employees in consumerism, Mr. Whitney explained. "We believe that if we can find areas where we can give our people more info, either about providers or about managing their own care, that's important to do," he said.

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Pension plan funding reform takes tortuous path

Financial woes at PBGC, corporate plan sponsors spurs legislative action

The final chapter of the top employee benefits story of 2005—the congressional drive to tighten defined benefit pension plan funding rules—likely will be written in the first months of 2006.

Like a good novel, this story has had many twists and turns, with even the most-seasoned Washington observers often surprised by new developments.

The pension story has its roots in legislation passed more than a decade ago and, more recently, in the failures of one-time major domestic steel producers and commercial airlines.

Eleven years ago this month, Congress passed legislation to tighten funding rules. That legislative drive was triggered by concerns that the federal pension insurance agency—the Pension Benefit Guaranty Corp., whose deficit at the time was nearly $3 billion—was headed for collapse. Key legislators feared that future big losses could swamp the agency, leading to big hikes in the premiums employers pay to the PBGC or, if that was insufficient, a taxpayer-funded bailout.

At the time, the legislative effort was hailed as a great success, with PBGC officials predicting that the agency's deficit would be wiped out in a decade.

For a while, those predictions seemed conservative. Aided by a strong economy and the absence of any jumbo-size terminations, the PBGC's financial position strengthened throughout the late 1990s. Its financial position hit its high point in 2000, when the PBGC recorded a surplus of nearly $10 billion.

But from there, things quickly went downhill. The stock market began to falter in 2000, and the economy, already slowing, took a nose dive after the Sept. 11, 2001, terrorist attacks.

PBGC's dwindling fortunes

The results were disastrous for the PBGC. Several big steel companies collapsed, leading to multibillion-dollar terminations by the PBGC, while the shedding of US Airways Group Inc.'s pension plans, by itself, cost the PBGC $3 billion. The $10 billion surplus turned into a $23 billion deficit.

Soon, it became clear that the 1994 law was riddled with loopholes that allowed employers to legally underfund their plans and exposed the PBGC to big losses. One example: In the three years prior to the PBGC taking over its pension plan in 2002, Bethlehem Steel Corp. did not contribute anything to its plan, yet the plan had a $3.7 billion deficit when the PBGC terminated it.

That realization led both the Bush administration and Congress to take action. The administration unveiled its pension reform package in March. Provisions in that proposal included speeding up the time employers have to fund plan liabilities, valuing plan liabilities in a new and very complex way and curbing the ability of employers with underfunded plans to improve benefits.

That package, though, was dead on arrival. On Capitol Hill, the consensus was that the proposed funding rules were so tough they would discourage employers from offering defined benefit plans.

But the package focused new and high-level attention on the pension funding issue, and federal legislators soon began to act. In late June, the House of Representatives' Education and the Workforce Committee approved a reform bill, while two Senate committees later followed suit.

Then the drama began. After the two Senate panels' bills were merged into one and just before the full Senate was to take up the merged bill, two senators—Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md.—placed a "hold" on the bill, a parliamentary tactic that can delay consideration of legislation. They objected, with the support of some business groups, to a provision requiring companies with poor credit ratings to make extra plan contributions.

After much wheeling and dealing, the two senators dropped their hold in exchange for assurances that the issue would be considered later. The Senate overwhelmingly

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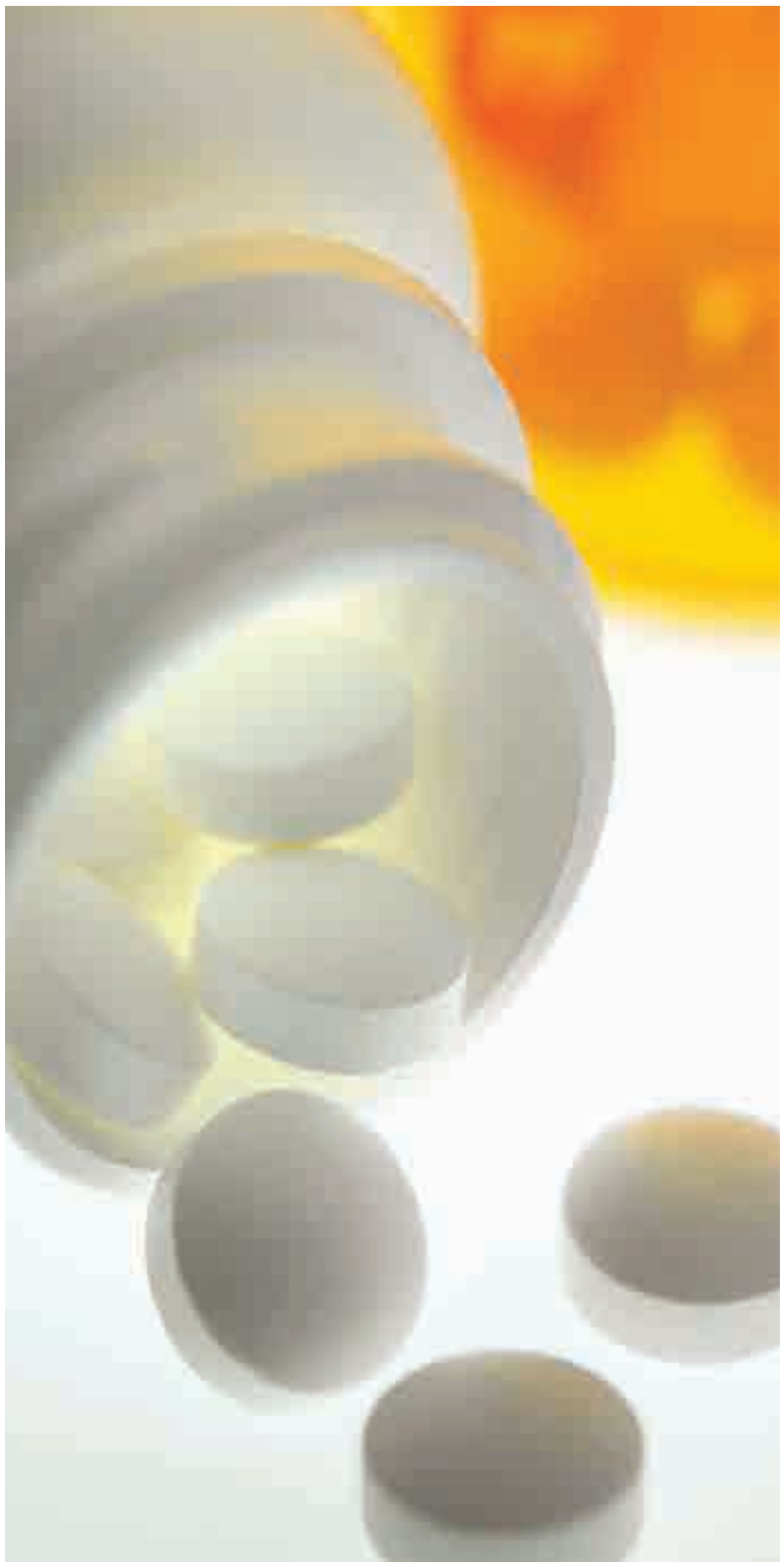

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Open road ahead for consumer-driven health care

Employer interest in cost-saving options soaring, but complexity slows enrollment

The consumer-driven health care movement continued to gain momentum in 2005, with new surveys showing that as many as half of large U.S. employers plan to offer high-deductible plans with either health reimbursement arrangements or health savings accounts next year.

The movement got further validation when two major insurers made significant moves into this fledgling marketplace by acquiring its two leading players: In the past year, Minneapolis-based UnitedHealth Group and Indianapolis-based WellPoint Inc. bought Minneapolis-based Definity Health Corp. and Alexandria, Va.-based Lumenos Inc., respectively.

In further acknowledgment that CDHP is the shape of things to come, other major insurers such as Hartford, Conn.-based Aetna Inc. began aggressively developing their own CDHP divisions, while other traditional health plans—even health maintenance organizations—began incorporating elements of consumerism to compete with the new plans.

Early research into the plans also is finding that the employers successfully implementing them had several things in common, the foremost of which was extensive communication with employees about the plans, usually from the chief executive officer.

In fact, research by management consulting firm McKinsey & Co. found that three factors had an impact on how the plans were received by employees: how the companies communicated the changes to employees; how employees were made accountable for their contributions to their health care costs; and whether employees were supplied with the proper tools and information to help them make the right health care decisions.

While early adopters are definitely finding that employees with health reimbursement arrangements become better health care consumers, other studies are finding that the results may be even better when employees maintain HSAs in which their own money is involved.

To further the cause of consumerism, many employers are forcing their employees to take greater financial stakes in their health care by linking the completion of health risk assessments to the level of employee contributions to their health care premiums, so that those who decline to do so pay the price.

Not uniformly popular

But not everyone hopped onto the consumer-driven bandwagon during 2005: The lack of U.S. Treasury Department guidance on the use of consumer-driven health plans in multiemployer environments made it difficult for multie mployer plans to offer HRAs and HSAs in conjunction with high-deductible health plans.

And misunderstandings about these new health plans are still widespread, as evidenced by assertions made in a report issued by California Insurance Commissioner John Garamendi. "Priced Out: Health Care in California," suggested that many people enrolled in consumer-driven health plans would forgo preventive care, something that these plans generally cover at 100% outside of the deductible. That report was sharply criticized as based on opinion—rather than fact— by CDHP advocates.

—By Joanne Wojcik

Pensions: Road to reform still winding

Continued from page 14

approved the measure.

The drama then turned to the House, where the United Auto Workers union, objecting to a provision to bar employers from paying plant shutdown benefits out of pension assets, helped block a vote on the measure. Intense negotiations followed, leaving the provision somewhat modified. The UAW reversed course, announcing its support of the bill, and the House approved the measure in mid-December.

How the next chapter will be written is not yet known. House and Senate negotiators still must resolve differences in the two bills, and the Bush administration has made it clear that it believes neither bill is tough enough.

But the biggest unknown is whether the measure—assuming a final bill is agreed upon and enacted—will be more successful than the 1994 congressional effort in improving plan funding and shoring up the PBGC's financial base.

—By Jerry Geisel

Group health care cost hikes slowing

Cost-shifting and benefit plan design changes help counter trend

Although group health care plan costs are still rising faster than overall inflation, the news on the cost front for employers in 2005 was a lot better than it has been in recent years.

In 2005, group health care plan costs rose by an average of 6.1%, the smallest increase in eight years, according to a survey of nearly 3,000 employers by Mercer Health & Benefits in New York.

Several factors contributed to the moderating cost trends, including the continued shifting of health care costs to employees through higher copayments and deductibles.

Benefit programs were also redesigned to change the health care usage habits of employees. For example, many employers have revamped their prescription drug benefit plans to promote the use of lower-cost generic drugs, a key factor because escalating pharmacy costs have been a major driver of rising health care costs for the last several years.

Employers also have been more aggressive in trying to address rising health care costs through disease management programs that target

costly conditions such as diabetes and depression.

For example, one large employer, Reston, Va.-based Sprint Nextel Corp., has made a concerted effort to de-stigmatize depression and encourage its employees to seek help. So far, 1,800 Sprint Nextel employees have enrolled in its disease management program this year, and the company expects to reduce direct medical costs by at least $750,000 a year.

The health insurance industry has promoted the adoption of consumer-driven health plans as a way of reducing cost increases. Only 2% of all employers offered this type of plan in 2005, but interest in the product is increasing, with 11% of employers saying they are likely to offer such a plan in 2006, according to the Mercer survey.

Health insurers have clearly placed their faith in the success of consumer-driven health plans. Minneapolis-based UnitedHealth Group Inc. has enrolled more than 1 million members in its consumer-driven plans, while also implementing one for its own employees.

Earlier this year, WellPoint Inc., the nation's largest health insurer, moved to strengthen its foothold in the consumer-driven health care market through its purchase of consumer-driven health plan pioneer Lumenos Inc. The deal came five months after UnitedHealth's purchase of Minneapolis-based Definity Health Corp., another major CDHP provider.

The ongoing consolidation of health care plans is expected to play a role in containing health care costs as insurers leverage their rising memberships to negotiate better discounts from providers and drug manufacturers.

This year, UnitedHealth announced plans to purchase Cypress, Calif.-based PacifiCare Health Systems Inc., which would add just over 3 million PacifiCare enrollees to UnitedHealth's nearly 23 million and strengthen UnitedHealth's position on the West Coast.

Meanwhile, WellPoint announced plans to acquire New York-based WellChoice Inc. in an effort to increase its share of the national account segment of the market.

The combination of all these factors will likely lead to rate increases remaining in a stable range in 2006, according to health care analysts.

—By Gloria Gonzalez

Retiree benefit plan design controversy nears end

Judge rules health care plan changes can be exempted from ADEA, but appeal looms

A long-running saga involving the design of retiree health care plans came one step closer to being resolved in 2005, perhaps putting an end to the years of legal uncertainties employers have faced.

Those uncertainties were triggered more than five years ago, when a federal appeals court ruled that retiree health care plans were subject to the Age Discrimination in Employment Act. As a result, employers could have faced age discrimination charges for providing, as is the norm, a lower level of health care benefits to Medicare-eligible retirees than to younger retirees.

That ruling was a bombshell to employers, who had long thought that the ADEA did not apply to retiree health care plans. The possibility of litigation over what had been long-standing retiree health care plan design suddenly became real.

Employers' fears heightened when the Equal Employment Opportunity Commission, the federal agency in charge of ADEA enforcement, said it would incorporate the *Erie County* decision—so named for the county in Pennsylvania that was sued by its Medicare-eligible retirees—in its compliance manual.

Employers warned that retirees would be the losers if the *Erie County* ruling was allowed to stand. They said one likely course of action would be that employers would lower the level of benefits provided younger retirees to those provided older retirees. Benefit upgrades to older retirees—at a time of soaring health care costs—was not a very likely result, they warned.

That argument found a sympathetic ear at the EEOC, whose political composition changed in 2001 when Republican George W. Bush assumed the presidency.

Soon thereafter, the EEOC announced it would no longer enforce the *Erie County* ruling. After other interim steps, the EEOC last year proposed a final rule under which changes employers make to health care plans after retirees become eli-

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We want you to know

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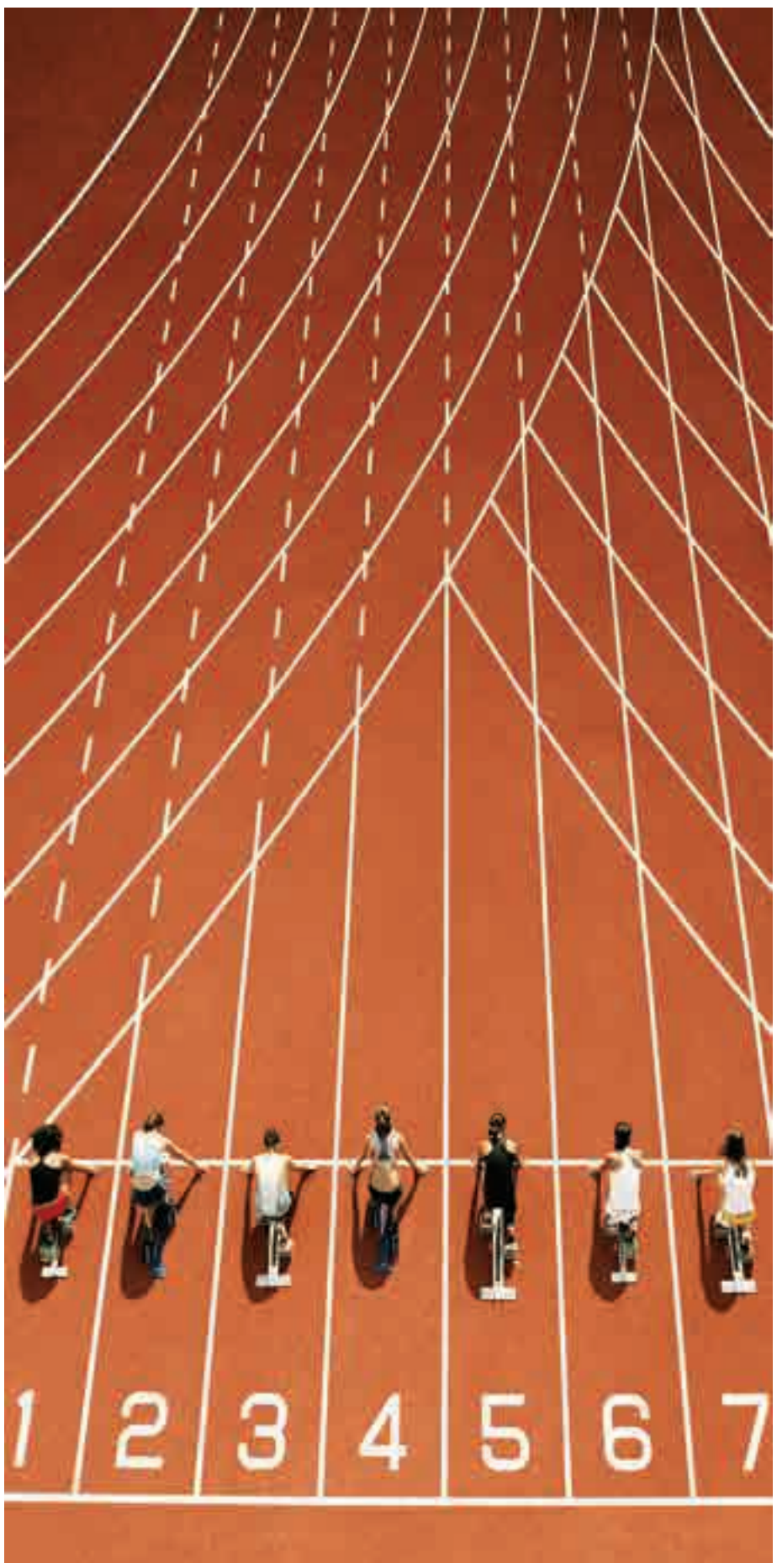

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ADEA: Controversy continues on retiree benefits

Continued from page 16

gible for Medicare would be exempt from ADEA. The practical effect of this proposed rule would be that employers could provide a two-tiered system of retiree health care coverage—with younger retirees receiving more generous benefits than Medicare-eligible retirees—without running afoul of the ADEA.

But the AARP, the lobbying group representing the elderly, earlier this year sued to block the rule, saying the EEOC lacked authority to issue it. Judge Anita Brody of the U.S. District Court for the Eastern District of Pennsylvania, sided with the AARP, saying that implementation of the rule would permit retiree health care designs that the 3rd U.S. Circuit Court of Appeals five years ago ruled violates the ADEA.

But that was not the end of the issue. Just a few months later, in a highly unusual development, Judge Brody reversed her earlier ruling due to a U.S. Supreme Court decision that came down a few months after her first ruling.

In that ruling, which involved the cable television industry, the high court said federal courts generally must defer to regulatory agencies' interpretation of law, so long as the statute on which there is a point of contention is ambiguous and the agency's interpretation of it is a reasonable one.

In the case of the EEOC rule, Judge Brody said the "plain text" of the ADEA is not clear on whether the age discrimination law applies to retiree health care benefits or prohibits Medicare coordination of retiree health care benefits.

"Thus, the question becomes whether this a reasonable way for the EEOC to fill the gap that Congress has left in the ADEA. I conclude that it is," Judge Brody wrote in her Sept. 27 decision.

But Judge Brody's ruling is not the end of the matter. The AARP immediately appealed her decision to the 3rd U.S. Circuit Court of Appeals, the court that handed down the *Erie County* ruling. The appeals court is likely to issue its ruling next year, perhaps finally putting an end to the controversy.

—By Jerry Geisel

Health plan M&A reshapes market

Deals create huge networks

While consolidation is not a new phenomenon in the managed care industry, a wave of mergers and acquisitions among health plans in 2005 marked some dramatic changes for the marketplace.

Most notably this year, UnitedHealth Group Inc. of Minnetonka, Minn., bought Cypress, Calif.-based PacifiCare Health Systems Inc.

Under the deal, announced in July and completed last week, UnitedHealth will significantly expand its presence in the Western United States by adding PacifiCare's 3.2 million enrollees to its own 23 million members.

Additionally, the health insurer

Continued on next page

Continued from previous page

gained the opportunity to tap the newly revived Medicare Advantage market, in which PacifiCare has been a leader.

The deal was completed last week after it cleared some key hurdles, including receiving conditional antitrust approval from the U.S. Department of Justice and getting the blessing of California Insurance Commissioner John Garamendi. Mr. Garamendi temporarily blocked the 2004 megamerger of WellPoint Inc. with Indianapolis-based Anthem Inc.

In October of this year, Indianapolis-based WellPoint, the nation's largest health insurer, ended much speculation about the fate of for-profit Blue Cross & Blue Shield

insurer WellChoice Inc. of New York.

Through its acquisition, which is still pending, WellPoint will secure a stronger presence in the Northeast. In addition, it will gain 5 million members, for a total membership of more than 33 million.

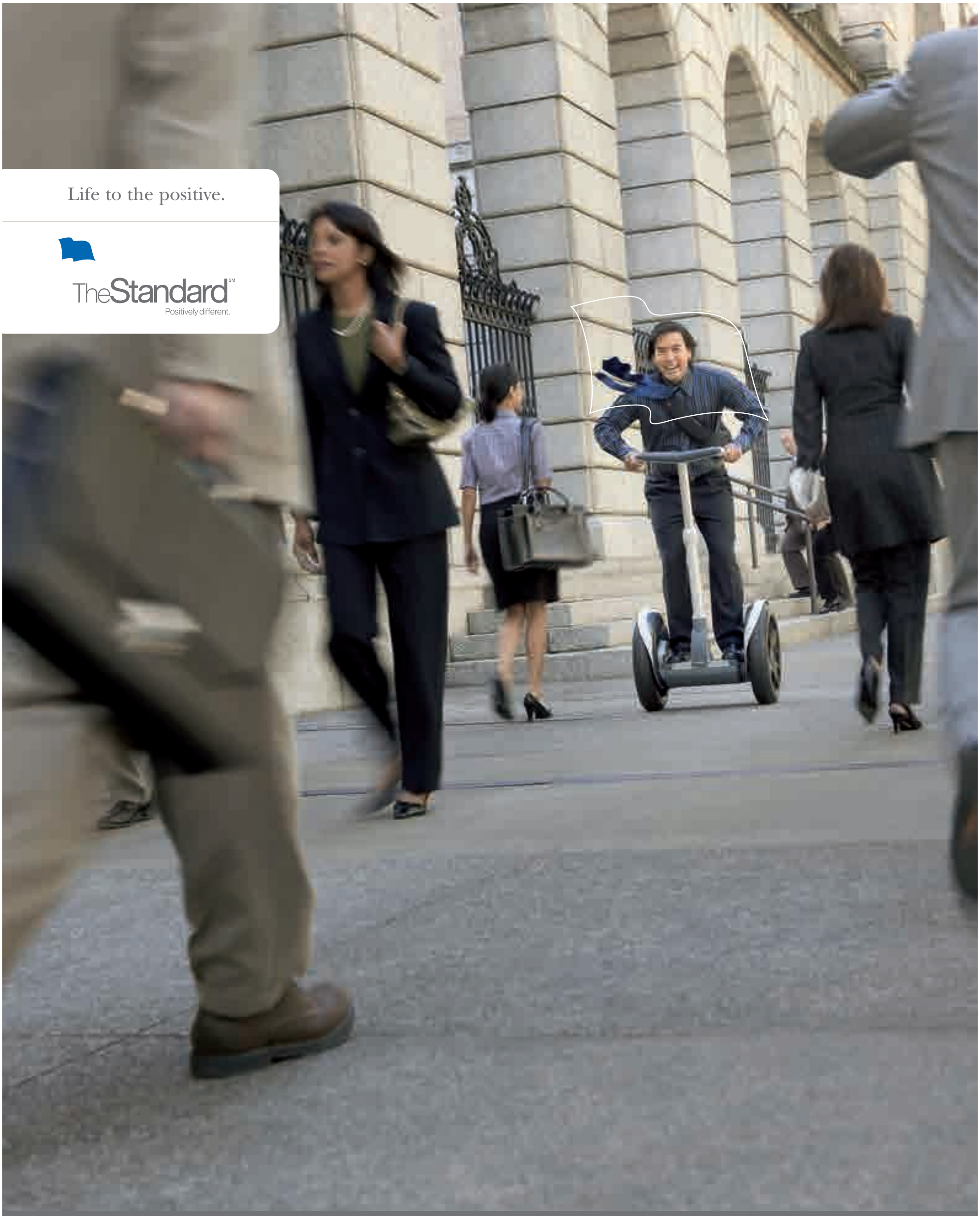
Still other deals such as WellPoint's May acquisition of Alexandria, Va.-based consumer-driven health plan pioneer Lumenos Inc. signaled that the flurry of consolidation activity in 2005 was motivated by more than just an eagerness to grow market share; companies sought to diversify product offerings as well.

Many in the industry hailed the deals reached this year as advantageous for employers, expressing hopes that the larger health plans could wield more power in negotiating discounts with providers as part of the ongoing battle to constrain group health care plan cost increases.

At the same time, some in the industry showed concern over more-limited choices in the marketplace due to the marriage of major health plans.

Whether the pace of mergers and acquisitions in 2005 can be sustained going forward remains to be seen. But, in the meanwhile, most employers note they would be willing to trade a plethora of health plan choices for administrative ease and one-stop employee benefit shopping.

—By Rupal Parekh



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Employee Benefits 2005

JANUARY

■ Technology giant EDS Corp. is purchasing Towers Perrin's benefit administration unit for $420 million. As part of the transaction, EDS and Towers Perrin will form a new venture, combining Towers Perrin's benefits administration services and EDS' existing payroll and HR-related outsourcing business.

■ Final Internal Revenue Service rules broaden the list of situations in which employees can make hardship withdrawals from 401(k) plans to include funeral expenses and repairs to an employee's principal residence. The final rules also generally bar employers from prefunding matching contributions and do not let employees who end employment and immediately become leased employees of the same employer receive their 401(k) account balance.

■ In an unusual move, SBC Communications Inc., the San Antonio-based voice and data telecommunications provider, is phasing out its cash balance and another hybrid pension plan and will use only a more traditional pension plan design to credit future benefit accruals. SBC's embrace of a traditional plan design bucks the trend of major employers moving away from such designs in favor of more portable plans, like enhanced 401(k) plans. SBC says the move is the result of a corporate decision to reward longer-term employees.

■ The Labor Department has given final approval for Alcoa Inc. to fund employee benefit risks through its Vermont captive. Under the arrangement, the Pittsburgh-based aluminum producer will use Three Rivers Insurance Co. to reinsure group term life insurance policies written by Metropolitan Life Insurance Co. Later in the year, Sun Microsystems Inc. receives approval for its captive benefit funding arrangement, while two other employers—the U.S. affiliates of U.K. pharmaceutical giant AstraZeneca P.L.C., and AGL Resources Inc.—an Atlanta-based energy firm, also filed applications.

■ A coalition of large employers is rolling out a program to reduce the ranks of the uninsured by providing access to low-cost, group-rated health care coverage. The program is the brainchild of a group of major employers belonging to the HR Policy Assn. In all, the program will be available to about 3 million individuals who work for the participating companies but are not eligible for group benefits, such as part-time or seasonal employees. Employees will have several health care plan designs to choose from, with better terms and conditions compared with the personal lines markets.

FEBRUARY

■ The Pension Benefit Guaranty Corp. is taking over financially ailing US Airways Group Inc.'s three remaining underfunded pension plans, saddling the PBGC with a $2.3 billion loss—one of the agency's biggest. The PBGC's action came several weeks after a bankruptcy court judge ruled that US Airways could not emerge from bankruptcy unless the plans were terminated.

MARCH

■ Mellon Financial Corp. is selling for $405 million its benefit consulting and administrative services unit to Affiliated Computer Services Inc., a big Dallas-based business process and information technology company. ACS, which is renaming the unit Buck Consultants Inc., says the move will enable it to become a major player in benefits consulting and plan administration.

■ Proposed IRS rules pave the way for employers to offer a new type of tax-favored 401(k) plan—the Roth 401(k). Among other things, the rules make clear that employers must keep traditional and Roth 401(k) accounts separate, but that contributions have to be combined when running nondiscrimination tests. Created by a 2001 federal law, Roth 401(k)s allow participants to make aftertax contributions with the contributions—if certain conditions are met—withdrawn tax-free.

PHOTO: ZUMA PRESS

In an unprecedented move, union workers at Daimler-Chrysler, in April, accepted mid-contract benefit cuts.

APRIL

■ DaimlerChrysler union workers have accepted mid-contract benefit cuts, in a change described as unprecedented in the auto industry. Among other things, the new contract imposes a $100 in-network deductible for individual coverage and a $200 deductible for family coverage. Later, General Motors Corp. and Ford Motor Co. also extract health care concessions. Experts say more health care plan cost sharing is inevitable if the Big 3 automakers are to compete with rivals whose health care costs are substantially lower.

MAY

■ An agreement between the PBGC and United Airlines calls for the PBGC to take over United's four massively underfunded plans in exchange for the agency receiving United-issued securities, including interest-bearing notes with a face value of $1 billion and 5 million shares of preferred United stock. United says the agreement is a linchpin to enable it obtain the outside financing it needs to emerge from bankruptcy. But the PBGC, which says the agreement is the best it could achieve under the circumstances, will be hit with its biggest loss ever—$6.6 billion—when it takes over the United plans.

■ Sears Holdings Corp. is phasing out its defined benefit pension plan, with employees, effective Jan. 1, 2006, earning coverage under a revamped 401(k) plan. Sears, one of the nation's biggest retailers and once a symbol of corporate benefits generosity, cited the volatility of cash funding requirements, competitive pressures and employee interest in more portable retirement plans as reasons why it is phasing out the plan. Later in the year, Hewlett-Packard Co., Lockheed Martin Corp., Motorola Inc. and Verizon Inc. announce that they, too, are phasing out their defined benefit plans.

■ The Treasury Department, responding to congressional pressure, is easing a two-decade-old rule that requires flexible spending account participants to forfeit unused account balances at the end of a plan year. Under the revamped rule, FSA participants can apply unused balances to pay for health care and dependent care expenses incurred in the first two-and-a-half months of the next plan year. The easing of the "use it or lose it" rule is expected to boost employee use of the accounts.

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Timeline

Continued from previous page

■ A pioneering program will enable some colleges and universities to offer retiree health care coverage for the first time, while making coverage more affordable for those that already do so. Under the program—Emeriti Retirement Solutions—employees and participating schools will contribute to special tax-exempt trusts. Employees will direct the investment of both their own and their employers' contributions. When employees retire and are eligible for Medicare, they can withdraw funds tax-free to pay premiums for health care plans offered by Aetna Inc., as well as for other retiree health care-related expenses.

JUNE

■ The California Public Employees' Retirement System, which for years had faced double-digit health care cost increases—including a 24.1% hike in 2003—says premium increases will average 8.9% in 2006. CalPERS, which spends more than $4 billion annually on care, says several factors, including pruning high-cost hospitals from networks, are helping to slow cost increases.

■ A Quebec law that bans health plans and other providers from offering the same services as Canada's single-payer system is unconstitutional, the Supreme Court of Canada rules. The ruling, though, is unlikely to spur employers to offer private health care plans, because Canada does not let employers deduct expenses for health care services the government already offers.

JULY

■ UnitedHealth Group Inc. proposes an acquisition of PacifiCare Health Systems Inc. The $9.2 billion deal, approved in December, creates the nation's second-largest health insurer behind WellPoint Inc. The combined entity will have about 26 million members nationwide.

■ A little more than 1% of eligible California workers took advantage of a paid family leave program in its first year, far fewer than initial expectations. Observers attribute the low takeup to the fact that employees can receive only just over half of their pre-leave pay—up to a maximum of $849 a week—and lack of awareness of the program.

■ A federal court has given final approval of a partial settlement between IBM Corp. and tens of thousands of current and former employees over the conversion of its traditional pension plan to a hybrid arrangement, moving the litigation to a potentially crucial stage. Under a key part of the settlement, IBM will appeal to the 7th U.S. Circuit Court of Appeals a 2003 ruling that its cash balance plan is age discriminatory. If IBM loses, its liability will be capped at $1.4 billion. If it prevails, it will have no further liability.

SEPTEMBER

■ Reversing her earlier ruling, a federal judge says the Equal Employment Opportunity Commission has authority to implement a final rule that would allow employers to provide richer benefits to younger retirees than to Medicare-eligible retirees without facing age discrimination charges. Judge Anita Brody, citing a June 2005 Supreme Court ruling affecting the cable television industry, says federal courts have to defer—in most cases—to a federal agency's interpretation of law, if the interpretation and the point of contention are reasonable. Judge Brody's ruling, which is being appealed by the AARP, is the latest twist in a legal saga that began when a federal appeals court in August 2000 ruled in the *Erie County* case that retiree health care plans are subject to the Age Discrimination in Employment Act.

OCTOBER

■ WellPoint Inc., the nation's largest health insurer, in a deal valued at $6.5 billion, plans to buy WellChoice Inc. The move would give WellPoint a foothold in the New York area, letting it aggressively pursue more national accounts.

NOVEMBER

■ The Massachusetts House of Representatives passes legislation that would impose a surcharge on employers that don't heavily subsidize their health insurance plans. The surcharge, reminiscent of one enacted in the late 1980s but later repealed, would be 5% of payroll for employers with 11 to 99 employees and 7% of payroll for employers with at least 100 employees. The funds generated by the surcharge would be used to help subsidize coverage for the uninsured.

■ Health care plan cost increases are continuing to ease, with this year's increase less than half of the peak reached three years ago. In 2005, group health costs rose by an average of 6.1%, the smallest increase in eight years, according to a survey by Mercer Health & Benefits. The easing of group health care cost inflation largely stems from employers shifting more costs to employees, greater emphasis on wellness and disease management programs, and a slowdown in the introduction of expensive prescription drugs.

DECEMBER

■ Nearly eight out of 10 large employers with retiree health care plans will retain their prescription drug plans and qualify for a federal subsidy available to employers whose plans are at least as generous as the drug benefit Medicare will offer in 2006. A survey by the Kaiser Family Foundation and Hewitt Associates Inc., though, notes that more employers in the future may try other approaches, such as supplementing Medicare Part D, that could save more money.

■ The House of Representatives passes comprehensive pension funding reform legislation. The measure would require employers to fund liabilities faster, create a new methodology to value liabilities, bar benefit improvements by employers with underfunded plans, raise premiums charged by the PBGC and make clear prospectively that cash balance plans do not violate federal age discrimination law. The measure, along with one earlier passed by the Senate, goes to a conference committee, which will try to come up with a compromise final bill.

■ U.K. business services firm Rentokil Initial P.L.C. will stop future benefit accruals in its defined benefit pension plan for current employees, the first such proposal by a large British employer. Rentokil said it was taking the action to ensure that the plan, which is underfunded by about £325 million ($573.3 million), will be in a position to pay benefits already earned by participants. In 2001, Rentokil closed off the plan to new employees.

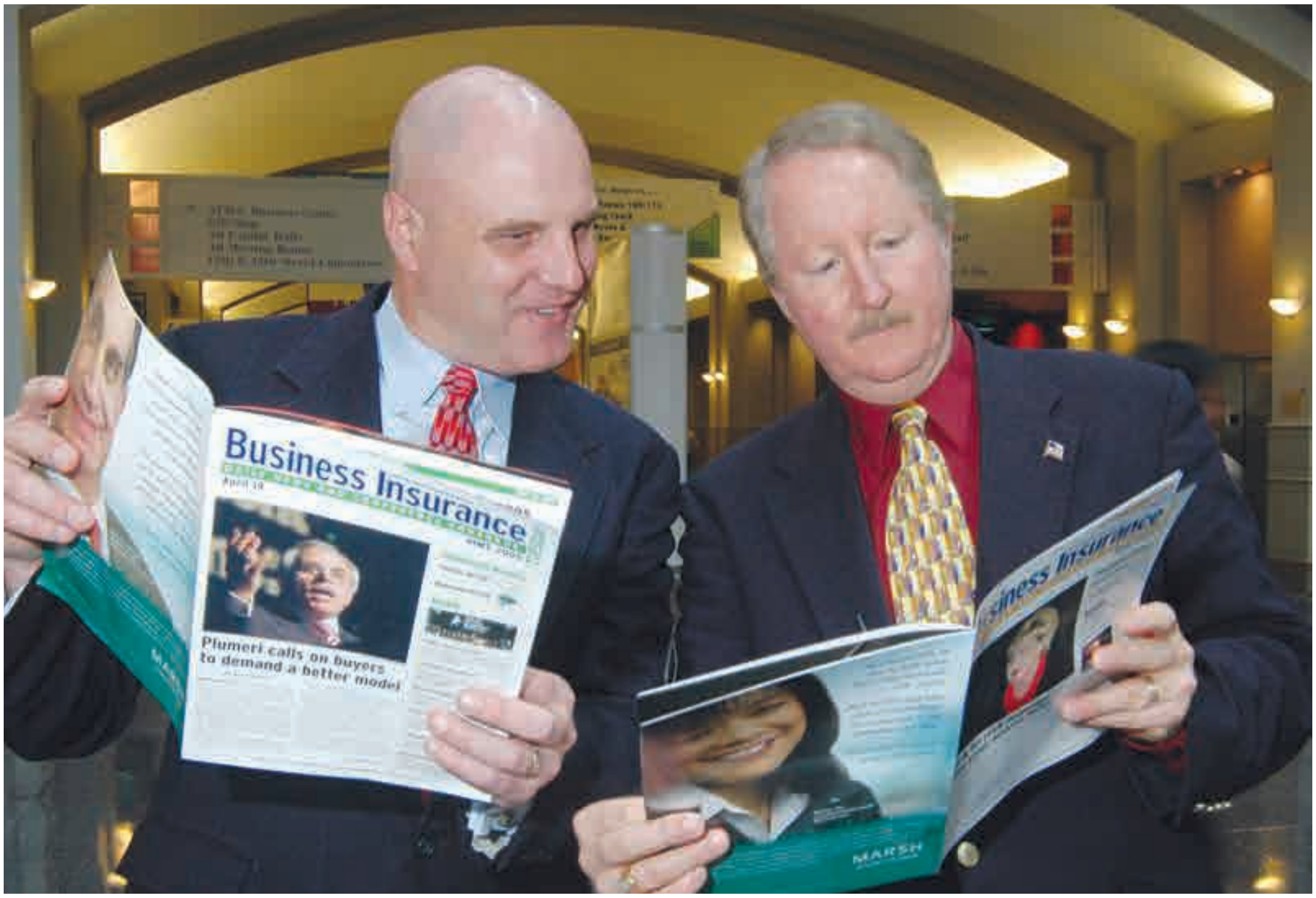

Photo: Michael Marcotte

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

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There's no shortage of questions in health care.

advocacy programs? What can be done to bring top flight care at reasonable costs? What can be done to encourage healthier habits? Can all my employees have access to the same health management programs, regardless of plan? How can I be sure clinical programs utilize evidence-based guidelines and resources? Can I get detailed reports on health care costs for my entire population? What should I do to help decrease absenteeism and presenteeism and improve productivity? How can I handle job-related stress? How many 2–3-star providers participate in my health provider network? How can I keep up on the latest trends to make the right decisions? What are my utilization rates? What is the value of health advocacy programs? What do I need to do to reduce hospital admissions and length of stay? How can I help employees assess and then reduce their health risks? How strongly linked to member responsibility is my health benefit plan design? How can my employees use their benefits to stay healthier? What percentage of pregnant women covered by my health plan is enrolled in the CIGNA HealthCare Healthy Babies® program? How healthy is my employee population? If an employee has cancer, is there help? Is there anyone who can help employees when they leave the hospital? What if I want a proactive approach to employee health? How strongly linked to member responsibility is my health benefit plan design? How much is depression costing my organization? What is the value of health advocacy programs? What percentage of my population is compliant with recommended health screenings? How can I be sure my employees get maximum value out of the use of prescription medicines? Can I get detailed reports on health care costs for my entire population? Who can employees call with health questions any time of the day or night? What are my utilization rates? What percentage of pregnant women covered by my health plan is enrolled in the CIGNA HealthCare Healthy Babies® program? How many 2–3-star providers participate in my health provider network? What percentage of my population is compliant with recommended health screenings? How do I help my employees get the most out of their benefits? How can I keep up on the latest trends to make the right decisions? What can I do to help combat obesity? How can I help employees assess and then reduce their health risks? What can I do to help reduce premature births? Can I get detailed reports on health care costs for my entire population? How can I help improve outcomes for my employee population as a whole? How healthy is my employee population? How can I handle job-related stress? What do I do if an employee or family member has a catastrophic illness? Where can I get help for employees who want to stop smoking? What percentage of my population is compliant with recommended health screenings? How are unit costs trending? Who can employees call with health questions any time of the day or night? How can we help our employees understand the benefits available to them? What is the percentage of generic drug use vs. opportunity? Do any employees need specialty transplant case management? What can I do to help combat obesity? How are unit costs trending? What can be done to encourage healthier habits? Who has an award winning website for health care? How can I handle job-related stress? What communications materials are the most effective? Who can employees call with health questions any time of the day or night? Where can employees with depression get help? How can my employees use their benefits to stay healthier? How do I make my approach consistent for all employees? Is there anyone who can help employees when they leave the hospital? Where can I get help for employees who want to stop smoking? How do I help my employees get the most out of their benefits? How much is depression costing my organization? What percentage of my population is compliant with recommended health screenings? How healthy is my employee population? What can be done to encourage healthier habits? How can I keep up on the latest trends to make the right decisions? How can my employees use their benefits to stay healthier? How do I convince employees to become active participants in improving their overall health? Is there any way to make health care simpler? If an employee has cancer, is there help? How can I be sure clinical programs utilize evidence-based guidelines and resources? Where can I get help for employees who want to stop smoking? How much is presenteeism costing my organization? What percentage of pregnant women covered by my health plan is enrolled in the CIGNA HealthCare Healthy Babies® program? How healthy is my employee population? How can my employees use their benefits to stay healthier? What communications materials are the most effective? Is there any way to make health care simpler? What

Integrate health offerings from 24/7 nurse support to disease management. Proactive health coaches encouraging employee participation in wellness programs. Report and analyze trends and conditions affecting employees to help you make informed decisions. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Provide an award winning national disease management program to help address chronic conditions. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Integrate health offerings from 24/7 nurse support to disease management. Provide an award winning national disease management program to help address chronic conditions. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Proactive health coaches encouraging employee participation in wellness programs. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Integrate health offerings from 24/7 nurse support to disease management. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Proactive health coaches encouraging employee participation in wellness programs. Provide an award winning national disease management program to help address chronic conditions. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Integrate health offerings from 24/7 nurse support to disease management. Provide an award winning national disease management program to help address chronic conditions. Proactive health coaches encouraging employee participation in wellness programs. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Report and analyze trends and conditions affecting employees to help you make informed decisions. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Integrate health offerings from 24/7 nurse support to disease management. Report and analyze trends and conditions affecting employees to help you make informed decisions. Provide an award winning national disease management program to help address chronic conditions. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Proactive health coaches encouraging employee participation in wellness programs. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Integrate health offerings from 24/7 nurse support to disease management. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Provide an award winning national disease management program to help address chronic conditions. Proactive health coaches encouraging employee participation in wellness programs. Provide assistance for employees that are ill, or are heading towards illness to help keep them healthier and happier. Report and analyze trends and conditions affecting employees to help you make informed decisions. Integrate health offerings from 24/7 nurse support to disease management. Provide an award winning national disease management program to help address chronic conditions. Sort through medical data to help employees to get the most out of their benefits and navigate the health system. Offer phone and online information about staying healthy, or recovering from illness or injury-enhances wellness. Proactive health coaches encouraging employee participation in wellness programs. Integrate health offerings from 24/7 nurse support to disease management. Provide an award winning national disease management program to help address chronic conditions. Report and analyze trends and conditions affecting employees to help you make informed

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2005's benefit newsmakers

If Congress enacts pension funding reform legislation next year, the legislator who should take much of the credit, many Washington observers agree, is **Rep. John Boehner**.

The Ohio Republican, who chairs the Education and the Workforce Committee, launched the reform drive back in 2003 and has been spearheading the effort ever since. In so doing, he has not been afraid to butt heads with fellow Republicans.


Rep. Boehner

The reform bill that he introduced earlier this year and that his committee passed in June took a different course than the one proposed by the Bush administration, which Rep. Boehner thought would prove to be counterproductive. "Make the rules too harsh, and you drive employers out," he admonished.

Still, Rep. Boehner warned on numerous occasions that congressional action on reform legislation to tighten pension funding rules is crucial to prevent a "meltdown" of the Pension Benefit Guaranty Corp.

Rep. Boehner's role in the debate is far from over. He is expected to be a pivotal figure when the House and Senate try to work out a final compromise bill.

***

It is rare for federal judges to reverse their rulings, but **Judge Anita Brody** of the U.S. District Court for the Eastern District of Pennsylvania is one who did, and employers cheered the result.

In March, Judge Brody ruled that the Equal Employment Opportunity Commission lacked the authority to implement a rule that effectively would allow employers to offer more-generous health care benefits to younger retirees than to those eligible for Medicare. But just a few months later, compelled by a June U.S. Supreme Court decision that said courts in many cases must defer to a regulatory agency's interpretation of law, Judge Brody reversed her March ruling.


Judge Brody

The rule proposed by the EEOC, wrote Judge Brody, a federal judge since 1992, was a "reasonable way for the EEOC" to interpret a federal age discrimination law that was not written clearly by Congress.

Judge Brody's ruling, if affirmed by the federal appeals court in which the issue now is pending, could resolve once and for all that employers that provide a richer level of health care benefits to younger retirees than older ones will not be vulnerable to federal age discrimination charges.

***

A controversial internal memorandum on benefit strategy at Wal-Mart Stores Inc. that was leaked to the press may have sparked more criticism of the much-maligned Bentonville, Ark.-based retailer, but it also demonstrated how the issue of health care costs is being elevated to the executive suite at many U.S. corporations.

The memo, written by **Susan Chambers**, Wal-Mart's executive vp of risk management, benefits and administration, suggested that jobs be re-engineered to include physical activity to "dissuade unhealthy people from coming to work at Wal-Mart" and that all employees be moved to consumer-driven health plans with high deductibles and health savings accounts.


PHOTO: LANDOV/BLOOMBERG
Ms. Chambers

"We so often hear about the fact that, in normal times, the CEO level of large companies does not focus on health care," observed Paul Ginsberg, president of the Center for Studying Health System Change, a Washington-based health policy research organization. "This shows that, at Wal-Mart, it got elevated to the C suite."

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It didn't take **Sen. Mike DeWine**, R-Ohio, long to get the attention of U.S. Senate leaders as they were moving to get the full Senate to consider a pension funding reform bill.

Concerned about the impact of a provision in the bill that effectively would require employers with poor credit ratings to make additional contributions to their plans, Sen. DeWine placed a "hold" on the bill, a parliamentary tactic that can delay the consideration of legislation.

Faced with the prospect that debate on the bill would be slow and time consuming, Senate leaders scrubbed a planned October vote on the measure and worked behind the scenes to try to work out a deal with Sen. DeWine. Those negotiations, which took nearly a month, resulted in an agreement in which Sen. DeWine dropped his hold in exchange for assurances that he would be appointed to the conference committee that would meet to produce a final bill.


Sen. DeWine

That would give Sen. DeWine one more opportunity to knock out the credit rating provision, which remained in the Senate bill but is not in the bill recently approved by the House of Representatives.

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Looking to fund coverage for the hundreds of thousands of Massachusetts residents who lack health insurance, Massachusetts Speaker of the House **Salvatore DiMasi**, D-Boston, led a new effort that borrowed heavily from an approach the Bay State previously adopted and then rejected.

Rep. DiMasi unveiled a bill that would impose on all but the smallest employers a new payroll tax to fund coverage for the uninsured. The tax, though, would be offset by what employers spent on health insurance.

The approach, described by Rep. DiMasi as one that "delivers on its promise to expand access to affordable, quality health care," was reminiscent of a measure passed by Massachusetts in the late 1980s. That law, which was repealed before it took effect, also imposed health care surcharges on employers and also offset the amount of the surcharge by what the individual employer spent on health insurance.


PHOTO:AP/WIDE WORLD
Rep. DiMasi

The Massachusetts House overwhelmingly approved Rep. DiMasi's proposal, but the Senate chose to pursue a different direction, passing a bill that would require those employers not providing health insurance to reimburse the state if their employees were to use a state health care program for low-income uninsured individuals.

Which approach Massachusetts lawmakers opt to take will likely be decided early next year.

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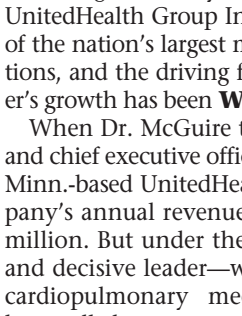
For **Sen. Charles Grassley**, R-Iowa, this year was all about moving—with success—from one pension issue to the next.

In July, Sen. Grassley, who chairs the U.S. Senate Finance Committee, introduced legislation to stiffen pension funding rules. The enactment of the legislation, Sen. Grassley warned, was necessary to prevent a collapse of the Pension Benefit Guaranty Corp.


Sen. Grassley

The bill soon cleared his committee, and later Sen. Grassley played a key role in merging the measure with legislation passed by the Senate Health, Education, Labor and Pensions Committee for consideration by the full Senate.

Then Sen. Grassley helped to negotiate a compromise when two legislators—Sens. Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md.-held up the bill because of their concerns about a provision requiring employers with underfunded plans and poor credit ratings to make extra contributions to their plans. Sen. Grassley, opposed to changes that would weaken the bill's funding requirements, agreed to allow Sen. DeWine—after the Senate and House finished work on their bills-to serve on the conference committee to iron out differences. That action resolved the controversy and allowed the bill to go to the Senate floor, where it easily passed.

Aside from the pension funding legislation, Sen. Grassley introduced and won passage of legislation that allows victims of Hurricane Katrina to receive pre-retirement distributions from their retirement plans without federal tax penalties.

***

Through a steady stream of acquisitions, UnitedHealth Group Inc. has grown into one of the nation's largest managed care organizations, and the driving force behind the insurer's growth has been **William W. McGuire**.

When Dr. McGuire took over as chairman and chief executive officer of the Minnetonka, Minn.-based UnitedHealth in 1991, the company's annual revenues were just over $400 million. But under the guidance of a strong and decisive leader—who is also a doctor of cardiopulmonary medicine—UnitedHealth has swelled to earn nearly $44 billion annually while consistently reporting strong results for its investors.


PHOTO: NY TIMES
Dr. McGuire

In July, Dr. McGuire led the company in inking perhaps its most strategic transaction to date—a $9.2 billion deal to swallow Cypress, Calif.-based PacifiCare Health Systems Inc.

The acquisition will increase UnitedHealth's market share by 3.2 million enrollees, to a total membership of 26 million, while arming the insurer with a stronger presence on the West Coast and in the Medicare Advantage market. In announcing the purchase, Dr. McGuire assured clients and shareholders they would "benefit from the effects of this merger for years to come."

UnitedHealth last week completed the PacifiCare deal, after it cleared a major hurdle by obtaining consent to the transaction from California Insurance Commissioner John Garamendi.

***

Chris McSwain, director of compensation and benefits at Columbia, S.C.-based SCANA Corp., was named *Business Insurance*'s first Benefit Manager of the Year.

Mr. McSwain was selected by a panel of judges based on such accomplishments as reversing the electric and gas utility company's upward spiral in health care costs, which had risen a total of 201% in three years, to a trend of negative 5%; persuading the company's board of directors to finance a health resource center that includes an in-house pharmacy owned and operated by SCANA; and working with the University of South Carolina to build a data warehouse that will be used to analyze and improve health care for SCANA's employees and retirees and their dependents.


Mr. McSwain

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Responding to political pressure, U.S. Treasury Secretary **John Snow** approved an easing of an unpopular rule that has been an impediment to employee participation in flexible spending accounts. That rule, long-known as "use it or lose it," required employees to forfeit unused FSA balances at the end of a plan year.

Employers and lawmakers had long complained that the rule led to end-of-the-year spending binges, as employees rushed to use up account balances to prevent forfeitures, a point on which Mr. Snow concurred. In approving an optional grace period in which employees can apply unused account balances to pay for expenses incurred in the first two and one-half months of the next plan year, Mr. Snow said the extension "will ease the year-end spending rush" associated with use it or lose it.


Mr. Snow

Mr. Snow's action drew praise from lawmakers. Senate Finance Committee Chairman Charles Grassley said the move "put the word 'flexible' back into these plans."

***

Adair Turner, recently appointed Lord Turner of Ecchinswell, this fall proposed a radical shake-up of the United Kingdom's pension system that would effectively see employers compulsorily making contributions to the pension plans of employees, who would be automatically enrolled in those plans.

Lord Turner headed the Pensions Commission, an independent agency set up by the U.K. government to explore pension reform.

In its report, published in November, the commission recommended the establishment of a National Pensions Saving Scheme that would be low cost and nationwide. U.K. employers would be required to pay 3% of employees' salaries into the proposed NPSS, unless they operate a more generous pension plan for staff. Employers would have to automatically enroll employees into occupational plans or the NPSS.


PHOTO: LANDOV
Lord Turner

Also, the commission proposed that the state pension age be raised gradually, starting in 2020, up to an as-yet-undetermined age between 67 and 69 by 2050.

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Between the Lines

Compiled by Joanne Wojcik

Sorry, wrong number

Imagine Grandma calling a toll-free number to ask questions about Medicare Part D and instead hearing the moans and groans of a sultry seductress.

That's precisely what happened to seniors calling the 800 number provided in a letter from Louisville, Ky.-based Humana Inc. confirming their enrollment in the new Medicare prescription drug program. Due to a typographical error, Humana's Medicare Part D "hot line" really sizzled, rerouting callers to "Intimate Encounters," a phone sex line.

But none of the approximately 20,000 Medicare beneficiaries who received the letter containing the wrong number called the insurer to complain, according to a Humana spokesman. In fact, the spokesman said that he learned about the mix-up only when a reporter at the Cedar Rapids Gazette in Iowa alerted him just after the Thanksgiving holiday.

"We've really heard nothing much other than from the media about this," the spokesman said.

Once informed about the error, Humana immediately made corrections on subsequent letters and sent apologies to those who had received letters listing the wrong number.

"We really feel badly that these people had to go through that, and we're correcting the situation," he said.

A sweet benefit

Holders of most insurance cards usually expect to get a discount on medical expenses, but members of Harrisburg, Pa.-based Capital BlueCross can use their cards to get discounted admission to theme parks, among other things.

Plan members were given a special discount to visit the Hersheypark Christmas Candylane in Hershey, Pa., on the evening of Dec. 9 as part of an ongoing effort to make healthy family fun activity more affordable for plan members, according to a Capital BlueCross spokesman.

"Each year, we sponsor similar activities, including discounts to local sporting and cultural events, children's programs and free distribution of health and safety materials," the spokesman said.

This past year, Capital BlueCross also distributed thousands of packets of sunscreen and hundreds of bike helmets at local summer festivals.

The insurer held a similar discount program in June involving a 2.5-mile "Lifewalk" through Hersheypark and is currently distributing a DVD for children concerning diet and nutrition in cooperation with the U.S. Department of Health and Human Services.

Another kind of drug rush

Retailers have dubbed the Monday after Thanksgiving "Cyber Monday" because of the rush of holiday shoppers using the Internet to make purchases that day.

But this year, some of those shoppers were looking for something Santa probably wouldn't think of leaving under the Christmas tree: prescription drugs.

Medco Health Solutions Inc., one of the nation's leading pharmacy benefit managers, processed an all-time high of 87,000 prescriptions through its online mail order system on Cyber Monday, an increase of nearly 7% from Cyber Monday in 2004 and a 31% increase over its typical Monday volume.

Nearly half of the medications were for five classes of therapy: antihypertensives, cholesterol-lowering agents, antidepressants, thyroid hormones and diabetes therapy.

Medco offered several theories for this post-Thanksgiving drug buying binge: people either forgot or were unable to order their medications due to the long holiday weekend, they wanted to stock up before benefit plan increases took effect for 2006, or maybe just the fact that they were already shopping online, so why not refill their prescriptions as well?

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

COMINGS & GOINGS - INDUSTRY

Insurers

QBE The Americas, a New York-based division of Australian property/casualty insurer QBE Insurance Group Ltd., has made several senior promotions:

Jim Fiore has been promoted to senior executive vp and chief underwriting officer.

Chris Fish has been named executive vp and chief financial officer, with responsibility for actuarial services. He previously was senior vp.

John LaCava has been named executive vp and chief information officer, acting as business liaison to QBE unit National Farmers Union Property & Casualty Co. He previously was senior vp.

Steve Calascione has been named senior vp and manager of facultative and commercial lines risk underwriting.

Peter McGuire has been promoted to senior vp and manager of program business from manager of the health division.

Security Benefit, a Topeka, Kan.-based life and accident company, announced that President and Chief Executive Officer **Kris A. Robbins** will succeed Howard R. Fricke as chairman of the company's board on Jan. 1. Mr. Fricke, who has been chairman since 1995, will serve on the Security Benefit board as a director until his term expires in 2007.

Agents/Brokers

Edward Nokes has joined ABD Insurance & Financial Services as senior vp and property and casualty managing director based in Carlsbad, Calif. Mr. Nokes, who previously was CEO of Willis of San Diego, oversees a team of insurance and risk management professionals who also recently joined ABD from the San Diego offices of several major brokerage firms.

James McCarthy has joined Los Angeles-based wholesaler Anderson & Murison Inc. as executive vp and general manager. Mr. McCarthy previously was senior vp of underwriting at Hannover Reinsurance Co.'s Los Angeles office.

Willis Group Holdings Ltd. has named **Todd J. Belden** as executive vp and managing partner. Mr. Belden, who will oversee three offices in Ohio and Kentucky, previously was a senior vp with Acordia Wells Fargo in Cincinnati.

USI Consulting Group, a unit of Briarcliff Manor, N.Y.-based USI Holdings Inc., has named **Wayne A. Blanchette** vp of new business development in Glastonbury, Conn. Mr. Blanchette previously was a managing director at a national insurance brokerage firm.

Reinsurance

Arch Reinsurance Ltd., a Bermuda-based unit of Arch Capital Group Ltd., has named **Maamoun Rajeh** chief underwriting officer. Mr. Rajeh joined Arch Re in late 2001 as senior underwriter for treaty casualty and specialty reinsurance after working as an underwriter in the alternative risk division of HartRe, a unit of The Hartford Financial Services Group Inc.

Managed care

Health Net of the Northeast has named **Donald R. Shassian** chief financial officer. The Shelton, Conn.-based managed care company is a unit of Health Net Inc. Mr. Shassian previously was a partner at Arthur Andersen L.L.P. and before that was CFO of Southern New England Telecommunications Corp., which is now part of SBC Communications.

Other suppliers

Workscape Inc. has named **Kevin Rhone** senior vp and general manager of its workforce management division. Marlborough, Mass.-based Workscape provides outsourced benefits and human resource programs. Before joining Workscape, Mr. Rhone was president and CEO of SmartTime Software Inc. in Framingham, Mass.

Business Insurance would like to report on senior-level appointments at commercial insurance industry organizations. Please send information on executive appointments to Comings & Goings Editor Joe Walker, Business Insurance, 360 N. Michigan Ave., Seventh Floor, Chicago, Ill. 60601-3806; jwalker@businessinsurance.com. High-resolution digital photographs in color or black and white should be sent to Assistant Managing Editor/Graphics Kathy Barnes at the same mailing address or to kbarnes@businessinsurance.com.

British court slashes asbestos injury award, saying tobacco contributed to worker's death

By BARBARA COCKBURN

LONDON—A U.K. ruling that reduced the damages awarded after the death of a smoker who had asbestosis may reduce similar future compensation claims, legal experts suggest.

The U.K. High Court's judgment in *Beryl Badger vs. the U.K. Ministry of Defence* will set a precedent for future asbestos claims in which claimants had smoked, legal experts say.

In the case brought by the widow of Reginald Badger, who died in 2002 of lung cancer at age 63, Justice Stanley Burnton reduced the damages payable by 20%, saying that Mr. Badger's cigarette smoking had contributed to his illness.

Mrs. Badger had sought £153,144 ($270,161) in damages from Mr. Badger's employer, the Ministry of Defence. The ministry admitted primary liability for the claim but argued that asbestosis was not the sole cause of Mr. Badger's lung cancer.

Mr. Badger had a habit of smoking 20 cigarettes a day, which the ministry argued significantly contributed to his fatal condition. He began smoking at the age of 16, and medical experts in court attributed Mr. Badger's lung cancer and premature death to tobacco consumption and asbestos exposure and said that if he had not smoked, he would have lived longer.

Between 1955 and 1978, Mr. Badger worked for the Ministry of Defence mainly as a dockyard boilermaker in Devonport and, between 1969 and 1972, at the Gibraltar Dockyard. Through his work, he developed asbestosis following exposure to asbestos dust and fibers.

The High Court justice ruled that Mr. Badger had been "contributorily negligent" because he continued to smoke despite advice from doctors and public health warnings printed on cigarette packets starting in 1971.

Court cuts asbestos award by 20%

Original award	Final judgment
£153,144	£122,515

During the case, doctors testified that Mr. Badger's lung cancer and premature death were due both to tobacco and asbestos exposure "sufficient to cause asbestosis" and said that, had it not been for his exposure to asbestos and his cigarette smoking, he would not have developed lung cancer at age 63.

Mr. Badger "cannot be criticized for starting to smoke" in 1955 because the link between ill health and smoking was not known at the time, Mr. Justice Burnton ruled. But, "a person who continues smoking, who knows or ought to know that by doing so he is damaging his health, or that he risks doing so, must accept responsibility for his actions. A reasonably prudent man, warned that there is a substantial risk that smoking will seriously damage his health, would stop smoking," he ruled.

The justice concluded that the compensation award be reduced, because "lung cancer is not the only disease caused by exposure to asbestos; it also and more commonly causes asbestosis and mesothelioma and, indeed, Mr. Badger had asbestosis when he died." Mr. Justice Burnton added that that lung cancer "is not the only disease attributable to smoking. Mr. Badger suffered from heart disease and emphysema attributable, at least in part, to his smoking."

Andrew Price, a solicitor for Bond Pearce L.L.P. in Plymouth representing Mrs. Badger, said he was not surprised at the ruling. "I can understand the court's reasoning, because smoking can cause lung cancer and a person knows the risks they take. But once you add asbestos to the equation, the risk is multiplicated," he said. Mr. Price said he does not intend to appeal.

Geoff Lee, an associate solicitor for the London-based law firm of Beachcroft Wansbrough, which representing the MOD, said he welcomed the ruling and expects that other courts will take a similar view on other claims involving asbestos and smoking.

Other legal experts have suggested the ruling may have wider implications for claims against employers for work-related injuries or illnesses in which judges may consider whether claimants have been contributorily negligent.

Kieron West, a partner at Kennedys law firm in London, said such a decision appears logical and equitable. "Why should a defendant pay the entirety of a claimant's damages when he has only contributed in part to the increased risk of the claimant contracting the injury complained of?" Mr. West asked.

Adrian Budgen, personal-injury specialist at the Sheffield-based law firm of Irwin Mitchell, said, "This will strongly impact other lung cancer and asbestos cases; a lot of people that were exposed to asbestos have also smoked. It's unfair that people like Mr. Badger work hard in appalling conditions."

Mr. Budgen criticized the ruling, saying the court did not consider that some industries, such as insurance and shipbuilding, are aware of the dangers of tobacco smoking and asbestos exposure "but had no additional duty placed on them to inform people."

Rentokil to close pension plan for active workers

FTSE100 company's move may start U.K. trend, experts in defined benefits say

By SARAH VEYSEY

EAST GRINSTEAD, England—Rentokil Initial P.L.C.'s announcement that it will phase out its defined benefit pension plan to active employees could mark the start of a trend in the United Kingdom, pension experts say.

While many U.K. companies have closed defined benefit plans to new hires, the move would make Rentokil the first FTSE100 company—the 100 largest U.K. public companies—to stop future benefit accruals for current employees.

The East Grinstead, England-based business services company said in a statement that, as of Nov. 30, its defined benefit pension plan had a deficit of about £325 million ($573.3 million) under International Accounting Standard 19. The plan, which covers about 3,000 employees, has liabilities of about £965 million ($1.7 billion) and assets of about £640 million ($1.1 billion), according to a spokeswoman.

The company said it would begin discussions with employees in the defined benefit plan about its plans to stop future benefit accruals and will suggest that they join the company's defined contribution plan.

Rentokil, which closed its defined benefit plan to new employees in 2001, said the latest move was designed to "reduce exposure to future shortfalls and to ensure that the scheme will be in a position to continue to pay all benefits that have been earned to date by its members." In addition, the freeze will lead to "more predictable costs of future pension provision," the company said.

The company said it immediately would inject £200 million ($352.8 million) into the plan to address the deficit.

Rentokil also said it would review the investment strategy for the fund and likely would reduce its exposure to equities to eliminate some potential volatility.

Rentokil's decision to freeze its defined benefit pension plan for active employees is likely to mark the start of a trend as companies continue to explore ways to reduce their pension costs, said Paul McGlone, head of employer propositions at Aon Consulting in London.

Many companies in recent years have closed their defined benefit pension plans to new entrants in an effort to reduce the cost of pension provision, he said. And, he noted, it is to be expected that between five and 10 years after making such a move, companies may seek to freeze their defined benefit pension plans completely.

Factors to consider

Mr. McGlone said that certain factors that companies consider when weighing whether to freeze their plans—such as the desire to retain employees and reputational concerns—become less pertinent years after a decision to close a plan to new entrants. For example, as fewer employees are covered by a plan, the plan becomes less central to a company's efforts to retain employees, he said.

In addition, once a well-known employer such as Rentokil has taken such a step, it becomes easier for other large companies to freeze their pension plans, as any adverse reputational effects are lessened by not being "the first," Mr. McGlone noted.

Other large U.K. companies are likely looking at taking steps such as the freezing of defined benefit pension plans in a bid to reduce their pension costs, said Deborah Cooper, a senior research actuary at Mercer Human Resource Consulting in London.

Updates

Wilma costs SCOR $22 million

SCOR S.A. said its net losses from Hurricane Wilma totaled about €18 million ($21.6 million) and were "almost exclusively" from businesses in Mexico. The Paris-based reinsurer said the loss would be reported in its fourth quarter results but was not expected to impact the group's financial strength.

AIG nonlife unit wins Vietnam license

American International Group Inc. announced that its subsidiary, American International Underwriters Overseas Ltd., has been licensed to set up a nonlife insurer in Vietnam. AIG Vietnam General Insurance Co. Ltd. will be headquartered in Hanoi and will specialize in property and casualty insurance, product liability, marine cargo and claims services. AIG established a life insurance unit in Vietnam in 1993.

Bermuda reinsurers replenish capital

Reinsurers in Bermuda have largely replenished capital lost to hurricane losses in 2005, according a report by London-based broker Benfield Group Ltd. The report noted that the capital of 16 Bermuda reinsurers that it tracks fell by $3.6 billion to $41.4 billion in the first nine months of 2005 due to losses from hurricanes Katrina, Rita and Wilma. But recapitalization has been "swift," according to the report, with $9.3 billion of new capital raised by mid-December.

Glacier Re issues debt to boost underwriting

Glacier Reinsurance A.G. plans to raise $50 million through a debt issue to increase its underwriting capital. The Pfäffikon, Switzerland-based reinsurer said in a statement that the increased capital will allow it "to take advantage of profitable underwriting opportunities during 2006 and beyond." Earlier this year, the group raised $100 million in a share issue to existing shareholders to enable it to expand its underwriting capacity following losses from hurricanes Katrina and Rita.

Regulators consult on business continuity

The Joint Forum, a Basel, Switzerland-based international group of banking, securities and insurance supervisors, last week launched a consultation to set international principles for effective business continuity management in the event of a major disruption. The consultation ends March 10, 2006. The document can be viewed at *www.iaisweb.org*.

Professional MarketPlace

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2005: NO. 292

IN THE MATTER OF BELVEDERE INSURANCE COMPANY LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 1981

SCHEME EFFECTIVE DATE AND BAR DATE

NOTICE IS HEREBY GIVEN that the Scheme of Arrangement between Belvedere Insurance Company Limited (in liquidation) ("Belvedere" or the "Company") and its Creditors became effective on December 20, 2005.

In accordance with the terms of the Scheme, Creditors are now required to file a Distribution Claim Form on or before the Bar Date which is Monday, February 20, 2006 (being the first working day after 60 days following the Effective Date of December 20, 2005).

Distribution Claim Forms can be downloaded from the Liquidation Website, www.belvedere-liquidation.com. Letters are being forwarded to all Creditors giving notice of the Bar Date and directing them to the Liquidation Website for Distribution Claim Forms. If you are unable to download a Distribution Claim Form from the Liquidation Website, please contact James Makin via

- Email to belvedere-liquidation@kpmg.bm;
- Mail to KPMG, Crown House, 4 Par-la-Ville Road, Hamilton HM08, Bermuda;
- Fax to +1 441 295 8280; or
- Phone on +1 441 294 2652.

Creditors must return the completed Distribution Claim Form so as to reach the Company at the offices of KPMG at the above address on or before the Bar Date. To facilitate a faster lodgment of your Distributions Claims Forms you may scan and email your form to the above email address or fax it to the above fax number, however faxes will only be accepted if legible.

Instructions for the completion of the Distribution Claim Form are provided with the form.

If you provided details of your claim in the form of a completed Provision of Information Form or Voting Claim Form we will send to you a completed Distribution Claim Form showing your Accepted Scheme Claim, as well as any Disputed Scheme Claims including claims that require further supporting information before they can be assessed for acceptance. This should be signed and returned to the Company to confirm your agreement, or a revised Distribution Claim Form should be submitted along with copies of documents supporting the changes. Any revised Distribution Claims Forms must be filed before the Bar Date. If you expected to receive a completed Distribution Claim Form and have not done so by December 31, 2005 please contact James Makin at the above address.

IF YOU DO NOT RECEIVE ADVICE OF YOUR ACCEPTED SCHEME CLAIM IN THE FORM OF A COMPLETED DISTRIBUTION CLAIM FORM YOU MUST FILE A DISTRIBUTION CLAIM FORM BY THE SCHEME BAR DATE OTHERWISE YOUR SCHEME CLAIM WILL BE VALUED AT NIL AND THE COMPANY WILL HAVE NO FURTHER LIABILITY TO YOU.

Dated December 20, 2005

Attride-Stirling & Woloniecki
Crawford House
50 Cedar Avenue
Hamilton HM11
Attorneys to Anthony McMahon and Malcolm Butterfield
Liquidators of the Company

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LEGAL NOTICE

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

Petition of Jeffrey John Lloyd, as Foreign Representative of United Kingdom Foreign Proceeding respecting United Kingdom marine insurance Account known as the MMA Account written by Les Mutuelles du Mans Assurances IARD, the United Kingdom branch of La Mutuelle du Mans Assurances IARD, f/k/a Les Mutuelles du Mans IARD, f/k/a La Mutuelle Générale Française Accidents,

Debtor in a Foreign Proceeding.

Chapter 15
Case No.: 05- 60100 (BRL)

NOTICE OF ENTRY OF ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND RELIEF, INCLUDING INJUNCTIVE RELIEF, UNDER UNITED STATES BANKRUPTCY CODE

TO: ALL NOTICE PARTIES (LIST ANNEXED TO CHAPTER 15 PETITION):

PLEASE TAKE NOTICE, that, on December 7, 2005, at 11:00 a.m. United States Eastern Standard Time, the Honorable Burton R. Lifland, United States Bankruptcy Judge for the Southern District of New York, entered an Order in aid of the above-referenced Foreign Proceeding, substantially in the form previously served on all Notice Parties by Notice dated November 14, 2005, granting recognition of the Foreign Proceeding as a Foreign Main Proceeding, as defined in Section 1502(4) of Title 11 of the United States Code (the "Bankruptcy Code"), and all relief requested by the Foreign Representative, including injunctive relief, among other things, enjoining all persons and entities from taking certain actions against the debtor or its property.

PLEASE TAKE FURTHER NOTICE, that a true and correct copy of the Order as entered by the Court may be obtained via the website for the Foreign Proceeding **www.mmaukbranchsolventscheme.co.uk**, through PACER via the Court's website **www.nysb.uscourts.gov**, or by written request to undersigned counsel at **smelnik@eapdlaw.com**.

Dated: December 14, 2005

EDWARDS ANGELL PALMER & DODGE LLP
Attorneys for Petitioner
By: /s/ Selinda A. Melnik
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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT - SOUTHERN DISTRICT OF NEW YORK

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

In a Proceeding Under Section 304 of the Bankruptcy Code
Case No. 98-B-47660 (REG)

NOTICE IS HEREBY GIVEN THAT, in connection with the Motion for a Permanent Injunction and Order Pursuant to Section 304 of the Bankruptcy Code Granting Recognition and Giving Full Force and Effect to Scheme of Arrangement (the "Motion") of Malcolm L. Butterfield and Anthony J. McMahon, as the Joint Liquidators of Belvedere Insurance Company Limited (In Liquidation) ("Belvedere"), authorized to act as the foreign representatives of Belvedere (the "Petitioners"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a permanent injunction and order dated December 7, 2005 (the "Order"), among other things:

1. Providing that, as of the Effective Date (as defined in the Order), the Scheme (as defined in the Order) shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors (as defined in the Order) in the United States;

2. Permanently enjoining, as of the Effective Date, all Scheme Creditors from taking any action in contravention of, or inconsistent with the Scheme;

3. Permanently enjoining, as of the Effective Date, all persons and entities, including, without limitation, Scheme Creditors, from: (a) commencing or continuing any action or legal proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against Belvedere, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against Belvedere; (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award, and commencing or continuing any act or any other legal or equitable action or proceeding (including, without limitation, arbitration, mediation, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against Belvedere or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring Belvedere to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings; (d) drawing down any letter of credit established by, on behalf or at the request of, Belvedere, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which Belvedere has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; provided, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Petitioners or permitted by further Order of the Court;

4. Requiring that all persons and entities including, without limitation, all Scheme Creditors in possession, custody or control of Belvedere's property in the United States or the proceeds thereof, shall turn over and account for such property or its proceeds to Belvedere or Petitioners;

5. Requiring that all persons and entities, including, without limitation, all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of Belvedere or parties to any trust, escrow or similar arrangement in which Belvedere has an interest, to: (a) provide notice to the Petitioners' United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, Belvedere, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which Belvedere has an interest, together with information sufficient to permit the Petitioners to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and, (b) turn over and account to the Petitioners for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established;

6. Requiring that every person or entity, including, without limitation, every Scheme Creditor that is a party to any action or other legal proceeding (including, without limitation, arbi-tration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which Belvedere is or was named as a party, or as a result of which a liability of Belvedere may be established, is required to place the Petitioners' United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list.

Copies of the Motion, the Order, and the Scheme are available upon written request to the undersigned counsel:

CHADBOURNE & PARKE LLP • Attorneys for the Petitioners • 30 Rockefeller Plaza
New York, New York 10112 • (212) 408-5100 • Attn: Howard Seife, Esq. and Francisco Vazquez, Esq.

LEGAL NOTICE

NOTICE OF FINAL IMPLEMENTATION OF SOLVENT SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE (OF ENGLAND AND WALES)

NO 2831 OF 2004
NO 2833 OF 2004
NO 2834 OF 2004
NO 2835 OF 2004

CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF

ELDERS INSURANCE COMPANY LIMITED
HISCOX INSURANCE COMPANY LIMITED (formerly ECONOMIC INSURANCE COMPANY LIMITED)
PEARL ASSURANCE PLC (formerly PEARL ASSURANCE COMPANY LIMITED)
THE WORLD MARINE & GENERAL INSURANCE PLC (formerly THE WORLD MARINE & GENERAL INSURANCE COMPANY LIMITED)

(TOGETHER REFERRED TO AS THE "SCHEME COMPANIES" AND INDIVIDUALLY REFERRED TO AS A "SCHEME COMPANY")

AND

IN THE MATTER OF THE COMPANIES ACT 1985, SECTION 425

NOTICE IS HEREBY GIVEN that the solvent schemes of arrangement in identical form (the "Solvent Scheme") made between the Scheme Companies and their respective Scheme Creditors (as defined in the Solvent Scheme) pursuant to section 425 of the Companies Act 1985, which were sanctioned in the High Court of Justice in England and Wales on 9 July 2004 and became effective on the same date, have been finally implemented.

Final implementation of the Solvent Scheme occurred on 16 December 2005, when the Scheme Manager, Omni Whittington Insurance Services Limited ("Omni") provided written confirmation to each of the Scheme Companies that all Scheme Liabilities had been adjudicated or otherwise determined and all Established Liabilities had been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Solvent Scheme.

Should you have any questions regarding this Notice, please contact John Leppard of Omni, at Omni House, 33 Creechurch Lane, London EC3A 5EB (email: prupearlscheme@omniwhittington.com; telephone: +44 (0)20 7743 0929; facsimile: +44 (0)20 7743 0973) or PricewaterhouseCoopers LLP at prupearlscheme@uk.pwc.com.

Advertisements appearing in this section also appear online at www.BusinessInsurance.com/Classifieds

No visions of sugar plums for the P/C bunch

By Myron M. Picoult

Well, it happened again, but with a bit of a twist! I found the following in my stocking on Christmas morning and immediately knew that I had to share it with our readers.

Dear Mr. Picoult:

I've been thinking about sending you a Christmas missive for some time. By the way, do you like the choice of words so far? I'm not as dumb as you have made me out to be over the years. Anyway, you've been beating the stuffing out of me for years and it was time to reply. However, I never quite got to it, even though I thought about it last year. Things were a bit hectic around here with Santa retiring and conning me into wearing his red suit. By the way it does fit quite nicely.

After last year's Christmas crush, I had some down time, which really just seemed to be an extension of reflecting on my years in the property/casualty business and my tenure as chairman of Nearly Defunct Fire & Casualty. Rest its soul. It went into runoff last year. It seems they could not find anyone to replace me and the wimpy board cratered and literally gave the company away to some outfit called KahnArtists Insurance Specialists Inc. with some kind of promise that shareholders would share in the profits. I don't recall any time frame mentioned in the one-line press release.

Sorry, I'm wandering. You know, I was really bitter about the way I got dumped, but time is a great healer, or so they say. As I look back at what the industry went through last year, I must admit I am very glad that I retired—even if it wasn't my idea initially. By the way, Santa built quite an operation up here at the North Pole. This place really hums like a fine-tuned engine. The elves may be short, but they are long on experience and phenomenal at solving problems. Once I accepted that it was easier to let them do it their way, we got along fine. They have really helped me understand the concept of delegating authority. I periodically think about trying to get this group to start an insurance company with me. However, I have been met with skepticism, and when I raise the subject, I am shouted down.

When Santa stopped by last year after my panicked call to him, since after all I was thrown into the fire from the frying pan, he shared the letter he was to drop off in your stocking. I never forgot about that and figured this was as good a time as any to clear the air. You know, the elves have done a great job of hot-wiring this place. I can go virtually anywhere up here with my laptop. Yes I have become quite a WiFi guy! OK, enough of this stuff, let's get to the meat!

First of all, you've been hollering for some time that this is a lousy business as evidenced by the average low ROE, volatile earnings stream and relative ease of entry into the business. Well, it hurts to say this, but I am inclined to agree. In fact, as rating agencies raise the capital bar, it will be even more difficult for the property/casualty folks to meet the minimum ROE investors want. This is all on top of the rating agencies scrutinizing risk management and capital management. In fairness, somebody has to be the policeman.

However, maybe something is changing. We have all heard the rumblings of several startups in Bermuda after the destructive hurricane season. It seems to be taking longer to get these new entities off the ground relative to some past efforts. Some soothsayers think it's tough to get the scratch. I think the problem is the industry's bench strength is a lot weaker that most realize. How many names can you come up with that could guide one of these new puppies? I bet you have a real short list too—maybe even a blank piece of paper! You know, while they're at it, I wonder why these folks don't try something really innovative. For example, what about trying a "Lloyd's model?" You know, set up and run a book of business for let's say seven years and then close it down. Let it run off. Then you start a new segment. Such a process might keep the underwriters more focused. They should also change the way underwriter bonuses are calculated and use a running total that averages in several years of results.

Chew on this, Picoult. Why don't these folks use their noodles and the brains of some of the Wall Street guys and find ways to make more effective use of capital markets to offload some of their risk? Make this more of a fee business! Speaking of Wall Street, when do you think my peers will wake up and stop providing earnings guidance? This is really pitiful. Most of those research analysts are just reporters parroting what they hear from management. There is very little real research being done. Hey, this just comes to mind. Some of the carriers sustained big hits due to the hurricanes. Some of them lost big chunks of their capital, too—and the Wall Street crowd filled up the buckets again. You know, some of the money should not have gone back to the same folks! Anyway, the percent of capital that some of those companies lost was hefty. What happened to the modeling expertise? Better yet, why not get a modeling officer who could ride herd over this stuff and play devil's advocate to keep everybody on their toes, like the modelers, the underwriters and top management! Somebody was not watching the bouncing ball at some of these entities.

One other thought. The role of the risk manager has changed and I don't sense that the industry has really got their hands around this one yet, either. Risk management, particularly its enterprise approach, is reaching a peak in organizational attention. This is leading to increased attention on techniques for the analysis of risk and the appropriate responses. There is really the chance here for carriers and underwriters to provide meaningful "value added" insights. Boy, would I love to give you a dissertation or two on that subject, but that will have to wait!

Hey, another thought for you. You know that guy Spritzer from New York? Well, I'm sure there were some practices in the business that might have skated on the edge. But how do you go after the top cats after the accountants, regulators, rating agencies, the NAIC, actuaries and the SEC all vetted this stuff? If you want to change the deck of cards in the middle of the game, that's OK. But you make the changes going forward and not retroactively. Looks like Hank Greenberg from AIG really got a raw deal from his board, too. What is really interesting is that while it was a loss for AIG, it was a tremendous loss for the industry. He was the industry spokesperson. He was eloquent. Who is out there to fill his shoes? I bet you come up with a real short or zero list, too. By the way, isn't it interesting that, when Mr. Spritzer and his folks went digging into that finite stuff, all of the industry CEOs ran for the hills? It looks to me that they're still there. Has the cat got their tongue, are they tongue-tied or can't they articulate what they did and how they did it? Hey, here's another thought. We are hearing renewed calls to set up catastrophe reserves to enable the industry to better cope with losses that are on a higher plateau. I wonder what Mr. Spritzer would say? Indeed, he would probably argue that you would have to undo the cache if you did not get hit in a year!

Let me touch on a meaty topic: the new age of corporate governance. I and others really complained about Sarbanes-Oxley, or SOX, as you whipper-snappers called it. Clearly, the cost is greater than anyone conceived, and there is another insidious factor. The time and effort that managements have had to put into SOX have resulted in many new business ideas falling by the wayside, because of time constraints. Furthermore, the new reporting guidelines of SOX make it a nightmare to detail what the new business is all about. How do you detail stuff that you are not yet clairvoyant about? Even though it is a pain in the buns, I will admit it is better to have it than to have kept going the way we were. Ethics and business morality need a push to get back on the right track. Hey, Picoult, do you think that the fact the CEOs and CFOs have to sign in blood will change the dynamics of the underwriting cycle? You know that reserving is a metaphysical art and subject to a constant stream of changing variables! However, after all is said and done, it would seem the reserving process might become a bit tighter.

I have chased this one around in my head many, many times. I really thought the folks on my board were my friends and would do their best to protect me. Was I wrong! In hindsight, I would have to admit there was some deadwood. In fact, some of the guys were composed of petrified wood! It is also obvious that directors, if you want them to do a good job, can't be on too many boards at once. I know there are exceptions to the rule, but wouldn't it be interesting if there were time limits on directors…and CEOs, too? Let's say about 10 years! Businesses change and economies change. Too many boards seem to be out of touch with reality. The cleansing of boards is still a must! I would also have to say that it appears to me that boards are data rich and people poor. You know, none of my members on their own at the board sessions would ever ask how management was executing on our strategies. Of course, we were a "seat of the pants operation," but that's another story. One thing I will take credit for, though. I had numerous requests from sitting CEOs to come on to my board. I didn't think that was a good idea. I've always been uneasy about that because I sensed that they would all try to run the company. Besides, wasn't their time consumed with operating their own empire?

OK, Picoult, let me get to some stuff that is really critical…and I know more about this than you think. There is a crying need for this industry to revamp its business model through the more effective use of technology. It is scary to see how far behind the curve the property/casualty industry is in the use of technology relative to other financial service entities. How organizations do business is likely to be more important that what they actually do. Social, political and technical evolution will require organizations to become much more "IT" savvy. IT will become more of a competitive tool than a cost saver. Indeed, adaptability to change may be the greatest challenge facing managements to create long-term value. I remember how much money we spent on IT at Nearly Defunct and how little we seemed to get in return. There was and still is an enormous reluctance to implement change. Why? It has to do with people and tradition. The IT systems were built around the need to collect statutory data for the blanks. Well, we have reached a point where all we are doing is shooting blanks! Data mining is the use of historical information to predict the future or to predict patterns of behavior. Clearly, the property/casualty industry has to and can do a better job of mining its data to become smarter underwriters. There is no question that the cost is daunting and the risks related to miscues are sizable. However, the costs and risks of doing nothing are greater!

Picoult, you should come up here and visit. I could really show you a thing or two about where this industry has been and where I think it has to go on the technology side of the equation. I know that there have been a lot of promises made to managements about cutting-edge systems that ultimately screwed things up. The fact is, there are people and processes out there today that are not as invasive to a carrier's system as some people think. These approaches will not only save carriers money, but it can put them on a new plateau for growth. I guess the scariest comments one can hear from a CEO or chief technology guru is "but our plate is full now" and/or "but we can do it better."

Gotta go, Picoult. Sorry for the quick departure, but when the sled is toyed up there is no time to waste. Unlike the property/casualty industry, we (well, the elves) really do execute our strategy at the North Pole. Come on up for a visit and see how pretty it is. But you should do it before global warming melts this place. It's about time we met face to face!

Have a Good Holiday.
Almost DoNothing a/k/a The New Santa

Myron Picoult is an independent insurance consultant in New York. He is a past president of the Assn. of Insurance & Financial Analysts and was a member of the New York Society of Security Analysts. He can be reached at mpicoult@aol.com. An archive of his columns for BI can be viewed at www.businessinsurance.com.

Tsunami: Disaster in 1946 aided Hawaii's readiness for today's challenges

Continued from page 3

reach Hawaii in the past 60 years, the 1946 event has been the most destructive, Ms. Rydell added. Other tsunamis occurred in 1957, 1960, 1964 and, most recently, in 1975.

There have also been a number of smaller ones, as tsunamis occur regularly in the Pacific Ocean, Ms. Rydell said. So Hawaiians prepare.

Officials believe the horrific loss of life from the Indian Ocean tsunami was compounded by the lack of a warning system in that region. While Pacific tsunamis are relatively common, seismic sea waves are very rare in the Indian Ocean.

Earlier this month, the National Weather Service recognized Hawaii's preparations, declaring it the first state to receive the designation of TsunamiReady.

The NWS' TsunamiReady program aims to help local emergency managers improve the effectiveness of warning systems, increase public understanding of the hazards and improve coordination among federal, state and local emergency management agencies.

To garner the TsunamiReady designation, communities must:

- Establish a 24-hour warning system and an emergency operations center.
- Have multiple methods for receiving tsunami and severe weather warnings and alerting the public.
- Create a system to monitor local weather.
- Promote public readiness.
- Develop a formal hazardous weather plan, including training severe-weather spotters and conducting emergency exercises.

So far, 24 communities in six coastal states—including Hawaii's four counties—have received the TsunamiReady designation since the NWS launched the program in the late 1990s.

The NWS simultaneously designated Hawaii StormReady, as many requirements for obtaining recognition under that program are met when preparing for tsunamis. But TsunamiReady status calls for additional measures, such as establishing community evacuation routes leading to shelters outside a danger area, according to the NWS.

Generally, smaller entities such as cities, counties or even universities have received the TsunamiReady designation. But because all four of Hawaii's counties met the criteria, the entire state garnered the TsunamiReady and StormReady labels.

For Hawaii, the NWS recognition provides added enthusiasm to continue expanding practices already in place, Ms. Rydell said. Because of past tsunamis and hurricanes, Hawaii already maintains state and county infrastructure, such as emergency command centers.

April is designated Tsunami Awareness Month in the state. And each year on April 1, the anniversary of the 1946 tsunami, statewide exercises occur so civil defense officials, schools and business can test emergency responses, Ms. Rydell explained.

Schools, for example, practice evacuating students twice each year, which often requires walking a few blocks away from an inundation zone. Businesses such as hotels practice moving guests or employees to upper floors of their buildings, when appropriate.

This "vertical evacuation" of buildings capable of withstanding a tsunami is effective because it can keep those occupants from clogging roadways needed by others, Ms. Rydell said.

And state civil defense officials monthly test a warning siren and emergency broadcast system, Ms. Mayeda said.

The planning is necessary. Ms. Mayeda recalled one tsunami warning, in the late 1980s, when downtown Honolulu became a parking lot as people attempted to evacuate. Fortunately, the tsunami didn't strike.

"We are very much a target and therefore must be tsunami-prepared, both in the workplace and at home," Ms. Mayeda said.

Hawaiians are proud of the recognition from the NWS, she added. Yet they can't afford to be complacent. All companies should have a tsunami evacuation plan for work and for family members, Ms. Mayeda said. "For those that have a plan, it is prudent to re-evaluate your plan and test it."

Ms. Rydell agrees. During the past year, emergency response officials have urged residents to develop home emergency strategies. That effort has included meeting with industry groups so that, in addition to establishing worksite evacuation plans, employers will encourage their workers to develop family plans.

If employees are not prepared to aid their families, there is greater likelihood they will not be able to tend to their work duties, Ms. Rydell said.

While Hawaiians have their own cause for such preparations, the 2004 Indian Ocean tsunami helped encourage more Hawaiians to make planning a priority, Ms. Rydell added.

One sign of that came this past April 1, when more people than usual participated in the statewide emergency practices, Ms. Rydell said. That included greater participation by employers.

"If employers weren't prepared before December 2004, they certainly see the need to be now," Ms. Rydell said. "Employers stood up and took notice."

PHOTO: REUTERS PHOTOS LIVE

National Weather Service geophysicist Barry Hirshorn points to the area where a 55-foot wave hit the Big island of Hawaii in 1946, claiming more than 150 lives.

National Weather Service-designated TsunamiReady areas

As of December 2005, there were 24 TsunamiReady sites in six states

Alaska
Homer
Kodiak
Seward
Sitka

California
Crescent City
Dana Point
University of California at Santa Barbara

Florida
Indian Harbour Beach

Hawaii
Hawaii County
Honolulu
Honolulu County
Kauai County
Maui County

Oregon
Cannon Beach
Lincoln City
Manzanita
Nehalem
Rockaway Beach
Tillamook
Wheeler

Washington
Clallam County
Long Beach
Ocean Shores
Quinault Indian Nation

Source: National Weather Service

Iuppa: Goals include making NAIC's insurance compact operational by 2007

Continued from page 3

ance departments about the rehabilitation of financially troubled insurers. From 1986 to 1991, he also worked with the Nevada Insurance Department as deputy commissioner and commissioner.

Mr. Iuppa was appointed in January 1998 to fill the unexpired portion of Brian Atchinson's term in Maine. He was subsequently appointed to a five-year term in February of 1998 and again in March 2004, by two different governors.

When he took office, Mr. Iuppa surprised some of the bureau's 80-plus employees—most of whom are Boston Red Sox fans—with his willingness to proclaim an allegiance from childhood to the New York Yankees, he said.

"It goes to show what kind of an independent I can be," Mr. Iuppa quipped.

Home and away

To further his international regulatory agenda, Mr. Iuppa said he wants the NAIC to provide technical expertise wherever it is needed and to continue its popular internship program for non-U.S. regulators.

Also, an NAIC subgroup's December adoption of a reinsurance collateralization white paper means that the multiyear debate "has gotten to the point where I expect to have meaningful dialogue," Mr. Iuppa said. He hopes that a decision can be made in 2006 about whether to allow primarily non-U.S.-based insurers and reinsurers to post less than the 100% collateral to write U.S. risks. Many of these companies have sought such a concession in recent years.

As part of his domestic regulatory agenda, Mr. Iuppa said he plans to "aggressively" work toward "the critical initiative" of making the NAIC's Interstate Insurance Product Regulation Compact operational by January of 2007.

As of mid-December, 19 states—representing about 30% of the nation's premium volume—had joined the compact, which provides uniform filing standards for several life/health-related coverages. Mr. Iuppa predicted that the NAIC will exceed the compact's self-imposed goal of 26 participating states—or 40% of the nation's premium volume—by the end of 2006.

"The interstate compact is a legitimate state response to the concept of an optional federal charter," which the life insurance industry has proposed as a way to streamline markets, Mr. Iuppa said.

He is also keeping an eye on the State Modernization & Regulatory Transparency Act, which is still in draft form before a U.S. congressional subcommittee.

"My intent is to reach out to congressional leaders and provide assistance to them," Mr. Iuppa said. That doesn't mean backing away from NAIC objections to the draft, though, he stressed. The NAIC is concerned that aspects of the proposal would pre-empt state insurance regulation, he explained.

Among the NAIC's other priorities are pursuing a more uniform approach to insurer examinations and continuing its efforts to help the nation to cope with catastrophes.

Mr. Iuppa noted he has been "thrilled" with the NAIC's response to catastrophes such as Hurricane Katrina, which included several collaborative efforts such as the consolidation of data requests to insurers and the other states' provision of staff members to relieve hard-hit insurance departments along the Gulf Coast.

Mr. Iuppa, who is the father of two daughters, is married and lives in Falmouth, Maine.

'A level-headed regulator'

Representatives of several trade associations say they are looking forward to Mr. Iuppa's term in office.

Former NAIC President Ernst Csiszar, who is now president and chief executive officer of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, said that Mr. Iuppa "understands the needs of the consumer, the industry and regulators. He is well-balanced" and takes a "thorough" and "analytical" approach to issues, Mr. Csiszar noted.

Mr. Iuppa "has an impressive regulatory history" because he has held a variety of such posts, noted Tammy Velasquez, the American Insurance Assn.'s vp and director-state affairs in Washington. Furthermore, "he is deliberative in his decision-making and also seen as a knowledgeable leader by his fellow commissioners," Ms. Velasquez said.

In addition, Paul Tetrault, the Beverly, Mass.-based Northeast regional state affairs manager for the National Assn. of Mutual Insurance Cos., said in an e-mail comment that Mr. Iuppa "is a level-headed regulator who has a good understanding of how markets and consumers are affected by government intervention." Also, Mr. Tetrault wrote, "he has a special knack for solvency regulation, which is critical, given that that is the primary function of state regulation."

From our family to yours ...

a safe and happy holiday season.

Avian flu: Risk managers differ over response to pandemic threat

Continued from page 1

step left" to trigger a pandemic: evolution of the virus into a form that passes easily from person to person.

If that happens, and the mutated virus retains its potency, the consequences could be catastrophic.

The Congressional Budget Office predicts that a severe pandemic, similar to the Spanish flu outbreak in 1918 that killed around 50 million worldwide, would infect 90 million people in the United States and kill more than 2 million of them. A milder outbreak, similar to pandemics in 1957 and 1968, would infect 75 million and cause around 100,000 deaths in the United States, according to the CBO.

Medical care facilities would be overwhelmed during a severe pandemic, and nonacute care would be drastically reduced, sources predict. As the pandemic spread, international travel would be greatly curtailed, people would quarantine themselves at home, and retailers, schools, restaurants and other organizations would suffer from absenteeism and a dearth of customers. Manufacturers' production problems would be compounded by the effects of the pandemic on their supply chains.

The World Bank has estimated that each year of a pandemic could cost the U.S. economy $100 billion to $200 billion, and economies worldwide could suffer a total per-year loss of $800 billion.

"What we're looking at with any flu pandemic is not something that's a risk, it's more of a biologic certainty," said Ms. Norris. Flu pandemics occur every 30 to 40 years. "The question is, how severe will it be?" she said.

And, Ms. Norris pointed out, the next pandemic might come from a flu other than the H5N1 virus. Even if the virus becomes easily transmissible among humans, its evolution could weaken its lethal nature, she explained.

"This one might burn itself out," Ms. Norris said.

Risk managers are of different minds regarding the possibility of a pandemic. Some say procedures already in place will take care of the threat, while others have updated their contingency plans to prepare for the possibility that the flu could devastate their workforces.

"I think a lot of it is overblown," said Ellen Vinck, vp-risk management and benefits at BAE Systems Ship Repair in San Diego. "Having said that, any good risk manager is certainly looking at what a pandemic could do to their own organization," she added.

For BAE, losing one-quarter or more of its workforce would be a serious problem, but one that would be hard to solve because there are few replacements available, Ms. Vinck acknowledged. "We have a tremendous time trying to find skilled labor," she said. "There's not a lot we could do; there's not an overflowing marketplace for people."

"People are talking about it," Ms. Vinck said of the potential for a pandemic, but few are doing anything about it.

"There is a mixed bag of preparedness," said Nirmal Traeger, director of casualty risk control services at St. Paul Travelers Cos. Inc. in Hartford, Conn. Most companies with a national or global presence "will exercise a greater degree of preparedness" than smaller operations, she said.

Marriott International Inc. is a worldwide organization that is taking the pandemic threat seriously, said Bradley R. Wood, the Bethesda, Md.-based hotel chain's senior vp-risk management. The company is developing a global contingency plan to respond to a pandemic should it strike in areas where the hotel's properties are located.

Marriott has implemented an "enterprisewide approach on pandemic awareness," according to Mr. Wood. There are measures to be implemented during a planning stage, "which is where we are now," he said, as well as procedures that will come into play if the virus mutates to a transmissible form and others that will be triggered if the virus becomes a pandemic.

Marriott's planning includes making sure critical operations can be handled from off-site locations. "We'll make sure that we will have some redundancy," he said of those operations, and have a "work-at-home protocol."

Employers need to consider work-at-home arrangements or how employees can transfer to different regions, Neal Drawas, New York-based managing director at Marsh unit Kroll Inc.'s corporate preparedness practice, said during the teleconference.

Medical care facilities, such as Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn., will face the challenge of preventing the virus from spreading among employees and patients during a pandemic, said Michael Liebowitz, director of risk management at that facility. There also is the problem of "surge capacity," or "what to do with all the patients," he said.

Already in place at the hospital are posters and other materials warning physicians and nurses to be alert for flu symptoms in patients, to put on masks when dealing with flu patients and to keep them away from others, Mr. Liebowitz said. "The biggest thing, and it may seem trivial, is reminding everybody to wash their hands, because that's how it spreads," he added.

At Bridgeport, if the hospital sees a rush of flu patients, it will activate a command structure that includes doctors, nurses, risk management and security personnel to begin making decisions on such matters as where to move patients who can't be accommodated, Mr. Liebowitz said. "In a crunch, we have inflatable decontamination units that we could use to put patients in if we had to," he said.

Cellular and satellite telephones will keep the facility in touch with public health officials as well as with "the unit that controls all the ambulances in the state," Mr. Liebowitz said.

Ms. Norris of Aon stressed that most employers can make some workplace changes to help halt the flu's transmission. Pedals that turn sinks on and off will keep employees hands off contaminated surfaces and automatic doors provide the same benefit, she said.

How to get ready

Experts say employers can take steps to prepare for a pandemic, including:

- Cross-train workers so that they can perform multiple duties if the flu causes high absenteeism.
- Consider limitations on travel to areas where outbreaks have occurred.
- Have teleconference and Internet conference abilities in place, in case human interaction must be limited.
- Determine the availability of health care services to treat sick employees.
- Build up nonperishable inventories.
- Provide infection control supplies such as hygiene products, masks and disinfectants.

Human virus strains prove hard to contain

The threat of an avian flu pandemic from the deadly H5N1 virus strain is not a new concern.

Health experts have been monitoring the virus since 1997, when it infected 18 people in Hong Kong, killing six, according to the World Health Organization. Since being identified, the strain has killed more than half of the 138 people it has infected.

The so-called bird flu that some fear could cause a devastating pandemic is one of many avian influenzas. While the majority of avian flu strains do not mutate to a form that can infect humans, fears are that the H5N1 variety will evolve into a lethal strain that will sweep through global human populations.

PHOTO: BAY ISMOYO/AFP/GETTY IMAGES

Poultry workers are considered to be most at risk of infection by the avian flu virus.

"Once a fully contagious virus emerges, its global spread is considered inevitable," WHO states in material it distributes on the H5N1 strain. Previous strains have swept the world in six to nine months, "even when most international travel was by ship," WHO points out. "Given the speed and volume of international air travel today, the virus could spread more rapidly, possibly reaching all continents in less than three months," according to the organization.

The H5N1 strain is spread among birds that shed the virus in their saliva, nasal secretions and feces, according to the Centers for Disease Control and Prevention. Most cases of infection in humans have come from contact with infected poultry or surfaces contaminated with secretions carrying the virus, the CDC says. The virus is not transmissible in properly cooked food because it is destroyed by high heat.

The spread of the H5N1 virus from person to person has rarely occurred and will reach pandemic proportions only if the strain evolves to one that is easily transmissible among humans.

As part of their planning against a pandemic, hospitals are alert for patient symptoms that could indicate avian flu infections. Employers are urged by health officials to maintain similar vigilance.

The CDC points out that symptoms of the H5N1 virus range from the typical flu symptoms of fever, cough, sore throat and muscle aches to more distinct problems such as eye infections, pneumonia, severe respiratory diseases and other life-threatening complications.

—By Michael Bradford

Converium: Reinsurer restates, questions remain

Continued from page 1

"In some cases, these transactions involved written or oral agreements, understandings or discussions relating to risk expectations that were not appropriately reflected in the accounting treatment at the time of origination," Converium said in a statement.

The restatement resulted in Converium reporting a $69.3 million increase in shareholders' equity for the year to June 2005, to $1.72 billion, and a $14.6 million increase in shareholders' equity for 2004 to $1.73 billion.

The reinsurer also noted that it would restate shareholders' equity figures for each of the quarters from March 31, 2003, through June 30, 2005, and said that this restatement could "materially" decrease shareholders' equity figures for some periods.

Fitch Ratings said last week that its BBB- rating on Converium would remain on rating watch with negative implications in the wake of the restatement. Fitch was one of several rating agencies that downgraded Converium to a B level rating last year after it announced large reserves increases.

In a statement, the rating agency said that it "takes comfort from the absolute level of capitalization reported by Converium at June 30, 2005," but said that it would await the further slated restatements in order to determine "the true underlying volatility of the group's business."

"Fitch is concerned that regulators have historically focused their attention on companies that have restated their accounts, and, as such, Fitch believes that Converium could potentially face an increased risk of fines and/or shareholder actions," it said.

Chris Waterman, senior director in Fitch's insurance group in London, said it was important for Converium's franchise that it reported some information about the restatements ahead of the renewal season in order to reassure cedents.

However, Mr. Waterman said that, given that the company plans to make further restatements, cedents and brokers may still be leery of placing business with Converium during the Jan. 1, 2006, renewal season.

Converium's announcement likely will be sufficient to reassure

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ADVERTISER INDEX

Issue of December 26

TRIA: Insurers, policyholders must work on long-term solution

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holders before issuing a report on the state of the terrorism insurance market (*BI*, Dec. 19).

The failure of Senate negotiators to accept even part of the House approach as both sides tried to hammer out an agreement before the current backstop created by the Terrorism Risk Insurance Act approached its Dec. 31 expiration date did not sit well with the chairman of the House Financial Services Committee.

In a statement issued Dec. 16, shortly after the compromise emerged, Rep. Michael G. Oxley, R-Ohio—one of the key architects of the House legislation—called the final bill "short-sighted."

Members of Congress "have missed a golden opportunity to frame the TRIA program more effectively and to move to a more market-based solution," he said. "Government and the industry have made little progress since TRIA was enacted in 2002. When members, inevitably, are asked again to renew this 'temporary' program, they will correctly conclude that in 2005 the can was simply kicked down the road without any real reform."

A prominent insurance lawyer who followed the TRIA extension debate closely agreed "completely" with Rep. Oxley.

"I think the whole plan of this extension is to deep-six the program after two years," said Christopher Kende, New York based vice chairman of the reinsurance group at Cozen O'Connor, a Philadelphia law firm. "I think the country needs to have something in place, and there should be continued extensive lobbying" for a long-term program.

A risk manager who has also been involved in efforts first to create the original federal backstop and then to extend it, agreed that lawmakers had missed an opportunity to provide long-range answers to terrorism insurance-related questions.

> "Risk managers should be most concerned that this extension is only for two years."
>
> **Bradley R. Wood**
> **Marriott International Inc.**

"For the near term, the extension brings a sigh of relief for risk managers facing sunset exclusions on Dec. 31, and what better way to conclude a rather turbulent year for the risk management community?" said Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc.

"For the longer term, we missed a golden opportunity to make significant headway toward creating a more dynamic marketplace that would have greatly benefited policyholders. Risk managers should be most concerned that this extension is only for two years and the prospects of this program sunsetting are very real," he said.

"We can only hope that many of the measures introduced by the House will be seriously considered by the presidential working group and the realities of the marketplace will ultimately prevail," said Mr. Wood.

Ellen Vinck, the president of the New York-based Risk & Insurance Management Society Inc., wants to make sure that RIMS is represented on any entity considering the backstop's future.

"Our first concern is we want to make sure that RIMS continues to be at the table—we would like a seat on either the president's working group or any type of working group that continues to address the issues that we have with TRIA long-term," said Ms. Vinck, who is also vp-risk management, benefits and safety for United States Marine Repair Inc. in San Diego.

"We really feel when TRIA expires that there has to be some type of either federal or public-private backstop, and that's what will ensure that the pricing is affordable to policyholders. We understand that the federal government might be reluctant to provide a high-level backstop, but then they have to provide the leadership to pass legislation that encourages the commercial market, and this can done either through self-insured groups, captives or pools," said Ms. Vinck.

Like Mr. Wood, Marc Racicot, president of the Washington-based American Insurance Assn., said approval of the extension bill provided immediate good news for the markets, but that more action was needed.

"Congressional action prior to TRIA's sunset restores much-needed predictability and stability to the commercial insurance marketplace," said Mr. Racicot. "However, we now have to turn our attention and efforts back to analyzing potential long-term solutions to this complex issue."

Policyholder input will be critical in the effort to provide some sort of permanent solution, said Peter A. Lefkin, senior vp-government and external affairs for Allianz of America Corp. in Washington.

Insurers have "got to do more to mobilize their policyholders," he said. "The people who are responsible for determining whether or not TRIA gets reauthorized beyond 2007 are not the insurance companies, but policyholders. They must be both educated and mobilized to make their views known to leaders on Capitol Hill and White House."

At least one other key issue remains unresolved in the compromise as well, said Alexandra S. Glickman, managing director and practice leader of Arthur J. Gallagher & Co.'s Gallagher Real Estate & Hospitality Services in Glendale, Calif. That's the issue of insuring against nuclear, biological chemical and radiological attacks.

"That's been ignored, and though it's positive news that the backstop has been extended, the fact that underwriters have to accept substantially more exposure will lead to more rigorous pricing for individual clients. And terrorism insurance may very well evolve as earthquake and wind coverage has evolved, with high deductibles and geographic and asset class underwriting," said Ms. Glickman.

RIMS also is concerned about the extension bill's treatment of nuclear, chemical, biological and radiological risks, said Ms. Vinck. "The NCBR exposure really has to be addressed. That is the most noticeable gap in the program," she said.

Converium: Standing with cedents depends on future restatements

Continued from previous page

current and potential clients about its capital position ahead of the renewal season, said Tim Dawson, an analyst at Helvea S.A. in Lausanne, Switzerland.

And cedents will be reassured that the company's shareholders' equity position was not drastically altered by the restatements announced last week, he said.

The restatement announcement does raise questions about the company, however, Mr. Dawson said, including the matter of how efficient internal controls at Converium were in the past.

Ben Cohen, an analyst at UBS Ltd. in London, said that Converium has not yet provided much information on the restatements, so it is difficult to assess how internal controls at the company have changed to avoid such incidents in future.

Cedents have been beginning to think that Converium had "turned a corner" after its recent troubles, noted one reinsurance broker who asked not to be named. Provided that the financial impact on the company of the restatements yet to be announced is not severe, the developments probably will not significantly impact the company's standing with cedents, he said.

Following Converium's announcement, Standard & Poor's Corp. affirmed its BBB+ rating on the reinsurer.

Marcus Rivaldi, a credit analyst at S&P in London, said in a statement that "we believe that the restatement will not have a negative impact on group financing arrangements or on Converium's ability to retain the support of its key European client base and key staff."

In its delayed report of third-quarter results last week, Converium reported a net loss of $6.9 million, due mainly to recent catastrophe losses and restructuring costs. For the first nine months of 2005, Converium posted profits of $34.5 million.

BI Stock Index [12/19 - 12/22]

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

***BI* Stock Index**	2,870.69	1.34
Dow Jones	10,875.60	0.13
S&P 500	1,267.32	0.06

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

Largest gains

Humana Inc.	17.21%
Clark Inc.	15.61%
Tower Group Inc.	5.73%
American International Group Inc.	4.22%
AXA	3.70%

Largest losses

Vesta Insurance Group Inc.	-4.31%
Gainsco Inc.	-2.25%
United Fire & Casualty Co.	-2.18%
IPC Holdings Ltd.	-2.11%
SCOR S.A.	-1.83%

Weekly change by market segment

Brokers	37.27%
Insurers/Reinsurers	18.69%
Managed Care Organizations	28.58%

Late News

Continued from page 1

earlier this year as part of its contingent commission settlement with officials in Connecticut, Illinois and New York. An Aon spokesman said last Tuesday that 74% of the fund, which represents about $140 million, will be distributed to clients that have elected to participate in the settlement. Previously, the spokesman incorrectly informed *Business Insurance* that 70% of the 352,000 settlement offers it has made to clients had been accepted, with some clients receiving multiple offers. Chicago-based Aon will not say how many clients or what proportion of the offers were accepted overall, though it stated that 90% of its "top 1,000" clients accepted distribution from the fund.

NYC transit strike ends, benefit issues remain

Although the union representing transit workers in New York City last week voted to end its three-day strike, key pension and benefits issues have not yet been resolved.

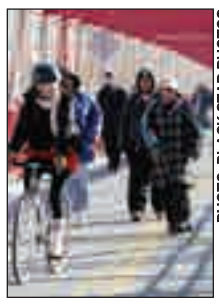

PHOTO: BLACK STAR PHOTOS

The Metropolitan Transit Authority has asked that new workers contribute a percentage of their pay to health insurance premiums and an increased percentage toward pensions—requests that Transport Workers Local 100 has resisted. The MTA wanted workers to contribute 6% of income toward pensions vs. the current 2%. The MTA earlier agreed to drop its demand that the minimum retirement age for new transit workers be raised to 62 from 55.

2005 cat losses hit $80 billion

Natural and manmade catastrophes have caused insured property losses of about $80 billion so far this year, making 2005 the costliest year ever for disasters, according to Swiss Reinsurance Co. Swiss Re said disasters in 2005 caused financial losses of about $225 billion and resulted in the deaths of more than 112,000 people. Swiss Re said about 90% of the total insured losses stemmed from storms and storm-related flood damage, with insured losses from Hurricane Katrina alone estimated at about $45 billion.

At *BusinessInsurance.com*

New **Online Poll:** Should employees who smoke pay higher health insurance premiums than nonsmokers?

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