

## JORDAN'S JOURNAL – 2005 EDITION

Kill Bill, Volume Three, opens with a heartening rendition of Mr. Clinton's condition and that in which he left us not long ago. A prodigious swordsman himself, his ignoble deeds are left on the cutting room floor as we explore how we went to war and chose to ignore those who implore us for help at home.

From Bill's Big Mac to Dick's heart attack we take a new tack on obesity. But corporate cats get fat for what they fudged while others play chicken rather than take a lickin' and make a clean breast of the rest. Segue to morality in play with Janet's display to the planet (of course, she didn't plan it) Justin time to make us make over Michael's land of make believe.

Compassionate conservatism proves parsimonious when suits turn sanctimonious despite Dick's daughter's choices and Bush's babies' voices pleading guilty to double trouble. Our faith in institutions fades as Boston Red Sox renegades who lost in Ruthless fashion past showed Cardinal rules could not last. When Jennings was in Jeopardy and TV spins reality and Donald Trumps his foes despite financial woes and everybody knows that the answer we're demanding – is who's the Last Comic Standing?

Maybe He was cracking wise at Last Supper with the guys (one a "coed" in disguise) as Da Vinci drew with malice his depiction of the chalice as through the Looking Glass with Alice things are not quite what they seem. So history is transitory a subject to the latest story with war fought more in vain than glory and vanity substitutes for sanity while electoral polls let Republican roles roll on.

So seasons change and nothing changes. We go full circle but go in circles as we circle the wagons to protect a precious center we can't see – except those on the outside "are not me." So how is moral certainty an issue when a tissue has more thickness than our claim to moral sickness and don't we decry decay in values every time they are not ours?

I received a sage retort to last year's staged report and my allusions to (not illusions of) Shakespeare: "Out out brief candle/ (your) life's but a walking shadow, a poor player/ that struts and frets his hour upon the stage/ and then is heard no more. It is a tale/ told by an idiot, full of sound and fury/ signifying nothing" (Macbeth)

Though Seinfeld succeeded at nothing, I'm nothing if not humble until I stumble upon what passes for intelligent thought in the upper reaches of government and economic theory. Those who are yearning for returning to what they were earning while dot coms were burning through a stash they didn't have see that Hillary's hintin' that another Clinton would cash in as a salve to heal the scars or heel the czars whose tyranny taught (before they were caught) that certainly there was no certainty to all that we had thought. In an interview this year, Robert Rubin, who left Wall Street with portfolio complete to take up residence in the President's Treasury seat:

Rubin: Even in an uncertain world, I'm prepared to stipulate that it's Wednesday

Reporter: So there actually is a provable certainty?

Rubin: No, because then you get to the cognitive issue point, which is that in some sense you can't be sure of any reality

Reporter: Can't be sure it's Wednesday?

Rubin: Not unless you stipulate as an assumption your own cognitive capabilities. When all is said and done, you cannot prove reality. You can say what you see, but you cannot prove your cognitive capabilities. You can only assume them, and therefore everything is ultimately based on assumption. But I'm still prepared to say this is Wednesday, just for the sake of this discussion.

Reporter: Okay, we'll stipulate that

Rubin: Yes, as long as you are willing to agree that it's not inconsistent with my notion, which is that there's no proof that it is

There is also no proof that our spoof is wholly off the mark. As Macbeth's candle goes out and we no longer make out what is begun in the light, but concludes in the dark.

While this America settles in the mould of its vulgarity, heavily thickening to empire  
And protest, only a bubble in the molten mass, pops and sighs out, and the mass hardens,  
I sadly smiling remember that the flower fades to make fruit, the fruit rots to make earth.  
Out of the mother; and through the spring exultances, ripeness and decadence;  
And home to the mother.  
You making haste haste on decay: not blameworthy; life is good, be it stubbornly  
Long or suddenly  
A mortal splendor: meteors are not needed less than mountains:  
Shine, perishing republic

(Robinson Jeffers)

## ECONOMIC WELLSPRING

I think that when statesmen forsake their own private conscience for the sake of their public duties, they lead their country by a short route to chaos (A Man for All Seasons)

A little madness in the Spring  
Is wholesome even for the king  
But God be with the Clown  
Who ponders this tremendous scene  
This whole experiment of green  
As if it were his own

(Emily Dickinson)

Deficits don't really matter, negative nabobs needn't natter  
And the pleas of retirees go unheeded  
Political preservation overcomes the reservation  
Many feel about real reserves exceeded

Pain relievers won't assist since the symptoms still persist  
Because Big Pharma feels bad karma of its own  
AS we take stock of the market, is money safe where you park it?  
With insecurity securities have shown?

The public system's going private with major returns sure to drive it  
And though we borrow from tomorrow do we care?  
Employers continue to stress they will still give employees less  
To use while they peruse how various plans compare

Some people will now make their bet with plans grown from the alphabet  
Is HSA or HRA the way to go?  
Health plan premiums are rising which is really not surprising  
But we will be when we see no HMO

Big carriers couldn't care less whether weather made them careless  
As tempest tosses tallied scores of losses  
They were able to conserve enough so profits they preserve  
They'll jam their reports with prose covered glosses

Both prophetic and profitable with future earnings estimable  
Health plans, maligned, have now aligned to merge  
United Health is now more so and Blue Cross Anthem steals the show  
And three brand names will land more in upsurge

Will they urge on biotech or will improvements prove to wreck  
Models based on bodies failing, ailing and spent  
Fat solutions coalesce for all in the race to cut cholesterol  
Leaning more to screening for where the largesse went

Chew. It's fast food but it's not going anywhere. In our rush to judgment about where the fudge went we should not have relied on old bromides on juicy profits or hamburgers or the worth of corporate mergers as we seek the antidote to economic rote that wrote off stocks just as we were stocking up. They must come down, as red ink causes dollar drown but just think what will happen if you happen to buy now.

It has been reported that jobs have been exported offshore and to Bangalore while keeping score as core expenses claim as defenses China Syndrome while melt down occurs not in Europe but at home. Technology thus exceeds humanity (and fans infantile profanity) while systems crash along with cash from an insufficiency in efficiency and good investments. Perhaps vestments are what's needed, as even prayers receded from the promise of salvation as our nation plunged into war. Which causes further drain as we cannot contain the sinking funds or feeling that the economy is reeling lest we cast off what we passed off for solutions.

HSAs are growing without our knowing what good they'll do if they won't imbue us with the means to manage care. AS HMOs have managed to care less for health than healthy returns on investor concerns which don't include the mess in which we automatically see our system which crashes with the same regularity as our hard drives. By cutting cost and price it's clear we sacrifice both quality and equality and thus prefer our polity make policy to fix what we helped to break ourselves. What's odd is that solutions praised are those precipitately raised on solid grounds from past pundits who were shunned. It's just a shame we adjust blame on acronyms we cannot name – so we claim new principles that we knew principally were already on our shelves to avoid blaming ourselves.

### *Spring Fashions*

*Pharma-suit-icals and other ways to dress up a balance sheet*

There are pills to make you happy  
There are pills to make you sad  
There are pills to cure your streptococchi  
There are pills to cure your cockeye too

(Alan Sherman)

There, there. So what do you take to make it all go away? The pain of revelations require relief but no drug is safe. We can't celebrate Celebrex and we've put a pox on Vioxx while Pfizer fizzles and Merck won't work. The manner in which tests now disturb a life makes us yearn for Herbalife though fen-phen fans don't take it any more. Drug companies are pilloried which may impede their ability to seed R&D (research and development, or "rob and duplicate?") especially if the states cede more market share to Canada (before you order across borders, check the pricing on generics which is less enticing in the North, and ask your pharmacist if there exist of less expensive purgatives or if it is your prerogative to request an alternative in your quest to cut prescription costs) So suits ensue, but what's said, but true, is that Vioxx users want to use again.

The concern over Cox-2 inhibitors haven't inhibited use of statins (apparently we Bayerly recall Baycol's recall) which fight like dogs and cats in their need to breed a greater market share. They needn't worry since even as lawyers scurry to blame McDonald's for wasting a nation's waistlines we still have Hardee folks who (it's not a hoax) advertise the Thickburger, a 1,420 calorie double burger with bacon, mayo, cheese and butter (tag line – "we have a wide range of selections for every body"). Is this a great country or what?

Drug stocks took a major hit but health czars threw a major fit when drug stocks for the flu vaccine flew quickly when a contaminated facility disseminated liability through damaged doses. Yet it turned out that the turnout was so low that we had plenty left to blow.

From drugs of choice to flu's invoice we can rejoice that e-mails gave a voice to scandal in how Marsh handled contingent commissions. Then they stopped taking them. And other agencies followed suit with Spitzer in hot pursuit as he indicted those who slighted clients reliant on their honesty. Though new suits are pending and brokers are defending past practices (to them they made perfect sense) they're now broker than before. There's more to it than we can intuit from what they've chosen to disclose in secret, but it's still behavior we've come to abhor.

*Deficits DO Matter (see Federal "Fallies")*

*March of the Wooden Soldiers – Inflation on Parade*

Every year we discuss the causes and conditions of health inflation. This year, two views:

Review – see the attached article

What's new – we're still going up, but the trend is down (that is called "spin" – in which you lose but think you win). Projections from ten surveys surveyed show single digit increases are expected in 2005 (someone had to say it: "In a dynamic industry such as health care, extrapolating current trends into the long term future is a mistake" – Business Week, May 2004)

Fun facts – a few

- 1) Captive – We are held prisoner to rate increases in penal institutions where the population is aging and there is no disincentive from seeking health care (there's not much else to do). The average cost of housing an inmate 60 years or older is 3 times the average cost for all prisoners – and it will get worse, with the aging of baby boomers, longer sentences and mandatory terms due to "tough on crime" measures, and a higher number of seniors being convicted of sex crimes and murder
- 2) Eye popping – pill bills are highest according to the California Nurses Association, saying hospitals mark up their charges over costs an average of 232%
- 3) Gouging – drug firms raised the price of some drugs as much as 10% after passage of the Medicare Reform act, which includes drug coverage. They could not be stopped, unlike the enterprising firms who decided to greatly hike the cost of flu vaccine as soon as a shortage was announced (and Attorneys General pounced)

- 4) Cancer “cures”: standard chemotherapy costs a few hundred dollars monthly, but new “replacement” drugs Avastin is \$4340 and Tarceva \$2000 – who pays? Or who denies?

### *Spring Forward, Fall Back – Markets*

California lures biotech to stem the stream of capital out of state, while Arnold capitalizes on the opportunity to address affairs of state at a national Republican rally where the Party chief has given grief to research advocates who search for a safe cell from which to sell their results. Somewhat “unconventional” logic.

Dollar’s drop, oil’s slump, profits not over the hump won’t pump up the market much but sober minds keep reminding us that funding fundamentals are mostly sound and the market will rebound – a bit. While castigating hedge funds for the risk they run, pundits truly hedge funds, as stocks’ no longer pique much interest.

### *Spring Cleaning*

Employers have been meaning to stop appearing to be mean spirited but the spirit of insurance has been lost and escalating costs demand a supply of new ideas. In last year’s Journal, we elucidated the ways laws have validated various financial options. These trends have received greater awareness from both sides participating. HSAs are now in place, CDHPs are giving chase, managed care is in disgrace and employees seek to erase the additional premium responsibility with which employers sought to grace them. “Dude, where’s my HMO” is how the trend will go, but recent studies show that design incentives may work more effectively than penalizing plan use which, though a deterrent, causes aberrant behavior which results in higher costs later.

On the insurance front, weather fronts cause disaster but carriers master cash flow well, with enough stash to spell heart palpitations through manipulation of reserves, payments, investments, dividends, administration, reinsurance and pluck enough luck to make a buck – or more.

Net income of life and health insurers went up 311% in 2003 and were showing a similarly profitable score through third quarter 2004. Even property/casualty carriers, facing the “Big Four” hurricanes this year, are still quite stable as they were able to run the table earlier with other policies in the stable.

### *Spring Lineup*

Consolidation is back on track as the “Blues” are in the black and even non profits are smart enough to belie that oxymoron. Carriers also returned to markets they had spurned (Medicare) and have also trend to new concepts when new respect was earned (Health Savings Accounts and Consumer Directed Health Plans)

- 1) Aetna and PacifiCare were on the brink of despair but have not only returned, but boast healthy returns. PacifiCare picked up the group health business of Pacific Life and American Medical Security, and Aetna came to bridge a bid for Oxford but failed.
- 2) United beat Aetna for Oxford and continues to pick off other companies as business continues to pick up.

- 3) Health Net is having trouble, and others better attuned may orchestrate to cast a net for this company
- 4) Kaiser and Blue Shield did yield exceptional earnings this year, despite some missteps and misstatements, and Kaiser continues to expand to meet demand which creates negative impressions, while Blue Shield's growth allows them to demand from providers positive concessions.
- 5) In one of the biggest business mergers of the year, Blue Cross and Anthem made it clear that they are Well Pointed in the right direction to establish erection of the largest health plan in the country. This story will one day be a textbook case of greed, political corruption and payoffs – and that's just within the companies themselves.

Concerns of \$600 million in severance packages, accusations of market shifting and lawsuits against the California Insurance Commissioner (with Georgia also on their mind), the carriers agreed to certain settlement conditions. In California:

- a) Paying \$100 million in investments to benefit California health care consumers
- b) No rate increase allowed to offset the cost of merger
- c) Donate \$15 million for Healthy Families and Medi-Cal outreach
- d) \$15 million pledge for nurse training
- e) Invest \$200 million in underserved communities
- f) Joint development, with the commissioner, of a new program to improve the quality of health care in the state.

See what happens when you ask for a few concessions?

### *Springs Eternal*

#### Faith

Regardless of where you stand, if the priests go on the stand the demand for money is raised. Claims were settled in Boston for only (?!) \$85 million where the statute of limitations was mostly exceeded, but a class action filed in Los Angeles asks the diocese for \$1.5 billion (with a "b"). Two down – how many left? And who pays for that, when they pass the hat, and church good turns to bad debt (that would be all of us)

#### Hope – want to retire?

- 1) Companies continue to abandon traditional retirement plans, putting the burden more on individuals and taxpayers

Business Week – “no one voted on it and Congress never debated the issue but with little fanfare we have entered into a vast reorganization of our retirement system, from employer funded to employee and government funded, a sort of stealthy nationalization of retirement”

- 2) The Pension Benefit Guaranty Corporation (PBGC) is \$9.7 billion in the red.

- 3) Weaker plans are \$86 billion at risk, compared to just \$35 billion in 2002
- 4) Companies in the S&P 500 run an aggregate deficit of \$149 billion
- 5) Social Security has a deficit of \$11.9 trillion (how did they count that high?)
- 6) Social Security is not helped by the reduced disparity between workers and retirees. In 1985 it was 3:1 and now it's nearly even – and we haven't yet arrived at the baby boomer bubble of 2010
- 7) Our population is aging (not all these facts are a revelation)
- 8) Pension values are down with the market (see above)

### Charity

How many are uninsured? Many, but the number and impact depends on the study:

- 1) US Census report said 45 million (15.6%) were without coverage this year at some point. Many were employed, but the number covered at their jobs dropped from 61.3% to 60.4%
- 2) Many called uninsured have private coverage or are enrolled in a government health plan (Medicare, Medicaid, SCHIP)
- 3) 75% are without coverage for a period of less than one year
- 4) Many are eligible for government coverage, but do not enroll  
Many are eligible for private coverage, but do not apply

Still, there are liabilities associated with the uninsured:

- 1) Institute of Medicine – “The US loses the equivalent of \$65-130 billion annually as a result of poor health and early deaths of uninsured adults”
- 2) Several class action suits were announced in June, led by Richard Scruggs (of tobacco settlement fame, not Lester Flatt's partner). Basically, non profit hospitals in 8 states are accused of failing to provide care for the needy and uninsured, and are instead billing them at inflated prices

And as we start to spring ahead we begin to dread old obligations and legations of both litigants and applicants continue to pursue some form of justice, just as we have the chance to break free of conventional musings, as amusing as their justifications are

Anyone who observed us would conclude the purpose of all academic discussions was to provide the grounds for becoming further entrenched in our original positions  
(Richard Russo, Straight Man)

We could change, but then would have to set a bonfire to banalities

## **PERSISTENT PRICING PROBLEMS IN HEALTH CARE**

“For every complex problem there is a simple solution – and it is always wrong” (HL Mencken)

My doctor said the operation would cost \$5,000. I said I couldn't afford it. He offered to touch up the X-Rays for \$500 (Henny Youngman)

We appear near the end of an unusually long underwriting cycle. But rate relaxation may be more serendipitous than serious, as previous trend estimates proved overly conservative in many regions. Once again, carriers will use this unexpected windfall to wind up in a battle for market share, and insurance premium pricing will tend more to fiction than science.

The forces for inflation have not fled. The temporary reprieve requires responsiveness, and an identification of the factors endemic to future cost epidemics. First, we should clarify:

- 1) It is not “inflation” – it's intensity, intellectual and technological improvement, scientific advances and economic retreats.
- 2) It is not “price” – it's the cost of care, trends, the impact of leveraging on claims, risk management (or its absence), demographics and plan design fostering or retarding utilization.

What are the underlying causes of health care cost increases, and why will they continue to mangle the margins of managed care, and manage to marginalize medical treatment? Insurance carriers' pose the problems of price pressures, population and poorer health. True, but simplistic. A more realistic review would consider a myriad of other possibilities, none of which show any sign of abating. In summation:

### ***Legislation***

With over 1,500 benefit mandates across the various states, the results of representative government easily represent 5% or more of medical insurance premiums. Add to that the cost of compliance, as state and federal regulations take a direct toll on the staff of those organizations offering benefits, and the indirect cost of supporting their consultants.

### ***Expectation***

We deserve the best, we demand the best, but no one can define the best, so it's best to figure that the newest, or most expensive, drug or treatment must be what is needed. Television shows, medical miracles in the media, drug company advertising and a general willingness to believe newer, bigger, and higher are all quality indicators, contributes to greater system demands and less willingness to “settle for less.”

## ***Litigation***

You mean my right to fight for what I think is right (in retrospect) carries a cost? Don't doctors, hospitals and health plans carry insurance? (yes, but who do you think pays the premium in the end?)

## ***Compensation***

The number of uninsured continues to rise, but none of the studies can agree on what it is or how to define the amount. All we know is – it's a lot, and medical professionals and facilities must pass the cost from those who can't pay to those who can.

The Federal Government, which should shoulder some of this cost shifting burden, actually contributes to it. Medicare and Medicaid reimbursement continues to decline. Again, providers pay the difference.

## ***Math Equation***

Pricing is not as simple as adjusting for last year's gains and losses, or estimating some nebulous "inflation rate." Added to the final calculation:

- 1) Claim activity is not always a straight line and both constancy and aberrations over the year, including adjustments for enrollment, must be determined to formulate an accurate cost per member
- 2) The difference between premium revenue and claims expense is also not a straight line. If we assume annual revenue for a plan at \$150,000, but claims at \$200,000 and we then plug in an "inflation rate" of 10% to both numbers to retain equilibrium, the actual increase required would be 13% ( $\$200,000 \times 1.1 = \$220,000$ ;  $\$150,000 \times 1.1 = \$165,000$ , for a difference of \$55,000. The revenue constant must therefore be \$170,000, which is 13% above the previous year's revenue). Of course, the inverse would also be true, but carriers generally find other factor to support a raise.

This often leads to –

## ***Negotiation***

Suppose you reached an accord with a carrier this year, according to mutual measurements on risk and rating factors. Convenient, but it does not help the carrier's bottom line long term. Thus, any additional loss ascribed to this year's contract must be factored in next year.

There are also negotiations (with more rancor than reason) between carriers, the controlled or private PPO networks, and providers. There is an increasing sense of entitlement by health care practitioners, who initially and continually cut fees too far in response to the threatened loss of patients. Having lost patience with reduced revenue, they seek its rescue on review, saying they'll sue or simply strew the ashes of what remains of managed care.

### ***Consolidation***

Of health systems, hospitals and medical groups, making rate negotiations an even dicier proposition, as carriers roll the dice and hope the numbers at least come out even.

### ***Allegation***

There is fraud and abuse in the system, partly because there is not really a system for the efficient, economical and easy delivery of health care in this country.

### ***Cooperation***

Health care is like a ship with too many captains and too few crew. It displaces a lot of dollars (and misplaces a fair amount as well) but it cannot be navigated well because when everyone (carriers, employers, doctors, hospitals, government and the consumer) is in charge, no one is in charge. But we all get charged for it, which is what charges up the many apostles of reform, who charge forward with ideals but few good ideas.

### ***Complication***

Hospitals are structures, with structured costs to maintain their physical plant. A tendency to greater out patient care does not reduce operational costs, and overall earnings may not even increase with service shifting.

### ***Coordination***

We are damnedly deficient when we try to make efficient the best way to deliver the best way for caregivers to handle hard cases. Expensive testing, expensive treatment and too many hands are handling with no one armed to make final decisions. Some systems are in place for catastrophic situations, but they're not widespread, not uniform nor suited to all occasions.

### ***Variation***

Health care does not have a single, or even a few components. There is a complex interaction between products, services, professionals and the resulting permutations arising from their interaction confounds computation. The cost of prescription drugs has risen at a faster rate than doctor fees, for example, but they purportedly prevent medical and hospital visits. They create risks and problems of their own, however, with additional visits to doctors and hospitals caused by noncompliance. Then there is the burden of administrators, rebaters, consolidators, advertising driven demand, Canadian imports (even when they cost more) and the Medicare movement – where does the cost spiral end?

What was the question? Actually, it's more of a quest. Despite proffered political panaceas and organizational observations offered, cost containment can't be conferred until the underlying difficulties are determined and we become determined to deter their deleterious effects. An examination of the health care system and its underpinnings is necessary not to divine answers, but the questions, the issues and the motivations required to define the problem – and then solve it. As Casey Stengel famously remarked, "if you don't know where you're going, you could end up someplace else."

## SUMMERTIME BLUES

More: The maxim is “qui tacet consentiret” – the maximum of law is “silence gives consent” If therefore you wish to construe what my silence betokened, you must construe that I consented, not that I denied

Cromwell: Do you pretend that is what you wish the world to construe from it?

More: The world must construe according to its wits; this court must construe according to the law

(Man for All Seasons)

The rain fell alike upon the just and the unjust, and for nothing was there a why and a wherefore (W. Somerset Maugham)

I know I am but summer to your heart  
And not the full four seasons of the year  
And you must welcome from another part  
Such noble moods as are not mine, my dear

(Edna St. Vincent Millay)

Layers of lawyers sift through legal grit, new Supremes dream a shift to regal writ  
Plaintiffs’ grief finds brief relief as the venue changes  
Attorneys’ journeys pass from Fed to State, trailing early to see who’ll legislate  
A course selection before menu exchanges

Which Congress will proceed to do when hapless will concede review  
Of sunset views which won’t fade but are made permanent  
COBRA snakes back HIPAA “takes” stack, clarity proves laws letters black  
Juries see injuries with less guess what judges meant

California courts trouble when acting in a bubble  
New laws lurk but won’t work without approval  
Domestic partners are impaired, conforming rules must be prepared  
Ballot fights for rights may end with removal

Fat becomes the new tobacco cases come by using RICO  
Spitzer sprays suits pursuing commission course direction  
Marsh was soon swamped with subpoenas and like a pack of hyenas  
States instated measures made to customize correction

Expect our rates to rise as Spitzer eyes the prize of Pataki’s seat after finding smoking gun of what Marsh execs had done all in the name of customer service. But it was quite contrary to what is customary even while prepared for such contingencies as the exigencies of their crime’s commission showed that Marsh’s mission may have been to pay themselves at clients’ expense or from carriers’ income. This is law practiced in raw form as more mundane reform shows perfection’s not the norm as even states can’t conform to what courts inform was meant in what was sent from Senate or the House.

We grow dependent on new definitions but don't know which end is up in the air as in confusion we compare family values in one venue to the next. "Working Family Tax Relief" and USERRA usurps COBRA's brief, which is less brief in California with the new extension. Extended families and leaves get accepted but neither are excepted from Federal tax and we were lax by not legislating reciprocating rules to lead HSAs away from state collection. Collecting random thoughts the national agencies thought to make clear COBRA standards which were sought and in a rare display passed rules in sequence on HSA which for once may be a law lacking unintended consequences.

A host of court decisions, some creating imprecision, will continue to allow a retinue of attorneys to be employed but many issues were tabled which enabled those ennobled to persist and avoid being destroyed.

### *The Heat is On – Federal Benchmarks*

Memory believes before knowing remembers, believes longer than recollects, longer than knowing even wonders (William Faulkner, Light in August)

So is it any wonder no one knows what Congress believed when they passed legislation past the point of no return to the turning point to point us in the right direction which is now codified with correction of COBRA and Flex Plans which both received bans in the light of the August moon. So "try to remember those days in September" when the government ceased dismemberment of these landmark laws.

### Flex Wrecks

Less interpretation than certification of court reports over many years, it appears the guesswork is now mostly gone and we can move along

### HSA Essays

Closely aligned when many are in mind of the exempt health expense, agencies were in a hurry to pass a flurry of regulations while the jury was still out in doubt about how HSAs would acquit themselves in the market. So mark it well, for this was the year of rapid bureaucratic response, and a flood of Revenue and Administrative Rulings, Private Letter and Procedural memos and, in September, an 88 "question and answer" bulletin that put the bullets in this weapon for self health determination. We've condensed all this in sales summaries and a plenary of procedures, which we present in polished form for those who wish us to perform their installation.

### COBRA Conclusions

The Department of Labor labored to publish final regulations on the content of COBRA notices. Eighteen years in the making, we present this for your taking in the attached outline.

### Que USERRA Sera

COBRA's military cousin, which states that those on active duty will be given 24 months of continuation rather than the standard eighteen, for election made beginning December 10, 2004. Employers are required to post or give notice of this change by March 10, 2005.

## Family Matters

The Working Family Tax Relief Act takes effect January 1, 2005

- 1) Dependents are now defined under IR Code Section 152 as either a qualifying child **or** a relative. The child may not be older than 24 but is not required to meet a formal support test
- 2) A qualifying relative could be a child, but a dependent is defined as someone providing less than 50% of their own support, with a relationship to the taxpayer, a common residence and earning less than the gross income limit set by statute
- 3) The requirement that a taxpayer maintain a household to claim the Dependent Care Tax Credit (or Flex Plan allowance) is eliminated. Thus, common residency for half the year is sufficient even if the taxpayer provides less than half the support

Tax credits were also changed:

- 1) Accelerated the allowed amount per child to \$1,000 in 2005 (was slated to occur in 2010)
- 2) Accelerated the refundability of the Child Care Tax Credit to 15% (was 10%) of taxpayer's earned income in excess of 410,750

Standard disclaimer – this is a *guide* – ask your accountant for details

### *Extended Family*

The law also extended the sunset provisions for the Mental Health Parity Act and Medical Savings Account (despite the activation of Health Savings Accounts) to December 31, 2005

## Disability is Taxing

Often forgotten when writing group disability plans is the fact that if the premium is deductible to the company as a business expense, the benefit received is taxable to the disabled recipient. Revenue Ruling 2004-55 (6/9/04) clarifies that employees may be given the opportunity for an irrevocable election to pay the premium on an after tax basis rather than have the employer pay. When contributions come from both sides, the rules are more complicated – so don't do that.

## Retirees Aren't Relaxing

The golden years might not be as golden as employers are less beholden to long term employees. The EEOC declared that employers may reduce or eliminate health benefits for retirees when they become eligible for Medicare at age 65

### *No Light in August – State Stretch Marks*

The most useful thing about a principle is that it can always be sacrificed to expediency  
(W. Somerset Maugham)

Which fits state rulings to a “T” which stands for “Trouble”

California State Supreme Court ruled in March that a Roman Catholic charity must provide employees with birth control coverage despite opposition to contraception (less a matter of how the idea is perceived as to how it was conceived)

Domestic Partners must be covered – but won’t be tax exempt  
Paid Family Leave must be granted – but benefits are taxable  
Health Savings Accounts may be allowed – but not an exemption from state tax

When given the opportunity to stretch a point, the state of California (don’t say we didn’t warn ya) is less liberal but not more right, less Golden and not more bright

### *Midsummer Night’s Dream – Bench Marks*

Lord, what fools these mortals be

His speech was like a tangled chain. Nothing impaired but all disordered

(Midsummer Night’s Dream)

### Managed Care Liability Responsibility

The suits are settled, as carriers beat a retreat to meet their obligations and deliberately end deliberations. Concerns about interns and internal accounting practices affecting the practice of medicine won’t be learned or overturned, as defendants spurned further disputation so as to keep their reputation (for what, no explication was required)

### Flex Muscle

- 1) Employees may be reimbursed for day care even if they fail to secure a Tax Identification Number from a provider, provided they “exercised due diligence” to get it
- 2) Private school tuition, when the school is to correct a learning disorder, is a medical expense (IRS Information Letter 2004-0090)
- 3) Employee setting aside funds pretax for Transportation payment is not entitled to a refund of remaining money if they cease to participate in the plan (even for termination of employment)

### COBRA – Small Bites

- 1) Legal separation is a qualifying event, but not an Agreed Temporary Order (Simpson vs. T.D. Williamson)

- 2) COBRA applies even when the person on FMLA does not pay for coverage
- 3) Where COBRA premium exceeds medical expenses, no damages when an inadequate COBRA notice was given (Soliman vs. Shark)

### Electronic Docs Rock

The Department of Labor issued rules regarding the substitution of paper Summary Plan Descriptions with electronic communications

### ERISA (how can we miss ya when you won't go away?)

The Supreme Court agreed with HMO defendants in two separate cases that they could not be sued for punitive damages under state law (both involved Texas disputes) because the matters were to be filed in Federal Court, which uses ERISA, which does not recognize the imposition of such damages (Aetna Health Inc. vs. Davila and CIGNA Healthcare of Texas Inc. vs. Calad)

And so the law sits above it all, not subject to Congressional thrall or the pall of political ramblings. It shimmers and it radiates and beckons as a beacon for those who wish to shine truth's light on what they might seek in the judicial system. Out of context, but in fitting with our Journal theme:

They are not to lose it, in whatever peaceful valleys, beside whatever placid and reassuring streams of old age, in the mirroring facts of whatever children they will contemplate, old disasters and newer hopes. It will be these musing, quiet, steadfast, not fading and not particularly threatening, but of itself alone since, of itself alone triumphant

(William Faulkner, Light in August)

## **COBRA Notification – The New Rules**

Index QB = qualifying beneficiary  
QE = qualifying event  
H/W = husband and wife  
SPD = Summary Plan Description

### ***Initial Notice***

- 1) Deadline for providing notices is within 90 days after coverage under plan begins
- 2) SPD containing the required COBRA information may be used to satisfy the initial requirement if it is provided within the 90 day period for delivery
- 3) Single notice rule has been retained if the spouse has same residence as employee – but if they become covered at different times, a separate initial notice must be provided to the covered spouse within 90 days after coverage begins
- 4) Initial notice must contain several items:
  - a) Name of the plan, name, address and phone number of contact
  - b) General description of continuation coverage, including identification of classes of individuals who may become QB, types of QE, obligation of the employer to notify plan administrator of the occurrence of certain QE, the maximum period for which continuation coverage may be available, when and under what circumstances continuation coverage may be extended beyond the applicable maximum period and the plan's requirements application to the payment of premium for continuation coverage
  - c) Plan's requirements regarding responsibility of QB to notify administrator if QE is divorce, legal separation or child no longer eligible dependent
  - d) Plan's requirements regarding responsibility of QB receiving continuation coverage to provide notice to administrator of determination by Social Security that QB is disabled and plan procedures for providing notice
  - e) Explanation of importance to keep administrator informed of current addresses of participants under the plan who are or may become QB
  - f) Statement that notice does not fully describe continuation coverage or other rights under the plan and more complete information is available

### ***Qualifying Event***

- 1) Plans may require covered employees and QB to provide their own notice within specific time limits and impose consequences for failure to meet, but only if QB informed of plan's "reasonable procedures" through its SPD or initial notice.

- 2) Disability Notice: rules stated QB must notify of disability determination within 60 days of determination and during the first 18 months – this is not possible for someone whose disability predated the QE – this is now extended to allow QB to have 60 days, measured from latest of: date of SSA disability determination, date of the QE, date on which the QB would lose coverage under the plan or the date on which the QB is informed of the obligation to provide the disability notice
- 3) Election Notices: must be furnished to each QB except H/W at same address
- 4) Must contain enumerated items:
  - a. Name of the plan, name, address and phone number of contact
  - b. Identification of the QE
  - c. Identification by status of QB name recognized by plan as being entitled to elect continuation and date on which plan coverage will terminate
  - d. Statement that each QB has independent right to elect coverage, and that QB who is spouse may elect coverage on behalf of all other QB
  - e. Election procedures, including time period and time limit for response
  - f. Consequences of failing to elect or waiving continuation coverage, including explanation that QB decision will affect future rights of QB for coverage portability and access to individual health coverage, and reference to where QB can get waiver revocation information procedures
  - g. Description of the continuation coverage that will be made available
  - h. Maximum coverage election period available under the plan if elected, of continuation termination date and explanation of events which may cause continuation coverage to be terminated before the maximum period
  - i. Description of the circumstances under which maximum period may be extended due to second QE
  - j. If notice offers less than 36 months, description of second notice
  - k. Amount QB must pay for continuation coverage
  - l. Due dates for payment, grace period, address to which payments should be sent and consequences of delayed payment or non payment
  - m. Statement that the notice does not fully describe continuation coverage or other rights under the plan

### ***Termination Notice***

Must be provided “as soon as practicable following the administrator’s determination that continuation coverage shall terminate”

## FEDERAL "FALL"IES

Henry VIII: Thomas, I chose the right man for Chancellor  
Thomas More: I should in fairness add that my taste in music is reputedly deplorable  
Henry VIII: Your taste in music is excellent! It exactly coincides with my own!

Democracy, n. a government of the masses. Authority derived through mass meeting or any other form of direct expression. Attitude toward law is that the will of the majority shall regulate, whether it is based upon deliberation or governed by passion, prejudice and impulse, without restraint or regard to consequences. Results is demagogism, license, agitation, discontent, anarchy (US Army Training Manual No. 2000-25, 1928-1932)

The weapons of mass destruction were clearly a crass construction  
Designed to back an Iraq attack  
And the commission's conclusion caused considerable confusion  
Who held the bag or would get the sack?

Rummy rose on djinned ascension Rice throws balls of Condyscension  
Powell tossed the towel over with Tom Ridge  
In the gorge with George's tenets the COA spied the Senate's  
Plan to span the intelligence bridge

While electoral euphoria sickened with sic transit gloria  
Mundi morning quarterbacks did Rove  
As Karl color coded states red and blue determined fates  
Faces angry white with fright purged the moralistic blight  
Finance taxed the other side Gulf war crossed the great divide  
To joint together voters in droves

The early polls showered Howard Dean with praise for funds raised without machine  
In the end it was all over (but the shouting)  
The other candidates did jockey in the horse race horse face Kerry cocky  
Led and left no room for Democratic doubting

Yet Theresa Heinz variety couldn't catch up with Bush dubiety  
Of one so recondite despite his erudition  
John couldn't help but act as such he didn't carry the common touch  
And opponents said he commonly switched position

So he lost and we were tossed into tempest to be bossed  
By Republicans who thought a mandate was imposed  
As many Cabinet members quit and the Supremes look out of it  
We don't know what we'll get (or got) what's proposed

Thus the call for our security yet Social claims to obscurity  
So which terror is the fairer for our pursuit?  
War is waged without wage raise and will uninsured give praise  
Or credit for tax credit if they knew John Snow fed it  
Or association pools run amok without state rules  
For cuts in social service so rich folks won't be nervous  
Though the deficit collars an arrest of oiled dollars  
Making signs of patient recovery moot?

Autumnal equinox. Opportunity knocks for the Bosox but electoral Masses choose its color red not blues it's sad Kerry couldn't marry United States. So George Bush begins again, will he channel Ron Reagan or will his panel picking new Cabinet show that we're not ready yet to take ownership of our own society. "We need to charge out of the box with a mandate to be bold" Policy Director Tim Adams told even though the many polled could not agree on what was sold or whether they got rolled around the many issues found surrounding judgment scarcely sound or was that what did redound as a result of our election selection?

Disgrace was not Delayed as Congress finally flayed one leader but lost the Daschle wit from Dakota. The Democrats' coalition couldn't coalesce, Michael Moore was less than Fair in heightening fears of four more years behind the Bushes. Who beat the bushes for a supporting cast to make the legacy last through initiatives passed for security homeland and Social insurance for assurance the uninsured get access while continued cutting taxes won't bring attention to our deficit disorder. Disunity would border on treason as we order more drugs across the board sure to make Canadian's bacon if we try to hog all their drugs.

So we delve into new queries to test economic theories to determine if we'll determine our own fate. With faith in our dollar shakening we're oil in for a crude awakening and may have to be forsaking our engorgement on what George sent for public consumption. We'll have consumptive fits if we don't expel what doesn't fit or just nudge it from our budget benefits. So here's his chance to make it, he's had four years to fake it, and we trust Bush makes it news not "Daily Show." Otherwise our poor condition will allow what's left of coalition to return another Clinton to Washington.

*Reading the Leaves – The Election*

Much madness in divinest sense  
To a discerning eye  
Much sense – the starkest madness  
'Tis the majority  
In this, as all prevail  
Ascent – and you are sane  
Demur – you're straightaway dangerous  
And handled with a chain

(Emily Dickinson)

It's hard to know which way to go, since the election raises more questions than it answers.

Has the Moral Majority returned?  
Is the election a mandate for the candidate or his agenda?  
Despite record turnouts, is carrying only 34% support a mandate?  
Will Dean's grass roots campaign through the Internet shift political support?  
Will the burgeoning 527 campaign PACs pack more punch?  
How did we go from November election to a 10 point drop in Presidential popularity polls?  
Are Democrats in disarray – did their party play with too many issues and too many alliances?  
Who will be the Republican replacement and will they face Hillary Clinton or John Edwards?  
George Bush disdains discussion of legacy, so will he focus on what's possible or practical?  
(Henry Adams said, "practical politics consists of ignoring facts")  
Do polls matter?  
For that matter, do they reflect the truth of the pollee or the perspective of the poller?  
Do we need traditional news media? Web logs predicted returns with more accuracy, and  
more viewers returned to watch John Stewart rather than Dan, Pete or Tom  
(the Three Wise men, Three Stooges, or just the unholy trio?)  
Is the nation ready to set a precedent by electing an Austrian President?  
Will George Bush court someone with Senate support for appointment to the Supreme bench?  
Will a new cabinet take old policies off the shelf or open the door to a new agenda?  
With House and Senate firmly Republican, what happens to dissent?  
(or will we wonder where it went) as the President pushes through his plan?  
The war continues – for how long?  
And how strong will its influence be felt – and over what?

*The Autumn Leaves – with everyone else*

William Rehnquist may have kissed off the role of Chief, and it is posited that two more justices may not survive Bush's second term. Thus the President can influence precedent for years to come with an opportunity to reseat one third of the Supreme Court bench.

The head of HHS is gone, Commerce gets no flakes from Kellogg's, Andrew may have played his last Card, Powell went out without a howl, Tom Ridge couldn't bridge the gap of credibility, which was not helped with the first CIA nominee (and now someone new will oversee that agency). Ashcroft did not craft his role well in general, John may be Snowed in or has been Snowed by his boss. Rumsfeld may not be held in place if he doesn't shut his face (or save us from disgrace) – and where will Karl Rove now that his mission is accomplished?

The Senate lost its Minority leader who opposed most of what the President proposed. Gephardt stepped down in the House, and there was a slight Delay to gerrymandering while the Whip got whipped over ethics charges. Campaign reform has apparently been performed, there are some musical chairs in committees, the Patient Bill of Rights bids good night, and Dingell and Kennedy promise to fight for a national health program. Solitary voices have made interesting choices, as witnessed in the debate over bringing new Intelligence to government (Washington enjoys forging ahead without irony)

### *Eats, Shoots and Leaves – The Spending Plan*

- 1) We'll leave intact estate tax relief – despite the cost
- 2) We'll leave intact tax cuts for the rich – despite what the middle lost
- 3) We'll prune public funding of Social Security – in spite of who it frosts
- 4) We'll graft on private investing for Social Security – at what cost?
- 5) No matter since we'll borrow from the Treasury branch
- 6) All of which will stimulate growth which will change the color of our economic picture

### *Eats Shoots and Leaves – The Savings Plan*

- 1) We borrow so tomorrow seniors have more invested
- 2) Their future is our future but we'll expand other programs for the present
- 3) And make a present by presenting expanded IRAs, FSAs, HRAs and HSAs
- 4) All of which will stimulate growth which will change the color of our economic picture

After all, deficits don't matter

### *Beats, Loots and Sheaves – The Health Plan*

Kerry can't carry his plan – just look at the man – he went to Yale, he was Skull and Bones, he has a patrician family (no, wait, that's Bush, no, wait – too late).

"I can say without equivocation – this President has been pretty heavily influenced by economic theory" (A. Glenn Hubbard, first Bush CEA chair). The current CEA chair hasn't grown weary of wacky theory, with a recent lecture likening personal care and its coverage to auto insurance. Now, I may love my car, but.... (and can I get a loaner on this body?)

- 1) It's cheaper – depending on who's doing the calculations, the combined proposals will only cost between \$89 and \$227 billion over ten years, but should cover 8.2 million of those previously uninsured. Kerry's plan, by contrast, was projected at \$1.25 to 1.5 *trillion*. Why either plan would cost so much when they propose so many cost saving reform measures has still not been measured – or explained.
- 2) Health Savings Accounts were just implemented January 1. Amazingly, the IRS has issued a large number of clarifying regulations – but additional expansion is expected
  - a) Allow any consumer to deduct 100% of the insurance premium when an HSA qualifying plan is purchased
  - b) Give \$200 (individual) or \$500 (family) tax credits to small business employers who make HSA contributions on behalf of their employees
- 3) Create Association Health Plans to give small business large group purchasing power. This is endorsed by the chair, Bill Thomas, of the Health Subcommittee of House Ways and Means. However:
  - a) Small business already has purchasing power – through insurance carriers, which create "trusts" or "pools" for different business size categories
  - b) Even the Associations representing business can't agree. One cites a potential 23% premium increase, saying by building on the weaknesses of the status quo it perpetuates the limitations of the current health care delivery system

- c) There is also a concern that the state regulatory and protection functions would be superseded by a federal regulatory authority that does not exist to enact safeguards it does not yet understand but which have already been established
- d) Thus we will do what has been done, at a higher cost, with a larger bureaucracy, while starting over, to put us back where we are.

Good idea.

- 4) Provide above the line deductions for Long Term Care and additional personal exemptions to have caretakers of family members
- 5) Provide Malpractice liability reform
  - a) Which has worked very well in California (no, really)
  - b) Which has been opposed primarily by Senator Daschle, who was defeated, and Representative Crane, who voters abstained from re electing
  - c) Following the prescriptions of HR 5, which caps non economic damages, discusses shared liability and has clear rules of recovery
- 6) Help the uninsured, even if they don't want it
  - a) Tax credits include HSA deposit amounts
  - b) \$100 million to high risk pools for those who are medically uninsurable
  - c) Expand outreach funding to enroll children in SCHIP and Medicaid
- 7) Economic theory must show that the issues of the uninsured or underinsured are not related as much to funding as they are to marketing. Expanded payments are proposed even though:
  - a) Just 3.6% of those eligible to receive tax credits under the 2002 Trade Act did so
  - b) Many who qualify for child credits (SCHIP) or Medicaid fail to enroll
  - c) The Medicare drug discount card didn't amount to much (i.e. AARP sent 26,000 applications and received only 400 back)

*Doesn't eat, just shoots and leaves – but when?*

Charm is a way of getting “yes” without asking a clear question (Albert Camus, The Fall)

This isn't the place to discuss it but the war in Iraq expends both a human and financial toll, which diverts resources from what is needed at home. An error in terror prevention was not recanted, but justification instead decanted while allies ranted and news was slanted and we find that warfare in the Middle East takes a different slant (didn't we learn that in Southeast Asia?) Reality is thus glossed over easily under cover of coruscation, but not so statements made by those who seem afraid that their capacity for mendacity will require expiation.

*Up a Tree – or Hidden in the Branches*

Universal coverage - Kennedy and Dingell tangle with Rangel, but no one intercedes

Patient bill of rights – why? The courts are taking the lead on this

Canadian drug imports – it's still not understood that if our country is the one that subsidizes the pharmaceutical trade in Canada and we buy from Canada, are we robbing Peter to put Paul on drugs?

Medicare – reform is re-forming funding and the future of CMS. But a senior official gave damning testimony this year that the Bush administration deliberately withheld intelligence that the 2003 Reform Bill was going to cost \$534 billion and not the \$395 billion publicly stated. The Congressional threshold for passage was, coincidentally, \$400 billion. The administration confessed to this “oversight” – after the bill was in the rear view mirror

*Turning over a new leaf?*

“I said ‘we should be careful not to adopt some new behavior just because there's hysteria in the country’” (After the Fall, by Arthur Miller)

Letting freedom reign has a nice ring to it and the “ownership society” should wring some real advantages – for those who respond responsibly. Who can, and how can they?

How much do seniors understand of Medicare reform or drug discounts?

Can anyone manage medical costs effectively with an HSA?

If people can't sign up for tax credits and program subsidies when they clearly qualify now, what happens when the course of action is less clear cut?

Why are employers still involved in health insurance purchasing?

What assistance will be available to regulate costs when the government can't do it now, when they are nominally in charge?

If you give a farmer a field with no tools to work it, who is responsible for the farm's failure? Put another way, if you try to fail and succeed, what have you done?

After the fall

It wasn't our fault at all

Lying in the stars and not ourselves

Despite what Shakespeare said

Or what Bush economists read

Theory is not reality

And it's not a question of morality

Since what it's all about

Is that true faith means doubt

Only questioning will bring us to solutions

Holga: it was my country – longer, perhaps, than it should have been but, I don't know...and now I don't know how I could not have known.

Quentin: Holga, I bless your uncertainty. You don't seem to be looking for some...moral victory

(After the Fall, by Arthur Miller)

## WINTER'S STATE

This country is planted thick with laws from coast to coast. Man's laws, not God's. And if you cut them down – and you're just the man to do it – do you really think you could stand upright in the winds that would blow them? (Thomas More, A Man for All Seasons)

Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies (Groucho Marx)

### The Snowman (Wallace Stevens)

One must have a mind of winter  
To regard the frost and the boughs  
Of the pine trees crusted with snow;

And have been cold a long time  
To behold the junipers shagged with ice,  
The spruces rough in the distant glitter

Of the January sun; and not to think  
Of any misery in the sound of the wind,  
In the sound of a few leaves,

Which is the sound of the land  
Full of the same wind  
That is blowing in the same bare place

For the listener, who listens in the snow,  
And, nothing himself, beholds  
Nothing that is not there and the nothing that is.

Schwarzenegger's schadenfreude seemingly he will avoid  
Despite failure to hoist flagging finances  
He deferred some chances early when he referred in rants to girlie men  
And is tapped for his lapse with budgetary dances

Now three billion's back in bondage to stem dollars' flow this bandage  
To bring business while we lose it cells our future  
Garamendi will reform his image grows and glows warm  
Rate and core repair needs air more than a suture

Medical mandates for groups were passed but opposition was soon amassed  
Arnold took initiative with a ballot measure  
Proponents were California dreaming as opponents kicked in funds while screaming  
High turnout didn't turn out to give backers pleasure

Casinos are bad and gambling lost some wealth  
Millionaires are mad which cost them mental health  
HSAs faced funding needs lost tax by stealth  
Domestic partners rights were legislated while they were publicly excoriated  
Though Gavin Newsom trouble would ensue  
Did we mention marriage in Massachusetts?  
Berated state fights elsewhere massed eschews its  
Right to engage the rights that gays pursue

The IRS caused some distress now Family Leave is in a mess  
While states desire to conspire to import drugs now mounts  
Medicaid still needs some aid but Feds won't fund, I'm afraid  
And Washington (no, the other one) shows that every vote counts

Can anyone recall the situation last fall when skies were Gray and we didn't pay attention to our bills to electric power shills and blamed our budget ills on a man who had no time to plan recovery? We marched off to a different drummer singing praises of his Hummer, but we might look even dumber if we thought that a newcomer knew which way to go when the thought it was a show or a showcase for convention-al discovery. The budget still won't balance and the ballot gave no chance to validate what some would state are beyond our laws to legislate and thus we suffer some of the fate we see just as irrational when it is on a national level.

The problem of the uninsured won't be by SB 2 soon cured or any other bill procured to help our health by sharing wealth. If millionaires are bullied to bear the cost of problems mostly mental won't we in time make incremental incursions (thought it's meant well) to fund more fundamental excursions into needed programs channeled to show equity? What does it portend when we find poor tend to vote against the rich or be persuaded to switch to bonds since payment on a debt is not required to be made yet we think the system won't be taxed to cough up more for coffers (and should we revoke the right to smoke or would that provoke too many coffin fits?).

There's always a way around it and supporters say they've found it when they tell Arnold "we'll be back" with new attack on employer paid health care. Not that they don't care but is it really fair to place the burden of the fare on the backs of those on whom it does not belong? Employers may seem strong but they'll just pass the cost along (or hasn't anyone seen the throng of those who stomp for other states when Workers' Comp issues high rates and legislators debate about what's wrong?)

### *Lion in Winter*

If California were a corporation...it would reorganize! Then everyone will be confused (if not amused) and we'll freeze funds for some programs while transplanting agencies and then come spring it's a whole new thing and see, isn't that better? It had better be, since the Governor proposes to eliminate 118 Boards and Commissions in the state, but then return with new redundancy – 112 new agencies with broader powers and presumably positioning that many appointees with loyalty to the current leader.

Our favorite suggestion is, despite claims the state wants less involvement with managing health care, we would eliminate the DMHC and have one agency run public health, Medi-Cal, mental health, welfare, disabled services and substance abuse, giving plenty of substance to claims of abuse that could be exercised before Arnold's successor successfully exorcised this abomination.

### *Lying in State – Arnold, the Movie Review*

The state is in no better state than when “True Lies” were told and we were sold on star quality. Immediately losing \$3 billion in foregone new car tax, then bonding \$15 billion on future backs (and they accuse Barry of drug enhanced performance?) Moving the smoke filled room to an outside patio, blowing smoke about the budget and getting sued on nursing ratio. Arnold builds his body politic but is not politically correct when he incorrectly identifies the body parts of party members, and then remembers to wound the pride of those on the other side. We've had more thrills and spills than “Terminator” – but will we get a “Raw Deal” *in the end*.

### *Lying in Wait – Governor Garamendi?*

He saved Workers Comp! OK, he cut the costs a little – and with help.  
He saved us money from Executive Life! OK, he was trying to do in his first term.  
He saved consumers from the Blue Cross merger! OK, he OK'd it when they paid.

He will save us from brokers! That's right – Marsh got bogged down in criminal pursuits, causing legions of lawsuits, but now we are all made to look guilty (so I'll confess right here – I get paid for what I do. And I'll tell you what it is. A new disclosure statement required by the Commissioner will take four pages to make that statement. So here you have the more concise version)

John Garamendi believes the state should run health care (wait – what would happen to the insurance carriers? There would no no one left to regulate unless...he secretly backs the Governor's reorganization plan and wants to head a new “super agency” and co star in an action movie and be the toast of Hollywood...) Oh, wow. What a nightmare.

### *I'll Be Back – in the spring*

So sing supporters of universal access, or universal health, or whatever passes and avoids the masses massed against another public referendum. What's interesting is that the two camps have either not thought much about the consequences and structure (those who pushed through SB 2) or have examined too much Truth or Consequences to arrive at a workable – and affordable – model. I've been to forums for both sides and see they have one thing in common – a disregard for the common consumer, and common sense.

### *Hibernate*

A \$15 billion bailout bond, a \$3 billion bid for biotech business and when this sweeping debt does waken will we be overtaken by a bearish forecast for the next financial season?

## *Snow Job*

The problem with federalism is it tends toward feudalism – or feuds – with those imbued with the power to turn sour some of the sweetness of success started by state largesse

## Domestic Partners

- 1) All plans must offer the same coverage to Domestic Partners as they do to spouses
- 2) This is dependent on partners being registered with the Secretary of State
- 3) Carriers may only require such proof if they make similar requests of married couples

But – the premium paid for partners' insurance is not

- 1) Deductible to an employer
- 2) Tax exempt to an individual or covered employee
- 3) Eligible for Cafeteria Plan deduction
- 4) Nor do COBRA continuation rules apply to the partner or *their* dependents

## Family Leave

Yes, the legislature lets those with need and newborns take Paid Time Off, with funding coming not from the employer but State Disability coffers (to which all employees must contribute)

But – the IRS just ruled that the amounts received, even though the “premiums” are made on an after tax basis, are taxable

Or there was no smell so sweet, as some bills went to defeat, or we managed to make of them a mess

## Cal COBRA

There are actually two laws with this title. The challenger wins the bout, as the original was taken out – but those on the old “Senior COBRA” as of 1/1/05 are grandfathered (sometimes the puns run themselves)

The first bill allowed those with at least five years of service who reached age 60 by the time of employment termination could extend COBRA until age 65 (as well as their spouses, even if they were younger). A subsequent bill extended COBRA for any employee losing eligibility to 36 months, HIPAA requires individual insurance to be issued on a guaranteed basis when COBRA ends, and another law limits the amount that may be charged to those 55 and over.

Three laws for the price of one, which was already too expensive (permitted premium was 213% of the employer payment). Simple, huh? So one went, and the new ones stayed.

## Nursing Ratios

Proper care is only there when the balance between patients and nurses is fair. But hospitals didn't fare well under the law, with budgets already strained so some refrained from proper implementation. With new, tougher ratios set to take effect January 1, the Governor interceded without authority and suspended this subsequent mandate. So nurses sued, saying patient care is compromised, but won't they be surprised when the hospitals can't afford to keep either of them?

## Health Savings Accounts

Hurray! We have a way to save more money, and use it how we want and when we want and state law came up wanting as they want more tax revenue, so on review all three of the bills in the legislative hopper came a cropper – reaping more for California by asking that state tax be paid on Health Savings Account contributions.

### *Now is the Winter of Our Discontent*

Here's an idea. Find an issue where payment is lacking, get some prominent political backing and then undermine without attacking those we don't like anyway. Now the rich must contribute 1% of their income to fund mental health programs.

That was so easy – who was going to openly oppose it? So we should do that again. Let's find another issue, but this time lower the income threshold for taxation from \$1 million to \$500,000 – “those people” don't need all that money. But wait – there are lots of problems that need our attention, so 1% of \$1 million x 3 issues, then 2% at \$500,000 for 2, and another 1% at \$100,000...

This is the problem that needs our attention

### *Washington a Winter Wonderland*

Where every vote counts, and they count every vote again and again and...enough already, declare a winner. And next time, vote early and often.

Their turnout was still not as large as California, which had the highest numbers in the nation. Just out of curiosity, do we still have to register the complaints of the 29% who registered but did not vote?

In Arizona, they are trying to get a referendum on whether voting should also confer eligibility for a raffle drawing. Those who said that politics is like a lottery may be proven right after all.

## AN AGENCY – FOR ALL SEASONS

Duke of Norfolk: I'm not a scholar, but look at these names! Why can't you do as I did and come with us – for fellowship?

Sir Thomas More: And when we die, and you are sent to heaven for doing your conscience and I am sent to hell for not doing mine, will you come with me – for fellowship?

(A Man for All Seasons)

Strategic alliances, maybe; professional partnerships, certainly; but fellowship?

We have tried to set ourselves apart while becoming a part of something greater than the sum of its parts while providing our clients with the whole picture of what is possible in benefits.

Somewhat sarcastic, I also suffer from and other “tics” – for all good reasons

I tend to be iconoclastic  
Avoiding others studiously  
While engaging in studies scholastic  
Competitors treat me dubiously  
Combatting with bon mots bombastic

But I take this job seriously  
With series of queries elastic  
In form conform mysteriously  
Not to the norm or faux fantastic  
With models built laboriously  
For which we wax enthusiastic

Sarcasm should not be mistaken for cynicism (or witticism), which in turn is not to be confused with skepticism. A cynic is a skeptic without hope. Ancient Greek skeptics believed that all knowledge is uncertain. This led them to keep asking questions rather than becoming silenced by certainty. My hope is that I remain uncertain, so no curtain may be closed on production of the means by which deduction deservedly sees destruction of “business as usual.”

We usually display recent developments in our agency “model” since we don't model ourselves on any other organization – but not this year. After all, it's not a beauty contest (and, I fear, I often miss congeniality). So we'll continue to do it our way – but not without the help of so many excellent professionals with whom we've been fortunate enough to affiliate (for fellowship):

- 1) United Insurance Technologies, for consulting on web based administration programs
- 2) Our “web” of regionally agency associations, and national through United Benefit Advisors
- 3) Taddei Ludwig Associates, for assistance with financial and retirement planning
- 4) WEA Consulting, for HR administrative systems, consulting and placement
- 5) Various agencies specializing in various aspects of property/casualty coverage

Someone once asked me, I think out of spite, “what's the big idea?” Their problem, of course, is in believing that there may be only one – when there are many, which are part of an overall design of “tensegrity” as envisioned by Buckminster Fuller than a less full schematic that believes the *only* course between two points is a straight line. So they gave me a straight line...

Which I then took seriously, and composed some thoughts on how we would orchestrate such a synergy with passion and energy. The attached outline was written four years ago, but we continue to use the model today.

The big ideas are not a matter of conception (I'm not really all that bright) but perception (since I sometimes get it right) and the collection of a lot of little ideas

We believe you perceive that the best ideas are those that keep evolving, so that we can keep solving your benefit problems – even as those problems themselves evolve.

So “Season’s Greetings” no matter what the reason when you read this, as we punctuate our theme with one who needs no punctuation (but a lot of explanation)

anyone lived in a pretty how town  
(with up so floating many bells down)  
spring summer autumn winter  
he sang his didn't he danced his did

women and men (both little and small)  
cared for anyone not at all  
they sowed their isn't they reaped their same  
sun moon stars rain

children guessed (but only a few  
and down they forgot as up they grew  
autumn winter spring summer)  
that noone loved him more by more

when by now and tree by leaf  
she laughed his joy she cried his grief  
bird by snow and stir by still  
anyone's any was all to her

stars rain sun moon  
(and only the snow can begin to explain  
how children are apt to forget to remember  
with up so floating many bells down)

all by all and deep by deep  
and more by more they dream their sleep  
noone and anyone earth by april  
wish by spirit and if by yes

women and men (both dong and ding)  
summer autumn winter spring  
reaped their sowing and went their came  
sun moon stars rain

(e.e. cummings)



**What's the Big Idea?**  
**(2000 version – what's changed in five years?)**

There are two avenues to success: improve what exists, and create what doesn't  
In health insurance, there is room to achieve both

**What Exists (what will exist)**

Disparate distribution, driven by the carrier

*Consolidation and technology change distribution's direction*

Focus on sales and marketing

*Full service systems, including compliance*

Vertically integrated resources for consumers

*Horizontally integrated structures to leverage best practices*

A patchwork of professional services meeting client's many needs

*Horizontal integration across insurance, tax, and administration systems*

Increasing reliance on technological interface

*Return to personal touch, with full use of technological support*

***Our joint work with similar agencies incorporates the system as it will exist***

**What Will Exist (what it should mean)**

Increasing consolidation among carriers

*Outsourcing of client administrative functions*

*Internet support for administration and management*

Increasing reliance on technological capabilities

*Alternate forms of funding, information, and administration*

*More direct health care systems for consumers*

***United Benefit Advisors, and our regional partners, provides definition as new meanings emerge***

## **What Will Be Will Be**

Several “big ideas” will give shape to the health care delivery system of the future and the method for providing products, services and information. Whether alone or in combination, and in various forms of development, their impact is significant

### ***Cluster One – Carrier Service and Distribution***

Health carriers will appoint agents rather than rely on broker networks

*Easier to attain with consolidation, will allow more efficient sales and service*

Health insurance sold on a fee basis – no more commissioned sales

*Pricing pressure, delivery system shifts, and demand for accountability*

Alternate distribution system for carriers

*Demand for efficiency, availability of technology, broker specialization*

Separation of services into diverse business units

*Funding, information, practice management and partnerships*

*The carriers will be able to diversify to meet different market targets*

### ***Cluster Two – Service Business***

Increased use of business “partnerships” to allow more efficient selection of necessary services, enabled by technological sophistication and ease of use, rather than create one company that can do many things only marginally well. This philosophy is what will jointly drive carriers and agents to find systems in which they can both exist and thrive, while serving consumer needs without fear of continued governmental interference.

### ***Cluster Three – Employer Requirements***

Health insurance detached from employer based administration

*Legal shifts, use of defined contribution, employer cost and concerns*

Full integration of employer administrative systems, including health insurance

*Technological advances make it simpler, complexity demands a “system”*

*Growth of Professional Employment Organizations presages this development*

Growth of purchasing pools

*Vehicle for individual purchase and integrated administrative systems*

### **Cluster Four – Broker Changes**

Broker specialization within health insurance area

*Different health care markets need different skills  
More tools to determine maximum efficiency of market orientation*

Horizontal integration

*Facing carrier demands, good defense, exit strategy  
Allows greater potential for cross selling and diversification of revenue stream*

General agency moves from product to service distribution

*Increasing agent needs, some agents may be able to serve as GA*

### **Cluster Five – Legislative Changes**

The demand for reform will increase accountability, and this may ultimately be thought best to reside with the consumer and not their company. Enabling legislation to efficiency in the pricing model, free selection of required services and competition within both the health care product and service sector, follow.

By reaching full portability and the hope for affordability in the system, a lot of the regulatory framework will no longer be required, saving the government funds.

Changes include delinking employment from health insurance enrollment, use of no-load products, enabling open selection of products in purchasing pools, and various tax strategies that will steer consumers toward desired behaviors.